ALABAMA

TITLE 26. INFANTS AND INCOMPETENTS

CHAPTER 1. GENERAL PROVISIONS

Code of Ala. @ 26-1-4. (1987)

@ 26-1-4. Department of public safety to provide criminal conviction information on applicants for positions involving child care and treatment; such information to be confidential; applicant to be denied status if has felony conviction; children may be removed from home.

(a) Notwithstanding any other provisions of law to the contrary, upon request to the department of public safety, by the department of human resources, or by any other youth service agency approved by the department, such center shall provide information to the department of an approved agency concerning the felony criminal conviction record in this or another state of an applicant for a paid or voluntary position, including one established by contract, whose primary duty is the care or treatment of children, including applicants for adoption or foster parents. All information, including any criminal conviction record, procured by the department or an approved agency shall be confidential and shall not be further disclosed by such agencies or their representatives. The applicant may be denied an adoptive or foster parent status if he or she has a felony conviction, and if a foster parent is subsequently convicted of a felony the child or children may be removed from that home and relocated with another foster parent. This determination shall be made by the court handling the matter, giving primary consideration to the best interests of the child.

(b) The department of public safety shall provide appropriate forms and shall create a procedure for the application for such information.

(c) Any violation of the provisions of this section relative to the confidentiality of information received by the department or other approved agency shall be punishable by a fine of not more than $1,000.00.

ARTICLE 23.

CRIMINAL JUSTICE INFORMATION CENTER COMMISSION.

Division 1.

General Provisions.

§ 41-9-590. Definitions.

When used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates a different meaning:

(1) CRIMINAL JUSTICE AGENCIES. Such term shall include those public agencies at all levels of government which perform as their principal function activities or planning for such activities relating to the identification, apprehension, prosecution, adjudication or rehabilitation of civil, traffic and criminal offenders.

(2) OFFENSE. Any act which is a felony or is a misdemeanor as described in section 41-9-622.

(3) CRIMINAL JUSTICE INFORMATION SYSTEM and SYSTEM. Such terms shall include that portion of those public agencies, procedures, mechanisms, media and criminal justice information center forms as well as the information itself involved in the origination, transmittal, storage, retrieval, analysis and dissemination of information related to reported offenses, offenders and actions related to such events or persons required to be reported to and received by, as well as stored, analyzed and disseminated by the Alabama criminal justice information center commission through the center.

(4) COMMISSION. The Alabama criminal justice information center commission.

(5) ACJICC. The Alabama criminal justice information center commission.

(6) ACJIC. The Alabama criminal justice information center.

(7) CENTER. The Alabama criminal justice information center.

(8) DIRECTOR. The director of the Alabama criminal justice information center. (Acts 1975, No. 872, § 1.)

§ 41-9-591. Creation; functions generally; responsibility for development, administration, etc., of Alabama criminal justice information center.

There is hereby created and established an Alabama criminal justice information center commission, which shall establish, develop and continue to operate a center and system for the interstate and intrastate accumulation, storage, retrieval, analysis and dissemination of vital information relating to certain crimes, criminals and criminal activity to be known as the Alabama criminal justice information center.

Central responsibility for the development, maintenance, operation and administration of the Alabama criminal justice information center shall be vested with the director of the ACJIC under the supervision of the Alabama criminal justice information center commission. (Acts 1975, No. 872, § 2.)

§ 41-9-592. Composition of commission; terms of service of members of commission.

The commission shall be composed of two sections.

The voting section will include: the attorney general, the chairman of the board of pardons and paroles, the commissioner of the board of corrections, the president of the Alabama sheriffs' association, the director of the department of public safety, the president of the Alabama association of chiefs of police, the director of the Alabama law enforcement planning agency, the president of the district attorney's association, the president of the circuit clerks' association, the chief justice of the Alabama supreme court, the president of the Alabama association of intermediate court judges, the president of the circuit judges' association, the governor's coordinator of Alabama highway and traffic safety and the director of the data systems management division of the Alabama department of finance.

The advisory section will include: the presiding officer of the Alabama senate, the speaker of the Alabama house of representatives, the president of the association of county commissions of Alabama, the president of the Alabama league of municipalities, the administrative director of the courts and a citizen of the state of Alabama, to be appointed by the governor. The member shall have authority to select a designee based upon qualifications and with a view of continuity of representation and attendance at the commission meetings.

No person or individual shall continue to serve on the commission when he no longer officially represents the function or serves in the capacity enumerated in this section as a member to which he was elected or appointed. (Acts 1975, No. 872, § 3.)

§ 41-9-593. Chairman and vice-chairman; meetings; quorum; record of transactions discussed or voted upon; compensation of members of commission.

The commission shall, upon its first meeting, elect from its membership a chairman and a vice-chairman who shall serve for a period of one year. The vice-chairman shall act in the place of the chairman in his absence or disability.

The commission shall meet at such times as designated by the commission or by the chairman at the state capital or at other places as is deemed necessary or convenient, but the chairman of the commission must call a meeting four times a year at the state capital or main location of the ACJIC in the months of January, April, July and October. The chairman of the commission may also call a special meeting of the commission at any time he deems it advisable or necessary. A quorum shall be a simple majority of the voting commission

membership or their designees and all matters coming before the commission shall be voted on by the commission.

The commission will keep or cause to be kept a record of all transactions discussed or voted on by the commission.

Members of the commission and their designees shall serve without compensation; except, that payment of their expenses may be paid in accordance with the applicable state travel regulations. (Acts 1975, No. 872, § 4.)

§ 41-9-594. Establishment of rules, regulations and policies by commission generally; establishment of policies, safeguards, etc., as to collection, use, dissemination, etc., of criminal justice information; establishment, etc., of privacy and security committee.

The commission shall establish its own rules, regulations and policies for the performance of the responsibilities charged to it in this article.

The commission shall ensure that the information obtained under authority of this article shall be restricted to the items germane to the implementation of this article and shall ensure that the Alabama criminal justice information center is administered so as not to accumulate any information or distribute any information that is not required by this article. The commission shall ensure that adequate safeguards are incorporated so that data available through this system is used only by properly authorized persons and agencies.

The commission shall appoint a privacy and security committee from the membership of the commission who are elected officials, consisting of a chairman and three members, to study the privacy and security implications of criminal justice information and to formulate policy recommendations for consideration by the commission concerning the collection, storage, dissemination or usage of criminal justice information. The commission may establish other policies and promulgate such regulations that provide for the efficient and effective use and operation of the Alabama criminal justice information center under the limitations imposed by the terms of this article. (Acts 1975, No. 872, § 5.)

§ 41-9-595. Director and deputy director of criminal justice information center.

The commission shall appoint a director and a deputy director for the Alabama criminal justice information center who shall be responsible for the development, maintenance and operation of the ACJIC as required by the terms of this article and the implementation and operation of policies, programs and procedures established by the commission under the limitations of this article. The qualifications of the director and deputy director shall be determined by the state personnel department. (Acts 1975, No. 872, § 6.)

§ 41-9-596. Maintenance of staff and support services for center.

The director shall maintain the necessary staff along with support services necessary to enable the effective and efficient performance of the duties and responsibilities ascribed to the ACJIC in this article under the supervision of the commission. (Acts 1975, No. 872, § 7.)

§ 41-9-597. Applicability of rules and regulations of state personnel merit system to staff and personnel employed by commission: employment conditions, etc., of employees of agencies or institutions transferred to center or commission.

The staff and personnel employed by the commission for the development and operation of the center and system shall be governed by the personnel merit system rules and regulations of the state personnel department.

Employees of agencies or institutions which are transferred to the center or commission under the provisions of this article shall remain in their respective employments and shall be considered to meet the requirements of the department in terms of training and experience, but nothing in this section shall be construed to prevent or preclude the removal of an employee for cause in the manner provided by law. Such employees shall continue to enjoy employment conditions, including, but not limited to, salary range and advancement at a level no less than those enjoyed prior to transfer to the center or commission. All time accumulated while engaged in such prior employment shall be credited toward all privileges enjoyed under state merit employment. (Acts 1975, No. 872, § 8.)

§ 41-9-598. Appeals from rules and regulations promulgated by commission.

The process for appeals by an individual or governmental body of any rules and regulations promulgated by the commission shall first be to the commission proper. The appellant may present his argument at a regular meeting of the commission requesting the alteration or suggesting the nonapplicability of a particular rule and/or regulation. If the appellant is not satisfied by the action of the commission, then an appeal may be made to the circuit court in Montgomery county. (Acts 1975, No. 872, § 42.)

§ 41-9-599. Annual request for funds and budget; appropriations.

Annually the commission shall present to the governor a request for funds based on projected needs for criminal justice information systems in the state, together with a budget showing proposed expenditures, and the governor may include in his appropriation bill a request for funds to meet the financial needs of the commission. (Acts 1975, No. 872, § 43.)

§ 41-9-600. Failure of officer or official to make report or do act required by article.

Any officer or official mentioned in this article who neglects or refuses to make any report or to do any act required in this article shall be subject to

prosecution for a misdemeanor and, if found guilty, may be fined not less than $100.00 nor more than $10,000.00 and may be confined in a county jail for not more than one year. He shall also be subject to prosecution for nonfeasance and, if found guilty, shall be subject to removal from office therefor. (Acts 1975, No. 872, § 37.)

§ 41-9-601. Obtaining, etc., of criminal offender record information under false pretenses, falsification of information, etc.

Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the ACJICC, the ACJIC or any participating agency who willfully falsifies criminal offender record information or any records relating thereto shall, for each offense, be fined not less than $5,000.00 nor more than $10,000.00 or imprisoned in the state penitentiary for not more than five years or both. (Acts 1975, No. 872, § 35.)

§ 41-9-602. Communication, etc., of criminal offender record information in violation of article.

Any person who knowingly communicates or seeks to communicate criminal offender record information, except in accordance with this article, shall, upon conviction, be guilty of a misdemeanor and, for each such offense, may be fined not less than $500.00 nor more than $10,000.00 or imprisoned for not less than 30 days nor more than one year or both. (Acts 1975, No. 872, § 36.)

§ 41-9-603. Effect of article upon other provisions of law, etc.

(a) In the event of conflict, this article shall, to the extent of the conflict, supersede all conflicting parts of existing statutes which regulate, control or otherwise relate, directly or by implication, to the collection, storage and dissemination or usage of fingerprint identification, offender criminal history, uniform crime reporting and criminal justice activity data records or any conflicting parts of existing statutes which relate, directly or by implication, to any other provisions of this article.

(b) The provisions of this article shall not alter, amend or supersede the statutes and rules of law governing the collection, storage, dissemination or usage of records concerning individual juvenile offenders in which they are individually identified by name or other means until such time as the Alabama legislature provides legislation permitting the collection, storage, dissemination or usage of records concerning individual juvenile offenders.

(c) All laws or parts of laws which conflict with this article are hereby repealed. No part of this article shall violate provisions of article 8 of chapter 4 of Title 41 of this Code, Article VI of the Constitution of Alabama of 1901 or chapter 1 of Title 44 of this Code. (Acts 1975, No. 872, §§ 38, 39, 41.)

Division 2.

Collection, Dissemination, etc., of Criminal Data.

§ 41-9-620. Commission to provide for uniform crime reporting system.

The commission shall provide for a uniform crime reporting system for the periodic collection and analysis of crimes reported to any and all criminal justice agencies within the state. The collection of said data and the time for submission of said data shall be subject to the commission's regulation-making authority. (Acts 1975, No. 872, § 9.)

§ 41-9-621. Powers and duties of commission as to collection, dissemination, etc., of crime and offender data, etc., generally.

The commission, acting through the director of the Alabama criminal justice information center, shall:

(1) Develop, operate and maintain an information system which will support the collection, storage, retrieval, analysis and dissemination of all crime and offender data described in this article consistent with those principles of scope, security and responsiveness prescribed by this article;

(2) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards and related training assistance necessary for the uniform operation of the statewide ACJIC crime reporting and criminal justice information system;

(3) Offer assistance and, when practicable, instruction to all criminal justice agencies in establishing efficient systems for information management;

(4) Compile statistics on the nature and extent of crime in Alabama and compile data for planning and operating criminal justice agencies; provided, that such statistics shall not identify persons. The commission shall make available all such statistical information obtained to the governor, the legislature, the judiciary and any such other governmental agencies whose primary responsibilities include the planning, development or execution of crime reduction programs. Access to such information by such governmental agencies shall be on an individual written request basis or in accordance with the approved operational procedure, wherein must be demonstrated a need to know, the intent of any analyses and dissemination of such analyses, and shall be subject to any security provisions deemed necessary by the commission;

(5) Periodically publish statistics, no less frequently than annually, that do not identify persons and report such information to the chief executive officers of the agencies and branches of government concerned; such information shall accurately reflect the level and nature of crime in this state and the general operation of the agencies within the criminal justice system;

(6) Make available, upon request, to all criminal justice agencies in this state, to all federal criminal justice and criminal identification agencies and to state criminal justice and criminal identification agencies in other states any

information in the files of the ACJIC which will aid these agencies in crime fighting; for this purpose the ACJIC shall operate 24 hours per day, seven days per week;

(7) Cooperate with other agencies of this state, the crime information agencies of other states and the uniform crime reports and national crime information center systems of the federal bureau of investigation or any entity designated by the federal government as the central clearinghouse for criminal justice information systems in developing and conducting an interstate, national and international system of criminal identification, records and statistics;

(8) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for elsewhere in this article and to cooperate in the correction of the central ACJIC records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual; and

(9) Institute the necessary measures in the design, implementation and continued operation of the criminal justice information system to ensure the privacy and security of the system. Such security measures must meet standards to be set by the commission as well as those set by the nationally operated systems for interstate sharing of such information. (Acts 1975, No. 872, § 10.)

§ 41-9-622. Report, collection, dissemination, etc., of data pertaining to persons arrested or convicted of felonies or certain misdemeanors generally.

The commission is authorized to obtain, compare, file, analyze and disseminate, and all state, county and municipal criminal justice agencies are required to report fingerprints, descriptions, photographs and any other pertinent identifying and historical criminal data on persons who have been or are hereafter arrested or convicted in this state or any state for an offense which is a felony or an offense which is a misdemeanor escalating to a felony involving, but not limited to: possession of burglary tools or unlawful entry; engaging in unlawful commercial gambling; dealing in gambling; dealing in gambling devices; contributing to the delinquency of a child; robbery, larceny or dealing in stolen property; possession of controlled substances and illegal drugs, including marijuana; firearms; dangerous weapons; explosives; pandering; prostitution; rape; sex offenses, where minors or adults are victims; misrepresentation; fraud; and worthless checks. (Acts 1975, No. 872, § 11.)

§ 41-9-623. Submission to department of public safety by criminal justice agencies of fingerprints, photographs, etc., of persons arrested for felonies and misdemeanors described in section 41-9-622; duty of sheriffs, parole and probation officers, etc., to furnish other data to center.

All criminal justice agencies within the state shall submit to the ACJIC, by forwarding to the Alabama department of public safety, fingerprints, descriptions, photographs, when specifically requested, and other identifying data on persons who have been lawfully arrested in this state for all felonies and certain misdemeanors described in section 41-9-622.

It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, parole and probation officers, wardens or other persons in charge of correctional or detention institutions in this state to furnish the ACJIC with any other data deemed necessary by the commission to carry out its responsibilities under this article. (Acts 1975, No. 872, § 12.)

§ 41-9-624. Determination by commission as to criminal record of person arrested and notification of requesting agency or arresting officer.

The commission is authorized to compare all fingerprints and other identifying data received with information already on file, to ascertain whether or not a criminal record is found for that person and at once to inform the requesting agency or arresting officer of such facts. (Acts 1975, No. 872, § 15.)

§ 41-9-625. Obtaining by law enforcement and correction agencies of fingerprints, photographs, etc., of persons arrested as fugitives from justice, unidentified human corpses, etc.; procedure where persons arrested released without charge or cleared of offense.

All persons in this state in charge of law enforcement and correction agencies shall obtain or cause to be obtained the fingerprints according to the fingerprint system of identification established by the commission, full face and profile photographs, if photo equipment is available, and other identifying data of each person arrested for an offense of a type designated in section 41-9-622, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested for offenses other than those designated in this article may be taken at the discretion of the agency concerned.

If any person arrested or taken into custody is subsequently released without charge or cleared of the offense through criminal justice proceedings, such disposition shall be reported by all state, county and municipal criminal justice agencies to ACJIC within 30 days of such action, and all such information shall be eliminated and removed. (Acts 1975, No. 872, § 19.)

§ 41-9-626. Forwarding of fingerprints, photographs, etc.

Fingerprints and other identifying data required to be taken by this article shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked "photo available," and the photographs shall be forwarded subsequently if the commission so requests. (Acts 1975, No. 872, § 20.)

§ 41-9-627. Forwarding to department of public safety of descriptions of arrest warrants which cannot be served; notice where warrant subsequently served or withdrawn; annual..etc., confirmation of warrants remaining outstanding.

All persons in this state in charge of criminal justice agencies shall submit to the ACJIC by forwarding to the Alabama department of public safety detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated.

If the warrant is subsequently served or withdrawn, the criminal justice agency concerned must immediately notify the ACJIC of such service or withdrawal.

The agency concerned also must annually, no later than January 31 of each year and at other times if requested by the commission, confirm to the ACJIC all arrest warrants of this type which continue to be outstanding. (Acts 1975, No. 872, § 21.)

§ 41-9-628. Obtaining and forwarding to department of public safety by penal and correctional institutions of fingerprints, photographs, etc., of persons committed thereto; procedure upon release of such persons.

All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the commission, and full face and profile photographs of all persons received on commitment to these institutions. The prints so taken shall be forwarded to the ACJIC by forwarding to the Alabama department of public safety together with any other identifying data requested within 10 days after the arrival at the institution of the person committed.

At the time of release, the institution will again obtain fingerprints as before and forward them to ACJIC within 10 days along with any other related information requested by the commission. Immediately upon release, the institution shall notify ACJIC of the release of such person. (Acts 1975, No. 872, § 22.)

§ 41-9-629. Forwarding of data to criminal justice information center by department of public safety.

The Alabama department of public safety shall forward to ACJIC within a reasonable period, not to exceed 72 hours, all data collected pursuant to sections 41-9-623, 41-9-627 and 41-9-628. (Acts 1975, No. 872, § 23.)

§ 41-9-630. Furnishing of other identifying data to center by criminal justice agencies generally; furnishing of information in criminal identification files.

All persons in charge of criminal justice agencies in this state shall furnish the ACJIC with any other identifying data required in accordance with guidelines established by the ACJIC.

All criminal justice agencies in this state having criminal identification files shall cooperate in providing to ACJIC information in such files as will aid in establishing the nucleus of the state criminal identification file. (Acts 1975, No. 872, § 24.)

§ 41-9-631. Submission by criminal justice agencies of uniform crime reports; contents thereof.

All criminal justice agencies within the state shall submit to the ACJIC periodically, at a time and in such a form as prescribed by the commission, information regarding only the cases within its jurisdiction. Said report shall be known as the "Alabama uniform crime report" and shall include crimes reported and otherwise processed during the reporting period.

Said report shall contain the number and nature of offenses committed, the disposition of such offenses and such other information as the commission shall specify relating to the method, frequency, cause and prevention of crime. (Acts 1975, No. 872, § 25.)

§ 41-9-632. Submission of uniform crime reports by other governmental agencies; use of information contained therein.

Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report which desires to submit such a report shall be furnished with the proper forms by the ACJIC. When a report is received by ACJIC from a governmental agency not required to make such a report, the information contained therein shall be included within the periodic compilation provided for in this article. (Acts 1975, No. 872, § 30.)

§ 41-9-633. Reporting by criminal justice agencies of persons wanted and vehicles and property stolen.

All criminal justice agencies within the state shall report to the ACJIC, in a time and manner prescribed by the commission, all persons wanted by and all vehicles and property stolen from their jurisdictions. The reports shall be made

as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the reporting department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested. The commission shall have authority to institute any and all procedures necessary to trace and complete the investigative cycles of stolen vehicles or wanted persons. (Acts 1975, No. 872, § 26.)

§ 41-9-634. Notification of center, etc., of apprehension of person or recovery of property.

If it is determined by the reporting agency that a person is no longer wanted due to his apprehension or any other factor, or when a vehicle or property reported stolen is recovered, the determining agency shall notify immediately the Alabama criminal justice information center. Furthermore, if the agency making such apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall notify immediately the originating agency of the full particulars relating to such apprehension or recovery. (Acts 1975, No. 872, § 27.)

§ 41-9-635. Supplying of information on delinquent parolees by probation and parole officers.

All probation and parole officers shall supply the ACJIC with the information on delinquent parolees required by this article in a time and manner prescribed by the commission. (Acts 1975, No. 872, § 29.)

§ 41-9-636. Limitations upon provision of information generally.

Provision of information under this article shall be limited by all constitutional provisions, limitations and guarantees, including, but not limited to, due process, the right of privacy and the tripartite form of Alabama's state government. (Acts 1975, No. 872, § 41.)

§ 41-9-637. Obtaining and dissemination of identifying data and criminal histories generally — Persons convicted of offenses described in section 41-9-622 and confined to jails, workhouses, etc.

Pertinent identifying data and historical criminal information may be obtained and disseminated on any person confined to any workhouse, jail, reformatory, prison, penitentiary or other penal institution having been convicted of an offense described in section 41-9-622. (Acts 1975, No. 872, § 13.)

§ 41-9-638. Same — Unidentified human corpses found in state.

Pertinent identifying data and historical criminal information may be obtained and disseminated on any unidentified human corpse found in this state. (Acts 1975, No. 872, § 14.)

§ 41-9-639. Information which may be included in criminal histories.

Information in a criminal history, other than physical and identifying data, shall be limited to those offenses in which a conviction was obtained or to data relating to the current cycle of criminal justice administration if the subject has not yet completed that cycle. (Acts 1975, No. 872, § 16.)

§ 41-9-640. Log of disseminations of criminal histories.

A log shall be maintained of all disseminations made of each criminal history, including the date of information request and the recipient of said information. (Acts 1975, No. 872, § 17.)

§ 41-9-641. Dissemination of information to criminal justice agencies outside state.

The ACJIC shall not disseminate any information concerning any person to any criminal justice agencies outside of the state of Alabama unless said information pertains to a conviction of the person. (Acts 1975, No. 872, § 6.)

§ 41-9-642. Unconstitutional, etc., invasions of privacy of citizens not authorized by article; disclosure of criminal histories, etc., which might lead to identification of individuals to whom information pertains not to be made to persons, agencies, etc., not having "need to know" or "right to know."

Nothing in this article shall be construed to give authority to any person, agency or corporation or other legal entity to invade the privacy of any citizen as defined by the Constitution, the legislature or the courts other than to the extent provided in this article.

Disclosure of criminal histories or other information that may directly or otherwise lead to the identification of the individual to whom such information pertains may not be made to any person, agency, corporation or other legal entity that has neither the "need to know" nor the "right to know" as determined by the commission pursuant to section 41-9-594. (Acts 1975, No. 872, § 31.)

§ 41-9-643. Inspection of criminal records by persons to whom records pertain or attorneys thereof; establishment of procedures, etc., pertaining thereto by commission generally.

The center shall make a person's criminal records available for inspection to him or his attorney upon written application to the commission. Forms, procedures, identification and other related aspects pertinent to such access may

be prescribed by the commission in providing access to such records and information. (Acts 1975, No. 872, § 32.)

§ 41-9-644. Establishment of procedures, fees, etc., by agencies for inspection of criminal offender records; disposition of fees collected.

Agencies, including ACJIC, at which criminal offender records are sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures, fees (not to exceed $5.00) or restrictions, including fingerprinting, as are reasonably necessary to assure the records' security, to verify the identities of those who seek to inspect them and to maintain an orderly and efficient mechanism for such accesses.

All fees collected are to be forwarded to the state general fund for disposition. (Acts 1975, No. 872, § 35.)

§ 41-9-645. Purging, modification or supplementation of criminal records — Applications to agencies by individuals; appeals to circuit courts upon refusal of agencies to act, etc.; costs.

If an individual believes such information to be inaccurate or incomplete, he may request the original agency having custody or control of the detail records to purge, modify or supplement them and to so notify the ACJIC of such changes.

Should the agency decline to so act or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual or his attorney may within 30 days of such decision enter an appeal to the circuit court of the county of his residence or to the circuit court in the county where such agency exists, with notice to the agency, pursuant to acquiring an order by such court that the subject information be expunged, modified or supplemented by the agency of record. The court in each such case shall conduct a de novo hearing and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as appeals are entered from the court of probate; except, that the appellant shall not be required to post bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at the first term or in chambers. A notice sent by registered or certified mail shall be sufficient service on the agency of disputed record that such appeal has been entered.

The party found to be in error shall assume all costs involved. (Acts 1975, No. 872, § 33.)

§ 41-9-646. Same — Entry of court order for purging, modification or supplementation of record and compliance therewith by agencies, etc.; notification of agencies, individual, etc., of deletions, amendments, etc., in records.

Should the record in question be found to be inaccurate, incomplete or misleading, the court shall order it to be appropriately purged, modified or supplemented by an explanatory notation. Each agency or individual in the state

with custody, possession or control of any such record shall promptly cause each and every copy thereof in his custody, possession or control to be altered in accordance with a court order. Notification of each such deletion, amendment and supplementary notation shall be promptly disseminated to any individuals or agencies to which the records in question have been communicated, including the ACJIC, as well as to the individual whose records have been ordered so altered. (Acts 1975, No. 872, § 34.)

§ 41-9-647. Establishment of guidelines for action and institution of actions for violations as to data reporting or dissemination.

The commission shall establish guidelines for appropriate measures to be taken in the instance of any violation of data reporting or dissemination and shall initiate and pursue appropriate action for violations of rules, regulations, laws and constitutional provisions pertaining thereto. (Acts 1975, No. 872, § 18.)

§ 41-9-648. Compilation of information and statistics pertaining to disposition of criminal cases.

The administrator of the department of court management or the chief administrative officer of any other entity that is charged with the compilation of information and statistics pertaining to the disposition of criminal cases shall report such disposition to the ACJIC within a reasonable time after formal rendition of judgment as prescribed by the commission. (Acts 1975, No. 872, § 28.)

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§ 15-10-90. Sheriffs to fingerprint persons taken into custody; disposition of copies of fingerprints.

It shall be the duty of the sheriff of each county in this state who shall first take a person into custody to fingerprint such person and furnish a copy of such fingerprints, with the fingerprint card properly filled out, to the director of the federal bureau of investigation, Washington, D.C., and a copy to the director, department of public safety, state bureau of investigation, Montgomery, Alabama. (Acts 1943, No. 420, p. 385, § 1.)

§ 15-10-91. Central state assembling agency for receipt of fingerprint records designated; duties thereof.

The department of public safety, state bureau of investigation, shall constitute the central assembling agency of the state of Alabama for receiving such fingerprint records. Said agency shall maintain such records and shall furnish to all law-enforcement agencies and officers of the state of Alabama any information to be derived therefrom on request in writing. (Acts 1943, No. 420, p. 385, § 2.)

§ 15-10-92. Furnishing of fingerprinting equipment generally.

The county commissions of the several counties in this state shall furnish to the sheriffs of the respective counties, at county expense, such equipment as may be required for the purpose of this article other than fingerprint cards and envelopes. (Acts 1943, No. 420, p. 385, § 3.)

§ 15-10-93. Furnishing of fingerprint cards and envelopes.

The state of Alabama, through the department of public safety, shall provide the form of the fingerprint cards and furnish the several sheriffs with said uniform fingerprint cards and envelopes. (Acts 1943, No. 420, p. 385, § 4.)

* * *

§ 36-12-40. Rights of citizens to inspect and copy public writings.

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. (Code 1923, § 2695; Code 1940, T. 41, § 145.)

§ 36-12-41. Public officers to provide certified copies of writings upon payment of fees therefor; admissibility in evidence of copies.

Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing. (Code 1923, § 2696; Code 1940, T. 41, § 147.)

Act 85-537

Enrolled, An Act,

Relating to applicants for adoption or foster parents; to require the department of pensions and security to apply for, and for the state department of public safety to furnish, any history of prior felony convictions. The applicant shall be denied adoptive or foster parent status if he or she has a prior history of felony conviction in this or another state, and to revoke such status of foster parent if he or she is subsequently convicted of a felony; to require strict confidentiality of such reports and to provide for a fine for breach of such confidential information.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Notwithstanding any other provisions of law to the contrary, upon request to the department of public safety, by the department of pensions and security, or by any other youth service agency approved by the department, such center shall provide information to the department or an approved agency concerning the felony criminal conviction record in this or another state of an applicant for a paid or voluntary position, including one established by contract, whose primary duty is the care or treatment of children, including applicants for adoption or foster parents. All information, including any criminal conviction record, procured by the department or an approved agency shall be confidential and shall not be further disclosed by such agencies or their representatives. The applicant may be denied an adoptive or foster parent status if he or she has a felony conviction, and if a foster parent is subsequently convicted of a felony the child or children may be removed from that home and relocated with another foster parent. This determination shall be made by the court handling the matter, giving primary consideration to the best interests of the child.

Section 2. The department of public safety shall provide appropriate forms and shall create a procedure for the application for such information.

Section 3. Any violation of the provisions of this act relative to the confidentiality of information received by the department or other approved agency shall be punishable by a fine of not more than one thousand dollars

Section 4. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 5. All laws or parts of laws which conflict with this act are hereby repealed.

Section 6. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House April 30, 1985, as amended.

John W. Pemberton
Clerk

Senate MAY 9 1985 Passed

NO. 85-537
MAY 17 1985
RECEIVED
Secretary of State

APPROVED 5-17-85
TIME 3:05 pm
AL-17 George C. Wallace
Governor

Privacy & Security Regulation
No. 001

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

ADMINISTRATIVE PROCEDURES

Purpose: This regulation sets forth the procedures for issuing new or revised privacy and security regulations and the procedure for appealing existing regulations.

1. Authority. ACJIC privacy and security regulations are issued by the ACJIC Commission through the authority of Section 5, Alabama Act No. 872, Regular Session 1975.

2. Procedure for Modification of Regulations.

A. Recommended changes, additions, or deletions to ACJIC privacy and security regulations should be directed to the Director, ACJIC, 858 South Court Street, Montgomery, Alabama 36130.

B. Proposed changes, additions, or deletions will be presented to the Privacy and Security Committee for review. Committee recommendations will be forwarded to the ACJIC Commission for approval/disapproval.

C. Proposed changes, additions, or deletions that are disapproved will be returned to the originator with appropriate comments as to the reason(s) for disapproval.

3. Appeal Procedures. The process of appeal by an individual or governmental body of any rule or regulation promulgated by the Commission shall first be to the Commission proper. The appellant may present his argument at a regular meeting of the Commission requesting the alteration or suggesting the nonapplicability of a particular rule and/or

regulation. If the appellant is not satisfied by the action of the Commission, then an appeal may be made to the circuit court of Montgomery County.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

Privacy & Security Regulation
No. 002

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

DEFINITIONS

Purpose: This regulation defines terms used in ACJIC privacy and security regulations.

1. The term "criminal justice agencies" means only those public agencies, or subunits thereof, at all levels of government which perform as their principal function activities (1) relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of criminal offenders; or (2) relating to the collection, storage, and dissemination of criminal justice records.

2. The terms "criminal history record information," "criminal history information," or "criminal histories" mean information compiled by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release. It shall be understood not to include intelligence, analytical and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

3. The terms "Act" or "ACJIC Act" mean Alabama Act No. 872, Regular Session, 1975.

4. The term "Commission" means Alabama Criminal Justice Information Center Commission.

5. The term "ACJIC" means Alabama Criminal Justice Information Center.

6. The term "NCIC" means the National Crime Information Center operated by the Federal Bureau of Investigation.

7. The term "CCH/OBTS system" means computerized criminal history/offender-based transaction statistics system. CCH records an offender's formal contacts with each segment of the criminal justice system. OBTS is a statistical system which describes the aggregate experiences of an offender in terms of type, relation and time-frame of the criminal justice process.

8. The term "LEDS" refers to the Law Enforcement Data System operated by the ACJIC. LEDS contains computerized files consisting of wanted persons, stolen vehicles, stolen property and firearms, vehicle and boat registration, and drivers license information.

9. The term "direct access" means access or the right to access by an agency or individual to criminal justice records maintained by the ACJIC without the intervention of another and independent agency or individual.

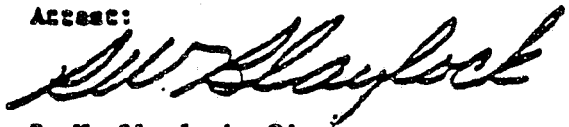
10. The term "indirect access" means access to criminal justice information through an agency or individual authorized direct access to criminal justice records maintained by the ACJIC.

11. The term "administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

12. The term "record of adjudication of guilt" means an arrest record with a court disposition noting a conviction of the offense charged.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:



R. W. Blaylock, Director
Alabama Criminal Justice Information Center

Privacy & Security Regulation
No. 003

State of Alabama
Criminal Justice Information Center
558 South Court Street
Montgomery, Alabama 36130

CRIMINAL HISTORY DISSEMINATION POLICIES & PROCEDURES

Purpose: This regulation defines criminal history information usage and dissemination for information collected, stored, processed, or disseminated by the ACJIC.

1. Agencies authorized access to criminal history record information:

A. Criminal Justice Agencies

Criminal justice agencies, upon completion of a Privacy and Security Agreement as specified in paragraph 2 of this regulation, shall be authorized direct access to criminal history record information for the following purposes:

(1) Functions related to the administration of criminal justice.

(2) Criminal justice agency pre-employment screening.

Criminal history record information may be disseminated directly to Federal agencies and agencies of other states only if they are criminal justice agencies within the meaning of these regulations.

B. Noncriminal Justice Agencies

The following types of noncriminal justice agencies may be authorized indirect access to criminal history record information upon approval by the appropriate authority and completion of a Privacy and Security Agreement:

(1) Agencies authorized by State or Federal statute, executive order, local ordinance, or court order to have access to criminal history information shall be granted indirect access to such information. Dissemination

will be through the ACJIC or designated criminal justice agencies. Application for access to criminal history information under this paragraph shall be addressed to the Director, ACJIC.

(2) Agencies or individuals may be authorized access to criminal history record information for the express purpose of research, evaluative or statistical activities pursuant to a specific agreement with the ACJIC and with the approval of the ACJIC Director. Individuals or agencies seeking access under this paragraph shall submit to the ACJIC a completed research design that assures the security and confidentiality of the data. Dissemination of criminal records pursuant to this paragraph will be through the ACJIC.

(3) Businesses or private persons may be allowed access to records of adjudication of guilt for the purpose of making employment and job assignment decisions about employees or prospective employees whose duties involve or may involve:

(a) Providing services necessary to maintain the public safety of the State's citizens;

(b) Working in or near private dwellings without immediate supervision;

(c) Custody or control over access to cash or valuable items;

(d) Knowledge of or access to secret processes, trade secrets or other confidential business information; and,

(e) Insuring the security or safety of other employees, customers, or property of the employer.

Criminal records disseminated for use in employment and job assignment decisions must be based on positive identification of the subject by fingerprint comparison. The use of the information shall be limited to the purposes for which it was released. Dissemination will be through the ACJIC.

Application for records under this Section shall be in writing to the Director, ACJIC. Fees shall be charged for disseminating such records which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the State providing the information.

(5) Agencies or individuals not otherwise authorized access to criminal history record information collected, stored, processed, or disseminated by the ACJIC, may be authorized indirect access to such information upon a demonstrated need and right to access and utilize such records. Application for access under this paragraph shall be in writing to the ACJIC Director. Upon request by the applicant or upon the ACJIC's own motion, the Privacy and Security Committee shall conduct public hearings at which it may receive evidence and hear statements concerning the application for access to criminal history record information. Access to information under this paragraph will be through the ACJIC or designated criminal justice agencies.

2. Privacy and Security Agreements. Each agency or individual authorized access to criminal history record information, whether directly or through any intermediary, shall enter into a Privacy and Security Agreement with the ACJIC.

A. Criminal justice agencies shall agree to the following:

(1) To receive, store, use, and disseminate criminal history record information in strict compliance with State and Federal statutes and regulations governing criminal history record information.

(2) To make its records available to the ACJIC for the purpose of conducting periodic audits to determine compliance with statutes and regulations governing criminal history record information.

(3) To keep such records as the ACJIC may require to facilitate such audits.

B. Noncriminal justice agencies shall agree to the following:

(1) To receive, store, and use criminal history record information in strict compliance with State and Federal statutes and regulations governing criminal history record information.

(2) To restrict the use of criminal history record information to the purposes for which it was provided and disseminate it no further.

(3) To keep such records as the ACJIC may require and to make those records available for audit to determine compliance with appropriate statutes and regulations.

(4) To familiarize personnel working with or having access to criminal history record information with the appropriate statutes and regulations governing such information.

3. General Policies on the Use and Dissemination of Criminal History Record Information.

A. Criminal history records obtained from the National Crime Information Center (NCIC) through the ACJIC are subject to the policies promulgated by the NCIC Advisory Policy Board.

B. No agency or individual having access to criminal history record information maintained by the ACJIC, whether directly or through any intermediary, shall confirm the existence or nonexistence of such information to any person or agency that would not be eligible to receive the information itself.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

Privacy & Security Regulation
No. 004

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

PERSONNEL SECURITY

Purpose: This regulation establishes procedures by which personnel security is achieved and maintained. The procedures include employment screening, management control, in-service training, penalties, and system discipline.

1. Employment Screening. Applicants for employment and those presently employed by the Alabama Criminal Justice Information Center or Commission whose duties require access to criminal justice information or to areas where such information is stored, must consent to an investigation of their character, previous employment, and other matters necessary to establish their suitability to work with sensitive information. Giving false information will disqualify an applicant from employment and subject a present employee to dismissal. The investigation will be designed to develop sufficient information to enable ACJIC officials to determine employability and fitness of persons entering sensitive positions.

Employees of other State government departments and employees of nongovernmental agencies providing contractual services, whose duties require access to criminal justice information or areas where such information is stored, shall be subject to pre-employment screening.

Remote terminal operators and employees of local/regional criminal justice information systems exchanging criminal justice information with the ACJIC are also subject to personnel security screening. This responsibility rests with the appropriate criminal justice agency.

ACJIC personnel records, including employment suitability and security investigations, are confidential and will be made available only to ACJIC officials who require access to such information in the performance of their official duties.

2. Management Control.

A. Personnel employed by the Data Systems Management Division (DSMD). Alabama Department of Finance, who provide data processing services to the ACJIC for the operation of the criminal justice information system, shall be subject to the management control of the ACJIC Director in the areas specified in this regulation.

The ACJIC Director shall execute a privacy and security agreement with the DSMD which shall include the following conditions:

(1) Those personnel whose assigned duties involve the collection, storage, processing, or dissemination of criminal history record information shall be under the supervision of the ACJIC Director, or his designee, while performing those duties. The ACJIC Director shall have the authority to select and/or approve all DSMD employees so assigned.

(2) Those personnel whose duties require access to criminal history record information or to areas where such information is stored shall be subject to all personnel and physical security procedures established by the ACJIC Director.

(3) Those personnel working with or having access to criminal history record information shall be subject to legal and administrative sanctions provided for the abuse, unauthorized access, disclosure, or dissemination of criminal justice information.

B. Nongovernmental agencies providing contractual services to the ACJIC, and whose employees will require access to criminal justice information or to areas where such information is stored, shall enter into a privacy and security agreement with the ACJIC. The agreement shall include provisions similar to those in paragraph A (1), (2), and (3) above.

3. In-Service Training. All persons working with or having access to criminal justice information collected, stored, processed, or disseminated by the ACJIC shall be made aware of all statutes and regulations pertaining to the privacy and security of such information. This training requirement shall apply to remote terminal operators and system personnel of local/regional criminal justice information systems interfaced with the ACJIC as well as ACJIC employees.

The ACJIC Director shall determine the method and frequency of required privacy and security training.

4. Penalties for Violation of System Security Standards. Persons employed by the ACJIC or Commission or who are otherwise under the management control of the ACJIC Director, who are found to be in violation of ACJIC privacy and security regulations or statutes and regulations governing the privacy and security of criminal justice information, may be subject to the following administrative penalties:

A. A formal reprimand which will be made a part of the employee's permanent personnel record.

B. Suspension without pay for a period not to exceed thirty days.

C. Termination of employment.

All administrative penalties enumerated herein shall be administered in strict compliance with the provisions of the Alabama Code, Title 55, Chapter 9, Personnel Department and Merit System.

5. System Discipline. Persons functioning as operators for remote terminals and the personnel of local or regional criminal justice information systems that are interfaced with the statewide criminal justice information system are subject to the system security standards established by the ACJIC Commission and promulgated through ACJIC privacy and security regulations.

Any violation of the provisions of these regulations by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, should be punished by suspension, discharge, reduction in grade, or any other administrative penalties as are deemed appropriate by the agency; provided, however, that such penalties shall be imposed only if they are permissible under any applicable statutes governing the employment of the individual in question.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

PHYSICAL SECURITY

Purpose: This regulation defines physical security standards for the Alabama Criminal Justice Information Center and assigns responsibilities for monitoring system security.

1. Responsiblity for System Security. The Director of the Alabama Criminal Justice Information Center shall insure that all personnel and units of government participating in the Alabama Criminal Justice Information System comply with the security standards adopted by the ACJIC Commission and those specified by other statutes and regulations applicable to criminal justice information systems.

2. Physical Security Standards.

A. The Alabama Criminal Justice Information Center.

The ACJIC Director shall develop and enforce procedures to reasonably protect the ACJIC from unauthorized access, theft, sabotage, natural or manmade disaster. Such procedures shall address the following areas:

(1) Fire detection and suppression systems.

(2) Access control to the ACJIC facility; particular attention must be given to areas where criminal justice information is processed and stored.

(3) Visitor identification and control procedures.

(4) Structural design of the ACJIC facility to reduce the possibility of physical damage to the system and information.

(5) Supporting utilities.

(6) Document control procedures to insure the proper handling of criminal justice records.

B. Local/Regional Criminal Justice Information Systems.

Agencies operating criminal justice information systems which interface with the ACJIC shall develop and implement security procedures in the following areas:

(1) Computer centers should be protected from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(2) System personnel who have direct access to ACJIC criminal history record information must be screened in accordance with the requirements established by the ACJIC Commission.

(3) Visitors to computer centers having direct access to ACJIC criminal justice information must be accompanied by staff personnel at all times.

(4) Printed copies of criminal history record information obtained through the ACJIC must be afforded security to prevent unauthorized access or dissemination. Printed records should be destroyed when no longer needed.

(5) Remote terminal devices accessing the ACJIC through local/regional criminal justice information systems are subject to all privacy and security regulations issued by the ACJIC Commission.

C. ACJIC Remote Terminal Devices

Agencies having direct terminal access to the ACJIC or terminal access through a local or regional information system, shall institute procedures to reasonably protect the terminal device and any criminal justice information obtained through the terminal. Such procedures must include the following minimum measures:

(1) Terminal devices must be placed in physically secure locations within the authorized agency. To be secure, the agency operating the terminal must be able to control physical access to the device on a twenty-four hour per day, seven-day per week basis.

(2) Remote terminal operators must be screened in accordance with the requirements established by the ACJIC Commission.

(3) Printed copies of criminal history record information obtained through ACJIC remote terminals must be afforded security to prevent unauthorized access to or use of that information.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

ALASKA

Alaska Statutes Annotated

Sec. 12.55.147. Fingerprints at time of sentencing. When a defendant is convicted of a felony by a court of this state, the defendant's fingerprints shall be placed on the judgment of conviction in open court, on the record, at the time of sentencing. The defendant and the person administering the fingerprinting shall sign their names under the fingerprints. (§ 35 ch 143 SLA 1982)

Chapter 62. Criminal Justice Information Systems Security and Privacy.

Section
10. Regulations
15. Collection and security of intelligence information
17. Annual report to commission
20. Collection and storage
30. Access and use
40. Security, updating, and purging
50. Interstate systems for the exchange of criminal justice information
60. Civil and criminal remedies
70. Definitions

Sec. 12.62.010. Regulations. (a) The Governor's Commission on the Administration of Justice established under AS 44.19.110 — 44.19.122 is authorized, after appropriate consultation with representatives of state and local law-enforcement agencies participating in information systems covered by this chapter, to establish rules, regulations, and procedures considered necessary to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this chapter.

(b) In addition to regulations adopted under (a) of this section, the commission shall, after appropriate consultation with representatives of state and local law-enforcement agencies, adopt regulations and procedures governing the gathering of intelligence information and the storage, security, and privacy of the intelligence information collected and maintained by law-enforcement agencies in the state. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this subsection. In adopting these regulations, the commission shall take into account both the interest of law-enforcement agencies in maintaining the ability to conduct intelligence operations and each individual's right to privacy. (§ 1 ch 161 SLA 1972; am § 1 ch 38 SLA 1976)

Sec. 12.62.015. Collection and security of intelligence information. (a) Regulations of the commission, adopted under AS 12.62.010(b), shall include requirements and guidelines concerning the categories of intelligence information which may be gathered by law-enforcement agencies in the state, the purposes for which intelligence information may be collected, and the methods and

procedures which may be used in collecting intelligence information.

(b) The commission's regulations adopted under AS 12.62.010(b) shall establish standards for the confidentiality and security of intelligence information and provide for controls, access to and dissemination of intelligence information, and methods for updating, correcting and purging intelligence information while maintaining the security and confidentiality of the information. (§ 2 ch 38 SLA 1976)

Sec. 12.62.017. Annual report to commission. The chief officer of each state or municipal law-enforcement agency shall submit an annual report to the commission, in the form required by the commission, certifying compliance by the agency with the regulations adopted by the commission under AS 12.62.010(b). (§ 2 ch 38 SLA 1976)

Sec. 12.62.020. Collection and storage. (a) The commission shall establish regulations concerning the specific classes of criminal justice information which may be collected and stored in criminal justice information systems.

(b) No information collected under the provisions of any of the following titles of the Alaska Statutes, except for information related to criminal offenses under those titles, may be collected or stored in criminal justice information systems:

(1) AS 02, except chs. 20, 30, and 35;
(2) AS 03 — AS 04;
(3) AS 05, except chs. 20, 25, 30, and 35;
(4) AS 06 — AS 10;
(5) AS 13 — AS 15;
(6) AS 17;
(7) AS 18, except AS 18.60.120 — 18.60.175 and ch. 65;
(8) AS 19 — AS 24;
(9) AS 25, except ch. 25;
(10) AS 26 — AS 27;
(11) AS 29 — AS 32;
(12) AS 34 — AS 46; and
(13) AS 47, except chs. 10 and 23.

(§ 1 ch 161 SLA 1972; am § 30 ch 126 SLA 1977)

Sec. 12.62.030. Access and use. (a) Except as provided in (b) and (c) of this section, access to specified classes of criminal justice information in criminal justice information systems is available only to individual law enforcement agencies according to the specific needs of the agency under regulations established by the commission under AS 12.62.010. Criminal justice information may be used only for law

enforcement purposes or for those additional lawful purposes necessary to the proper enforcement or administration of other provisions of law as the commission may prescribe by regulations established under AS 12.62.010. No criminal justice information may be disseminated to an agency before the commission determines the agency's eligibility to receive that information.

(b) Criminal justice information may be made available to qualified persons for research related to law enforcement under regulations established by the commission. These regulations must include procedures to assure the security of information and the privacy of individuals about whom information is released.

(c) A person shall have the right to inspect criminal justice information which refers to him. If a person believes the information to be inaccurate, incomplete or misleading, he may request the criminal justice agency having custody or control of the records to purge, modify or supplement them. If the agency declines to do so, or if the person believes the agency's decision to be otherwise unsatisfactory, the person may in writing request review by the commission within 60 days of the decision of the agency. The commission, its representative or agent shall, in a case in which it finds a basis for complaint, conduct a hearing at which the person may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings and conclusions shall be issued. If the record in question is found to be inaccurate, incomplete or misleading, the commission shall order it to be appropriately purged, modified or supplemented by an explanatory notation. An agency or person in the state with custody, possession or control of the record shall promptly have every copy of the record altered in accordance with the commission's order. Notification of a deletion, amendment and supplementary notation shall be promptly disseminated by the commission to persons or agencies to which records in question have been communicated, as well as to the person whose records have been altered.

(d) An agency holding or receiving criminal justice information shall maintain, for a period determined by the commission to be appropriate, a listing of the agencies to which it has released or communicated the information. These listings shall be reviewed from time to time by the commission or staff members of the commission to determine whether the provisions of this chapter or any applicable regulations have been violated.

(e) Reasonable hours and places of inspection, and any additional restrictions, including fingerprinting, that are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them may be prescribed by published rules. Fingerprints taken under this subsection may not be transferred to another agency or used for any other purpose.

(f) A person or agency aggrieved by an order or decision of the commission under (c) of this section may appeal the order or decision to the superior court. The court shall in each case conduct a de novo hearing and may order the relief it determines to be necessary. If a person about whom information is maintained by an agency challenges that information in an action under this subsection as being inaccurate, incomplete or misleading, the burden is on the agency to prove that the information is not inaccurate, incomplete or misleading. (§ 1 ch 161 SLA 1972)

Sec. 12.62.035. Access to certain crime information. (a) An interested person may request from the Department of Public Safety records of all felony convictions, convictions involving contributing to the delinquency of a minor, and convictions involving any sex crimes of a person who holds or applies for a position of employment in which the person has or would have supervisory or disciplinary power over a minor or dependent adult. The Department of Public Safety shall disclose the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section must include within it the fingerprints of the person who is the subject of the request and any other data specified in regulations adopted by the commission. The request must be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting interested person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request.

(c) The commission shall adopt regulations to implement the provisions of this section.

(d) If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information.

(e) The Department of Education shall request and receive records under (a) of this section for a person seeking initial certification as a teacher or administrator.

(f) In this section

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violations of AS 11.51.130(a)(1), (3), or (5); former AS 11.40.130; or the laws of another jurisdiction if the offense would have been a crime in this state under AS 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if committed in the state;

(2) "dependent adult" means an adult with a physical or mental disability who requires assistance or supervision with the activities of daily living;

(3) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor or dependent adult;

(4) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984; am §§ 1 — 3 ch 7 SLA 1990)

Sec. 12.62.040. Security, updating, and purging. (a) Criminal justice information systems shall

(1) be dedicated to law enforcement purposes and be under the management and control of law enforcement agencies unless exempted under regulations prescribed under AS 12.62.010;

(2) include operating procedures approved by the commission which are reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and reasonably designed to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information;

(3) include operating procedures approved by the commission which are designed to assure that information concerning an individual shall be removed from the records, based on considerations of age, nature of record, and reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(b) Notwithstanding any provision of this section, any criminal justice information relating to minors which is maintained as part of a criminal justice information system must be afforded at least the same protection and is subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use and security as it would be under AS 47.10.090. (§ 1 ch 161 SLA 1972)

Sec. 12.62.050. Interstate systems for the exchange of criminal justice information. (a) The commission shall regulate the participation by all state and local criminal justice agencies in an interstate system for the exchange of criminal justice information, and shall be responsible to assure the consistency of the participation with the provisions and purposes of this chapter. The commission may not compel any criminal justice agency to participate in an interstate system.

(b) Direct access to an interstate system for the exchange of criminal justice information shall be limited to those criminal justice agencies that are expressly designated for that purpose by the commission. When the system employs telecommunications access terminals, the

commission shall limit the number and placement of the terminals to those for which adequate security measures may be taken and as to which the commission may impose appropriate supervisory regulations. (§ 1 ch 161 SLA 1972)

Sec. 12.62.060. Civil and criminal remedies. (a) A person with respect to whom criminal justice information has been wilfully maintained, disseminated, or used, or intelligence information has been collected, obtained or used, in violation of this chapter has a civil cause of action against the person responsible for the violation and shall be entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A person who wilfully disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this chapter, or who knowingly collects, obtains or uses intelligence information in violation of this chapter, upon conviction, is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both.

(c) A good faith reliance upon the provisions of this chapter or of applicable law governing maintenance, dissemination, or use of criminal justice information, or upon rules, regulations, or procedures prescribed under this chapter is a defense to a civil or criminal action brought under this chapter. (§ 1 ch 161 SLA 1972; am § 3 ch 38 SLA 1976)

Sec. 12.62.070. Definitions. In this chapter

(1) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations related to the system funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing, or dissemination of criminal justice information;

(2) "criminal justice information" means information concerning an individual in a criminal justice information system and indexed under the individual's name, or retrievable by reference to the individual by name or otherwise and which is collected or stored in a criminal justice information system;

(3) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.110 — 44.19.122;

(4) "interstate systems" means agreements, arrangements and systems for the interstate transmission and exchange of criminal justice information, but does not include record keeping systems in the state maintained or controlled by a state or local agency, or a group of

agencies, even if the agency receives information through, or otherwise participates in, systems for the interstate exchange of criminal justice information;

(5) "law enforcement" means any activity relating to crime prevention, control or reduction or the enforcement of the criminal prevention, control or reduction or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, activities of criminal prosecution, courts, public defender, corrections, probation or parole authorities;

(6) "law-enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law enforcement and includes the child support enforcement agency created by AS 47.23.

(7) "intelligence information" means information concerning the background, activities or associations of an individual or group collected or obtained by a law-enforcement agency for preventive, precautionary or general investigative purposes not directly connected with the investigation of a specific crime which has been committed nor with the apprehension of a specific person in connection with the commission of a particular crime. (§ 1 ch 161 SLA 1972; am § 4 ch 38 SLA 1976; am § 31 ch 126 SLA 1977)

Public Records

Sec. 09.25.110. Public records open to inspection and copying; fees. (a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 09.25.115 a certified copy of the public record.

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of $5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics, the library archives in the Department of Education, and the division of banking, securities, and corporations in the Department of Commerce and Economic Development may continue to charge the same fees that they are charging on September 25, 1990 for performing record searches, and may increase the fees as necessary to recover agency expenses on the same basis that is used by the agency immediately before September 25, 1990.

Sec. 09.25.120. Public records; exceptions; certified copies. Every person has a right to inspect a public record in the state, including public records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law; (5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance; (6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions, (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law, or (G) could reasonably be expected to endanger the life or physical safety of an individual. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 09.25.110 — 09.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees. (§ 3.23 ch 101 SLA 1962; am § 5 ch 200 SLA 1990)

Sec. 09.25.125. Enforcement; Injunctive relief. A person having custody or control of a public record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in obstructing or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. (§ 1 ch 74 SLA 1975)

Sec. 18.65.060. Peace officers to cooperate. (a) All peace officers in the state or any municipality or subdivision shall cooperate with the Department of Public Safety in creating and maintaining its files, and all information shall be classified upon standard forms and kept available for the detection of crime and the identification of criminals. Criminal justice information collected and maintained under this section is subject to the provisions of AS 12.62.

(b) The Department of Public Safety may adopt regulations necessary to carry out the purposes of this section; however, regulations proposed by the department shall be submitted to the presiding officer of each house of the legislature on the day the house convenes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the proposed regulations. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members of the legislature in joint session, the regulations become effective at a date to be designated by the department. (§ 7 ch 144 SLA 1953; am § 1 ch 107 SLA 1968; am § 43 ch 69 SLA 1970; am § 16 ch 71 SLA 1972; am § 2 ch 161 SLA 1972)

Alaska Regulations

PART 3.
GOVERNOR'S COMMISSION ON THE ADMINISTRATION OF JUSTICE

Chapter

60. Criminal Justice Information Systems (6 AAC 60.010 – 6 AAC 60.900)

CHAPTER 60.
CRIMINAL JUSTICE INFORMATION SYSTEMS

Article

1. Collection and Storage of Criminal Justice Information (6 AAC 60.010 – 6 AAC 60.020)
2. Security (6 AAC 60.030 – 6 AAC 60.040)
3. Access and Use (6 AAC 60.050 – 6 AAC 60.090)
4. Purging of Criminal Justice Information (6 AAC 60.100 – 6 AAC 60.130)
5. General Provisions (6 AAC 60.900)

ARTICLE 1.
COLLECTION AND STORAGE OF CRIMINAL JUSTICE INFORMATION

Section

10. Scope of regulations
15. Alaska justice information system
20. Categories of criminal justice information which may be collected

6 AAC 60.010. SCOPE OF REGULATIONS. To the extent required by applicable federal regulations in 28 Code of Federal Regulations, sec. 20.20 (1976), this chapter applies to the collection, storage, processing, and dissemination of criminal justice information contained in a criminal justice information system. (Eff.

6 AAC 60.015. ALASKA JUSTICE INFORMATION SYSTEM. (a) The Governor's Commission on the Administration of Justice will monitor the Alaska justice information system and all individual criminal justice information systems for compliance with the provisions of AS 12.62 and this chapter.

(b) Each criminal justice agency may, under the provisions of this chapter, develop a criminal justice information system to collect, process, store, and disseminate criminal justice information for those lawful purposes necessary to the proper administration of the responsibilities of that agency. (Eff. 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 44.19.010

6 AAC 60.020. CATEGORIES OF CRIMINAL JUSTICE INFORMATION WHICH MAY BE COLLECTED. The following categories of criminal justice information may be collected and stored in a criminal justice information system:

(1) an individual's full name, and any aliases known to refer to that person including, but not limited to, nicknames;

(2) an identifying number which each criminal justice information system may assign to an individual to whom criminal justice information relates;

(3) an individual's physical description and physical description classification including, but not limited to, height, weight, sex, color of hair, color of eyes, identification of race, and other identifying physical features;

(4) an individual's date of birth;

(5) an individual's citizenship;

(6) an individual's residence;

(7) an individual's social security number;

(8) an individual's Federal Bureau of Investigation file number;

(9) an individual's Alaska State Trooper file number, including date of entry, type of contact, and type of subject involvement;

(10) all other police agency file numbers which refer to an individual, including date of entry, type of contact, and type of subject involvement;

(11) an individual's fingerprint classification;

(12) all current arrest warrants, summons, missing person notifications, requests to contact for an emergency notification, and investigatory requests to locate without contacting;

(13) information originating from a source that is reasonably considered reliable by the law enforcement agency collecting the information, indicating that an individual who is the subject of an arrest warrant or a police investigation may be armed or dangerous, has attempted suicide, or has a disabling medical condition which may require immediate attention or treatment; information collected under this paragraph must include the date of collection;

(14) an individual's current driver's license class and number; the issuing authority; the date of expiration; any suspension, revocation, or cancellation of the license; a record of prior recorded violations of state statutes, regulations, or local ordinances pertaining to the operation of a motor vehicle; a record of accident involvement; license application information; and other information relevant to the issuance and regulation of driver's licenses;

(15) an individual's last recorded fish and game license numbers, including year of issue and current status;

(16) an individual's arrest history, which may include information relating to charge, date, and disposition;

(17) an individual's prior recorded convictions for criminal offenses, which may include information relating to charge, date, and disposition; the central repository must maintain its criminal history record information so that any disposition that occurs within the state is reflected on the individual's record within 90 days after the date of that disposition;

(18) a description of the circumstances surrounding an individual's prior recorded convictions for a criminal offense;

(19) parole, probation, and correctional information relating to an individual;

(20) information relating to the currently pending status or progress of a case involving

a criminal or regulatory offense against an individual, including a description of the circumstances of the offense;

(21) administrative and management information relating to the operation, management, and responsibilities of a law enforcement agency;

(22) court calendaring information;

(23) terminal security information;

(24) operator security information;

(25) system error information; and

(26) administrative messages. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.020(a) and (b)

ARTICLE 2.
SECURITY

Section
30. Protection of computerized criminal justice information and linkage to investigatory information
40. Agency security

6 AAC 60.030. PROTECTION OF COMPUTERIZED CRIMINAL JUSTICE INFORMATION AND LINKAGE TO INVESTIGATORY INFORMATION. (a) Criminal justice information within an automated criminal justice information system must be stored in such a manner that it cannot be destroyed, accessed, changed, or overlaid in any fashion by any person not authorized to do so under this chapter.

(b) Each automated criminal justice information system must contain a program that will prevent criminal justice information from being destroyed, accessed, changed, or overlaid in any fashion from any terminal other than one under the management and control of the criminal justice agency maintaining that information within its system.

(c) Each automated criminal justice information system must contain a classified program to detect, and store for classified output, all attempts to penetrate any criminal justice information system.

(d) The Alaska justice information system coordinator has sole authority to release, upon formal application, information and documentation relating to criminal justice information system control, including information maintained under (b) and (c) of this section. This information may not be released unless it is necessary for the maintenance or continued operation of a criminal justice information system and then only where the information will be kept continuously under appropriate security conditions.

(e) Constituent parts of the Alaska justice information system may not be linked in such a manner that a criminal history record information inquiry from one agency would result in the dissemination of information which indicates the existence in another agency of an investigatory or management file that is not a criminal case referred for prosecution.

(f) Constituent parts of the Alaska justice information system may be linked so that criminal history record information files can be accessed by an investigatory or management inquiry.

(g) The computer hardware of a criminal justice information system is exempt from the requirement of dedication to law enforcement purposes, as provided for in AS 12.62.040 (a) (1). (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.040(a)(1) and (c)

6 AAC 60.040. AGENCY SECURITY. (a) Each criminal justice agency

(1) shall screen and may reject for employment, for good cause, a person who, if employed, would be authorized to have direct access to criminal justice information, and whose employment would compromise the security of a criminal justice information system;

(2) shall screen each employee before granting the employee access to criminal justice

information, and may initiate administrative action leading to the transfer or termination of an employee if the employee has willfully violated a provision of this chapter or another security requirement established for the collection, storage, processing, and dissemination of criminal justice information;

(3) may not allow access to a criminal justice information system by unauthorized organizations or personnel, except under the direct supervision of authorized personnel;

(4) shall familiarize each employee working with or having access to criminal justice information with the content, substance, and intent of this chapter.

(b) Physical plant security must be provided by all agencies with access to a criminal justice information system to insure maximum safeguards against fire, theft, sabotage, flood, wind, or other natural or manmade disasters, and all unauthorized entry to areas where criminal justice information is collected, stored, processed, or disseminated. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.040(a)

ARTICLE 3.
ACCESS AND USE

Section
50. Input and update
60. Access
70. Restrictions on dissemination of criminal history record information
80. Individual's right to information
90. Research use of criminal justice information

6 AAC 60.050. INPUT AND UPDATE. To the extent authorized by the commission or the coordinator, the following agencies may add, modify, or delete criminal justice information that is collected, stored, processed, or disseminated within the Alaska justice information system:

(1) Department of Public Safety;

(2) local Alaska police departments;

(3) Alaska State Court System;

(4) division of corrections of the Department of Health and Social Services;

(5) Alaska Board of Parole of the Department of Health and Social Services;

(6) Department of Law and local prosecution agencies;

(7) Alaska Public Defender Agency;

(8) Child Support Enforcement Agency;

(9) Federal Bureau of Investigation; and

(10) Governor's Commission on the Administration of Justice. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.020(a)

6 AAC 60.060. ACCESS. The following agencies may, to the extent authorized by the agency collecting the information, have access to the following categories of criminal justice information through the Alaska justice information system:

(1) Department of Public Safety: 6 AAC 60.020 (1) – (20), (22), and (26);

(2) local Alaska police departments: 6 AAC 60.020(1) – (20), (22), and (26);

(3) Alaska State Court System: 6 AAC 60.020(1) – (12), (14) – (20), (22), and (26);

(4) division of corrections of the Department of Health and Social Services: 6 AAC 60.020 (1) – (20), (22), and (26);

(5) Alaska Board of Parole of the Department of Health and Social Services: 6 AAC 60.020(1) – (20), (22), and (26);

(6) Department of Law and local prosecution agencies: 6 AAC 60.020(1) – (12), (14) – (20), (22), and (26);

(7) Alaska Public Defender Agency: 6 AAC 60.020(1) – (11), (14) – (20), (22), and (26), if the information has been collected with

reference to an individual represented by the agency; access by the Alaska Public Defender Agency is authorized only upon the condition that the agency, subject to 6 AAC 60.070, will make information that refers to an individual available to any attorney not employed by the agency, who certifies that he represents that individual in a criminal prosecution and that the information to be released relates to that prosecution; for the release of the information, the Alaska Public Defender Agency may impose a nominal fee, reflective of the administrative costs involved and consistent with any applicable regulations adopted by the governor regarding provision of information;

(8) Child Support Enforcement Agency: 6 AAC 60.020(1) – (7), (20), (22), and (26);

(9) Federal Bureau of Investigation: 6 AAC 60.020(1) – (20), (22), and (26); and

(10) Governor's Commission on the Administration of Justice: 6 AAC 60.020(1) – (26). (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.020(a)

6 AAC 60.070. RESTRICTIONS ON DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION. (a) Except as authorized in this chapter, criminal history record information may be used only for law enforcement purposes, for research related to law enforcement, or for those additional lawful purposes necessary to the proper enforcement or administration of other provisions of law. Except as authorized under (c) of this section, criminal history record information may only be disseminated to an individual, agency, or other entity associated with the agencies listed in 6 AAC 60.060, an attorney representing a criminal defendant, an individual under 6 AAC 60.080, or a research program under 6 AAC 60.090.

(b) Confirmation of the existence or nonexistence of criminal history record information may not be given to any individual agency or entity that would not be eligible to receive information under (a) of this section or another provision of this chapter.

(c) When necessary for the administration or enforcement of state, municipal, or federal law, an individual, agency, or other entity, not listed in (a) of this section, may receive criminal history record information upon the approval of the commission or, in the interim between commission meetings, the chairman of the commission. Upon appropriate approval, and before receiving information, the individual, agency, or other entity must sign a contractual agreement approved by the commission or the chairman that specifically limits the use of that data to those legitimate purposes for which access was granted, ensures the security and confidentiality of data consistent with this chapter, and provides sanctions for violations of the agreement or the provisions of this chapter. The commission will, in its discretion, at any time, disapprove dissemination to any individual, agency, or other entity and rescind any agreement entered into under this subsection. In the interim between commission meetings, the chairman of the commission may disapprove dissemination and rescind such an agreement.

(d) A criminal justice agency, other than an agency which is the source of the information, shall contact the central repository before disseminating any criminal history record information, to assure that the most up-to-date disposition data is being used. This requirement does not apply in those cases where time is of the essence and the central repository is technically incapable of responding within the necessary time period. Criminal justice agencies shall establish procedures to ensure that the potential recipient is in fact permitted to receive information under this chapter.

(e) Each criminal justice agency shall maintain listings of the individuals, agencies, or other entities, both within and outside this state, to which it has disseminated criminal history record information. Each listing must be preserved until the commission expressly authorizes its destruction. Each listing must indicate the individual, agency, or other entity to which information was disseminated, the date of the dissemination, and the individual to whom the information relates. These listings must be made available for inspection by the commission or the coordinator, and individuals exercising their rights of access and review of under AS 12.62.030(c) and 6 AAC 60.080.

(f) This section does not prevent a criminal justice agency from disclosing to the public criminal justice information related to the offense for which an individual is currently within the criminal justice system.

(g) This section does not apply to the dissemination of criminal history record information contained in

(1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(2) original records of entry maintained by criminal justice agencies, if the records are routinely organized on a chronological or other easily accessible basis; or

(3) records, or statutory or regulatory offenses, maintained for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers', pilots', or other operators' licenses. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.030(a) and (d)

6 AAC 60.080. INDIVIDUAL'S RIGHT TO INFORMATION. (a) Each individual has the right to review, in accordance with (b) of this section, criminal justice information relating to him. Each criminal justice agency shall make available facilities and personnel necessary to permit review of that information.

(b) Reviews must be conducted in accordance with the following procedures:

(1) Reviews may take place only within the facilities of a criminal justice agency and only under the supervision and in the presence of a designated employee or agent of that agency.

(2) Reviews may be permitted only after proper verification that the requesting individual is the subject of criminal justice information.

(3) This section does not prevent a criminal justice agency from refusing to allow an individual to review criminal justice information related to the offense for which the individual is currently within the criminal justice system if that information would compromise an ongoing investigation, jeopardize institutional security, endanger any individual, or constitute nondiscoverable material under applicable rules of criminal law and procedure.

(4) Each criminal justice agency shall maintain a record of each review. The supervisory employee or agent present at the review shall complete and sign each review form. The form must include the name of the reviewing individual, the date of the review, and a statement as to whether any exception was taken to the accuracy, completeness, or contents of the information reviewed.

(5) An individual exercising his right to review criminal justice information may compile a written summary or make notes of information reviewed, and may take copies of it with him. Individuals may not, however, take any copy that might reasonably be confused with the original, unless the copy

(A) is clearly established to be necessary for the purpose of challenge or correction, and then only that part of the record which is being challenged or corrected may be released;

(B) consists solely of data pertaining to an individual's operator's license application and any operating record; or

(C) is necessary for purposes of international travel, such as issuing visas and granting citizenship.

(6) Each individual exercising his right to review criminal justice information must be informed of his right to challenge the inclusion of information, under AS 12.62.030 (c) and (f).

(7) Upon written request, an individual whose record has been purged, modified, or supplemented by an explanatory notation as a result of his review under this section must be given the names of any individuals, agencies, or other entities, which are not law enforcement agencies, to whom criminal justice information has been disseminated.

(8) Each criminal justice agency that has previously disseminated criminal justice information

which has subsequently been purged, modified, or supplemented by an explanatory notation as a result of a review under this section, shall give notice of the action taken to all criminal justice agencies, both within and outside the state, to which the records have been previously disseminated, unless the record disseminated contained a notation making it invalid after a specific date within 90 days after the dissemination. When furnishing notice, the criminal justice agency shall at the same time request the recipient criminal justice agency to purge, modify, or supplement the information by an explanatory notation, as appropriate. Compliance with this request must be verified through a request made of the recipient agency to furnish an updated record. If the recipient agency refuses to comply with a request to purge, modify, or supplement with an explanatory notation the information which has been previously disseminated to it, no further criminal justice information may be disseminated to it by any criminal justice agency. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.030(c) and (f)

6 AAC 60.090. RESEARCH USE OF CRIMINAL JUSTICE INFORMATION. (a) No research program, conducted by an individual or organization not authorized to have access to criminal justice information under this chapter, may have access to that information without the written authorization from the commission or the coordinator, after formal application has been made.

(b) No criminal justice agency may permit a research program to have access to criminal history record information until the agency has been notified by the commission or the coordinator that access is authorized.

(c) Access to criminal history record information under this section will be permitted only if a research program demonstrates that threats to individual privacy which might be created by the program

(1) have been minimized by methods and procedures calculated to prevent injury or embarrassment to individuals; and

(2) are clearly outweighted by the prospective advantages accruing to the administration of justice.

(d) Access to criminal history record information under this section will be restricted in such a manner that an individual's identity will not be disclosed, unless a research program conclusively demonstrates in its formal application for access that access by name is a prerequisite to conducting the research for which application has been made.

(e) The following requirements are applicable to all research programs, and each criminal justice agency is responsible for their full and prompt enforcement:

(1) Criminal justice information which has been made available to a research program may not be used to the detriment of individuals to whom the information relates.

(2) Criminal justice information which has been made available to a research program may not be used for any other purpose, nor may that information be used for any other research program unless authorized by the commission or the coordinator.

(f) A research program requesting access to criminal history record information shall, before receiving authorization of access, execute a nondisclosure agreement approved by the commission or the coordinator and post a bond in the amount of $500 with the commission. The bond is subject to forfeiture if any requirement of this section is violated.

(g) Authorization of access to criminal history record information under this section is subject to the following conditions:

(1) The commission and the coordinator have the right to fully monitor any research program to assure compliance with the requirements of this section.

(2) The commission and the coordinator have the right to examine and verify all data generated by the research program, and if a material error or omission is found, to order that the data not be released or used for any purpose unless corrected.

(h) Each criminal justice agency is responsible for the formulation of methods and procedures which assure compliance with the requirements of this section with respect to the use of criminal history record information for purposes of any program of behavioral or other research, whether those programs are conducted by a criminal justice agency or by any other agency or individual. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010(b)
AS 12.62.030(b)

ARTICLE 4.
PURGING OF CRIMINAL JUSTICE INFORMATION

Section

100. Purging of criminal history record information
110. Purging of certain investigative records
120. Notification of purging and requests for compliance
130. Formulation of procedures

6 AAC 60.100. PURGING OF CRIMINAL HISTORY RECORD INFORMATION. (a) Criminal history record information collected, stored, processed or disseminated within the Alaska justice information system must be purged as follows:

(1) All criminal history record information collected and stored as a result of an arrest, except fingerprint classifications, must be closed 90 days after the date of arrest unless a criminal proceeding is pending.

(2) Upon final disposition of an arrest or criminal proceeding in favor of the arrestee, all criminal history record information collected and stored as a result of that arrest or proceeding must be immediately closed, except fingerprint classifications and medical information under 6 AAC 60.110.

(3) Criminal history record information closed under (1) or (2) of this subsection must be expunged no sooner than 60 and no later than 90 days after closure. If the individual makes written application within 60 days after closure, a copy of the records to be expunged must be sent to him.

(4) All criminal history record information relating to an individual who has been convicted in this state, or convicted in another jurisdiction of an offense which would be a crime in this state, must be closed if, for a period of 10 years if the offense is or would be a felony in this state, and seven years for a misdemeanor the individual: (A) has not been imprisoned for that offense in this or any other jurisdiction in the United States; (B) has not been subject to the control of parole or probation authorities in this or any other jurisdiction in the United States; (C) has not been convicted in this or any other jurisdiction in the United States for an offense which would be an offense in this state the penalty for which denotes criminality; and (D) is not currently under indictment for, or otherwise charged with a criminal offense, or the subject of an arrest warrant, by any criminal justice agency in this or any other jurisdiction in the United States. With regard to (D) of this paragraph, when no conviction results, periods of elapsed time while the individual was under indictment for, or otherwise charged with, a crime, or was the subject of an arrest warrant must be included in the computation of the period provided for in this paragraph. Closing of records under this paragraph must occur at least annually.

(b) Information closed under this section may not be disseminated, except for the time and to the extent necessary for the following purposes:

(1) administrative, management, and statistical activities of the recordkeeping agency or for the regulatory responsibilities of the commission;

(2) where the information is to be used for statistical compilations or research programs under 6 AAC 60.090;

(3) where the individual to whom the information relates seeks to exercise rights of access and review under 6 AAC 60.080;

(4) to permit an adjudication of a claim by the individual to whom the information relates that the information is misleading, inaccurate, or incomplete, under AS 12.62.030 (c) and (f);

(5) where a statute of this state specifically requires inquiry into criminal history record information beyond the limitations of this section; and

(6) where the information is to be used for executive clemency investigations conducted under AS 33.20.070 or 33.20.080.

(c) When criminal history record information has been purged under this section, and the individual to whom the information relates is subsequently arrested for a crime, his records may be reopened during the subsequent investigation, prosecution, and disposition of that offense. If the arrest does not terminate in a conviction, the records must again be closed within 90 days. If a conviction does result, the records may remain open and available for dissemination and use under this chapter.

(d) Criminal history record information supplied by another state to criminal justice agencies in this state must be closed or expunged as required under the laws or regulations of that other jurisdiction in the United States. Information may not be closed or expunged under this subsection until the commission or a criminal justice agency in this state has received written notification from another jurisdiction that expunging or closing is required under the laws or regulations of that other jurisdiction.

(e) Where the commission or the coordinator orders the alteration of criminal history record information, that order may include a requirement that the information be closed or expunged or otherwise treated in accordance with the requirements of this chapter.

(f) Where required by statute or regulation of this state, or the judgment of any court of competent jurisdiction in this state, criminal history record information must be closed, expunged, or otherwise treated in accordance with the requirements of this chapter.

(g) The requirements of this section impose no obligation upon criminal justice agencies to retain records beyond that time which may otherwise be provided by law. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.030(c) and (f)
AS 12.62.040(a)

6 AAC 60.110. PURGING OF CERTAIN INVESTIGATIVE RECORDS. Upon termination of an arrest or a police investigation in favor of an individual, information collected and stored under 6 AAC 60.020 (13) must be closed, except information indicating that an individual may have a disabling medical condition which may require immediate attention or treatment. That information must be expunged within one year after closure. In any event, information collected and stored under 6 AAC 60.020(13) may not be retained for longer than five years, and must be expunged after that. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.040(a)

6 AAC 60.120. NOTIFICATION OF PURGING AND REQUESTS FOR COMPLIANCE. (a) Each criminal justice agency shall promptly furnish notice to the commission of any criminal history record information which has been closed, expunged, or reopened under 6 AAC 60.100 or 6 AAC 60.110, including notice of the specific provisions under which the action was taken.

(b) Each criminal justice agency may periodically, but shall at least annually, furnish notice that criminal history record information has been closed, expunged, or reopened under 6 AAC 60.100 or 6 AAC 60.110 to criminal justice agencies in this state with access to that category of criminal justice information, unless the information disseminated contained a notation making it invalid after a specific date within 90 days after dissemination.

(c) Each criminal justice agency which has disseminated criminal justice information, which has subsequently been closed or expunged under 6 AAC 60.100 or 6 AAC 60.110, to any law enforcement agency, both within and outside this state, shall promptly furnish notice to those agencies that the information has been closed

or expunged, unless the information disseminated contained a notation making it invalid after a specific date within 90 days after dissemination.

(d) When notice is required under (c) of this section, a criminal justice agency shall at the same time request the law enforcement agency to close or expunge, as appropriate, criminal justice information which has previously been disseminated to the agency, but which has subsequently been closed or expunged under 6 AAC 60.100 or 6 AAC 60.110. Compliance with this request to close or expunge criminal history record information must be verified through a request made of the law enforcement agency to furnish the criminal justice agency with an updated record. If the recipient agency refuses to comply with a request to purge, modify, or supplement with an explanatory notation the information which has been disseminated to it, no further criminal history record information may be disseminated to it by any criminal justice agency. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010 AS 12.62.040(a)
AS 12.62.030(c) AS 12.62.050(a)

6 AAC 60.130. FORMULATION OF PROCEDURES. (a) Each criminal justice agency shall formulate methods and procedures to assure its continuing compliance with the requirements of this chapter. The commission will, in its discretion, require any modifications or additions to those methods and procedures which it finds necessary for full and prompt compliance with this chapter.

(b) Each criminal justice agency shall develop systematic audit procedures to ensure that dispositions of actions are reflected within 90 days after entry and to ensure that data is correctly entered.

(c) Where the commission finds that any public agency in this state has willfully or repeatedly violated the requirements of AS 12.62 or this chapter the commission will, where other statutory provisions permit, prohibit the dissemination, release or communication of criminal justice information to that agency, for periods and under conditions that the commission considers appropriate. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

Authority: AS 12.62.010
AS 12.62.030(c) and (f)
AS 12.62.040(a)

ARTICLE 5.
GENERAL PROVISIONS

Section
140. (Repealed)
900. Definitions

6 AAC 60.140. DEFINITIONS. Repealed 5/29/82.

Editor's Note: The definitions section has been relocated from 6 AAC 60.140 to 6 AAC 60.900.

6 AAC 60.900. DEFINITIONS. In this chapter, unless otherwise provided

(1) "Alaska justice information system" means a criminal justice information system comprised of one or more subsystems, programs, or linkages which allow access to criminal history record information by creating a direct connection between criminal justice information systems maintained by different executive branch departments or by different branches of government;

(2) "Alaska justice information system coordinator" means the person selected to perform staff responsibilities under this chapter for the Governor's Commission on the Administration of Justice as provided in AS 44.19.122;

(3) "central repository" means the records and identification section of the commissioner's office of the Department of Public Safety;

(4) "close" means the retention of criminal history record information in a criminal justice information system subject to further restrictions on access and dissemination under 6 AAC 60.100 (b);

(5) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.110 – 44.19.122;

(6) "coordinator" means the Alaska justice information system coordinator;

(7) "criminal history record information" means criminal justice information collected under the authority of 6 AAC 60.020 (8) – (13) and (16) – (19); it does not include information or statistical records and reports in which individuals are not identified and from which their identities are not ascertainable;

(8) "criminal justice agency" means a law enforcement agency in this state that collects, stores, processes, or disseminates criminal justice information;

(9) "criminal justice information" means information concerning an individual which is indexed under the individual's name or retrievable by reference to the individual by name or otherwise;

(10) "criminal justice information system" means a manual or automated system, including the equipment, facilities, procedures, and agreements related to a system, for the collection, processing, storage, or dissemination of criminal justice information, which has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration;

(11) "criminal offense" means an offense for which a sentence of imprisonment or fine is authorized;

(12) "expunge" means the deletion of criminal justice information collected, stored, processed, or disseminated within the Alaska justice information system;

(13) "law enforcement" means any activity relating to crime prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities and efforts of prosecution agencies, courts, public defender agencies, correctional institutions, and probation or parole agencies; and

(14) "law enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law enforcement. (Eff. 10/9/72, Reg. 44; am 3/10/73, Reg. 45; am 5/29/82, Reg. 82)

ARTICLE 2. CRIMINAL AND IDENTIFICATION RECORDS

Section
210. Declaration of intent
220. Required information
230. Submission of information
240. Completion of reports
250. Custody and maintenance of information
260. Distribution of information
270. Requesting information
280. Records and information confidential
290. Required contributors
300. Definitions

13 AAC 25.210. DECLARATION OF INTENT. It is the intent of the department that 13 AAC 25.210.– 13 AAC 25.300 will provide a means of planning and establishing a centralized records system available to all facets of law enforcement throughout the state and to provide a system compatible with the National Crime Information Center system; however, the contributions required by 13 AAC 25.220 will be requested only when the department has the resources necessary to adequately file, retrieve and distribute the information to those persons required to contribute. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

13 AAC 25.220. REQUIRED INFORMATION. (a) The information or reports which are required to be submitted to the department by those persons or agencies set out in 13 AAC 25.290 are as follows:

(1) daily, reports of lost, stolen, found, pledged or pawned property;

(2) daily, classifiable copies of fingerprints and descriptions of all persons arrested and incarcerated in this state;

(3) upon completion, classifiable copies of fingerprints of each person employed as a peace officer by the state, a city, village, borough or other political subdivision;

(4) upon completion, classifiable copies of fingerprints and descriptions of each person who is required by statute, ordinance or regulation to be fingerprinted in order to obtain a license, permit or as otherwise required as a condition of employment;

(5) daily, photographs of each person who is arrested and incarcerated in this state;

(6) daily, copies of booking sheets for each person who is incarcerated in this state. The sheet shall contain at least the full name, date of birth, race, sex, physical description, residence address, mailing address, next of kin, offense charged, name of agency by whom arrested, name of arresting officer, booking number, date booked, time booked, location where booked and name of booking officer;

(7) daily, copies of commitment forms for each person sentenced by a court in this state. The form shall contain at least the full name, date of birth, race, sex, the booking number, the sentence of the court and the offense for which sentence was given;

(8) daily, copies of release forms for each person released from confinement in this state, either on bail or after serving sentence. The form shall contain, depending upon circumstances of release, at least the full name, date of birth, race, sex, booking number, the offense for which sentence was served or for which booked if released on bail, date of release, conditions of release and any forwarding address;

(9) daily, copies of transfer forms for each person transferred from one institution to the custody of another institutional facility. The form shall contain at least the full name, date of birth, race, sex, booking number, the offense for which booked or for which sentence is being served, date of transfer and name of institution to which the transfer is made;

(10) daily, copies of modus operandi (M.O.) offense reports by type of offense;

(11) daily, copies of traffic citations, except those issued only for a parking violation;

(12) daily, copies of weapons registrations and permits issued;

(13) daily, copies of outstanding warrant lists. List shall contain at least full name, warrant

ber, offense, amount of bail, physical ation of warrant and date warrant was issued;

(14) daily, the ultimate disposition of each minal proceeding; such as, dropping of rges, dismissing a case, not guilty or terms of tence;

(15) monthly, semi-monthly, annual or ni-annual compilations of information as uired by the departments.

) An agency or person is required to submit ly that information which is available in that

agency's or person's normal course of business. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

13 AAC 25.230. SUBMISSION OF INFORMATION. (a) All required information, except photographs, shall be submitted on forms approved by the department.

(b) The submission of information to the department shall begin 30 days after the department supplies the approved forms to an agency, or upon notice of approval of an agency's forms which are already in use.

(c) Required information shall be submitted in compliance with the submission scheduled for the specific information as provided by sec. 220 of this chapter. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

13 AAC 25.240. COMPLETION OF REPORTS. (a) All required information shall be provided on the forms supplied or approved by the department and completion shall conform to the instructions of the department.

(b) The department shall provide an instruction manual concerning form completion to each agency which contributes to the department. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

13 AAC 25.250. CUSTODY AND MAINTENANCE OF INFORMATION. (a) All required information becomes the property of the department upon receipt and is subject to the department's control as provided by secs. 210–300 of this chapter.

(b) The department will file and index all required information received in a manner which will allow retrieval within the currently available facilities of the department.

(c) Access to department files is denied to a person not authorized by the department. Persons having access are required to undergo such background investigation and inquiry as the department considers appropriate.

(d) The original files of the department may not be removed from the immediate custody and control of the department except on order of a court of competent jurisdiction, and the viewing of department records by authorized persons may be done only in the presence of an authorized employee of the department. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060
AS 44.17.030

13 AAC 25.260. DISTRIBUTION OF INFORMATION. The department shall provide, upon proper request, information concerning the identification of a person or any data of record in the department which was received as information required by sec. 220 of this chapter to persons required by sec. 290 of this chapter to contribute to the department, and to law enforcement officers of the United States or peace officers of other states, territories or United States possessions, or at the discretion of the department, peace officers of other countries for the purpose of the detection of crime and identification and apprehension of criminals. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

13 AAC 25.270. REQUESTING INFORMATION. A person to whom distribution is authorized under sec. 260 of this chapter may obtain information as follows:

(1) by verbal request, in person, to the department or a local member of the division of state troopers;

(2) by telephonic request to the department; however, the information will be provided only by return call to the agency the caller represents;

(3) by telegraphic request to the department. The request must identify the person requesting the information and the agency which he represents;

(4) by written request to the department on the official stationery of the agency which the person making the request represents. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

13 AAC 25.280. RECORDS AND INFORMATION CONFIDENTIAL. The criminal identification and criminal investigation records and information of the department are maintained for the detection of crime and the

ification and apprehension of criminals and confidential. They may not be released to or ved by a person who is not authorized by 260 of this chapter except upon order of a rt of competent jurisdiction, issued for good se shown and where they will not be put to improper use or to a use which will impair prevention and detection of crime or impair prosecution of persons charged with criminal . (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060
AS 44.17.030

3 AAC 25.290. REQUIRED NTRIBUTORS. The following persons are uired to contribute information and records, set out in sec. 220 of this chapter, to the artment:

1) the chief of police and peace officers of state, a city, village or borough;

2) a district attorney and investigators of his ce;

) the director and investigators of the oholic Beverage Control Board;

4) the director and officers of the airport urity police;

5) the director and officers of the nsportation commission, empowered to orce size, weight and load limitation;

6) the director and correctional and bation officers of the division of corrections other supervisors and guards of a penal or rectional institution;

7) the director and protection officers of the partment of Fish and Game, division of tection;

8) the fire chief or fire marshal and arson estigators of the state or a local fire partment;

9) the Attorney General and investigators gned to his office;

) the director and officers of the partment of Natural Resources empowered to orce laws governing parks and recreation;

(11) the director and investigators of the Department of Labor empowered to enforce employment security laws;

(12) the chief and officers of a state college or university security patrol. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

13 AAC 25.300. DEFINITIONS. In secs. 210–300 of this chapter

(1) "commissioner" means the commissioner of the Department of Public Safety;

(2) "department" means the Department of Public Safety of the State of Alaska. (Eff. 7/1/69, Reg. 30)

Authority: AS 18.65.060

MEMORANDUM State of Alaska

ALASKA

TO: James D. Vaden
Deputy Commissioner
Department of Public Safety

DATE: December 10, 1986
FILE NO: 663-86-0479

THRU:

TELEPHONE NO: 465-3428

Ronald W. Lorensen
Acting Attorney General

SUBJECT: Applicability of AS 12.62 to Alaska Public Safety Information Network

FROM:
By: Dean J. Guaneli DG
Assistant Attorney General

You have asked for our opinion whether existing statutes under AS 12.62 and regulations under 6 AAC 60, relating to criminal justice information systems, apply to the Alaska Public Safety Information Network (APSIN). Based on the information your office has provided to me regarding the financing of the system, it is our opinion that these statutes and regulations do not apply to APSIN. Nonetheless, the policy embodied in these statutes and in the right to privacy under article I, section 22, of the Alaska Constitution requires that APSIN be operated in a way that is designed to serve legitimate state interests in law enforcement, while at the same time respecting reasonable expectations of individual privacy.

Background

In the early seventies the federal Law Enforcement Assistance Administration (LEAA) provided millions of dollars in grant funds to state and local law enforcement agencies nationwide. In Alaska, one of the primary projects to be undertaken with this federal money was the development of the Alaska Justice Information System (AJIS), a computerized databank containing, among other things, criminal histories of persons committing crimes in Alaska.

Because federal money was used for the major portion of the project, the development of AJIS proceeded at a rapid rate and, prior to 1972, state legislative committees had not given the project the degree of scrutiny that usually precedes the expenditure of large amounts of state money. At that time computers were viewed as somewhat more threatening than they are today. For that reason, and because of persistent rumors that the Alaska State Troopers were compiling secret dossiers on Alaska citizens, there was considerable concern in the legislature in 1972 over the potential of systems like AJIS for invasion into the privacy of individuals. Indeed, by the time of the 1972 legislature, AJIS had already been put into operation.

In order to try to exert some control over AJIS, and to avoid similar perceptions of potential abuse with all future federally-funded systems which might bypass careful legislative

scrutiny, the 1972 legislature adopted certain safeguards in AS 12.62, making them applicable to all systems "funded in whole or in part by the Law Enforcement Assistance Administration." AS 12.62.070(3). 1/ At the same time, in response to a broader concern over government computers generally, whether or not federally funded, the legislature also passed House Committee Substitute for Senate Joint Resolution 68, which placed on the ballot a proposed amendment to the Alaska Constitution to guarantee the right to privacy. 2/ The amendment was approved by the voters and became article I, section 22, of the Alaska Constitution.

Over the years the AJIS system, as was the case with many early computer systems, became badly outdated in terms of both the equipment and the software it used. By the time the Department of Public Safety decided to replace AJIS with a more modern system, two significant changes had occurred. First, the general attitude of the public and the legislature toward computers had changed greatly. Computers were recognized as a useful management tool and were not viewed with the same degree of apprehension as in 1972. Indeed, in addition to being a repository for arrest warrants and conviction records, the APSIN system was specifically designed to be used by the department for things like property inventory, vehicle maintenance records, and personnel and budget management. The second major change that had occurred since 1972 was the demise of LEAA and the end to federal funding.

The design, development, and implementation of APSIN was therefore undertaken entirely with money appropriated by the Alaska State Legislature from the state general fund. According

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1/ Other systems developed in recent years with LEAA funds are the Prosecutor's Management Information System and the Offender-Based State Correctional Information System.

2/ Newspaper reports at the time contained statements by the sponsors and supporters of the constitutional amendment that the AJIS system was the primary motivation for the right-to-privacy provision. See articles appearing in Alaska newspapers in 1972: Anchorage Daily News, March 21 at 8, March 22 at 5, March 31 at 1-2, April 1 at 4, April 6 at 2; Anchorage Daily Times, March 20 at 8, March 27 at 2, March 21 at 2-3; Fairbanks Daily News-Miner, March 20 at 2; Southeast Alaska Empire, March 17 at 2, March 20 at 1 and 8, March 21 at 1 and 8, May 18 at 4.

to your office, APSIN software constitutes a complete redesign and does not in any way utilize federally-funded AJIS software. In addition, the equipment which operates the new system is also funded entirely with state money, primarily through the Department of Administration, and thus does not rely on the old federally-funded AJIS hardware. In fact, the two systems are wholly incompatible.

AS 12.62 Does Not Apply To The Alaska Public Safety Information Network But Restrictions On The System Should Nonetheless Be Imposed

Based on the observations contained in the preceding paragraph, it is apparent that APSIN was not "funded in whole or in part by the Law Enforcement Assistance Administration" and is thus not a "criminal justice information system" as that term is defined in AS 12.62.070(3). 3/ Title 12, chapter 62, of the Alaska Statutes and regulations adopted under the authority of that chapter therefore do not apply to APSIN. 4/

3/ Although some of the original data in AJIS was entered into the system at federal expense, and it is arguable that federal funds facilitated the computerized storage of that data, the information itself has always belonged to the state and was under state control. The statutes in AS 12.62 apply to "systems" funded by LEAA, the definition of which does not include the data stored within the system. AS 12.62.070(3). The mere fact that data was once stored, collected, or processed through the help of federal funds does not of itself subject any future system which might hold that data to federal oversight. Indeed, it would make no sense to apply one set of rules to all old data that had at one time been stored in AJIS, and a completely different set of rules to new data entered directly into APSIN.

4/ Our opinion is shared by the Division of Legislative Audit. See A Special Report On The Oversight Of Criminal Justice Information Systems In Alaska And The Alaska Public Safety Information Network (March 19, 1986). At page 8 of that report the legislative auditor stated, "APSIN was funded with State and not LEAA money, and as such is not covered by current State statutes and regulations."

Despite the fact that APSIN is not governed by the "letter" of AS 12.62, the "spirit" of that statute 5/ and of the right to privacy under article I, section 22, of the Alaska Constitution nonetheless imposes certain restrictions on the department. Therefore, what is needed is a reasonably detailed set of written procedures 6/ that will recognize and implement the privacy guarantees contained in the state constitution. Although a complete list of topics that should be addressed within these written procedures is beyond the scope of this opinion, at a minimum the department should adopt: (1) reasonable guidelines for collection, security, dissemination, and use of information; (2) policies designed to insure the completeness and accuracy of data; and (3) procedures to permit individuals to have access to data about themselves and a mechanism to allow individuals to obtain correction of inaccurate data.

You should also make a policy decision whether, and to what extent, data will be released to private individuals, in addition to government agencies. For example, you will certainly want to continue to provide information about sex offenders to employers under procedures similar to those set forth in AS 12.62.035. You may also want to continue to disseminate information in categories listed in 6 AAC 60.070(f) and (g). 7/ Beyond this, however, you should carefully consider what

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5/ In our view, AS 12.62.070(3) is clear and unambiguous on its face. One therefore need not attempt to divine whether the legislature's "intent" in adopting AS 12.62 was to exclude state-funded systems from its ambit. Nonetheless, the legislature's approach to regulating federally-funded systems is something that should be taken into consideration in any policy decisions made about APSIN.

6/ Our use of the term "written procedures" is intended to be read broadly to include, where applicable, regulations promulgated under AS 44.62.

7/ Those regulations permit dissemination of information relating to wanted persons, driver's records, and offenses for which an individual is currently within the criminal justice system. Although there is no definition for the term "currently within the criminal justice system," we have always interpreted it to mean that the person has not been "unconditionally discharged" as that term is defined in AS 12.55.185.

information should be released to individuals and under what circumstances. If the department would ordinarily not release certain information contained in its manual files, then there is probably no justification for releasing that same information after it has been transferred to the APSIN database.

The primary question to be addressed in making these decisions is whether the state's interest in legitimate law enforcement and public protection outweighs an individual's expectation of privacy. Obviously that expectation must be one that society is willing to recognize as reasonable. For example, it is probably safe to say that reasonable people would expect that information about arrests and investigations which do not result in prosecution will remain private, at least insofar as preventing such information from being given to other individuals. On the other hand, there are legitimate reasons for making this type of information available to other law enforcement agencies for use in subsequent investigations, and the legitimate government interest in having police agencies share such relevant information with other police agencies outweighs any interest in individual privacy. 8/

A more difficult question is presented by conviction records. Such documents in the possession of the court system are clearly public records and are available to any interested person. Nor are conviction records "sensitive personal information" as that term was used by the Alaska Supreme Court in Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska 1977), even though a convicted person may desire to keep this information private because it causes embarrassment. Thus there is no constitutional prohibition from releasing this information to interested persons, although it has always been the practice in this state to prevent private individuals from obtaining this information from state computers after the offender has been unconditionally discharged. 9/ See 6 AAC 60.070(f) and note 7

8/ Current federal regulations governing federally-funded criminal justice information systems in 28 C.F.R. pt. 20 make just this distinction by permitting "nonconviction" data to be disseminated to criminal justice agencies, but not to individuals. See 28 C.F.R. § 20.3(k) and 20.21(b).

9/ Under certain circumstances, the state may have an affirmative duty to disseminate information about offenders who
(Footnote Continued)

supra. While this past practice is not determinative, it should be considered in deciding whether as a policy matter there is any legitimate government interest in disseminating this information to private persons, after an offender has "paid his debt to society." 10/ In making this decision you should also take into consideration AS 12.62.035, which permits dissemination of conviction data to interested persons, but only if the information relates to a conviction for a sexual offense and only if the interested person is considering the employment of the offender in a position of supervisory control over children. See also AS 28.15.151(f), declaring that conviction records for driving offenses in the possession of the department may be given to government agencies or to a person designated by the offender, but are otherwise "confidential and private." These recent expressions of legislative intent may be interpreted as an indication that unlimited dissemination of conviction data after an offender has been unconditionally discharged would probably not meet with legislative approval.

If you have any questions, please contact me.

DJG:so-09

(Footnote Continued)
have been released on probation and parole and are therefore still under the jurisdiction of the state. See Division of Corrections v. Neakok, 721 P.2d 1121 (Alaska 1986).

10/ Federal regulations neither require nor prohibit dissemination of conviction data to private individuals, but leave that decision to each state. 28 C.F.R. § 20.21(c)(3).

§ 13-2316. Computer fraud; classification

A. A person commits computer fraud in the first degree by accessing, altering, damaging or destroying without authorization any computer, computer system, computer network, or any part of such computer, system or network, with the intent to devise or execute any scheme or artifice to defraud or deceive, or control property or services by means of false or fraudulent pretenses, representations or promises.

B. A person commits computer fraud in the second degree by intentionally and without authorization accessing, altering, damaging or destroying any computer, computer system or computer network or any computer software, program or data contained in such computer, computer system or computer network.

C. Computer fraud in the first degree is a class 3 felony. Computer fraud in the second degree is a class 6 felony.

Added Laws 1978, Ch. 204, § 2, eff. Oct. 1, 1978.

§ 13-4051. Entry on records; stipulation; court order

A. Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry upon all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared.

B. After a hearing on the petition, if the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on such records, with accompanying justification therefor, and shall cause a copy of such order to be delivered to all law enforcement agencies and courts. The order shall further require that all law enforcement agencies and courts shall not release copies of such records to any person except upon order of the court.

C. Any person who has notice of such order and fails to comply with the court order issued pursuant to this section shall be liable to the person for damages from such failure.

Added as § 13-1761 by Laws 1973, Ch. 126, § 3. As amended Laws 1976, Ch. 154, § 2. Renumbered as § 13-4051 by Laws 1977, Ch. 142, § 163, eff. Oct. 1, 1978.

ARIZONA REVISED STATUTES

TITLE 41. STATE GOVERNMENT

CHAPTER 11. STATE DEPARTMENT OF CORRECTIONS

§ 41-1606.02. Fingerprinting personnel; affidavit; definition

This section is repealed effective July 1, 1990 by Laws 1989, Ch. 266, § 14.

TITLE 41. STATE GOVERNMENT

CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY

ARTICLE 1. GENERAL PROVISIONS

§ 41-1964. Day care homes; child care personnel; registration; fingerprints; definition

A. Child care personnel shall register with the department in order to work in a certified day care home.

B. Child care personnel shall be fingerprinted and submit the form prescribed in subsection E of this section to the department within twenty days after beginning work at a certified day care home. Registration is conditioned on the results of the fingerprint check.

C. For the purpose of screening child care personnel, the department of pubic safety shall provide information from its records relating to convictions for public offenses to the department of economic security. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

D. The department shall charge child care personnel for the costs of their fingerprint checks.

E. Child care personnel shall certify on forms that are provided by the department and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

(a) Sexual abuse of a minor.
(b) Incest.
(c) First or second degree murder.
(d) Kidnapping.
(e) Arson.
(f) Sexual assault.
(g) Sexual exploitation of a minor.
(h) Contributing to the delinquency of a minor.
(i) Commercial sexual exploitation of a minor.
(j) Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
(k) Burglary.
(l) Robbery.
(m) A dangerous crime against children as defined in § 13-604.01.
(n) Child abuse.
(o) Sexual conduct with a minor.
(p) Molestation of a child.

(q) Manslaughter.
(r) Aggravated assault.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8-201, paragraph 11.

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

F. The department shall make documented, good faith efforts to contact previous employers of certified day care home personnel to obtain information or recommendations which may be relevant to an individual's fitness for work in a certified day care home.

G. The notarized forms and fingerprint checks are confidential.

H. For the purposes of this section, "child care personnel" means all employees of an persons residing in a day care home which is certified by the department pursuant to § 41-1954, subsection A, paragraph 1, subdivision (b) who are eighteen years of age or older.

CHAPTER 17.--CRIMINAL JUSTICE INFORMATION SYSTEMS

ARTICLE 1. ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM

See
41-2201. Definitions.
41-2202. Comprehensive data systems policy board: term, compensation.
41-2203. Powers and duties of the board.
41-2204. System manager; powers and duties.
41-2205. Criminal justice information system central repository.
41-2206. Disciplinary action; system participants.

Chapter 17, consisting of Article 1, Sec. 41-2201 to 41-2206, was added by Laws 1977, Ch. 131, Sec. 2, effective May 31, 1977.

ARTICLE 1. ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM

Article 1, consisting of Sec. 41-2201 to 41-2206, was added by Laws 1977, Ch. 131, Sec. 2, effective May 31, 1977.

Termination under Sunset Law

The comprehensive data systems policy board shall terminate on July 1, 1988, unless continued. See Sec. 41-2365 and 41-2377.

Article 1 relating to the comprehensive data systems policy board is repealed on January 1, 1989. See Sec. 41-2373.

Sec. 41-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the comprehensive data system policy board.

2. "Center" means the criminal justice statistical analysis center, an operating section within the Arizona state justice planning agency.

3. "Component information system" means an independent information system serving one or more criminal justice agencies and which may participate in the criminal justice information system.

4. "Criminal history record information" means data collected on individuals by criminal justice agencies which consists of identifiable descriptions and notations of arrest, detentions, indictments, criminal informations or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. Criminal history record information does not mean identification information, such as fingerprint records, to the extent such information does not indicate involvement of the individual in the criminal justice system, information associated with the administrative functions or correctional treatment process of a criminal justice agency or juvenile justice information.

5. "Criminal justice agency" means any court or government agency or division of such agency which performs the administration of criminal justice pursuant to statutory authority or executive order and which allocates a substantial part of its budget to the administration of criminal justice.

6. "Manager" means criminal justice information system manager.

7. "System" means criminal justice information system. Added Laws 1977, Ch. 131, Sec. 2, eff. May 31, 1977.

ARIZONA REVISED STATUTES

TITLE 41. STATE GOVERNMENT

CHAPTER 17. CRIMINAL JUSTICE INFORMATION SYSTEMS

ARTICLE 1. ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM

§§ 41-2202, 41-2203. Repealed by Laws 1988, Ch. 268, § 2, eff. Sept. 30, 1988, retroactively effective to July 1, 1988.

§ 41-2204. System manager; powers and duties

There shall be a system manager who is the director of the department of public safety. The manager shall:

1. Execute the policies of the commission and supervise the operations of the system.
2. Coordinate and standardize the design, development and implementation of the system and subsystem.
3. Provide for system and subsystem planning.
4. Enforce the rules and regulations relating to the security, privacy, confidentiality and dissemination of criminal history record information.
5. Submit recommendations to the commission concerning establishment of research, statistical and planning programs including a study of the system.
6. Provide criminal justice agencies with criminal history record information for operational and management purposes in accordance with the rules and regulations established by the commission governing the dissemination of such information.
7. Perform such other powers and duties as may be prescribed or delegated by the commission.

§ 41-2205. Criminal justice information system central repository

A. There shall be a central repository for the collection, storage and dissemination of criminal history record information. The department of public safety shall operate the central repository pursuant to the rules and regulations adopted by the commission. The department of public safety shall conduct annual audits to insure each criminal justice agency is complying with rules and regulations governing the maintenance and dissemination of criminal history record information.

B. Each criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository pursuant to the provisions of §§ 41-1750 and 41-1751.

Sec. 41-2206. Disciplinary action; system participants

Any agency, company or individual who fails to conform to the rules and regulations adopted pursuant to this chapter may be subject to removal from participation in the system by action of the board. Added Laws 1977, Ch. 131, Sec. 2, eff. May 31, 1977.

ARTICLE 1. DEFINITIONS

For termination under Sunset Law, see italic note, ante.

§ 41-1701. Definitions

In this chapter, unless the context otherwise requires:

1. "Council" means the Arizona law enforcement officer advisory council.

2. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

3. "Criminal justice agency" means courts or a government agency or any subunit thereof which performs any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

4. "Department" means the department of public safety.

5. "Director" means the director of the department of public safety.

6. "Patrol" means the Arizona highway patrol.

7. "Peace officer" means any personnel of the department designated by the director as being a peace officer under the provisions of this chapter.

8. "Reserve" means the Arizona highway patrol reserve.

Amended by Laws 1976, Ch. 59, § 11, May 27, 1976; Laws 1978, Ch. 173, § 10.

Sec. 4. Section 41-1750, Arizona Revised Statutes, is amended to read:

41-1750. Criminal identification section: duties: violation: classification

A. There shall be a criminal identification section within the department of public safety.

B. The criminal identification section shall:

1. Procure and maintain records of photographs, descriptions, fingerprints, dispositions and such other information as may be pertinent to all persons who have been arrested for or convicted of a public offense within the state.

2. Collect information concerning the number and nature of offenses known to have been committed in this state, of the legal steps taken in connection therewith, and such other information as shall be useful in the study of crime in the administration of justice.

3. Cooperate with the criminal identification bureaus in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law. In addition, the criminal identification section shall provide for the rapid exchange of information concerning the commission of crime and the detection of violators of the law, between the criminal justice agencies of this state and its political subdivisions and the criminal justice agencies of other states and of the federal government.

4. Furnish assistance to peace officers throughout the state in crime scene investigation for the detection of latent fingerprints, and in the comparison thereof.

5. Provide information from its records to criminal justice agencies of the federal government, the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative. Such information shall be used only for purposes of the administration of criminal justice.

6. Operate the central repository for the criminal justice information system as required by section 41-2205.

7. Provide criminal history record information to noncriminal justice agencies of the federal government, the state or its political subdivisions, upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective employees of such agency. Such information shall be used only for the purpose of such evaluation.

8. Provide criminal history record information to licensing and regulatory agencies of the federal government, the state or its political subdivisions, upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective licensees. Such information shall be used only for the purpose of such evaluation.

9. Provide criminal history record information to the subject of such information, or to his attorney at the request of the subject, and when accompanied by proper identification.

10. Provide criminal history record information concerning convictions for violations of title 13, chapter 14 or 32 in which the victim is a minor or convictions for violations of title 13, chapter 35.1 or section 13-3623 involving a person who is employed or is seeking employment in which he regularly is in contact with minors under fifteen years of age, if the information is requested by the person's employer or potential employer, or by any youth-serving agency in which the person is or seeks to become a volunteer. No action may be brought against the employer or agency as a result of a nonnegligent failure to obtain the person's criminal history.

11. UPON SUBMISSION OF THE FINGERPRINT CARD, PROVIDE CRIMINAL HISTORY RECORD INFORMATION ON PROSPECTIVE ADOPTIVE PARENTS FOR THE PURPOSE OF CONDUCTING THE PREADOPTION CERTIFICATION INVESTIGATION UNDER TITLE 8, CHAPTER 1, ARTICLE 1, TO THE DEPARTMENT OF ECONOMIC SECURITY, WHEN THE DEPARTMENT OF ECONOMIC SECURITY IS CONDUCTING THE INVESTIGATION, OR TO AN AGENCY OR A PERSON APPOINTED BY THE COURT WHEN THE AGENCY OR PERSON IS CONDUCTING THE INVESTIGATION. INFORMATION RECEIVED UNDER THIS PARAGRAPH SHALL ONLY BE USED FOR PURPOSES OF THE PREADOPTION CERTIFICATION INVESTIGATION.

12. UPON SUBMISSION OF THE FINGERPRINT CARD, PROVIDE CRIMINAL HISTORY RECORD INFORMATION TO THE DEPARTMENT OF ECONOMIC SECURITY AND THE SUPERIOR COURT FOR THE PURPOSE OF EVALUATING THE FITNESS OF PROSPECTIVE CUSTODIANS OF JUVENILES INCLUDING PARENTS AND GUARDIANS. INFORMATION RECEIVED UNDER THIS PARAGRAPH SHALL ONLY BE USED FOR THE PURPOSES OF SUCH EVALUATION.

C. The chief officers of criminal justice agencies of the state or its political subdivisions shall provide to the criminal identification section such information concerning crimes and persons arrested for or convicted of public offenses within the state as the chief of the criminal identification section, with the approval of the director, shall deem useful for the study or prevention of crime and for the administration of justice.

D. Any person who knowingly releases or procures the release of information held by the criminal identification section other than as provided by this section, or who uses such information for a purpose other than as provided by this section, is guilty of a class 2 misdemeanor.

E. The chief of the criminal identification section may, with the written approval of the director and in the manner prescribed by law, remove and destroy such records as he determines are no longer of value in the detection or prevention of crime.

F. The chief of the criminal identification section, subject to the approval of the director, shall make and issue rules and regulations relating to the procurement and dissemination of information, in the manner prescribed by law. The rules and regulations shall provide for:

1. The collection and disposition of fees pursuant to subsection G of this section.

2. The refusal of service to those agencies and political subdivisions which are delinquent in paying such fees.

G. All noncriminal justice agencies of the federal government, the state or its political subdivisions may receive criminal history record information from the department of public safety criminal identification section pursuant to specific authority granted to that agency by statute, ordinance, or executive order which states the agency's authorization to receive criminal history record information for purposes of employment or licensing, in accordance with subsection F of this section. Except as provided in subsection H of this section, each state regulatory agency and political subdivision shall charge a fee, in addition to any other fees prescribed by law, in an amount necessary to cover the cost of federal fingerprint processing or federal criminal history record information checks which are authorized by law for employment or licensing. The state

regulatory agency or political subdivision shall transmit the monies collected to the criminal identification section and the section shall forward the monies to the state treasurer for deposit in the state general fund subject to subsection I of this section. WHENEVER A PERSON MUST BE FINGERPRINTED BY TWO OR MORE STATE AGENCIES OR DEPARTMENTS PURSUANT TO SECTION 8-105, 8-230.02, 36-883.02, 41-1606.02, 41-1964, 46-141 OR 46-321, ONE SET OF FINGERPRINTS MAY BE SUBMITTED TO THE DEPARTMENT OF PUBLIC SAFETY. THE FEE PRESCRIBED BY THIS SUBSECTION SHALL BE SUBMITTED TO THE DEPARTMENT OF PUBLIC SAFETY WITH THE FINGERPRINTS. THE FINGERPRINT CARD SHALL STATE EACH STATE AGENCY OR DEPARTMENT REQUIRING FINGERPRINTING AND SHALL CITE THE STATUTE AUTHORIZING THE FINGERPRINTING FOR EACH AGENCY OR DEPARTMENT. THE DEPARTMENT OF PUBLIC SAFETY SHALL PROVIDE THE CRIMINAL HISTORY RECORD INFORMATION TO EACH AGENCY OR DEPARTMENT LISTED ON THE CARD.

H. The department of economic security may pay from appropriated monies the cost of federal fingerprint processing or federal criminal history record information checks which are authorized by law for licensing of foster parents or certification of adoptive parents.

I. An account within the state general fund is established for the purpose of separately accounting for the collection and payment of fees for fingerprint processing by the criminal identification section. Monies collected from state regulatory agencies and political subdivisions for such purpose shall be credited to the account and payments by the department to the United States for federal fingerprint processing shall be charged against the account. Any excess monies in the account may be used by the criminal identification section to pay for current administrative costs to perform the fingerprint processing. At the end of each fiscal year any balance in the account reverts to the general fund.

41-1751. REPORTING COURT DISPOSITIONS TO DEPARTMENT OF PUBLIC SAFETY

Every magistrate, or judge of a court, or clerk of a court of record who is responsible for court records in this state shall furnish to the criminal identification section of the department of public safety information pertaining to all court dispositions of criminal matters, where incarceration or fingerprinting of the person occurred, including guilty pleas, convictions, acquittals, probations granted and pleas of guilty to reduced charges within ten days of the final disposition. Such information shall be submitted on a form and in accordance with rules approved by the supreme court of the state.

* * *

PUBLIC RECORDS, PRINTING AND NOTICES

§ 39-121.01. Copies; printouts or photographs of public records

In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

2. "Public body" means the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof.

3. All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by funds from the state or any political subdivision thereof.

4. Each public body shall be responsible for the preservation, maintenance and care of that body's public records and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to §§ 41-1344, 41-1347 and 41-1351.

5. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours. The custodian of such records shall furnish such copies, printouts or photographs and may charge a reasonable fee if the facilities are available, subject to the provisions of § 39-122. The fee shall not exceed the commercial rate for like service except as otherwise provided by statute.

PUBLIC RECORDS, PRINTING & NOTICES

C. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. Added Laws 1975, Ch. 147, § 1. As amended Laws 1976, Ch. 104, § 17.

§ 39-121.02. Action upon denial of access; expenses and attorney fees; damages

A. Any person who has requested to examine or copy public records pursuant to the provisions of this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

B. If the court determines that a person was wrongfully denied access to or the right to copy a public record and if the court finds that the custodian of such public record acted in bad faith, or in an arbitrary or capricious manner, the superior court may award to the petitioner legal costs, including reasonable attorney fees, as determined by the court.

C. Any person who is wrongfully denied access to public records pursuant to the provisions of this article shall have a cause of action against the officer or public body for any damages resulting therefrom. Added Laws 1975, Ch. 147, § 1.

Criminal Code

§ 13-905. Restoration of civil rights; persons completing probation

A. A person who has been convicted of two or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction restored by the judge who discharges him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally convicted. The clerk of such superior court shall have the responsibility for processing the application upon request of the person involved or his attorney. The superior court shall cause a copy of the application to be served upon the county attorney.

§ 13-906. Applications by persons discharged from prison

A. Upon proper application, a person who has been convicted of two or more felonies who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally sentenced.

B. A person who is subject to the provisions of subsection A may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the department of corrections. The clerk of the superior court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, his attorney or a representative of the state department of corrections. The superior court shall cause a copy of the application to be served upon the county attorney.

§ 13-907. Setting aside judgment of convicted person upon discharge; making of application; release from disabilities; exceptions

Every person convicted of a criminal offense other than a violation of § 28-472, the provisions of title 28, chapter 6,[1] or a violation of any local ordinance relating to stopping, standing or operation of a vehicle, but nevertheless including a violation of § 28-661, 28-692, 28-692.02, 28-693 or any local ordinance relating to the same subject matter of such sections, may, upon fulfillment of the conditions of probation or sentence and discharge by the court, apply to the judge, justice of the peace or magistrate who pronounced sentence or imposed probation or such judge, justice of the peace or magistrate's successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge. The application to set aside the judgment may be made by the convicted person, by his attorney or probation officer authorized in writing. If the judge, justice of the peace or magistrate grants the application, the judge, justice of the peace or magistrate shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction other than those imposed by the department of transportation pursuant to § 28-445 or 28-446, and except that the conviction may be used as a conviction if such conviction would be admissible had it not been set aside and may be pleaded and proved in any subsequent prosecution of such person by the state or any of its subdivisions for any offense or used by the department of transportation in enforcing the provisions of § 28-445 or 28-446 as if the judgment of guilt had not been set aside.

nouncing sentence trial court advised petitioner of his right to appeal and to court-appointed counsel therefore and petitioner allegedly did not appeal within prescribed time because he believed from a discussion with his probation officer that his conviction would eventually be removed from his record if he fulfilled the terms of his probation. State v. Stice (1975) 23 Ariz.App. 97, 530 P.2d 1130, on reconsideration 24 Ariz.App. 516, 540 P.2d 135.

Probationer may, after completion of his probation period, move the court to set aside his plea of guilty or a verdict of guilty and, in addition, have his civil rights reinstated. State v. Brandt (1973) 19 Ariz. 172, 505 P.2d 1063.

City courts and justice of the peace courts had no jurisdiction to rule on either a petition for restoration of civil rights or a motion to withdraw a guilty plea or to set aside a verdict pursuant to the provisions of § 13-1741 et seq. (now this chapter). Op.Atty.Gen.No. 72-19-L.

2. City and police courts

Superior court exceeded its jurisdiction by ordering establishment of procedures in city court whereby successful misdemeanor probationers could obtain relief under this section establishing right of discharged probationers to withdraw guilty pleas or seek to vacate verdicts of conviction which resulted in their being placed on probation. State ex rel. Purcell v. Superior Court In and For Maricopa County (1976) 112 Ariz. 521, 544 P.2d 203.

3. Expungement of records

There is no expungement of records in regard to criminal identification, and, as a matter of fact, court orders to expunge should not be honored; any such order should be brought to attorney general's attention so that they may be appealed, based on lack of statutory authority to issue expungement orders. Op.Atty.Gen.No.73-3-L.

4. Review

If accused, who was convicted of three counts of misdemeanor manslaughter, was given erroneous advice by probation officer with regard to this section, which relates to setting aside of a conviction and restoration of civil rights and which does not apply to misdemeanor convictions, and if, as result of such advice, accused decided to forego his appeal rights, he was entitled to take a delayed appeal. State v. Stice (1975) 24 Ariz.App. 516, 540 P.2d 135.

Appeal of defendant from an order revoking probation and imposing a prison sentence was not rendered moot by defendant's completion of service of the sentence. State v. Brandt (1973) 19 Ariz.App. 172, 505 P.2d 1063.

§ 13-908. Restoration of civil rights in the discretion of the superior court judge

Except as provided in § 13-912, the restoration of civil rights and the dismissal of the accusation or information under the provisions of this chapter shall be in the discretion of the superior court judge by whom the person was sentenced or his successor in office.

Added as § 13-1745 by Laws 1970, Ch. 221, § 1. Renumbered as § 13-808 and amended by Laws 1977, Ch. 142, § 53, eff. Oct. 1, 1978. Renumbered as § 13-908 and amended by Laws 1978, Ch. 201, §§ 116, 120, eff. Oct. 1, 1978.

§ 13-909. Restoration of civil rights; persons completing probation for federal offense

A. A person who has been convicted of two or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction in a United States district court restored by the presiding judge of the superior court in the county in which he now resides, upon filing of an affidavit of discharge from the judge who discharged him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by an application filed with the clerk of the superior court in the county in which he now resides. The clerk of the superior court shall process the application upon request of the person involved or his attorney.

Added as § 13-1752 by Laws 1972, Ch. 159, § 3. Renumbered as § 13-809 and amended by Laws 1977, Ch. 142, § 54, eff. Oct. 1, 1978. Renumbered as § 13-909 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

The 1977 amendment inserted "who has been convicted of two or more felonies" in subsec. A, and substituted "either prior to or after adoption of this chapter" for "prior to the adoption of this article" in subsec. B.

§ 13-910. Applications by persons discharged from federal prison

A. Upon proper application, a person who has been convicted of two or more felonies who has received an absolute discharge from imprisonment in a federal prison may have any civil rights which were lost or suspended by his conviction restored by the presiding judge of the superior court in the county in which he now resides.

B. A person who is subject to the provisions of subsection A may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the federal bureau of prisons, unless it is shown to be impossible to obtain such certificate. Such application shall be filed with the clerk of the superior court in the county in which the person now resides and such clerk shall be responsible for processing applications for restoration of civil rights upon request of the person involved or his attorney.

Added as § 13–1753 by Laws 1971, Ch. 159, § 3. Renumbered as § 13–810 and amended by Laws 1977, Ch. 142, § 55, eff. Oct. 1, 1978. Renumbered as § 13–910 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

§ 13-911. Restoration of civil rights in the discretion of the presiding judge of the superior court

The restoration of civil rights under provisions of §§ 13–909 or 13–910 is within the discretion of the presiding judge of the superior court in the county in which the person resides.

Added as § 13–1754 by Laws 1971, Ch. 159, § 3. Renumbered as § 13–811 and amended by Laws 1977, Ch. 142, § 56, eff. Oct. 1, 1978. Renumbered as § 13–911 and amended by Laws 1978, Ch. 201, §§ 116, 121, eff. Oct. 1, 1978.

§ 13-912. Restoration of civil rights; automatic for first offenders

Upon completion of the term of probation, or upon absolute discharge from imprisonment, and upon the completion of payment of any fine or restitution imposed, any person who has not previously been convicted of any other felony shall automatically be restored any civil rights which were lost or suspended by the conviction.

Added as § 13–812 by Laws 1977, Ch. 142, § 49, eff. Oct. 1, 1978. Renumbered as § 13–912 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

* * *

§ 8-247. Destruction of records

A. On application of a person who has been adjudicated delinquent or incorrigible or on the court's own motion, and after a hearing, the juvenile court shall order the destruction of the files and records, including arrest records, in the proceeding, if the court finds:

1. The person has attained his eighteenth birthday.
2. No proceeding is pending seeking his conviction of a crime.
3. He has been rehabilitated to the satisfaction of the juvenile court.
4. He is not under the jurisdiction of the juvenile court, nor under commitment to the department of corrections from the juvenile court.

B. Reasonable notice of the hearing shall be given to:

1. The county attorney.

2. The authority granting the discharge if the final discharge was from an institution or from parole.

C. When a juvenile who has been adjudicated delinquent or incorrigible has attained his or her twenty-third birthday, the juvenile court may order destruction of files and records, including arrest records if the court finds:

1. There is no pending criminal complaint.

2. The department of corrections has no current jurisdiction.

3. There is no adult criminal record. As amended Laws 1975, Ch. 141, § 3.

Alcoholic Beverages

§ 4-202. Qualifications of licensees; fingerprinting; transfers; prior convictions

A. Every spirituous liquor licensee, other than a club licensee, a corporation licensee or an out-of-state distiller's, brewer's, vintner's, exporter's, importer's or rectifier's licensee, shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state. If a partnership, each partner shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state. If a corporation, it shall be a domestic corporation or a foreign corporation which has qualified to do business in this state and shall hold its license through an agent.

B. Either the board or the superintendent may require any person, other than a bank or licensed lending institution, having any interest, directly or indirectly, as defined by department regulation, in any license or licensee to furnish a complete, satisfactory set of fingerprints.

C. A corporation which conforms to the qualifications prescribed by subsection A shall own the entire equitable interest in its license through an agent provided the agent is otherwise qualified to hold a spirituous liquor license. The agent shall be subject to the penalties prescribed for any violation of the law relating to alcoholic beverages. Upon the death or resignation or discharge of an agent of a corporation holding a spirituous liquor license, the license shall be assigned to another qualified agent selected by the corporation.

D. No license shall be issued to any person who, within one year prior to application, has violated any provision of a spirituous liquor license issued or has had a license revoked. No license shall be issued or renewed to any person who, within five years prior to application, has been convicted of a felony. No corporation shall have its annual license issued or renewed unless it has on file with the department a list of its officers and directors and any stockholders who own ten per cent or more of the corporation. No corporation shall have its spirituous liquor license issued or renewed if any of its officers or directors or any stockholders who own ten per cent or more of the corporation have within five years been convicted of a felony.

E. The department shall receive criminal history record information from the department of public safety criminal identification section for applicants for employment with the department or for a license issued by the department.

Amended by Laws 1978, Ch. 88, § 3; Laws 1980, Ch. 84, § 2; Laws 1980, Ch. 185, § 2.

Laws 1976, Ch. 81, § 3, substituted "licensees" for "licenses" in the section heading.

For intent of Laws 1976, Ch. 81, see note following § 4-203.

For legislative intent regarding termination of provisions added or amended by Laws 1980, Ch. 84, see note following § 4-112.

For legislative intent regarding termination of provisions added or amended by Laws 1980, Ch. 185, see note following § 4-101.

1980 Reviser's Note:

This section contains the amendments made by Laws 1980, chapter 84, section 2 and chapter 185, section 2 which were blended together as shown above pursuant to authority of section 41-1304.03.

Cross References

Assignment fees, change of agent, see § 4-209.

Grounds for revocation, suspension, and refusal to renew licenses, see § 4-210.

Law Review Commentaries

Resident aliens employment rights. 19 Ariz.L.Rev. 409 (1977).

Children Adoption

§ 8-105. Preadoption certification; investigation; central adoption registry

A. Before any person may petition to adopt a child the person shall be certified by the court as acceptable to adopt children. Such a certificate shall be issued only after an investigation conducted by an officer of the court or by an agency or by the division. Written application for certification may be made directly to the court or to an agency or to the division, in such form and content as the court, agency or division may require.

B. After receiving the written and completed application of the prospective adoptive parent or parents, which shall include a financial statement, completed fingerprint card and a physician's statement of the physical health of each applicant, the division or the agency or a person or agency designated by the court shall conduct or cause to be conducted an investigation of the prospective adoptive parent or parents to determine if they are fit and proper persons to adopt children.

C. This investigation and report to the court shall consider all relevant and material facts dealing with the prospective adoptive parents' fitness to adopt children, and shall include but is not limited to:

1. A complete social history.

2. The financial condition of the applicant.

3. The moral fitness of the applicant.

4. The religious background of the applicant.

5. The physical and mental health condition of the applicants.

6. The submission of a fingerprint card and the results of a check of official fingerprint records based on such submission.

7. Whether the person or persons wish to be placed on the central registry established in subsection M.

8. All other facts bearing on the issue of the fitness of the prospective adoptive parents that the court, agency or division may deem relevant.

D. As soon as the identity of the child to be adopted is known, an investigation and report to the court shall include, but not be limited to:

1. Whether the natural parents, if living, are willing that the child be adopted and the reasons for such willingness.

2. Whether the natural parents have abandoned the child or are unfit to have custody of the child.

3. Whether the parent-child relationship has been previously terminated by court action and the circumstances of such termination.

4. The heritage of the child and natural parents and the mental and physical condition of the child and the natural parents.

5. The existing and proposed arrangements as to the custody of the child.

6. The adoptability of the child and the suitability of the child's placement with the applicant.

E. At no time shall the investigator reveal to the prospective adoptive parents the identity of a child or its parent or parents, and at no time shall the investigator reveal to the child or its parent or parents the identity of the prospective adoptive parents if these facts are not already known.

F. Within ninety days after the original application prescribed by subsection A, the division or the agency or a person or agency designated by the court to conduct an investigation shall present to the juvenile court the written report required by subsection C, which shall include a definite recommendation for certifying the applicant as being acceptable or nonacceptable to adopt children with the reasons for the recommendation.

G. Within ninety days after the court, the division or an agency has acquired information that a child has been placed with a prospective adoptive parent or parents, the division, if it placed the child, or an agency, if it placed the child, or an employee of the court, if the child was not placed by the division or an agency, shall investigate and present to the juvenile court the written report required by subsection D, which shall include a definite recommendation for or against certifying the child as being suitable or not suitable for adoption by the prospective adoptive parent or parents and the reasons for the recommendation.

H. The reports required by subsections C and D may be combined into one report at the discretion of the juvenile court.

I. The court, upon receiving the investigation report required by subsections C and F, shall certify the applicant as being acceptable or nonacceptable to adopt children based on the investigation report and recommendations of such report. The court, upon receiving the investigation report required by subsections D and G, shall certify the child as being suitable or not suitable for adoption by the prospective adoptive parent or parents subject to the investigation report and recommendations of such report. A certification shall remain in effect for one year from the date of its issuance and may be extended for additional one year periods if after review the court finds that there have been no material changes in circumstances which would adversely affect the acceptability of the applicant to adopt or the suitability of the child to be adopted by the prospective adoptive parent or parents. Upon the filing of a petition by the prospective adoptive parent or parents to adopt a child, the certification of such persons shall expire. Such persons must be again certified in order to petition for adoption of any other child.

J. The court in its discretion may require additional investigation if it finds that the welfare of the child would be served by such investigation or if additional information is necessary upon which to make an appropriate decision regarding certification.

K. Any applicant who has been certified as nonacceptable may petition the court to review such certification. Notice shall be given to all interested parties and the matter shall be heard by the court, which may affirm or reverse the certification.

L. If the applicant is certified as nonacceptable, he or she may not reapply for certification to the court, or to any agency or to the division, for one year thereafter.

M. The division shall maintain a central adoption registry which shall include the names of all prospective adoptive parents currently certified by the court as acceptable to adopt children, except those who request that their names not be included therein, the names of all children under the jurisdiction of the division who are currently available for adoption, the names of any other children currently available for adoption whose names are voluntarily entered therein by any agency, parent or other person having the right to give consent to the child's adoption, and such other information as the division may elect to include in aid of adoptive placements. Access to information in the registry shall be made available on request to any agency under such assurances as the division may require that the information sought is in furtherance of adoptive placements and that confidentiality of the information is preserved.

N. This section shall not apply where the prospective adoptive parent is the spouse of the natural parent of the child to be adopted or is an uncle, aunt or grandparent of the child of the whole or half-blood or by marriage and the child is not a ward of the court.

Transportation

§ 28–414. Classification of chauffeurs; special restrictions; requirements for school bus drivers

A. The department upon issuing a chauffeur's license shall indicate on the license the class of license issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules and regulations for the exercise thereof as it may deem necessary for the safety and welfare of the traveling public.

B. No person shall drive a school bus transporting school children or a motor vehicle when in use for the transportation of persons or property for compensation or a tow truck when in use for moving or transporting wrecked, damaged, disabled or abandoned vehicles until he has been licensed as a chauffeur for such purpose and the license so indicates. The department shall not issue a chauffeur's license for any such purpose unless the applicant has had at least one year of driving experience prior thereto and the department is fully satisfied as to the applicant's competency and fitness to be so employed.

C. In addition to the license required by this section, in order to be certified to operate a school bus each applicant shall meet and maintain the minimum standards prescribed by this section and rules adopted by the department and complete an initial course of school bus driver safety and training including behind the wheel instruction.

D. The department shall, by rule, establish minimum standards for certification of school bus drivers and provide, in cooperation with local school districts or the department of education, for school bus driver safety and training courses. The standards established shall include requirements concerning moral character, knowledge of school bus operation, pupil and motor vehicle safety, physical conditions which might affect the person's ability to safely operate a school bus or which might endanger the health or safety of school bus passengers, knowledge of first aid, establishment of school bus safety and training courses and a refresher course to be completed on at least a biannual basis, and such other matters as the department may prescribe for the protection of the public.

E. In carrying out the provisions of this section the department shall require applicants to furnish fingerprints and obtain criminal history record information pursuant to § 41–1750.

F. Notwithstanding subsections C and D of this section, the department may issue a temporary certificate to operate a school bus to an applicant who has demonstrated an ability to exercise control over a school bus. The department shall revoke the temporary certificate of any such driver who fails to complete a school bus driver training course approved by the department, within six months after commencing employment as a school bus driver.

G. Applicants who fully meet the requirements of this section shall be issued a certificate which shall be good so long as the applicant maintains the minimum standards established by this section. The department is authorized to cancel the certificate or temporary certificate if the person's license to drive is suspended, cancelled or revoked. The department shall cancel the certificate if the person fails to maintain minimum standards established pursuant to subsection D of this section. A person whose application for a certificate is refused or whose certificate is cancelled for failure to meet or maintain minimum standards may request and receive a hearing.

§ 36–883.02. Child care personnel; registration; fingerprints; exemptions; definition

A. Child care personnel shall register with the department in order to work in a day care center.

B. Except as provided in subsection E of this section, child care personnel shall be fingerprinted and submit the form prescribed in subsection F of this section to the department within twenty days after the date they begin work for a day care center. Registration is conditioned on the results of the fingerprint check.

C. For the purpose of screening child care personnel, the department of public safety shall provide information from its records relating to convictions for public offenses to the department of health services. Fingerprint checks shall be conducted pursuant to § 41–1750, subsection G.

D. The department shall charge the prospective employer of child care personnel for the costs of fingerprint checks. The employer may charge those costs to its fingerprinted employee.

E. Exempt from the fingerprinting requirements of subsection B of this section are parents, including foster parents and guardians, who are not employees of the day care center and who participate in activities with their children under the supervision of and in the presence of child care personnel.

F. Child care personnel shall certify on forms that are provided by the department and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

(a) Sexual abuse of a minor.

(b) Incest.

(c) First or second degree murder.

(d) Kidnapping.

(e) Arson.

(f) Sexual assault.

(g) Sexual exploitation of a minor.

(h) Contributing to the delinquency of a minor.

(i) Commercial sexual exploitation of a minor.

(j) Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.

(k) Burglary.

(*l*) Robbery.

(m) A dangerous crime against children as defined in § 13–604.01.

(n) Child abuse.

(*o*) Sexual conduct with a minor.

(p) Molestation of a child.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8–201, paragraph 11.

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

G. Employers of day care center personnel shall make documented, good faith efforts to contact previous employers of day care center personnel to obtain information or recommendations which may be relevant to an individual's fitness for employment in a day care center.

H. The notarized forms and fingerprint checks are confidential.

I. For the purposes of this section, "child care personnel" means any employee or volunteer working at a day care center.

Amended by Laws 1986, Ch. 292, § 1, eff. May 5, 1986; Laws 1987, Ch. 165, § 1.

§ 8-230.02. Juvenile probation fund; program and contract requirements; definition

A. The juvenile probation fund is established. The supreme court shall administer the fund.

B. The supreme court shall allocate monies in the fund or appropriated to the superior court's juvenile probation services fund line based on its determination of the need for and probable effectiveness of each plan submitted pursuant to this article. The supreme court shall require that the presiding juvenile court judge submit in accordance with rules of the supreme court a plan for the expenditure of monies allocated to the juvenile court pursuant to this section. The supreme court may reject a plan or a modification of a plan submitted pursuant to this subsection.

C. Monies shall be used to fund programs, the participation in which a juvenile probation officer has required as a condition precedent to adjustment of a delinquency complaint or a complaint or citation alleging an alcohol offense pursuant to § 8-230.01 to reduce the number of repetitive juvenile offenders and to provide services, including treatment, testing and residential and shelter care, for children referred to the juvenile court for incorrigibility or delinquency offenses. These services shall be approved by the supreme court. The juvenile court may develop and staff such programs, or the supreme court may enter into the purchase of service contracts with community youth serving agencies.

D. The monies shall be used to supplement, not supplant, funding to the juvenile court by the county.

E. The supreme court shall contract for a periodic evaluation to determine if the provisions of this article reduce the number of repetitive juvenile offenders. The supreme court shall send a copy of the evaluation to the speaker of the house of representatives, the president of the senate and the governor.

F. A contract entered into between the supreme court and any contract provider to provide services pursuant to this section to juveniles shall provide that personnel employed by any contract provider who have direct contact with juveniles shall be fingerprinted as a condition of employment. The contract shall further provide that the contractor shall submit employee fingerprints to the supreme court or designated agency prior to performance of any services by the employee which requires or allows the employee to have direct contact with juveniles.

G. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

H. The contractor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel.

I. Contractor personnel who have direct contact with juveniles shall certify on forms provided by the supreme court and notarized whether they are awaiting trial on or have ever been convicted of or committed any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Arson.
6. Sexual assault.
7. Sexual exploitation of a minor.
8. Contributing to the delinquency of a minor.
9. Commercial sexual exploitation of a minor.
10. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
11. Burglary.
12. Robbery.

13. A dangerous crime against children as defined in § 13-604.01.

14. Child abuse.

15. Sexual conduct with a minor.

16. Molestation of a child.

J. Every service contract with any contract provider which involves the employment of persons who have direct contact with juveniles shall provide that the contract may be cancelled or terminated if the fingerprint check or the certified form of any person who has direct contact with juveniles and is employed by a contract provider discloses that the person has been convicted of or is awaiting trial on or committed any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Sexual abuse of a minor.

2. Incest.

3. First or second degree murder.

4. Kidnapping.

5. Sexual assault.

6. Sexual exploitation of a minor.

7. Commercial sexual exploitation of a minor.

8. A dangerous crime against children as defined in § 13-604.01.

9. Child abuse.

10. Sexual conduct with a minor.

11. Molestation of a child.

The contractor may avoid termination of the contract if the person whose fingerprints or certification form shows that he has been convicted of or is awaiting trial or has committed an offense or similar offense as listed in this subsection is immediately prohibited from employment or service with the contractor in any capacity requiring or allowing direct contact with juveniles.

K. Every service contract with any contract provider which involves the employment of persons who have direct contact with juveniles shall contain a provision that the contract may be cancelled or terminated if the fingerprint check or the certified form of any person who has direct contact with juveniles employed by a contract provider discloses that the person has been convicted of or is awaiting trial on or committed any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Arson.

2. Contributing to the delinquency of a minor.

3. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.

4. Burglary.

5. Robbery.

The contractor may avoid termination of the contract if the person whose fingerprints or certification form shows that he has been convicted of or is awaiting trial on or has committed an offense or similar offense as listed in this subsection is immediately prohibited from employment or service with the contractor in any capacity requiring or allowing direct contact with juveniles or unless the person has been granted an exception for good cause pursuant to the requirements and procedures of § 41-1954.01. The supreme court may, in its sole discretion, determine whether to submit the application to the director of the department of economic security for review.

L. The requirements of subsections F through K of this section do not apply to personnel who are employed by a contract provider that has a contract for services to juveniles with or is licensed or certified by the department of health services, the department of corrections or the department of economic security and who have been fingerprinted and submitted the required certification form in connection with that employment.

M. For the purposes of this section, "employee" means paid and unpaid personnel who have direct contact with juveniles.

Added by Laws 1984, 1st S.S., Ch. 10, § 1, eff. July 1, 1984. Amended by Laws 1985, Ch. 168, § 3; Laws 1986, Ch. 75, § 1; Laws 1987, Ch. 324, § 1; Laws 1988, Ch. 274, § 2.

ARIZONA

Regulations

CHAPTER 1

DEPARTMENT OF PUBLIC SAFETY
CRIMINAL IDENTIFICATION SECTION

(Authority: A.R.S. § 41-1750 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Sec.

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ARTICLE 1. GENERAL PROVISIONS

R13-1-01. Explanation of Rules and Regulations

The following Rules and Regulations relating to the procurement and dissemination of information in the Criminal Identification Section are authorized by A.R.S. § 41-1750 F. (Supp. 1971-72). All materials and information collected pursuant to A.R.S. § 41-1750 are hereby classified as confidential – the release of, or use of said materials or information except as provided by A.R.S. § 41-1750 is prohibited and access to the files is limited to authorized employees of the Department of Public Safety's Criminal Identification Section.

R13-1-02. Provide Accurate and Timely Information

The primary function of the Department of Public Safety's Criminal Identification Section is to provide accurate and timely information to all law enforcement agencies regarding criminal history information. To disseminate this information to law enforcement agencies, the Department of Public Safety provides toll-free telephone service and teletype service, or information may be obtained in person after providing proper identification.

R13-1-03. Latent Fingerprint Identification Assistance

A. The Criminal Identification Section of the Department of Public Safety shall maintain a latent fingerprint identification laboratory and a sufficient number of latent fingerprint identification officers to provide assistance as needed to any law enforcement agency on a twenty-four-hour-a-day basis for the detection and development of latent fingerprints.

B. The chief officer of any law enforcement agency, or his authorized representative, may obtain the assistance of these officers by contacting the Criminal Identification Section of the Department of Public Safety.

C. The latent identification officers shall also be available to process evidence submitted to the Criminal Identification Section for the purpose of detecting latent fingerprints and shall provide expert court testimony, as required.

D. The chief officer of any law enforcement agency, or his authorized representative, upon submitting evidence to the Criminal Identification Section, shall complete any form required at the time of submitting such evidence.

R13-1-04. Information Required of Law Enforcement Agencies

All law enforcement agencies of the State of Arizona shall provide the Criminal Identification Section of the Department of Public Safety the following information:

1. A complete set of fingerprints on each initial arrest. Said fingerprints will be imprinted on the appropriate fingerprint form that is provided by the Federal Bureau of Investigation.

2. For each subsequent arrest, each law enforcement agency of the State of Arizona shall provide to the Criminal Identification Section of the Department of Public Safety one of the following:

a. A complete set of fingerprints on the appropriate F.B.I. fingerprint form, and include name, description data, and arrest data; i.e., description of charge, statute number, Arizona Criminal Identification Section number, and F.B.I. number, if available.

b. Department of Public Safety Form 30.60.03 entitled "Additional Arrest Information" completed in full, with Arizona Criminal Identification Section number and the inked impressions of the arrested individual's right four fingers. If the right hand is amputated, imprint the left four fingers and so indicate. In cases where the Criminal Identification Section number is not available, follow instructions in paragraph 2a, above.

3. In all cases where possible on an initial arrest, each law enforcement agency of the State of Arizona shall provide the Criminal Identification Section of the Department of Public Safety with a photograph of the person arrested, and on the back of said photograph shall inscribe the subject's name, date of birth, description of charge, and statute violated.

R13-1-05. Procedures and Restrictions on Dissemination of Information

A. The employees of the Criminal Identification Section of the Department of Public Safety shall not release information until after determining that the requesting party is, in fact, entitled to said information. After this determination has been made, information shall be disseminated in the following manner:

§ 41-1964. Day care homes; child care personnel; registration; fingerprints; definition

A. Child care personnel shall register with the department in order to work in a certified day care home.

B. Child care personnel shall be fingerprinted and submit the form prescribed in subsection E of this section to the department within twenty days after beginning work at a certified day care home. Registration is conditioned on the results of the fingerprint check.

C. For the purpose of screening child care personnel, the department of public safety shall provide information from its records relating to convictions for public offenses to the department of economic security. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

D. The department shall charge child care personnel for the costs of their fingerprint checks.

E. Child care personnel shall certify on forms that are provided by the department and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

(a) Sexual abuse of a minor.

(b) Incest.

(c) First or second degree murder.

(d) Kidnapping.

(e) Arson.

(f) Sexual assault.

(g) Sexual exploitation of a minor.

(h) Contributing to the delinquency of a minor.

(i) Commercial sexual exploitation of a minor.

(j) Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.

(k) Burglary.

(l) Robbery.

(m) A dangerous crime against children as defined in § 13-604.01.

(n) Child abuse.

(o) Sexual conduct with a minor.

(p) Molestation of a child.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8-201, paragraph 11.

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

F. The department shall make documented, good faith efforts to contact previous employers of certified day care home personnel to obtain information or recommendations which may be relevant to an individual's fitness for work in a certified day care home.

G. The notarized forms and fingerprint checks are confidential.

H. For the purposes of this section, "child care personnel" means all employees of and persons residing in a day care home which is certified by the department pursuant to § 41-1954, subsection A, paragraph 1, subdivision (b) who are eighteen years of age or older.

Amended by Laws 1986, Ch. 292, § 2, eff. May 5, 1986.

1. In-Person Request: Information shall be released after satisfactory identification has been made.

2. Telephone Requests: Requested information shall be recorded along with the requesting party's name, identification number, agency of employment, dated and time-stamped. Information to be disseminated will only be given by return phone call, teletype or letter to a previously designated phone number or address at the agency of employment. Information will not be returned to a private phone number.

3. Mail Requests: Requests for information received by mail will only be accepted on agency letterhead, when signed by the chief officer of the requesting agency or his authorized representative. All written requests must contain the name of the requesting party and the purpose for obtaining the requested information. All requested information shall be return-addressed to the requesting officer and directed to the requesting agency's physical address.

4. Teletype Requests: Teletype requests will be answered as soon as possible by return teletype and, if requested, additional information will be forwarded to the requesting agency by mail.

B. The chief officer of any agency receiving information from the Criminal Identification Section shall cooperate with officers of the Department of Public Safety in the investigation of violations of A.R.S. § 41-1750 and these rules.

C. In addition to the penalties provided by law, any department or agency which misuses or releases information contrary to law or violates any provision of these rules may be temporarily denied information from the Criminal Identification Section pending an investigation by the department and shall not be reinstated until such time as the chief of the Criminal Identification Section is satisfied that the department or agency is in full compliance with the law and these rules.

D. Any person convicted under the provisions of A.R.S. § 41-1750 D shall be denied further information from such files unless such request for information is accompanied by an affidavit signed by the chief of the requesting agency. Such affidavit shall set forth:

1. The facts and circumstances surrounding the prior conviction, and

2. A statement by the chief of the agency stating that he assumes full responsibility for the lawful use of any released information.

R13-1-06. Procedures for Dissemination of Information to Non-law Enforcement Agencies

A. The Department of Public Safety's Criminal Identification Section shall provide information from its records relating to convictions for public offenses to non-law enforcement agencies of the state or its political subdivisions for the purpose of evaluating the fitness of prospective employees of such agencies. Compliance to this rule will be made by the Criminal Identification Section after such agency has fully complied with paragraph G of A.R.S. § 41-1750, and the Criminal Identification Section has received, in writing, proper authorization to disseminate said information to such agency from the Attorney General of the State of Arizona.

B. Upon receiving said authorization from the Attorney General, the chief of the Criminal Identification Section shall contact the chief officer of such agency and establish rules regarding the procurement and dissemination of information as outlined in R13-1-05.

R13-1-07. Procedures for Dissemination of Information to Licensing and Regulatory Agencies

A. The Department of Public Safety's Criminal Identification Section shall provide information from its records relating to convictions for public offenses to licensing and regulatory agencies of the state or its political subdivisions, for the purpose of evaluating the fitness of prospective licensees.

B. Compliance to this rule will be made by the Criminal Identification Section after such agency has fully complied with paragraph G of A.R.S. §41-1750 and the Criminal Identification Section has received, in writing, proper authorization to disseminate said information to such agency from the Attorney General of the State of Arizona.

C. Upon receiving said authorization from the Attorney General, the chief of the Criminal Identification Section shall contact the chief officer of such agency and establish rules regarding the procurement and dissemination of information as outlined in R13-1-05.

R13-1-08. Procedures for Dissemination to, or Correction of Information by, the Subject of the Records

A. The subject of record or his attorney may be provided information contained on the "Arizona Criminal Offender Identification Records", DPS Form 30.60.04. The information on this record shall consist of dates and arrests, contributors of fingerprints, arrest numbers, charges of dispositions (where possible) which have occurred within the State of Arizona. The listing of this record shall be supported by fingerprints or other official documents contained in the Criminal Identification Section Criminal Offender Jacket relating to the subject of the record.

B. The information may be reviewed, or for specific need a copy obtained, after proper completion of a "Review of Criminal Offender Record Information" form, (DPS Form 30.60.05). The subject of the record to be reviewed must have his fingerprints imprinted upon this form. If a copy of the record is desired, the signature of the individual to whom the copy is released must be in the appropriate spaces both on the "Review of Criminal Offender Record Information" form and the "Arizona Criminal Offender Identification Record" being released. The name and identification number of the employee releasing the information must also be recorded on both forms.

C. The fingerprints on the "Review of Criminal Offender Record Information" form must be verified as being identical to the fingerprints of the subject of record

on file in the Criminal Identification Section by a Criminal Identification Section fingerprint technician or identification officer prior to any record being reviewed by the individual of record or his attorney.

D. The reviewing individual may challenge any entry contained on the "Arizona Criminal Offender Identification Record" that he knows to be incorrect. To challenge any entry on the "Arizona Criminal Offender Identification Records", DPS Form 30.60.07 the "Exception Taken to Criminal Offender Record Information" form must be properly completed. This form must then be signed by the subject of the record to which exceptions are taken. This form will then be filed with the Criminal Identification Section.

E. Upon receipt of an "Exception Taken to Criminal Offender Record Information" form, the employee accepting the form will place the current date and his/her serial number in the appropriate spaces. An audit of the record in question will begin within five days of receipt of this form and will be completed within fifteen working days.

F. To conduct an audit, the Criminal Identification Section shall contact each agency whose arrest(s) are challenged as exceptions. The Criminal Identification Section will obtain a set of fingerprints relating to the arrest in question and verify whether or not they belong to the subject of the record in question. The Criminal Identification Section will obtain a disposition for each of the entries challenged and record such dispositions in its files and cause such dispositions to be recorded with the appropriate federal agency whose responsibilities involve maintaining records of arrests and dispositions.

G. Upon completion of an audit, the "Exception Taken to Criminal Offender Record Information" form will be filed by the Criminal Information Section in the subject of such record's jacket. The chief of the Criminal Identification Section shall then complete DPS Form 30.60.06 "Notice of Results of Audit of Criminal Offender Record Information". The form shall be prepared in duplicate. The original shall be filed in the Criminal Identification Section jacket of the subject of the record. The copy shall be sent to the individual who submitted the exceptions.

R13-1-09. Right to Hearing After Denial or Restriction of Information

A. Any party or agency who has been denied information or has suffered a penalty or restriction under these Rules and Regulations due to the actions or inactions of the Department of Public Safety shall have a right to a hearing regarding the denial of information or the penalty or restriction suffered – except any temporary denial of information under R13-1-05 pending an investigation by the Department of Public Safety which does not exceed three working days does not constitute a penalty or restriction, and no hearing shall be provided for departments or agencies affected by such temporary denial.

B. The hearing shall be conducted by from two to three officers holding the rank of Lieutenant or above in the Department of Public Safety and one to two chief officers of any agency served or an authorized representative of any such agency, to be appointed by the Director or, in his absence or at his direction, the chief of the Criminal Identification Section.

C. The required notice and hearing shall be in compliance with A.R.S. § 41-1009 et. seq.

Arkansas Statutes Annotated
Chapter 11
Arkansas Crime Information Center

5-1101. Criminal justice and highway safety information center — Creation — Appointment of administrator. — There is hereby created a Criminal Justice and Highway Safety Information Center, under the supervision of a Supervisory Board established by this Act [§§ 5-1101—5-1115], and the Department of Public Safety. This Center shall consist of an Administrator of Criminal Justice and Highway Safety Information and such other staff under the general supervision of the Administrator as may be necessary to administer the services of this Act, subject to the approval of funds authorized by the General Assembly. The Supervisory Board shall name the Administrator of the Center with the approval of the Director of the Department of Public Safety. [Acts 1971, No. 286, § 1, p. 674; 1975, No. 742, § 1, p. —.]

5-1101.1. Name changed to crime information center. — Hereafter the Criminal Justice and Highway Safety Information Center, as authorized by Act 286 of 1971, as amended, the same being Arkansas Statute 5-1101, shall be designated and known as the Arkansas Crime Information Center, and that all powers, functions and duties of the Criminal Justice and Highway Safety Information Center shall be performed by the Arkansas Crime Information Center. [Acts 1979, No. 375, § 1, p. —.]

5-1102. Maintenance and operation of criminal justice and highway safety information system — Other duties of center — Availability of criminal record. — This Center shall be responsible for providing for the maintenance and operation of the computer-based Criminal Justice and Highway Safety Information System. The use of this System is restricted to serving the informational needs of police, courts, correction and highway safety agencies through a communications network connecting state, county, and local authorities to a centralized state depository of information. The information to be stored in the Criminal Justice and Highway Safety Information Center under the authority of this Act [§§ 5-1101—5-1115] shall be restricted to records of outstanding warrants for arrest, felony informations and indictments pending in Circuit Court, misdemeanor informations and indictments to the extent provided in this Section pending in Municipal and Circuit Courts, commitments to the penitentiary and other correctional agencies, felony convictions, persons on felony parole or probation, stolen property, moving traffic violations, traffic accidents, drivers licenses, vehicle registration, records to prevent misidentification of persons and convictions for the following specified misdemeanors:

(a) All misdemeanor crimes wherein violence is an element of the offense.

(b) All misdemeanor crimes involving the theft of property.

(c) All misdemeanor crimes involving the use, abuse, misuse or possession of dangerous drugs or narcotics.

(d) Driving while under the influence of drugs or intoxicants.

It is the intent of the General Assembly in this legislation that the Center shall maintain only the specified records on persons and shall not maintain any additional records on persons without specific statutory authorization from the General Assembly.

The Center shall collect data and compile statistics on the nature and extent of crime and highway safety problems in Arkansas and compile other data related to planning for and operating criminal justice and highway safety agencies, provided that such statistics do not identify persons. The Center shall also periodically publish statistics that do not identify persons and report such information to the Governor, the General Assembly, Federal, State and local criminal agencies, and the general public.

The Center, at the direction of the Supervisory Board, is hereby authorized to design and administer a Uniform Crime Reporting program, uniform records systems, and a criminal offender tracking program (Offender Based Transaction Statistics), to be used by criminal justice agencies for reporting the authorized information under this Act. The Center shall also provide all standard forms and provide for the instruction of participants in the use of such forms and related standard record systems.

The Center shall make criminal records on person [persons] available only to criminal justice agencies in their official capacity, to regulatory agencies with specific statutory authority of access, and to any person or his attorney, who has reason to believe that a criminal history record is being kept on him, or wherein the criminal defendant is charged with either a misdemeanor or felony. Upon the application of the person or his attorney, it shall be mandatory, upon proper and sufficient identification of the person, for the Criminal Justice and Highway Safety Information Center to make available to said person or his attorney any records on the person making said application. The Supervisory Board shall establish regulations and policies to carry out the review and challenge procedures in accordance with this Act. [Acts 1971, No. 286, § 2, p. 674; 1975, No. 742, § 2, p. —.]

5-1102.1. Coordination with national crime control information systems. — The Criminal Justice and Highway Safety Information Center shall be the central access and control agency for Arkansas' input, retrieval, and exchange of criminal justice information in the National Crime Information Center, or its successor, and National Law Enforcement Telecommunications System, or its successor, and shall be responsible for the coordination of all Arkansas user agencies with the National Crime Information Center and the National Law Enforcement Telecommunications System. [Acts 1979, No. 124, § 1, p. —.]

5-1102.2. Designation of control terminal officer. — The Director of the Criminal Justice and Highway Safety Information Center, or his designee, shall serve as the National Crime Information Center control terminal officer and the National Law Enforcement Telecommunications System representative. [Acts 1979, No. 124, § 2, p. —.]

5-1102.3. Collection of Class A, Class B and unclassified misdemeanor criminal records.

In addition to the duties imposed upon the Arkansas Crime Information Center by Section 2 of Act 286 of 1971, as amended (Arkansas Statute 5-1102), the Center shall be authorized to collect and maintain in accordance with the procedures established by Act 286 of 1971 [§§ 5-1101, 5-1102, 5-1103 — 5-1110], as amended, Class A, Class B, and Unclassified Misdemeanor criminal records. [Acts 1983, No. 282,

5-1103. Supervisory board — Duties. — There is hereby created a Supervisory Board for the Criminal Justice and Highway Safety Information Center. The duties and responsibilities of this Board are to:

(a) Maintain and operate the Criminal Justice and Highway Safety Information Center.

(b) Provide that the information obtained by this Act [§§ 5-1101—5-1115] shall be restricted to the items specified in this Act and shall so administer the Center so as not to accumulate any information or distribute any information that is not specifically approved in this Act.

(c) Provide for adequate security safeguards to ensure that the data available through this system is used only by properly authorized persons and agencies.

(d) Provide for uniform reporting and tracking systems to report data authorized by this Act. Standard forms and procedures for reporting such authorized data under this Act shall be prescribed by the Board.

(e) Establish regulations and policies as may be necessary for the efficient and effective use and operation of the Information Center under the limitations imposed by the terms of this Act.

(f) Provide for the reporting of authorized information under the limitations of this Act to the United States Department of Justice under its national system of crime reporting.

(g) Provide for research and development activities that will encourage the application of advanced technology, including the development of prototype systems and procedures, the development of plans for the implementing of these prototypes, and the development of technological expertise which can provide assistance in the application of technology in record and communication systems in Arkansas. [Acts 1971, No. 286, § 3, p. 674; 1975, No. 742, § 3, p. —.]

5-1104. Composition of board — Expenses. — The supervisory board shall consist of twelve (12) members:

(a) the Attorney General or one [1] of his assistants.

(b) the Chief Justice of the Supreme Court or his designated agent.

(c) a member designated by the Arkansas Association of Prosecuting Attorneys.

(d) a member designated by the Arkansas Sheriffs Association.

(e) a member designated by the Arkansas Association of Municipal Judges.

(f) a member designated by the President of the Arkansas Bar Association who is regularly engaged in criminal defense work.

(g) a citizen of the State of Arkansas to be appointed by the Governor.

(h) a member of the General Assembly appointed by the Governor.

(i) a member designated by the Arkansas Municipal Police Association.

(j) the Director of the Department of Correction or his designated agent.

(k) a member designated by the Arkansas Association of Chiefs of Police.

(l) a member designated by the Association of Arkansas Counties.

The Director of the Department of Public Safety or a member of his staff designated by him, shall serve as an ex officio member.

No member shall continue to serve on the supervisory board when the member no longer officially represents the function for which the member was appointed, except the citizen appointed by the Governor, who shall serve for a period of four (4) years.

Members of the board shall serve without compensation but within the limits of funds available, shall be entitled to reasonable reimbursement all reasonable expenses occurred [incurred] in the discharge of their duties. [Acts 1971, No. 286, § 4, p. 674; 1975, No. 742, § 4, p. 2045; 1977, No. 542, § 1, p. 1347.]

5-1105. Board meetings — Quorum — Removal of member — Rules and regulations. — The Supervisory Board shall meet at such times and places as it shall deem appropriate. A majority of the Board shall constitute a quorum for transacting any business of the Board.

The Board may, for cause, remove any Board member and shall notify the Governor of such removal and reason therefor.

The Board shall establish its own rules and regulations for performance of the responsibilities charged to the Board herein. [Acts 1971, No. 286, § 5, p. 674; 1975, No. 742, § 5, p. —.]

5-1106. Data —Control of — Continued use of existing facilities, systems personnel, networks and operations. — All data files and computer programs making up the Criminal Justice and Highway Safety Information System, in accordance with this Act [§§ 5-1101 — 5-1115], shall be under the control and jurisdiction of the Supervisory Board.

The Administrator and the Supervisory Board of the Center shall make arrangements for the continued use of existing State computer facilities, computer systems and programming personnel, communications networks wherever feasible and practical. [Acts 1971, No. 286, § 6, p. 674; 1975, No. 742, § 6, p. —.]

5-1107. Duty to furnish data. — It shall be the duty of all Sheriffs, Ch of Police, City Marshals, Correction officials, Prosecuting Attorneys, Court Clerks, and other State, county and local officials and agencies so directed to furnish the Center all data required by this Act [§§ 5-1101 — 5-1115]. Such data shall be furnished the Center in a manner prescribed by the Supervisory Board. [Acts 1971, No. 286, § 7, p. 674; 1975, No. 742, § 7, p. —.]

5-1108. Invasion of privacy prohibited. — Nothing in this Act [§§ 5-1101 — 5-1115] shall be construed so as to give authority to any person, agency or corporation or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this Act. [Acts 1971, No. 286, § 8, p. 674.]

5-1109. Duty to purge files following acquittal or dismissal of charges. — The Center shall, on or before the first day of January each year following the enactment of this Act [§§ 5-1101 — 5-1115], purge its files of all records of a person relating to a crime wherein the person has been acquitted or the arges dismissed. [Acts 1971, No. 286, § 9, p. 674.]

5-1110. Wilful release or disclosure to unauthorized person — Felony — Penalty. — Every person who shall wilfully release or disclose to any unauthorized person any information authorized to be maintained and collected under this Act [§§ 5-1101 — 5-1115] and any person who wilfully obtains said information for purposes not specified by this Act shall be deemed guilty of a felony and upon conviction shall be punished by a fine not exceeding five thousand dollars ($5,000), and by imprisonment in the state penitentiary for not exceeding three (3) years. [Acts 1971, No. 286, § 10, p. 674; 1975, No. 742, § 9, p. —.]

5-1111. Violation of law — Misdemeanor — Penalty. — Any Sheriff, Chief of Police, City Marshal, Correction official, Prosecuting Attorney, Court Clerk, or other State, county and local official who shall wilfully fail to comply with the provisions of this Act [§§ 5-1101 — 5-1115], or any regulation issued by the Supervisory Board carrying out the provisions of this Act, shall be found guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500. [Acts 1975, No. 742, § 8, p. —.]

5-1112. Special information services agents — Duties. — To insure the accuracy, timeliness and completeness of all records and information as prescribed by this Act [§§ 5-1101 — 5-1115], the Administrator shall appoint Special Information Services Agents, who after proper and sufficient security clearances and training, shall be commissioned to do monitoring and auditing of all records and information as defined by this Act, and other duties as may be prescribed by the Supervisory Board. [Acts 1975, No. 742, § 10, p. —.]

5-1117. Center to collect and maintain certain additional information.

In addition to the duties imposed upon the Arkansas Crime Information Center by Section 2 of Act 286 of 1971, as amended (Arkansas Statute 5-1102), the Center shall collect and maintain in accordance with the procedures established by Act 286 [§§ 5-1101 — 5-1110] of 1971, as amended, the following information: (a) records of missing persons; (b) felony arrest information; and (c) misdemeanor arrest information to the extent authorized in Act 286 of 1971, as amended. [Acts 1981, No. 612, § 1, p. —.]

5-1118. Child support enforcement unit a criminal justice agency for purpose of securing information.

The Child Support Enforcement Unit of the Division of Social Services of the Department of Human Services of this State, shall from the effective date [June 17, 1981] of this Act, be considered a criminal justice agency solely for the purpose of securing information from the Arkansas Crime Information Center of this state regarding the address or whereabouts of any deserting parent from whom the said Child Support Enforcement Unit is charged with collecting child support. [Acts 1981, No. 902, § 1, p. 2122.]

5-1119. Disclosure of information — Penalty.

It shall be unlawful, except for the purpose of performing the duties of the Child Support Enforcement Unit, or upon Court order, for any person to disclose information obtained by this Act [§§ 5-1118, 5-1119]. Upon conviction any person violating this section shall be guilty of a Class A misdemeanor. [Acts 1981, No. 902, § 2, p. 2122.]

5-1120. Center authorized to charge fees to local governmental units.

The Arkansas Crime Information Center is hereby authorized to charge fees to local governmental units in order to reimburse the Arkansas Crime Information Center for expenditures made on behalf of such local governmental units. Such fees are to be deposited into the Crime Information System Fund in the State Treasury as a Refund to Expenditures. [Acts 1983, No. 214, § 3, p. —.]

* * *

CHAPTER 28

FREEDOM OF INFORMATION ACT

SECTION.		SECTION.	
12-2801.	Title of act.	12-2805.	Open public meetings.
12-2802.	Declaration of public policy.	12-2806.	Enforcement.
12-2803.	Definitions.	12-2807.	Penalty.
12-2804.	Examination and copying of public records.		

12-2801. Title of act. — This Act [§§ 12-2801 — 12-2807] shall be known and cited as the "Freedom of Information Act" of 1967. [Acts 1967, No. 93, § 1, p. 208.]

12-2802. Declaration of public policy. — It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward this end, this act [§§ 12-2801 — 12-2807] is adopted, making it possible for them, or their representatives, to learn and to report fully the activities of their public officials. [Acts 1967, No. 93, § 2, p. 208.]

12-2803. Definitions. — "Public records" are writings, recorded sounds, films, tapes, or data compilations in any form (a) required by law to be kept, or (b) otherwise kept and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds.

All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records. Provided, that compilations, lists, or other aggregations of information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, are hereby determined to be confidential and shall not be considered to be "public records" within the terms of this Act [§§ 12-2801 — 12-2807], and shall not be supplied to private individuals or organizations.

"Public meetings" are the meetings of any bureau, commission, or agency of the State, or any political subdivision of the State, including municipalities and counties, boards of education, and all other boards, bureaus, commissions or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds, or expending public funds. [Acts

12-2804. Examination and copying of public records. — Except as otherwise specifically provided herein, by laws now in effect, or laws hereinafter specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records. It is the specific intent of this Section that State income tax returns; medical, scholastic, and adoption records; the site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archeological Survey; grand jury minutes; unpublished drafts of judicial or quasi-judicial opinions and decisions; undisclosed investigations by law enforcement agencies of suspected criminal activity; unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices, and the Attorney General; documents which are protected from disclosure by order or rule of court; files which, if disclosed, would give advantage to competitors or bidders; and other similar records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this Act [§§ 12-2801 — 12-2807].

Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy such records shall not be denied to any citizen.

If a public record is in active use or in storage and, therefore, not available, at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) days, at which time the record will be available for the exercise of the right given by this Act. [Acts 1967, No. 93, § 4, p. 208; 1977, No. 652, § 2, p. 1600.]

12-2805. Open public meetings. — Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts, and all boards, bureaus, commissions, or organizations of the State of Arkansas, except Grand Juries, supported wholly or in part by public funds, or expending public funds, shall be public meetings.

The time and place of each regular meeting shall be furnished to anyone who requests the information.

In the event of emergency, or special meetings the person calling such a meeting shall notify the representatives of the newspapers, radio stations and television stations, if any, located in the county in which the meeting is to be held and which have requested to be so notified of such emergency or special meetings, of the time, place and date at least two (2) hours before such a meeting takes place in order that the public shall have representatives at the meeting.

Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee.

(a) Only the person holding the top administrative position in the public agency, department or office involved; the immediate supervisor of the employee involved; and the employee may be present at the executive session when so requested by the governing body, board, commission or other public body holding the executive session.

(b) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission or other public body holding the executive session.

Executive sessions must never be called for the purpose of defeating the reason or the spirit of the Freedom of Information Act.

No resolution, ordinance, rule, contract, regulation or motion considered or arrived at in executive session will be legal unless following the executive session, the public body reconvenes in public session and presents and votes on such resolution, ordinance, rule, contract, regulation, or motion. [Acts 1967, No. 93, § 5, p. 208; 1975 (Extended Sess., 1976), No. 1201, § 1, p. 2915.]

12-2806. Enforcement. — Any citizen denied the rights granted to him by this Act [§§ 12-2801 — 12-2807] may appeal immediately from such denial to the Pulaski Circuit Court, or to the Circuit Court of the residence of the aggrieved party, if an agency of the State is involved, or to any of the Circuit Courts of the appropriate judicial districts when an agency of a county, municipality, township or school district, or a private organization supported by or expending public funds is involved. Upon written application of the person denied the rights provided for in this Act, or any interested party, it shall be mandatory upon the Circuit Court having jurisdiction, to fix and assess a day the petition is to be heard within seven [7] days of the date of the application of the petitioner, and to hear and determine the case. Those who refuse to comply with the orders of the court shall be found guilty of contempt of court. [Acts 1967, No. 93,

Chapter 8

Information Practices Act

SECTION.		SECTION.	
16-801.	Short title.	16-806.	Rights of subjects of information.
16-802.	Legislative intent.	16-807.	Use of social security number.
16-803.	Definitions.	16-808.	Penalties.
16-804.	Arkansas information practices board.	16-809.	Common law.
16-805.	Local government.	16-810.	Relation to other acts.

16-801. Short title. — This Act [§§ 16-801 — 16-810] shall be known and may be cited as the "Information Practices Act." [Acts 1977, No. 236, § 1, p. —.]

16-802. Legislative intent. — (a) The Arkansas General Assembly finds and declares:

(1) That the use of personal information collected, stored, or disseminated by government for purposes other than those purposes to which a person knowingly consents can seriously endanger a person's right to privacy and confidentiality.

(2) That government information collection methods are not limited to State political subdivision boundaries and, therefore, it is necessary to establish a unified statewide program for the regulation of governmental information collection practices and to cooperate fully with other states and with agencies of the government of the United States in regulating such information collection practices.

(3) That in order to increase participation of persons in the prevention and correction of unfair information practices, opportunity for hearing and remedies must be provided.

(4) That in order to insure that information collected, stored and disseminated by government about persons is consistent with fair information practices while safe-guarding the interests of the persons and allowing the State and other governmental subdivisions to exercise their proper powers, a definition of rights and responsibilities must be established.

(b) The purpose of this Act [§§ 16-801 — 16-810] is to insure safeguards for personal privacy from government recordkeeping organizations by adherence to the following principles of information practice:

(1) There should be no personal information systems whose existence is secret.

(2) Information should not be collected unless the need for it has been clearly established in advance.

(3) Information should be appropriate and relevant to the purpose for which it has been collected.

(4) Information should not be obtained by fraudulent or unfair means.

(5) Information should not be used unless it is accurate and current.

(6) There should be a prescribed procedure for an individual to know the existence of information stored about him, the purpose for which it has been recorded, particulars about its use and dissemination, and to examine that information.

(7) There should be a clearly prescribed procedure for an individual to correct, erase, or amend inaccurate, obsolete, or irrelevant information.

(8) Any government organization collecting, maintaining, using, or disseminating personal information should assure its reliability and take precautions to prevent its misuse.

(9) There should be a clearly prescribed procedure for an individual to prevent personal information collected for one purpose from being used for another purpose without his consent.

(10) State and Local Government should not collect personal information except as expressly authorized by law. [Acts 1977, No. 236, § 2, p. —.]

16-803. Definitions. — As used by this Act [§§ 16-801 — 16-810], unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(a) "Act" is the Arkansas Information Practices Act.

(b) "Board" is the Arkansas Information Practices Board created by this Act.

(c) "Individual" is any man, woman or child.

(d) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representatives or agent.

(e) "Personal information" is any information that by some specific means of identification, including but not limited to any name, number, description, finger or voice print or picture, and including any combination of such characters, it is possible to identify with reasonable certainty the person to whom such information pertains.

(f) "Personal information system" is any method by which personal information is collected, stored, or disseminated by any agency of this State government, or by any local government or other political subdivision of this State, but does not include any system for the collection, storage or dissemination of data specifically obtained for use by criminal justice agencies.

(g) "Responsible authority" at the State level means any office established by law as the body responsible for the collection and use of any set of data on persons or summary data. "Responsible authority" in any political subdivision means the person designated by the governing body of that political subdivision, unless otherwise provided by law. With respect to statewide systems, those involving one or more state agencies and one or more political subdivisions, "responsible authority" means the state official involved, or if more than one state official, the state official designated by the board.

(h) "File" is the point of collection of personal identifiable information.

(i) "Purge" is the physical destruction of files, records, or information.

(j) "Need to know" is the necessity of the person who wishes to collect, store, or disseminate personal information for obtaining the specific information.

(k) "Political subdivision" means all cities or counties in this State and any board, agency, or other entity of state, city, or county government except local school districts.

(l) "Machine-accessible" means recorded on magnetic tape, magnetic disk, magnetic drum, punched card, optically scannable paper or film, punched paper tape, or any other medium by means of which information can be communicated to data processing machines. [Acts 1977, No. 236, § 3, p. —.]

16-804. Arkansas information practices board. — (a) There is established an Information Practices Board. The Board shall be composed of the Attorney General, who shall be Chairman of the Board; and the Director of the Department of Finance and Administration (or his designee), who shall serve ex-officio; a County Judge, and a Mayor and three [3] members of the public who shall be appointed by the Governor subject to confirmation by the Senate. The first County Judge appointed and two [2] of the three [3] public members shall be appointed to one (1) year terms. Their successors and the other appointed members shall be appointed to two

(2) year terms and shall serve until their successors are duly appointed and qualified.

(b) The Board shall appoint a Director and such additional staff as may be necessary to carry out its responsibilities under this Act [§§ 16-801 — 16-810].

(c) The Board shall meet at least once every three [3] months, and each appointed member of the Board shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his duties.

(d) The Board shall collect and disseminate such information and acquire such technical data as may be required to carry out the purposes of this Act, including ascertainment of the routine practices and security procedures of personal information systems in the collection, storage or dissemination of personal information.

(e) The Board may require the submission of complete outlines or plans of personal information systems from responsible authorities and the submission of such reports regarding known or alleged violations of the Act or of regulations thereunder, as may be necessary for purposes of this Act.

(f) The Board shall prescribe a program of continuing and regular inspection of personal information systems in order to assure that information practices are in compliance with this Act and regulations adopted thereunder.

(g) The Board shall investigate alleged violations of this Act or of regulations adopted thereunder.

(h) The Board, pursuant to the Administrative Procedures Act [§§ 5-701 — 5-715], shall adopt regulations to promote security, confidentiality and privacy in personal information systems, consistent with the purpose of this Act. Without limiting the generality of this authority, such regulation shall prescribe:

(1) limits of authority and responsibility for all persons with access to personal information systems or any part thereof;

(2) methods for obtaining advice and opinions with regard to requirements of law in the regulating of security, confidentiality and privacy in personal information systems;

(3) policies and procedures to insure the security of personal information systems including the mechanics, personnel, processing of information, site design and access;

(4) standards, over and above those required by normal civil service, of conduct, employment and discipline for responsible authorities and all other persons with access to personal information systems or any part thereof;

(5) standards for the need to know to be utilized by responsible authorities in determining what types of information may be collected, stored and disseminated;

(6) standards for direct and indirect access to personal information systems;

(7) standards and procedures to assure the prompt and complete purging of obsolete, inaccurate or unnecessary personal information from personal information systems;

(8) a continuing program of external and internal auditing and verification to assure the accuracy and completeness of personal information;

(9) standards governing interagency use of files as long as such use is not in violation of other statutory requirements, this Act [§§ 16-801 — 16-810] or regulations adopted thereunder;

(10) standards for exempting certain files from the coverage of this Act, such as telephone number lists, mailing lists, etc., intended for normal office use.

(i) The Board shall have the duty to represent the State of Arkansas in any and all matters pertaining to plans, procedures or negotiations for interstate compacts or other governmental arrangements relating to the regulation of personal information systems or otherwise relating to the protection of the person's right of privacy.

(j) The Board shall have the authority to accept, receive and administer on behalf of the State any grants, gifts, loans or other funds made available to the State from any source for purposes of this Act or other related privacy protection activities, surveys or programs, subject to the several statutes and procedures of this State.

(k) On or before December 1 of each year, the Board shall prepare a report, or update of the previous year's report, to the Legislature and the Governor. Summaries of the report shall be available to the public at a nominal cost. The report shall contain to the extent feasible at least the following information:

(1) a complete listing of all personal information systems which are kept by the State, its local governments and political subdivisions, a description of the information contained therein, and the reason that the information is kept;

(2) a statement of which types of personal information in the Board's opinion are public records as defined by law and which types of information are confidential;

(3) the title, name, and address of the responsible authority for the system and for each file and associated procedures:

(i) the categories and number of persons in each category on whom information is or is expected to be maintained;

(ii) the categories of information maintained, or to be maintained, indicating which categories are or will be stored in machine-accessible files;

(iii) the categories of information sources;

(iv) a description of all types of use made of information, indicating those involving machine-accessible files, and including all classes of users;

(v) the responsible authority's and the Board's policies and practices regarding information storage, duration of retention of information, and disposal thereof;

(vi) a description of the provisions for maintaining the integrity of the information pursuant to this Act [§§ 16-801 — 16-810] and the regulations adopted thereunder; and

(vii) the procedures pursuant to this Act and the regulation [regulations] adopted thereunder whereby a person can (a) be informed if he is the subject of information in the system, (b) gain access to the information, and (c) contest its accuracy, completeness, pertinence, and the necessity for retaining it; and

(4) an analysis of the administrative and cost considerations for providing continuing and regular inspection of all information systems which are or could reasonably come under the jurisdiction of this Act [§§ 16-801 — '6-810] to assure that information practices are in compliance with this Act and regulations adopted thereunder.

(5) any recommendations concerning appropriate legislation. [Acts 1977, No. 236, § 4, p. 337.]

16-805. Local government. — (a) The Board shall exercise all powers and perform all duties as provided for in the Act [§§ 16-801 — 16-810] with regard to any personal information system operated, conducted or maintained by such local government, other political subdivision or combination thereof.

(b) At the request of any local government, other political subdivision or combination thereof in this State, the Board may adopt regulations to: permit the establishment of a local information practices board; govern the operation of such local information practices board; and define the rule-making and review authority of such local information practices board. Such local information practices board shall be operated by and at the expenses of such local government, other political subdivision or combination thereof.

(c) Such local government, other political subdivision or combination thereof may request that the Board dissolve a local information practices board. [Acts 1977, No. 236, § 5, p. 337.]

16-806. Rights of subjects of information. — The rights of persons on whom the information is stored or to be stored and the responsibilities of the responsible authority shall be as follows:

(a) The purpose for which personal information is collected and used or to be collected and used shall be filed in writing by the responsible authority with the Board and shall be a matter of public record pursuant to Section 4 [§ 16-804].

(b) A person asked to supply personal information shall be informed of all intended uses and of the purpose of all intended uses of the requested information.

(c) A person asked to supply personal information shall be informed whether he may refuse or is legally required to supply the requested information. He shall be informed of any known consequence arising from his supplying or refusing to supply the personal information.

(d) Information shall not be used for any purpose other than as stated in clause (a) of this section unless (1) the responsible authority first makes an additional filing in accordance with clause (a); (2) the Legislature gives its approval by law; or (3) the persons to whom the information pertains give their informed consent.

(e) Upon request to a responsible authority, a person shall be informed whether he is the subject of stored information and if so, and upon his additional request, shall be informed of the content and meaning of the data recorded about him and shown the information without any charge to him. For a six [6] month period after such disclosure, the responsible authority may charge a fee equal to their actual cost of making the disclosure for additional disclosures. This clause does not apply to information about persons which is defined by statute as confidential or to records relating to the medical or psychiatric treatment of an individual and nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(f) A person shall have the right to contest the accuracy or completeness of information about him. To institute a contest, the person shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within thirty (30) days excluding Saturdays, Sundays, and holidays correct the information if the data is found to be inaccurate or incomplete and attempt to notify past recipients who have received the inaccurate or incomplete data within the preceding two [2] years of the inaccurate or incomplete information, or notify the person of disagreement. The determination of the responsible authority is appealable in accordance with the Administrative Procedures Act [§§ 5-701 — 5-715]. Information in dispute shall not be disclosed except under conditions of demonstrated need and then only if the person's statement of disagreement is included with the disclosed information.

(g) A person has the right to be free from the storage and continued collection of personal information no longer utilized for any valid purpose.

(h) A person has the right to be free from the collection, storage or dissemination of any personal information collected from anonymous sources except as exempted by the Board or statutes. [Acts 1977, No. 236, § 6, p. 337.]

16-807. Use of social security number. — (a) No agency of the government of this State or of any local government or political subdivision of this State shall deny to any individual any right, benefit or privilege

provided by law because of such individual's refusal to disclose his social security number.

(b) Subsection (a) shall not apply with respect to any disclosure required by Federal statute or to the disclosure of a social security number to any State agency, local government or political subdivision maintaining a personal information system before the effective date [February 23, 1977] of this Act, if such disclosure was required under statute or ordinance adopted prior to such date to verify the identity of an individual.

(c) Any individual requested to reveal his or her social security number must be informed whether the disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and what uses will be made of it. [Acts 1977, No. 236, § 7, p. 337.]

16-808. Penalties. — Any person who willfully violates the provisions of this Act [§§ 16-801 — 16-810] or any rules and regulations promulgated thereunder is guilty of a misdemeanor and additionally shall be liable for a mandatory civil penalty of at least Five Hundred Dollars ($500.00) to be recovered by the State or political subdivision by whom the individual is employed. Any person damaged in his person or property by reason of an individual's willful violation of any of the provisions of this Act may recover actual and punitive damages from such individual together with a reasonable attorney's fee. [Acts 1977, No. 236, § 8, p. 337.]

16-809. Common law. — No existing statute or common law shall be limited or reduced by this Act [§§ 16-801 — 16-810]. [Acts 1977, No. 236, § 9, p. 337.]

16-810. Relation to other acts. — Nothing in this Act [§§ 16-801 — 16-810] shall be construed to restrict or modify that right of access to public records as provided by Section 24 of Act 142 of 1949 (Ark. Stats. 75-124) and Act 78 of 1953 (Ark. Stats. 16-601). [Acts 1977, No. 236, § 10, p. 337.]

district office. The amount of straight life annuity to be received shall be (except as provided in Section 5, [§ 12-2705], Subsections 5 and 7 herein) one-half [½] the salary as of July 1, 1965, established for the position in which such person shall have served. [Acts 1965, No. 148, § 9, p. 442.]

Criminal Procedure

Title 43

43-1231. Expunging record of first offenders — "Expunge" defined. — For the purposes of this Act [§§ 43-1231 — 43-1235], the term "expunge" shall mean an entry upon the official records kept in the regular course of business by law enforcement agencies and judicial officials evidencing the fact said records are those relating to first offenders as so determined by the court; that such records shall be sealed, sequestered, treated as confidential and only available to law enforcement and judicial officials; and further signifying that the defendant was completely exonerated of any criminal purpose and said disposition shall not affect any civil right or liberties of said defendant.

The term "expunge" shall not mean the physical destruction of any official records of law enforcement agencies or judicial officials. [Acts 1975, No. 346, § 1, p. 881.]

43-1232. Probation of defendant — Discretion of judge in use of procedure. — Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit or municipal court (criminal or traffic division) may in the case of a defendant who has not been previously convicted of a felony, without entering a judgment of guilt and with the consent of the defendant, defer further proceeding and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the court. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

Nothing herein shall require or compel any court of this state to establish first offender procedures as provided in this Act [§§ 43-1231 — 43-1235] nor shall any defendant be availed the benefit of this Act as a matter of right.

43-1233. Fulfillment of probation terms — Effect. — Upon fulfillment of the terms and conditions of probation, or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order which shall effectively dismiss the case, discharge the defendant and expunge the record. Such order shall completely exonerate the defendant of any criminal purpose and shall not affect any civil rights or liberties of said defendant. Provided further, that a defendant so discharged may reply in the negative to questions pertaining to past criminal convictions in applications for employment, permits or licenses or in any other instance wherein a civil right or liberty might be affected.

Upon disposition of each case utilizing the procedures as provided herein, the judge of the circuit or municipal court shall give notice of the same to appropriate court officials and law enforcement agencies charged with keeping criminal justice records. [Acts 1975, No. 346, § 3, p. 881.]

43-1234. Limitation on use of procedure — Penalty for false testimony. — No person may avail himself of the provisions of this Act [§§ 43-1231 — 43-1235] on more than one [1] occasion. Furthermore, any person seeking to avail himself of the benefits of this Act who shall falsely testify, swear, or affirm to the court that he has not previously availed himself of the benefits of this Act, shall be deemed guilty of a felony and shall, upon conviction thereof, be punished by a fine of not less than Five Hundred Dollars ($500) nor more than Two Thousand Five Hundred Dollars ($2,500), or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. [Acts 1975, No. 346, § 4, p. 881.]

43-1235. Penalty for disclosure of records of first offenders. — Any person charged under the provisions of this Act [§§ 43-1231 — 43-1235] with keeping the confidential records of first offenders as provided in Section 1 [§ 43-1231] hereof shall, upon divulging any information contained in such records to any person or agency other than a law enforcement officer or judicial officer, upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars ($500). Each such violation shall be considered a separate offense. [Acts 1975, No. 346, § 5, p. 881.]

43-1236. Report of probation to crime information center — Query concerning previous probations required prior to grant of probation.

All municipal court judges and circuit court judges shall immediately report to the Arkansas Crime Information Center, in the form prescribed by the Arkansas Crime Information Center, all probations of criminal defendants under Act 346 of 1975 [§§ 43-1231 — 43-1235]. Prior to granting probation to a criminal defendant under Act 346 of 1975, the court shall query the Arkansas Crime Information Center to determine whether such criminal defendant has previously been granted probation under the provisions of Act 346 of 1975. If the Arkansas Crime Information Center determines that an individual has utilized Act 346 of 1975 more than once, the Center shall notify the last sentencing judge of such fact. [Acts 1981, No. 581, § 1, p. 1194.]

REGULATIONS TO BE ISSUED BY DEPARTMENT OF PUBLIC SAFETY APPLICABLE TO ALL CJIS TERMINAL AGENCIES

Sec. 1. Purpose. These regulations are issued in compliance with Part 20 of Chapter 1 of Title 28 of the Code of Federal Regulations (Order No. 601-75, Fed. Reg., Vol. 40, No. 98, Tuesday, May 20, 1975).

Subsection 20.21(g) of Part 20 requires federally-assisted criminal justice information systems to implement operational procedures to permit individuals to review criminal history record information concerning them maintained in such systems to insure that such information is accurate and complete. If, after review, the individual claims that the information is inaccurate or incomplete, the procedures must provide for an administrative review of appropriate source documents to determine whether or not the information should be corrected. If the individual is dissatisfied with the review decision, he must be afforded some means of administrative appeal to an agency other than the agency declining to correct the information. If information is found to be inaccurate or incomplete. it must be corrected and all criminal justice agencies that have received the incorrect information must be notified of the correction. Upon request, the individual must be given a list of all non-criminal justice recipients of the incorrect information.

Sec. 2. Scope. The procedures set out below apply only to "criminal history record information," which should be understood to include only notations of the arrest or detention of an identified individual and the outcome of subsequent proceedings against the individual. In general, this includes the basic computerized criminal history (CCH) and offender-based transaction statistics (OBTS) data elements, traditionally collected on "rap sheets." The regulations do not apply to other types of information contained in criminal justice agency reports, such as intelligence or investigative information

(suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles, for example) except to the extent that criminal history record information is contained in such reports. Thus, if a rap sheet is contained in an intelligence file, the rap sheet must be corrected pursuant to the procedures set out below; but the intelligence data is not subject to review by the individual.

Sec. 3. Review by Individuals. Each terminal agency shall make available facilities and personnel necessary to permit review by individuals of criminal history record information concerning them. Reviews shall be conducted in accordance with the following procedures:

(a) Reviews shall take place only within the facilities of the agency and under the supervision and in the presence of an employee designated for that purpose. The agency may limit the hours for such reviews to normal daylight business hours. No fee may be charged for any such review, but a charge, not to exceed $5.00, may be made to recover the actual costs of any copies of records provided to the individual.

(b) Reviews shall be permitted only after verification that the requesting individual is the subject of the records he seeks to review. A rolled set of ten fingerprints shall be required for such verification. A review may be conducted on behalf of an individual by his attorney or other representative if such person presents adequate verification of the identity of the subject individual, including fingerprints, and a notarized statement from the individual authorizing him to conduct the review.

(c) A record of each review shall be maintained by the agency on Form No. 1 provided with these regulations. The form shall be completed and signed by the supervising employee present at the review and by the reviewing individual.

(d) If the criminal history record information requested by the individual is maintained at the agency, a copy of such information shall promptly be provided for the individual's review. If the agency has no criminal history record information

concerning the individual in its files, it shall forward a copy of the request form, together with the fingerprints, to the Bureau of Identification of the Arkansas State Police. The Bureau of Identification shall promptly conduct a search of its files and shall cause a search to be made of the automated files of the Criminal Justice and Highway Safety Information Center. If any criminal history record information concerning the individual is discovered, a copy of such information shall promptly be returned to the requesting agency, which shall notify the individual that the record is avialable for review. This notification shall take place no later than 15 days after the individual requests a review of his record.

(c) The reviewing individual may make and retain a written summary or notes in his own handwriting of the information. He shall be informed of his right to submit written exceptions as to the maintenance, completeness or accuracy of the information. If the individual does not wish to challenge the information, he may be asked, but may not be required, to verify by his signature the accuracy and completeness of the information.

Sec. 4. Administrative Review. Should any individual wish to challenge the maintenance, accuracy or completeness of criminal history record information concerning him, he shall do so within 10 days after the review of such information. Such challenge shall be recorded on Form No. 2 provided with these regulations. The individual shall indicate on the form the information he believes to be inaccurate, incomplete or improperly maintained, and shall state what he believes to be a correct and complete version of the information or why he believes the information should not be maintained. The reviewing individual shall attest by his signature that the exceptions are made in good faith and that the facts set forth are true to the best of his knowledge and belief. Upon his request, the individual shall be provided with a copy of that part of the information that he has challenged. Such copy shall be marked: "THIS COPY IS PROVIDED FOR PURPOSES OF REVIEW

AND CHALLENGE. ANY USE FOR ANY OTHER PURPOSE IS A VIOLATION OF SEC. 3771 OF TITLE 42 OF THE UNITED STATES CODE."

An administrative review of the challenge shall be conducted in accordance with the following procedures:

(a) The challenge form shall be forwarded to a review officer designated for that purpose in each agency. If the information challenged related to criminal proceedings that occurred in the political jurisdiction in which the reviewing agency is located, the review officer shall cause to be conducted an appropriate audit of source documents and other information necessary to determine the accuracy of the exceptions. If the information challenged related to criminal proceedings in another jurisdiction, a copy of the challenge form shall be sent to the Bureau of Identification of the Arkansas State Police. The Bureau shall promptly forward the form to the criminal justice agency, whether within or outside of the State of Arkansas, that originated the information that is the subject of the challenge. The Bureau shall request the agency to conduct an audit to determine the accuracy of the exceptions, to notify the Bureau within 30 days of the results of such audit, and to provide the Bureau with certified copies of the source documents on which the agency's decision is based. The Bureau shall promptly forward this information to the agency where the review took place. Should any agency over which the Bureau has no administrative authority fail to respond to the Bureau's request, the Bureau shall so notify the agency where the review took place. That agency shall notify the individual that he must pursue the challenge directly with the agency which originated the challenged information.

(b) The review officer shall notify the individual in writing of the decision concerning the challenge. Form No. 3 provided with these regulations shall be used for this purpose. The individual shall be informed that, if he is not satisfied with the decision, he may, within 10 days, request an administrative appeal to the Office of the Attorney General of the

State of Arkansas.

Sec. 5. Administrative Appeal. Should any individual elect an administrative appeal, the appeal shall be conducted in accordance with the following procedures:

(a) The appeal shall be requested on Form No. 4 provided with these regulations. A copy of the form, together with copies of any appropriate source documents provided by the individual or by any criminal justice agency, shall be forwarded to the Office of the Attorney General.

(b) The Attorney General or a member of his office designated to handle such appeals, shall review the request form and the statements and documents accompanying it and shall determine whether the challenged record is inaccurate, incomplete or improperly maintained. If he considers it necessary, the Attorney General or his designee may request additional information from any criminal justice agency, or may, in his sole discretion, order a hearing for the purpose of obtaining additional information. The order for such hearing shall state where the hearing shall be held, who shall conduct the hearing, whether the individual may appear, whether he may be represented by counsel and other procedures governing the conduct of such hearing.

(c) The Attorney General's decision on the appeal shall be recorded on Form No. 4, together with a statement of any relief to which the individual is entitled. Copies of the form shall be sent to the Bureau of Identification and to the criminal justice agency from which the appeal originated. The latter agency shall notify the individual of the Attorney General's decision and shall take any necessary action to implement the decision.

Sec. 6. Correction and Notification. Should it be determined as a result of a review or appeal conducted under these regulations that challenged criminal history record information is inaccurate, incomplete or improperly maintained, the information shall be appropriately deleted, supplemented or corrected in the files of the Bureau of Identification, the Criminal

Justice and Highway Safety Information System and any criminal justice agencies involved in the challenge procedures. In addition, such agencies shall give notice of the corrective action to any criminal justice agencies to which the incorrect information has been disseminated within the one-year period prior to the data of the challenge, and shall direct such agencies to correct their files and to give appropriate notice to other agencies to which they have disseminated the incorrect information within the previous year.

Sec. 7. List of Noncriminal Justice Recipients. Upon request by any individual whose record has been corrected pursuant to a challenge under these regulations, he shall be given a list of all noncriminal justice agencies or individuals to whom the incorrect information has been disseminated within the one-year period prior to the date of the challenge. This list shall be compiled by the criminal justice agency where the review and challenge took place, the criminal justice agency which originated the corrected information, the Criminal Justice and Highway Safety Information System and the Bureau of Identification, as appropriate.

Sec. 8. Administrative Penalties.

(a) Any failure to implement the provisions of these regulations by any employee or officer of any criminal justice agency subject to the regulations shall be punished by suspension, discharge, reduction in grade, transfer or such other administrative penalties as the agency shall deem appropriate.

(b) If any criminal justice agency subject to these regulations is found by the Bureau of Identification or the Criminal Justice and Highway Safety Information System to have wilfully and repeatedly failed to implement the procedures specified in these regulations, dissemination of criminal history record information to such agency may be terminated or suspended for such periods and on such terms as the Bureau of Identification and the Criminal Justice and Highway Safety Information System may deem appropriate.

DIRECTIVE ON INMATE RECORD REVIEW

(To be Issued by Director of Corrections)

Sec. 1. Purpose. This directive is issued in compliance with Part 20 of Chapter 1 of Title 28 of the Code of Federal Regulations (Order No. 601-75, Fed. Reg., Vol. 40, No. 98, Tuesday, May 20, 1975).

Subsection 20.21(g) of Part 20 requires federally-assisted criminal justice information systems to implement operational procedures to permit individuals to review criminal history record information concerning them maintained in such systems to insure that such information is accurate and complete. If, after review, the individual claims that the information is inaccurate or incomplete, the procedures must provide for an administrative review of appropriate source documents to determine whether or not the information should be corrected. If the individual is dissatisfied with the review decision, he must be afforded some means of administrative appeal to an agency other than the agency declining to correct the information. If information is found to be inaccurate or incomplete, it must be corrected and all criminal justice agencies that have received the incorrect information must be notified of the correction. Upon request, the individual must be given a list of all noncriminal justice recipients of the incorrect information.

Sec. 2. Scope. The procedures set out below apply only to "criminal history record information," which should be understood to include only notations of the arrest or detention of an identified individual and the outcome of subsequent proceedings against the individual. In general, this includes the basic computerized criminal history (CCH) and offender-based transaction statistics (OBTS) data elements, traditionally collected on "rap sheets." The regulations do not apply to other types of information contained in criminal justice agency reports, such as intelligence or investigative information or correctional treatment or program reports, except to the extent that criminal

history record information is contained in such reports. Thus, if a rap sheet is contained in a presentence report or a correctional treatment report, the rap sheet information must be corrected pursuant to the procedures set out below; but the presentence and treatment reports are not subject to review by the individual.

Sec. 3. Review by Inmate. Arrangements have been made to inform every inmate in the Arkansas correctional system of the right to review any criminal history record information concerning him on file in the Department of Corrections or in the Bureau of Identification of the Arkansas State Police. Reviews shall be conducted in accordance with the following procedures:

(a) Reviews shall take place only under the supervision of and in the presence of an employee of the Department designated for that purpose. The Department may limit the hours for such reviews to normal daylight business hours. No fee may be charged for any such review, but a charge, not to exceed $5.00, may be made to recover the actual costs of any copies of records provided to the inmate.

(b) Reviews shall be permitted only after verification that the inmate is the subject of the records he seeks to review. A rolled set of ten fingerprints shall be required for such verification.

(c) A record of each review shall be maintained by the Department on Form No. 1 provided with this directive. The form shall be completed and signed by the supervising employee present at the review and by the reviewing inmate.

(d) The inmate shall be permitted to make and retain a written summary or notes in his own handwriting of the information. He shall be informed of his right to submit written

exceptions as to the maintenance, completeness or accuracy of the information. If the inmate does not wish to challenge the information, he may be asked, but may not be required, to verify by his signature the accuracy and completeness of the information.

Sec. 4. Administrative Review. Should any inmate wish to challenge the maintenance, accuracy or completeness of criminal history record information concerning him, he shall do so within 10 days after the review of such information. Such challenge shall be recorded on Form No. 2 provided with this directive. The inmate shall indicate on the form the information he believes to be inaccurate, incomplete or improperly maintained, and shall state what he believes to be a correct and complete version of the information or why he believes the information should not be maintained. The inmate shall attest by his signature that the exceptions are made in good faith and that the facts set forth are true to the best of his knowledge and belief. Upon his request, he shall be provided with a copy of that part of the information that he has challenged. Such copy shall be marked: "THIS COPY IS PROVIDED FOR PURPOSES OF REVIEW AND CHALLENGE. ANY USE FOR ANY OTHER PURPOSE IS A VIOLATION OF SEC. 3771 OF TITLE 42 OF THE UNITED STATES CODE."

An administrative review of the challenge shall be conducted in accordance with the following procedures:

(a) The challenge form shall be forwarded to a review officer designated for that purpose in the Department. If the accuracy of the exceptions taken can be determined from records and information maintained within the Department of Corrections or available to the Department, the review officer shall cause to be conducted an appropriate audit of source documents and other information necessary to determine the accuracy of the exceptions. If the information challenged relates to criminal proceedings in another jurisdiction or other matters as to which the Department has no knowledge or records, a copy of the challenge form shall be sent to the Bureau of Identification of

the Arkansas State Police. The Bureau shall promply forward the form to the criminal justice agency, whether within or outside of the State of Arkansas, that originated the information that is the subject of the challenge. The Bureau shall request the agency to conduct an audit to determine the accuracy of the exceptions, to notify the Bureau within 30 days of the results of such audit, and to provide the Bureau with certified copies of the source documents on which the agency's decision is based. The Bureau shall promptly forward this information to the Department of Corrections. Should any agency over which the Bureau has no administrative authority fail to respond to the Bureau's request, the Bureau shall so notify the Department. The Department shall notify the inmate that he must pursue the challenge directly with the agency which originated the challenged information. He shall be provided with the name and address of that agency.

(b) The review officer shall notify the inmate in writing of the decision concerning the challenge. Form No. 3 provided with this directive shall be used for this purpose. The inmate shall be informed that, if he is not satisfied with the decision, he may, within 10 days, request an administrative appeal to the Office of the Attorney General of the State of Arkansas.

Sec. 5. Administrative Appeal. Should any inmate elect an administrative appeal, the appeal shall be conducted in accordance with the following procedures:

(a) The appeal shall be requested on Form No. 4 provided with this directive. A copy of the form, together with copies of any appropriate source documents or other information, shall be forwarded to the Office of the Attorney General.

(b) The Attorney General or a member of his office designated to handle such appeals, shall review the request form and the statements and documents accompanying it and shall determine whether the challenged record is inaccurate, incomplete or improperly maintained. If he considers it necessary, the

Attorney General or his designee may request additional information from any criminal justice agency, or may, in his sole discretion, order a hearing for the purpose of obtaining additional information. The order for such hearing shall state where the hearing shall be held, who shall conduct the hearing, whether the inmate may appear, whether he may be represented by counsel and other procedures governing the conduct of such hearing.

(c) The Attorney General's decision on the appeal shall be recorded on Form No. 4, together with a statement of any relief to which the inmate is entitled. Copies of the form shall be sent to the Bureau of Identification and to the Department of Corrections. The Department shall notify the inmate of the Attorney General's decision and shall take all appropriate action to implement the decision.

Sec. 6. Correction and Notification. Should it be determined as a result of a review or appeal conducted under this directive that challenged criminal history record information is inaccurate, incomplete, or improperly maintained, the information shall be appropriately deleted, supplemented or corrected in the files of the Department of Corrections, Bureau of Identification, the Criminal Justice and Highway Safety Information System and any criminal justice agencies involved in the challenge procedures. In addition, such departments and agencies shall give notice of the corrective action to any criminal justice agencies to which the incorrect information has disseminated within the one-year period prior to the date of the challenge, and shall direct such agencies to correct their files and to give appropriate notice to other agencies to which they have disseminated the incorrect information within the previous year.

Sec. 7. List of Noncriminal Justice Recipients. Upon request by any inmate whose record has been corrected pursuant to a challenge under this directive, he shall be given a list of all noncriminal justice agencies or individuals to whom the incorrect information has been disseminated within the one-year

period prior to the date of the challenge. This list shall be compiled by the Department of Corrections, the criminal justice agency which originated the corrected information, the Criminal Justice and Highway Safety Information System and the Bureau of Identification, as appropriate.

Sec. 8. Administrative Penalties. Any failure to implement the provisions of this directive by any employee or officer of the Department of Corrections shall be punished by suspension, discharge, reduction in grade, transfer or such other administrative penalties as shall be deemed appropriate.

_____ _____

(Director of Corrections) (Date)

Penal Code

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Knowingly and without permission uses or causes to be used computer services.

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

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

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

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

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

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

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Amended by Stats.1988, c. 1076, § 1; Stats.1989, c. 1110, § 1; Stats.1989, c. 1357, § 1.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.

California Penal Code

Title 1
Chapter 1
Investigation, Identification and Information Responsibilities of Department of Justice

Article 2.5: Criminal Record Dissemination

11075. Criminal offender record information

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

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

11076. Dissemination to authorized agencies

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

11077. Attorney General; duties

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

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

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

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

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

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

11078. Listing of agencies to whom information released or communicated

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

11079. Investigations; cooperation by agencies

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

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

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

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

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

11081. No access to information unless otherwise authorized by law

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

Article 3

Criminal Identification and Statistics

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

Text of section operative Aug. 31, 1984.

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

(2) As used in this section:

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

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

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

(1) The courts of the state.
(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.
(3) District attorneys of the state.
(4) Prosecuting city attorneys of any city within the state.
(5) Probation officers of the state.
(6) Parole officers of the state.
(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.
(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.
(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.
(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.
(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the Penal Code.
(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.
(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.
(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:
(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General supplies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).
(3) To a peace officer of another country.
(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.
(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.
(6) The courts of the United States, other states or territories or possessions of the United States.
(7) Peace officers of the United States, other states, or territories or possessions of the United States.
(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.
(9) Any public utility as defined in Section 216 of the Public Utilities Code, when access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

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

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

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

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

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

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

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing or certification purposes, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other provisions of law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13523 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections and for maintenance and improvements to the systems from which the information is obtained when appropriated by the Legislature therefor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Notwithstanding any other provision of law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest for which the person is released on bail or on his or her own recognizance pending trial, involving any sex crimes, drug crimes, or crimes of violence of a person who applies for a license, employment, or * * * volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under their care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the requester for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization or any agency responsible for the licensing of facilities pursuant to Article 1 (commencing with Section 1500) of Chapter 3, Chapter 3.2 (commencing with Section 1569), and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code for processing the request. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) A human resource agency may request from the Department of Justice full criminal history records, to the extent those records are otherwise available under Section 226.55 of the Civil Code, or Section 1522 of the Health and Safety Code, for persons who apply to the agency to adopt a child or to be a foster parent. Requests for criminal history information obtained pursuant to this subdivision shall be used only for the purposes stated and in compliance with any requirements or conditions provided in those sections.

(d) The department shall adopt regulations to implement the provisions of this section.

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

(f) As used in this section, "human resource agency" means a public or private entity responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) As used in this section, "sex crime" means a conviction for a violation or attempted violation of Section 220, 261, 261.5, 264.1, 267, 272, 273a, 273d, 285, 286, 288, 288a, 289, 314, 647.6, or former Section 647a, or subdivision (d) of Section 647, or commitment as a mentally disordered sex offender under * * * former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

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

(i) As used in this section, "crime of violence" means any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for any of the offenses specified in subdivision (c) of Section 667.5 or a violation or attempted violation of Chapter 3 (commencing with Section 207), Chapter 8 (commencing with Section 236), or Chapter 9 (commencing with Section 240) of Title 8 of Part 1, provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this subdivision * * * or subdivision (g) within the immediately preceding 10-year period.

(j) Conviction for a violation or attempted violation of an offense committed outside the State of California is a sex crime, drug crime, or crime of violence if the offense would have been a crime as defined in this section if committed in California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 4

Criminal Records

§ 11115. Arrests; report on disposition of case

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

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

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

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

§ 11116.5. Use of dismissal

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

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

§ 11116.6. Entry of dispositions on records

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

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

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

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

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

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

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

§ 11116.9. Additional copies of disposition; fees

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

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

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

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

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

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

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

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

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

§ 11117. Procedures and forms; admissibility in civil actions

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

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

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

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

Article 5

Examination of Records

11120. Record defined

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

11121. Purpose

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

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

11122. Submission of application; fee

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

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

11123. Submission of application; fee

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

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

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

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

11125. Unauthorized requirement of obtaining record or notice of no record offense

No person or agency shall require another person to obtain a copy of a record or notification that a record exists or does not exist, as provided in Section 11124, unless specifically authorized by law. A violation of this section is a misdemeanor.

Added by Stats.1980, c. 939, Section 6. Former Section 11125 was repealed by Stats.1980, c. 939, Section 5.

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

(a) If the applicant desires to question the accuracy or completeness of any material matter contained in the record, he may submit a written request to the department in a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, and its materiality, and shall specify any proof or corroboration available. Upon receipt of such request, the department shall forward it to the person or agency which furnished the questioned information. Such person or agency shall, within 30 days of receipt of such written request for clarification, review its information and forward to the department the results of such review.

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

(c) If such agency denies the allegations of inaccurateness or incompleteness in the record, the matter shall be referred for administrative adjudication in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code for a determination of whether inaccuracy or incompleteness exists in the record. The agency from which the questioned information originated shall be the respondent in the hearing. If a material inaccuracy or incompleteness is found in any record, the agency in charge of the record shall be directed to correct it accordingly, and to inform the department, which shall correct its record accordingly. The department and the agency shall notify all persons and agencies to which they have disseminated the incorrect record in the past 90 days of the correction of the record, and the applicant shall be informed that such notification has been given. The department and the agency shall also notify those persons or agencies to which the incorrect record has been disseminated which have been specifically requested by the applicant to receive notification of the correction of the record, and the applicant shall be informed that such notification has been given. Judicial review of the decision shall be governed by Section 11523 of the Government Code. The applicant shall be informed of the decision within 30 days of its issuance in accordance with Section 11518 of the Government Code.

Article 6

Unlawful Furnishing of State Summary Criminal History Information

11140. Definitions

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

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

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

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

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

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

11143. Unauthorized person receiving record or information; misdemeanor

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

11144. Dissemination of statistical or research information from a record

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

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

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

* * *

CHAPTER 1.5. NATIONAL SEARCH OF CRIMINAL RECORDS [NEW]

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

Chapter 1.5 was added by Stats.1982, c. 1222, p. ——, § 2, urgency, eff. Sept. 22, 1982.

REPEAL

Chapter 1.5 shall remain operative only until the Federal Bureau of Investigation reinstates its national fingerprint services. See note under § 11145.

§ 11145. Contracts; independent vendors

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

1982 Legislation.

Sections 1 and 3 of Stats.1982, c. 1222, p. ——, provide:

"Sec. 1. The Legislature reaffirms its commitment to protecting the youth of California by searching, on a national basis, the criminal records of prospective state and local government employees who will be working with children.

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

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

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

§ 11146. Application of chapter

This chapter applies to:

(a) The California Commission for Teacher Preparation and Licensing, in licensing of all teaching and services credential applicants, pursuant to Section 44341 of the Education Code.

(b) The State Department of Social Services in licensing those community care facility operators providing services to children as mandated in Section 1522 of the Health and Safety Code.

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

§ 11147. Applicants; information required; perjury

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

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

§ 11148. Vendors; qualifications; cost limitation

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

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

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

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

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

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

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

§ 11149.1. Exemption from provisions prohibiting search

Vendors are exempted from any provisions of Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code which prevent the vendor from conducting the national search of individual criminal records required by this chapter.

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

§ 11149.2. Applicants; fee for search

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

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

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

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

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

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

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

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

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

Title 3

Chapter 1
Bureau of Criminal Statistics

Article 2

DUTIES OF THE BUREAU

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

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

UNIFORM CRIMINAL STATISTICS ACT

Table of Jurisdictions Wherein Act Has Been Adopted

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

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

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

It shall be the duty of the department:

(a) To collect data necessary for the work of the department from all persons and agencies mentioned in Section 1320 and from any other appropriate source;

(b) To prepare and distribute to all such persons and agencies, cards or other forms used in reporting data to the department. Such cards or forms may, in addition to other items, include items of information needed by federal bureaus or departments engaged in the development of national and uniform criminal statistics;

(c) To recommend the form and content of records which must be kept by such persons and agencies in order to insure the correct reporting of data to the department;

(d) To instruct such persons and agencies in the installation, maintenance, and use of such records and in the reporting of data therefrom to the department;

(e) To process, tabulate, analyze and interpret the data collected from such persons and agencies;

(f) To supply, at their request, to federal bureaus or departments engaged in the collection of national criminal statistics data they need from this state;

(g) To present to the Governor, on or before July 1st, a printed annual report containing the criminal statistics of the preceding calendar year and to present at such other times as the Attorney General may approve reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed or otherwise prepared to enable the Attorney General to send a copy to all public officials in the state dealing with criminals and to distribute them generally in channels where they will add to the public enlightenment; and

(h) To periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes it deems necessary in the design of criminal justice statistics systems, including new techniques of collection and processing made possible by automation.

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

§ 13011. Statistical and research agency

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

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

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

§ 13012. Contents of annual report

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

(a) The amount and the types of offenses known to the public authorities;

(b) The personal and social characteristics of criminals and delinquents; and

(c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions in dealing with criminals or delinquents.

(d) The number of citizens complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of such complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

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

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

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

Article 3

DUTIES OF PUBLIC AGENCIES AND OFFICERS

Sec.

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

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

§ 13020. Records, reports; access to data

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

(a) To install and maintain records needed for the correct reporting of statistical data required by him;

(b) To report statistical data to the department at such times and in such manner as the Attorney General prescribes; and

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

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

§ 13021. Information relating to misdemeanor violations

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

§ 13022. Report of justifiable homicides

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

Chapter 2

Criminal Offender Record Information
[New]

ARTICLE 1. LEGISLATIVE FINDINGS AND DEFINITIONS

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

§ 13100. Legislative declaration

The Legislature finds and declares as follows:

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

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

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

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

(e) That, in order to achieve the above improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in this state must be made more uniform and efficient, and better controlled and coordinated.

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

§ 13101. Criminal justice agencies

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

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

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

§ 13102. Criminal offender record information

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

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

(a) Personal identification.

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

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

(d) The fact, date, and results of any trial or proceeding, including any sentence or penalty.

(e) The fact, date, and results of any direct or collateral review of that trial or proceeding; the period and place of any confinement, including admission, release; and, where appropriate, readmission and rerelease dates.

(f) The fact, date, and results of any release proceedings.

(g) The fact, date, and authority of any act of pardon or clemency.

(h) The fact and date of any formal termination to the criminal justice process as to that charge or conviction.

(i) The fact, date, and results of any proceeding revoking probation or parole.

It shall not include intelligence, analytical, and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

Article 2

RECORDING INFORMATION

Sec.

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

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

§ 13125. Standard data elements; enumeration

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

The following personal identification data:

Name—(full name)
- Aliases
- Monikers

Race
Sex
Date of birth
Place of birth (state or country)
Height
Weight
Hair color
Eye color
CII number
FBI number
Social security number
California operators license number
Fingerprint classification number
- Henry
- NCIC

Address

The following arrest data:
- Arresting agency
- Booking number
- Date of arrest
- Offenses charged
  - Statute citations
  - Literal descriptions

The following arrest data:—Continued
- Police disposition
  - Released
  - Cited and released
  - Turned over to
  - Complaint filed

The following lower court data:
- County and court name
- Date complaint filed
- Original offenses charged in complaint to superior court
  - Held to answer
  - Certified plea
- Disposition—lower court
  - Not convicted
  - Dismissed
  - Acquitted
    - Court trial
    - Jury trial
  - Convicted
    - Plea
    - Court trial
    - Jury trial
  - Date of disposition
  - Convicted offenses
  - Sentence
  - Proceedings suspended
    - Reason suspended

The following superior court data:
- County
- Date complaint filed
- Type of proceeding
  - Indictment
  - Information
  - Certification
- Original offenses charged in indictment or information
- Disposition
  - Not convicted
  - Dismissed
  - Acquitted
    - Court trial
    - Jury trial
    - On transcript

The following superior court data:—Continued
- Disposition—Continued
  - Convicted—felony, misdemeanor
    - Plea
    - Court trial
    - Jury trial
    - On transcript
  - Date of disposition
  - Convicted offenses
  - Sentence
  - Proceedings suspended
    - Reason suspended
  - Source of reopened cases

The following corrections data:
- Adult probation
  - County
  - Type of court
  - Court number
  - Offense
  - Date on probation
  - Date removed
  - Reason for removal
- Jail (unsentenced prisoners only)
  - Offenses charged
  - Name of jail or institution
  - Date received
  - Date released
  - Reason for release
    - Bail on own recognizance
    - Bail
    - Other
  - Committing agency
- County jail (sentenced prisoners only)
  - Name of jail, camp, or other
  - Convicted offense
  - Sentence
  - Date received
  - Date released
  - Reason for release
  - Committing agency
- Youth Authority
  - County
  - Type of court
  - Court number
  - Youth Authority number

The following corrections data:—Continued
- Youth Authority—Continued
  - Date received
  - Convicted offense
  - Type of receipt
    - Original commitment
    - Parole violator
  - Date released
  - Type of release
    - Custody
    - Supervision
  - Date terminated
- Department of Corrections
  - County
  - Type of court
  - Court number
  - Department of Corrections number
    - Date received
    - Convicted offense
  - Type of receipt
    - Original commitment
    - Parole violator
  - Date released
  - Type of release
    - Custody
    - Supervision
  - Date terminated
- Mentally disordered sex offenders
  - County
  - Hospital number
  - Date received
  - Date discharged
  - Recommendation

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

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

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

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

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

Article 3

REPORTING INFORMATION

Sec.

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

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

§ 13150. Arrest; data required

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

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

Criminal Law ⇐1226(4).

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

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

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

§ 13151.1. Dismissal of charge; reasons

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

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

(b) Case compromised; defendant discharged because restitution or other satisfaction was made to the injured person, pursuant to Sections 1377 and 1378.

(c) Court found insufficient cause to believe defendant guilty of a public offense; defendant discharged without trial pursuant to Section 871.

(d) Dismissal due to delay; action against defendant dismissed because the information was not filed or the action was not brought to trial within the time allowed by Section 1381, 1381.5, or 1382.

(e) Accusation set aside pursuant to Section 995. In addition to this dismissal label, the court shall set forth the particular reasons for the dismissal.

(f) Defective accusation; defendant discharged pursuant to Section 1008, when the action is dismissed pursuant to that section after demurrer is sustained, because no amendment of the accusatory pleading is permitted or amendment is not made or filed within the time allowed.

(g) Defendant became a witness for the people and was discharged pursuant to Section 1099.

(h) Defendant discharged at trial because of insufficient evidence, in order to become a witness for his codefendant pursuant to Section 1100.

(i) Judgment arrested; defendant discharged, when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, inclusive, and defendant is released pursuant to Section 1188.

(j) Judgment arrested; defendant recommitted, when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, inclusive, and defendant is recommitted to answer a new indictment or information pursuant to Section 1188.

(k) Mistrial; defendant discharged. In addition to this dismissal label, the court shall set forth the particular reasons for its declaration of a mistrial.

(l) Mistrial; defendant recommitted. In addition to this dismissal label, the court shall set forth the particular reasons for its declaration of a mistrial.

(m) Any other dismissal by which the case was terminated. In addition to the dismissal label, the court shall set forth the particular reasons for the disposition.

§ 13152. Admissions or releases from detention facilities; time

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

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

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

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

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

§ 13154. Public offenses committed while in custody; arrests

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

Article 4

INFORMATION SERVICE

Sec.

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

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

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

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

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

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

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

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

§ 13177. Requirements for other public record information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) As used in this section:

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

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

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

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

(1) The courts of the state.

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

(3) District attorneys of the state.

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

(5) Probation officers of the state.

(6) Parole officers of the state.

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

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

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

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist the agency, officer, or official in fulfilling employment, certification, or licensing duties, and when the access is specifically authorized by the city council, board of

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

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

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

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

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

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

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

(3) To a peace officer of another country.

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

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

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

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

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

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

If the local agency supplies the data pursuant to this paragraph, it shall furnish a copy of the data to the person to whom the data relate.

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

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

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

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

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

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

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

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

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

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

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

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

Government Code

Chapter 3

CRIMES RELATING TO PUBLIC RECORDS, DOCUMENTS, AND CERTIFICATES

Sec.

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

§ 6200. Theft, destruction, falsification, or removal by officer custodian

Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person to do so, is punishable by imprisonment in the state prison for two, three, or four years.

(Stats.1943, c. 134, p. 992, § 6200. Amended by Stats.1976, c. 1139, p. 5077, § 57, operative July 1, 1977.)

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

Every person not an officer referred to in Section 6200, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars ($100), or by both such fine and imprisonment.

(Stats.1943, c. 134, p. 992, § 6201. Amended by Stats.1976, c. 1139, p. 5077, § 58, operative July 1, 1977.)

Chapter 3.5

INSPECTION OF PUBLIC RECORDS

Sec.

6250. Legislative findings and declarations.
6251. Short title.
6252. Definitions.
6253. Public records open to inspection; time; guidelines and regulations governing procedure.
6253.5. Initiative, referendum and recall petitions deemed not public records.
6254. Exemption of particular records.
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6255. Justification for withholding of records.
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6260. Effect of chapter on prior rights and proceedings.
6261. Itemized statement of total expenditures and disbursement of any agency.
6262. Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; inapplicability to district attorney.
6263. District attorney; inspection or copying of nonexempt public records.
6264. Order to allow district attorney to inspect or copy records.
6265. Disclosure of records to district attorney; status of records.

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

§ 6250. Legislative findings and declarations

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

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

§ 6251. Short title

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

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

§ 6252. Definitions

As used in this chapter:

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

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.

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

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

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

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1970, c. 575, p. 1151, § 2; Stats.1975, c. 1246, p. 3209, § 2.)

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

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

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

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse

Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Zone Conservation Commission
All regional coastal zone conservation commissions
State Water Quality Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District.

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make such records accessible to the public.

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1973, c. 664, p. 1215, § 1; Stats.1974, c. 544, p. 1249, § 7; Stats.1975, c. 957, p. 2140, § 6; Stats.1977, c. 1252, p. 4325, § 96, operative July 1, 1978; Stats. 1979, c. 373, § 120.)

§ 6253.5. Initiative, referendum and recall petitions deemed not public records; examination by proponents

Text of section operative Jan. 1, 1981.

Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda and, if the petition is found to be insufficient, by the proponents of the petition and such representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, and a city attorney shall be permitted to examine such material upon approval of the appropriate superior court.

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

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

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

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

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

§ 6254. Exemption of particular records

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

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

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

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

(d) Contained in or related to:

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

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

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

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

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

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

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

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

Asterisks * * * indicate deletions by amendment

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

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

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

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

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

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

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

(m) In the custody of or maintained by the Legislative Counsel.

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

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

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

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special

negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

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

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

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

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

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

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

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

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

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

(Added by Stats.1981, c. 684, p. 2484, § 1.5, eff. Sept. 23, 1981, operative Jan. 1, 1982. Amended by Stats.1982, c. 83, p. 242, § 1, eff. March 1, 1982; Stats.1982, c. 1492, p. 5778, § 2; Stats.1982, c. 1594, p. 6299, § 2, eff. Sept. 30, 1982; Stats.1983, c. 200, § 1, eff. July 12, 1983; Stats.1983, c. 621, § 1; Stats.1983, c. 955, § 1; Stats.1983, c. 1315, § 1; Stats.1984, c. 1516, § 1, eff. Sept. 28, 1984; Stats.1985, c. 103, § 1; Stats.1985, c. 1218, § 1; Stats.1986, c. 135, § 2; Stats.1987, c. 1452, § 1, eff. Sept. 14, 1987; Stats.1987, c. 635, § 1; Stats.1988, c. 870, § 1; Stats.1988, c. 1371, § 2.)

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

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

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

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

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

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

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

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

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

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

§ 6255. Justification for withholding of records

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

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

§ 6256. Copies of records

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

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

§ 6257. Request for copy; fee

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

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

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

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

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

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

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

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

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

§ 6260. Effect of chapter on prior rights and proceedings

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

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

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

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

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

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

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

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

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

(Added by Stats.1979, c. 601, § 3.)

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

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

(Added by Stats.1979, c. 601, § 4.)

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

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

(Added by Stats.1979, c. 601, § 5.)

TITLE 1.8 PERSONAL DATA [NEW]

Chapter	Section
1. Information Practices Act of 1977	1798

Title 1.8 was added by Stats.1977, c. 709, p. 2269, § 1.

CHAPTER 1. INFORMATION PRACTICES ACT OF 1977

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

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

ARTICLE 1. GENERAL PROVISIONS AND LEGISLATIVE FINDINGS

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

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

§ 1798. Citation of chapter

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

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

Sections 2, 4 and 5 of Stats.1977, c. 709, p. 2286, provide:

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

"Sec. 4. Section 1 of this act shall become operative on July 1, 1978.

"Sec. 5. This act shall not be deemed to supersede the provisions of Chapter 1299 of the Statutes of 1976 [Educ.C. § 24317; repealed, see, now, Educ.C. § 89546.

§ 1798.1 Legislative declaration and findings

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

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

(a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.

(b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.

(c) In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.2 Application of chapter

This chapter applies to personal and confidential information, except as otherwise specified, and does not apply to nonpersonal information.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

ARTICLE 2. DEFINITIONS

Sec.
1798.3 Definitions.

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

§ 1798.3 Definitions

As used in this chapter:

(a) The term "confidential information" means any of the following:

(1) Any information in any record maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Justice to prevent, control, or reduce crime or to apprehend criminals if the information is (i) compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; or (ii) compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual; or (iii) contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.

(2) Information consisting solely of written testing or examination material, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(3) Information containing medical, psychiatric or psychological material, if the holder of the record determines that disclosure of the information would be medically or psychologically detrimental to the individual. Such information shall, upon written authorization, be disclosed to a physician, psychiatrist or other licensed medical or psychological personnel designated by the data subject.

(4) Information, other than that referred to in paragraph (1) of subdivision (a), consisting solely of investigative materials maintained by an agency * * * for

Asterisks * * * indicate deletions by amendment

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

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

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

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

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

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

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

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

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

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

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

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

(1) The California Legislature.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. NOTIFICATION REQUIREMENTS

Sec.

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

1798.10 Specifications; failure to file reports.

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

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

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

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

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

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

§ 1798.10 Specifications; failure to file reports

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

(a) The name of the agency and the division within the agency that is maintaining the records containing personal or confidential information and the name or title of the system of records, if any, in which such information is maintained.

(b) A brief description of the kinds of personal and confidential information contained in the record system, including the categories of individuals and the approximate number of individuals on whom records containing personal or confidential information are maintained in the system.

(c) Each major use or purpose within the agency for the personal or confidential information within the system.

(d) Disclosures of the information that will be made pursuant to subdivision (e) or (f) of Section 1798.24.

(e) The legal authority which authorizes the maintenance of personal or confidential information.

(f) Retention and disposal policies for the personal or confidential information.

(g) The general source or sources of the information in the system.

(h) The title and business address of the agency official responsible for maintaining the records.

(i) The procedures to be followed for an individual to gain access to, and contest the contents of, records containing personal information.

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

ARTICLE 5. AGENCY REQUIREMENTS

Sec.

1798.14 Contents of records.
1798.15 Sources of information.

1798.17 Notice; contents.
1798.18 Maintenance of records; standards; transfers of records outside state government.
1798.19 Contracts for the operation or maintenance of records; requirements of chapter; employees of agency.
1798.20 Rules of conduct; instruction.
1798.21 Safeguards; administrative, technical and physical.
1798.22 Designation of employee responsible for agency compliance.
1798.23 Department of Justice; review of confidential information; classification.

Article 5 was added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.

§ 1798.14 Contents of records

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

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

§ 1798.15 Sources of information

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

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

§ 1798.17 Notice; contents

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

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

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

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

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

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

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

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

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

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

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

1978 Amendment. Added the second paragraph of subd. (h).

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

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

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

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

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

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

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

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

1978 Amendment. Added a third sentence related to state mandated local government functions.

§ 1798.20 Rules of conduct; instruction

Each agency shall establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing personal

Asterisks * * * indicate deletions by amendment

or confidential information and instruct each such person with respect to such rules and the requirements of this chapter, including any other rules and procedures adopted pursuant to this chapter and the remedies and penalties for noncompliance.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.21 Safeguards; administrative, technical and physical

Each agency shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.22 Designation of employee responsible for agency compliance

Each agency shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

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

The Department of Justice shall review all confidential information in its possession every five years commencing July 1, 1978, to determine whether it should continue to be classified as confidential.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

ARTICLE 6. CONDITIONS OF DISCLOSURE

§ 1798.24 Personal information

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

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if such consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that such person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency which has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is listed in the notice provided pursuant to Section 1798.9 or accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity when required by state or federal law.

(g) Pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(h) To a person who has provided the agency with advance adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.

(i) Pursuant to a determination by the agency which maintains information that compelling circumstances exist which affect the health or safety of an individual, if upon the disclosure

notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal law.

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

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

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

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

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

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

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

(q) To the Office of Information Practices when the transfer is necessary for that office to investigate a complaint it has received regarding an alleged violation * * * of this chapter or to perform its mediation functions, provided that the Office of Information Practices has received the written voluntary consent of the individual to whom the information pertains for such a transfer.

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

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

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

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

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

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

(Amended by Stats.1985, c. 595, § 11; Stats.1987, c. 1453, § 2.)

1985 Amendment. Deleted "or confidential" following "disclose any personal" and inserted "in a manner that would link the information disclosed to the individual to whom it pertains" in the introductory paragraph; substituted "information pertains" for "record pertains as set forth in Section 1798.34" in subd. (a); substituted "agreed to" for "specified" in subd. (b); inserted "agents" in subd. (d); deleted "Personal information only" from the beginning of subd. (q); deleted "or confidential" following "need for personal" in subd. (u); and substituted "personal" for "confidential" following "the disclosure of" and "Section 1798.40" for "Section 1798.42" in the last paragraph.

1987 Legislation

The 1987 amendment added the second sentence of subd. (e) relating to information transferred from a law enforce-

Asterisks * * * indicate deletions by amendment

ARTICLE 8. ACCESS TO RECORDS AND ADMINISTRATIVE REMEDIES

§ 1798.30 Regulations or guidelines; procedure for implementation of article .

Each agency shall * * * either adopt regulations or publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in this article.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats. 1978, c. 874, p. 2747, § 7, urgency, eff. Sept. 19, 1978.)

Asterisks * * * indicate deletions by amendment

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

§ 1798.31 Application of article

This article shall apply only to personal information and not confidential information, except as otherwise expressly stated in Section 1798.40.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

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

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

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

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

§ 1798.42 Confidential information; deletion from disclosures of personal information

In disclosing information contained in a record to an individual, an agency * * * need not disclose any confidential information pertaining to that individual which may be contained in a record containing personal information. To comply with this section, an agency * * * may, in disclosing personal information contained in a record, delete from such disclosure any confidential information.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1982, c. 604, p. —, § 7.)

ARTICLE 9. CIVIL REMEDIES

Sec.

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

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

§ 1798.45 Civil actions against agencies; grounds

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

(a) Refuses to comply with an individual's lawful request to inspect pursuant to subdivision (a) of Section 1798.34.

(b) Fails to maintain any record concerning any individual with such accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of such record, if, as a proximate result of such failure, a determination is made which is adverse to the individual.

(c) Fails to comply with any other provision of this chapter, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. (Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

Section 3 of Stats.1977, c. 709, p. 2286, provides:

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

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

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

(a) The court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from the complainant. In such a suit the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld as being confidential information and the burden is on the agency to sustain its action.

(b) The court shall assess against the agency reasonable attorney's fees and other litigation costs reasonably incurred in any suit under this section in which the complainant has prevailed. A party may be considered to have prevailed even though he does not prevail on all issues or against all parties.

§ 1798.47 Injunctions; orders and judgments

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

Actions for injunction under this section may be prosecuted by the Attorney General, or any district attorney in this state, in the name of the people of the State of California whether upon his or her own complaint, or upon the complaint of the Office of Information Practices, or of a member of the general public, or by any individual acting in his own behalf.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

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

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

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

(b) The costs of the action together with reasonable attorney's fees as determined by the court.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

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

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

The rights and remedies set forth in this chapter shall be deemed to be nonexclusive and are in addition to all those rights and remedies which are otherwise available under any other provision of law.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

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

A civil action shall not lie under this article based upon an allegation that an opinion which is subjective in nature, as distinguished from a factual assertion, about an individual's qualifications, in connection with a personnel action concerning such an individual, was not accurate, relevant, timely, or complete.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.51 Lapse of time; corrections to records

Where a remedy other than those provided in Articles 8 and 9 is provided by law but is not available because of lapse of time an individual may obtain a correction to a record under this chapter but such correction shall not operate to revise or restore a right or remedy not provided by this chapter that has been barred because of lapse of time.
(Adopted by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

Asterisks * * * indicate deletions by amendment

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

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

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

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

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

ARTICLE 10. PENALTIES

Sec.

1798.55 Intentional violations; agency officers and employees; discipline; termination of employment.
1798.56 False pretenses; requesting or obtaining records; misdemeanor.

Article 10 was added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.

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

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

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

§ 1798.56 False pretenses; requesting or obtaining records; misdemeanor

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

45123. Employment after conviction of sex offense or narcotics offense

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

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

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

NOTES OF DECISION

The board of education was not precluded from discharging a teacher for a sex offense despite his acquittal of the criminal charge for such offense in view of provision of this section that no person shall be employed or retained by school district who has been convicted of any sex offense but if conviction is reversed and person is acquitted this section does not prohibit his employment thereafter, thus making optional at discretion of board the retention of an employee who has first been convicted of a sex offense and ultimately acquitted, the same rule applying to anyone who has been acquitted ab initio. Board of Ed. of El Monte School Dist. of Los Angeles County v. Calderon (1973) 110 Cal.Rptr. 916, 35 C.A.3d 490.

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

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

45124. Employment of sexual psychopath

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

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

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

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

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

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

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

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

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

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

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

* * *

88022. Employment after conviction of sex offense or narcotics offense

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

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

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

88023. Employment of sexual psychopath

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

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

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

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

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

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

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

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

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

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

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

* * *

ARTICLE 3

CONTRACTS AND APPLICATIONS FOR EMPLOYMENT

432.7 Record of arrest or detention not resulting in conviction or referral or participation in diversion programs; prohibition of disclosure to or use by employer; violations; penalty

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

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

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

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

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

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

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

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

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

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

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

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

(i) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201, 13201.5 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

1. In general

State officials were subject to being sued by taxpayer for declaratory and injunctive relief with respect to alleged unconstitutional policy of routinely disseminating to public employers arrest records containing solely nonconviction

data and arrest records containing nonconviction data and conviction data without first deleting reference to nonconviction data. Central Valley Chapter of 7th Step Foundation, Inc. v. Younger (App.1979) 157 Cal.Rptr. 117.

2. Pleadings

Allegations of complaint that arrest records were commonly misinterpreted by public employers, that subjects of those records suffered damage to their reputation and were stigmatized and exposed to unnecessary and unjustified public harassment and humiliation, and that there was widespread discrimination against individuals with arrest records in obtaining employment were sufficient to state a prima facie violation of state constitutional right of privacy with respect to policy of state officials in routinely disseminating to public employers arrest records containing solely nonconviction data and arrest records containing nonconviction data and conviction data without first deleting reference to nonconviction data. Central Valley Chapter of 7th Step Foundation, Inc. v. Younger (App.1979) 157 Cal.Rptr. 117.

3. Injunctions

Injunctive relief was available against state officials to enjoin them from continuing alleged unconstitutional policy of routinely disseminating to public employers arrest records containing solely nonconviction data and arrest records containing nonconviction data and conviction data without first deleting reference to nonconviction data. Central Valley Chapter of 7th Step Foundation, Inc. v. Younger (App.1979) 157 Cal.Rptr. 117.

432.8 Limitations on employers and penalties for certain convictions

The limitations on employers and the penalties provided for in Section 432.7 shall apply to a conviction for violation of subdivision (b) or (c) of Section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of Section 11360 of the Health and Safety Code, or Sections 11364, 11365, or 11550 of the Health and Safety Code as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof, two years from the data of such a conviction.

Added by Stats.1976, c. 952, p.2180, Section 3.

HEALTH AND SAFETY CODE

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

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

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents ($37.50). The application form shall be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars ($10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application. Each state or local agency receiving a notice from the Department of Justice shall destroy records of the agency, if any, pertaining to the arrest or conviction specified in the notice, in the manner prescribed by subdivision (c). The application form and the notices from the department to the agencies specified in this subdivision shall be destroyed by the department or agency, as the case may be, at the time the other records of the arrest or conviction are destroyed.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

(e) Costs incurred by local agencies in complying with the provisions of subdivision (c) shall be reimbursed as provided in Section 2231 of the Revenue and Taxation Code.

Financial Code

§ 777.5. Delivery of fingerprints of employment applicants to law enforcement agencies to obtain criminal history records; requests; fees; consent; confidentiality

(a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, a commercial bank licensed to do business in California under the laws of this state or of the United States, or officer or employee thereof, may deliver fingerprints taken of an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the applicant relating to convictions, and to any arrest for which the applicant is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the bank responsible for the final decision regarding employment of the applicant, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank determines that employment of the applicant would constitute an unreasonable risk to the bank or its customers, the applicant may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting bank pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the applicant.

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

(Formerly § 777, added by Stats.1982, c. 595, p. 2562, § 1. Amended by Stats.1982, c. 1203, p. 4387, § 4, urgency, eff. Sept. 22, 1982, operative Jan. 1, 1983. Renumbered § 777.5 and amended by Stats.1986, c. 163, § 1.)

1982 Amendment. Substituted, in subd (a), "crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers", for the former listing of section numbers which read: "crime set forth in Section 115, 211, 337a, 459, 464, 470, 471, 472, 475, 475a, 476, 476a, 477, 480, 484, 484e, 484f, 484g, 484h, 484i, 487, 496, 502, 503, 504b, 506, 506a, 508, 532, 532a, or 648 of the Penal Code."; deleted "or of a comparable crime committed in another state" at the end of the sentence comprising subd (a), added the second sentence of subd (b); added the first and second sentences of subd (c); and added subd. (d).

1986 Amendment. Renumbered the section and made no other changes.

§ 14409.2. Delivery of fingerprints of employment applicants to law enforcement agencies to obtain criminal history records; requests; fees; consent; confidentiality

(a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, any credit union or officer or employee thereof may deliver fingerprints taken of an applicant for employment by the credit union to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the applicant relating to convictions, and to any arrest for which the applicant is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime * * involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the credit union responsible for the final decision regarding employment of the applicant, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the credit union, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the credit union determines that employment of the applicant would constitute an unreasonable risk to the credit union or its customers, the applicant may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting credit union pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the applicant.

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

§ 6525. Fingerprints of applicants; deliverance to enforcement agencies; criminal history information

(a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, an association or officer or employee thereof may deliver fingerprints taken of an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the applicant relating to convictions, and to any arrest for which the applicant is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may pursuant to Section 13300 of the Penal Code, furnish to the officer of the association responsible for the final decision regarding employment of the applicant, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the association, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the association determines that employment of the applicant would constitute an unreasonable risk to the association or its customers, the applicant may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting savings and loan association pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the applicant.

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

(Added by Stats.1983, c. 1091, § 2.)

Evidence Code
Privileges

1040. Privilege for official information

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered. (Stats.1965, c. 299, Section 1040)

Article 5

ACCESS TO INFORMATION

Sec.

13200. Right of authorized access to individual record information not affected.
13201. Access to individual record information only if authorized by law.
13202. Public agencies and research bodies; access to criminal offender record information; removal of individual identification; costs.

Article 5 was added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.

§ 13200. Right of authorized access to individual record information not affected

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

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

§ 13201. Access to individual record information only if authorized by law

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

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

§ 13202. Public agencies and research bodies; access to criminal offender record information; removal of individual identification; costs

Every public agency or bona fide research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals, and provided that such agency or body pays the cost of the processing of such data as determined by the Attorney General.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978. Amended by Stats.1979, c. 849, p. 2950, § 3.)

Article 6
Local Summary Criminal History Information

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

(a) As used in this section:

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

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

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

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

(1) The courts of the state.

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

(3) District attorneys of the state.

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

(5) Probation officers of the state.

(6) Parole officers of the state.

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

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

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

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

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

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

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

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

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

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

(3) To a peace officer of another country.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added by Stats.1975, c. 1222, Section 6 operative July 1, 1978.
Amended by Stats.1978, c. 475, Section 2.

13301. "Record"; "a person authorized by law to receive a record" defined

(a) "Record" means the master local summary criminal history information defined in subdivision (a) of Section 13300, or a copy thereof.

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

13302. Furnishing to unauthorized person by employee of local agency

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

13303. Furnishing to unauthorized person by authorized person

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

13304. Receipt, purchase or possession by unauthorized person

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

13305. Statistical data, data for apprehension of purported criminal, and data in public records; authorized use

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

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

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

Article 7
Examination of Local Records

13320. Definitions; purpose

(a) As used in this article, "record" with respect to any person means the local summary criminal history information as defined in subdivision (a) of Section 13300, maintained under such person's name by the local criminal justice agency.

(b) As used in this article, "agency" means any agency or consortium of agencies.

(c) It is the function and intent of this article to afford persons concerning whom a record is maintained in the files of the local criminal justice agency a reasonable opportunity to examine the record compiled from such files, and to refute any erroneous or inaccurate information contained therein.

Added by Stats.1979, c. 849, Section 4.

13321. Application; records relating to applicant; requirements

Any person desiring to examine a record relating to himself shall make application to the agency maintaining the record in the form prescribed by that agency which may require the submission of fingerprints.

Added by Stats.1979, c 849, Section 4.

13322. Fee

The agency may require the application be accompanied by a fee not to exceed twenty-five dollars ($25) that the agency determines is equal to the cost of processing the application and making a record available for examination.

Added by Stats.1979, c 849, Section 4.

13323. Verification of applicants identity and existence of record; method of examination

When an application is received by the agency, the agency shall upon verification of the applicant's identity determine whether a record pertaining to the applicant is maintained. If such record is maintained, the agency shall at its discretion either inform the applicant by mail of the existence of the record and specify a time when the record may be examined at a suitable facility of the agency or shall mail the subject a copy of the record.

Added by Stats.1979, c 849, Section 4.

13324. Written request to correct inaccuracy or completeness, concurrence by agency; correction of record; notice. denial; administrates adjudication

(a) If the applicant desires to question the accuracy or completeness of any material matter contained in the record, he may submit a written request to the agency in the form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, its materiality, and shall specify any proof or corroboration available. Upon receipt of such request, the agency shall, within 60 days of receipt of such written request for clarification, review its information and forward to the applicant the results of such review.

(b) If the agency concurs in the allegations of inaccuracy or incompleteness in the record and finds that the error is material, it shall correct its record, and the agency shall inform the applicant of its correction of any material error in the record under this subdivision within 60 days. The agency shall notify all criminal justice agencies to which it has disseminated the incorrect record from an automated system in the past two years of the correction of the record.

The agency shall furnish the applicant with a list of all the noncriminal justice agencies to which the incorrect record has been disseminated from an automated system in the past two years unless it interferes with the conduct of an authorized investigation.

(c) If the agency denies the allegations of inaccuracy or incompleteness in the record, the matter shall at the option of the applicant be referred for administrative adjudication in accordance with the rules of the local governing body.

Added by Stats.1979, c 849, Section 4.

13325. Regulations

The agency shall adopt all regulations necessary to carry out the provisions of this article.

Added by Stats.1979, c 849, Section 4.

13326. Request of employee to obtain record or notification of existence of record; prohibition; violations; penalty

No person shall require an employee or prospective employee to obtain a copy of a record or notification that a record exists as provided in Section 13323. A violation of this section is a misdemeanor.

Added by Stats.1979, c 849, Section 4.

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

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

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

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

291.1 Teachers; notice of arrest to private school authorities

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

SEALING AND DESTRUCTION OF ARREST RECORDS

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

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

(b) If, after receipt by both the law enforcement agency and the district attorney of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal or justice court which would have had territorial jurisdiction over the matter. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner

to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitionery committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records.

The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy such records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

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

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

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

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

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

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

(j) Destruction of records of arrest pursuant to subdivision (a), (b), , (d), or (e) shall be accomplished by permanent obliteration of all entries notations upon such records pertaining to the arrest, and the record shall be pared again so that it appears that the arrest never occurred. However, re (1) the only entries on the record pertain to the arrest and (2) the ord can be destroyed without necessarily affecting the destruction of other ords, then the document constituting the record shall be physically troyed.

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

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

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

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

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

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

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

Added by Stats.1980, c. 1172, Section 2. Former Section 851.8 was repealed by Stats.1980, c. 1172, Section 1. Effective contingent repeal of this section, see note under Section 851.85.

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

Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.

Added by Stats.1980, c. 1172, Section 3. Operative effect, see note under this section.

Section 4 of Stats.1980, c. 1172, provided: "If the provisions of Section 851.8 of the Penal Code as added by Section 2 of this act are appealed pursuant to subdivision (o) of Section 851.8, then Section 3 of this act shall be operative on the operative date of the repeal of Section 851.8."

EXCERPTS FROM THE CALIFORNIA ADMINISTRATIVE CODE

REGULATIONS GOVERNING THE RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION IN THE STATE OF CALIFORNIA

Article 1. Mandatory Securing of Criminal Offender Record Information

700. Scope.

NOTE: Authority cited: Section 11077, Penal Code. Reference: Sections 11075-11081, Penal Code.

HISTORY:

1. New Subchapter 7 (Article 1, Sections 700-710) filed 6-6-75; effective thirtieth day thereafter (Register 75, No. 23).

2. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No.26).

701. Definitions.

For the purposes of this article, the following definitions shall apply whenever the terms are used.

(a) "Criminal Justice Agency" means a public agency or component thereof which performs a criminal justice activity as its principal function.

(b) "Authorized Person or Agency" means any person or agency authorized by court order, statute, or decisional law to receive criminal offender record information.

(c) (Reserved)

(d) (Reserved)

(e) (Reserved)

(f) "Record Check" means obtaining the most recent rap sheet from the California Department of Justice.

HISTORY:

1. Order of Repeal of subsections (c) - (e) filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

702. Compliance with State Regulations.

(a) (Reserved)

(b) (Reserved)

(c) The California Department of Justice shall conduct audits of authorized persons or agencies using criminal offender record information to insure compliance with the State regulations.

(d) (Reserved)

(e) Authorized persons or agencies violating these regulations may lose direct access to criminal offender record information maintained by the California Department of Justice.

703. Release of Criminal Offender Record Information

(a) (Reserved)

(b) Criminal offender record information may be released, on a need-to-know basis, only to persons or agencies authorized by court order, statute, or decisional law to receive criminal offender record information.

(c) (Reserved)

(d) Record checks shall be conducted on all personnel hired after July 1, 1975, who have access to criminal offender record information.

HISTORY:

1. Order of Repeal of subsections (a) and (c) filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

704. Juvenile Records.

HISTORY:

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

705. Review of Criminal Offender Record Information

HISTORY:

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

706. Protection of Criminal Offender Record Information

HISTORY:

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

707. Automated Systems

(a) Automated systems handling criminal offender record information and the information derived therefrom shall be secure from unauthorized access, alteration, deletion, or release. The computer system and terminals shall be located in secure premises. Non-criminal justice agencies shall not receive criminal offender record information directly from an automated criminal justice system.

(b) Record checks shall be conducted on all personnel hired after July 1, 1975, who have access to the computer system, its terminals, or the stored criminal offender record information.

(c) Each authorized agency shall keep a record of each release of criminal offender record information from the automated system. The record shall be retained and available for inspection for a period of not less than three years from the date of release. This record shall contain the date of release, the requesting terminal identifier, the receiving terminal identifier, and the information given.

708. Destruction of Criminal Offender Record Information

(a) When criminal offender record information is destroyed, the destruction shall be carried out to the extent that the identity of the subject can no longer reasonably be ascertained. When criminal offender record information is destroyed outside of the authorized agency, a person designated by the agency shall witness the destruction.

(b) (Reserved)

(c) Printouts of criminal offender record information obtained through system development, test, or maintenance shall be destroyed at the completion of the function or purpose for which the printout was obtained.

HISTORY:

1. Order of Repeal of subsection (b) filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

709. Reproduction of Criminal Offender Record Information

HISTORY:

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

710. Training

HISTORY:

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

COLORADO

Colorado Revised Statutes Annotated

PART 4

COLORADO BUREAU OF INVESTIGATION

Statutes Replacing 24-32-401 and 24-32-412
July 1, 1984

24-33.5-401. Colorado bureau of investigation. (1) There is hereby created as a division of the department of public safety the Colorado bureau of investigation, referred to in this part 4 as the "bureau".

(2) The Colorado bureau of investigation and the office of the director shall exercise their powers and perform their duties and functions under the department of public safety and the executive director as transferred to the department by a type 2 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

24-33.5-412. Functions of bureau - legislative review. (1) The bureau has the following authority:

(a) When assistance is requested by any sheriff, chief of police, district attorney, or chief law enforcement officer and with the approval of the director, to assist such law enforcement authority in the investigation and detection of crime and in the enforcement of the criminal laws of the state;

(b) When assistance is requested by any district attorney and upon approval by the director, to assist the district attorney in preparing the prosecution of any criminal case in which the bureau had participated in the investigation under the provisions of this part 4;

(c) To establish and maintain fingerprint, crime, criminal, fugitive, stolen property, and other identification files and records; to operate the statewide uniform crime reporting program; and to arrange for scientific laboratory services and facilities for assistance to law enforcement agencies, utilizing existing facilities and services wherever feasible;

(d) To investigate suspected criminal activity when directed to do so by the governor.

(e) To procure any records furnished by any law enforcement agency i this state, including local law enforcement agencies, at the expense of th bureau.

(f) To enter into and perform contracts with the department of soci services for the investigation of any matters arising under the "Revised Uni form Reciprocal Enforcement of Support Act", article 5 of title 14, C.R.S. or a substantially similar enactment of another state.

(g) Repealed, L. 83, p. 934, § 1, effective July 1, 1984

(h) To compile, maintain, and distribute a list of missing children a required by section 24-33.5-415.1.

(2) In order to enable the bureau to carry out the functions enumerate in this section, it shall establish and maintain statewide telecommunication programs consistent with telecommunications programs and policies of th state telecommunications director.

(3) (a) Any other provision of law to the contrary notwithstanding an excluding title 19, C.R.S., except as provided in paragraph (b) of this subsec tion (3), on and after July 1, 1971, in accordance with a program to be estal lished by the bureau, every law enforcement, correctional, and judicial entity agency, or facility in this state shall furnish to the bureau all arrest, identif cation, and final charge dispositional information on persons arrested in Co orado for federal, state, or out-of-state criminal offenses and on person received for service of any sentence of incarceration; except that the provi sion of information by judicial entities, agencies, and facilities shall be unde procedures to be established jointly by the state court administrator and th director.

(b) On or after July 1, 1983, the bureau may establish a program unde which every entity, agency, or facility specified in paragraph (a) of this sub section (3) shall furnish to the bureau the information specified in sectio 19-1-111 (2) (d), C.R.S.

(4) The bureau is charged with the responsibility to investigate organized crime which cuts across jurisdictional boundaries of local law enforcemen agencies, subject to the provisions of section 24-33.5-410.

(5) To assist the bureau in its operation of the uniform crime reporting program, every law enforcement agency in this state shall furnish such infor mation to the bureau concerning crimes, arrests, and stolen and recovered property as is necessary for uniform compilation of statewide reported crime arrest, and recovered property statistics. The cost to the law enforcemen agency of furnishing such information shall be reimbursed out of appropria tions made therefor by the general assembly; except that the general assembly shall make no such reimbursement if said cost was incurred in a fiscal yea during which the Colorado crime information center was funded exclusively by state or federal funds.

Public Records

PART 2

INSPECTION, COPYING, OR PHOTOGRAPHING

24-72-201. Legislative declaration. It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(2) "Official custodian" means and includes any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(3) "Person" means and includes any natural person, corporation, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, and special district within this state.

(6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. It does not include criminal justice records which are subject to the provisions of part 3 of this article.

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

Source: L. 68, p. 201, § 2; C.R.S. 1963, § 113-2-2; L. 77, p. 1250, § 2.

24-72-203. Public records open to inspection. (1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification he shall state in detail to the best of his knowledge and belief the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the records will be available for inspection.

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Repealed, L. 77, p. 1250, § 4, effective December 31, 1977.

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system

or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution; and

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner thereof who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which he has obtained relative to the proposed acquisition of the property.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, psychological, sociological, and scholastic achievement data on individual persons, exclusive of coroners' autopsy reports and group scholastic achievement data from which the individual cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) Personnel files, except applications and performance ratings; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise his work;

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions; and

(VI) Addresses and telephone numbers of students in any public elementary or secondary school.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student

is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his parent or guardian shall not be required therefor.

(d) Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names and addresses of students in any secondary school may be released to a recruiting officer for any branch of the United States armed forces who requests such information, unless the student requests in writing that said information not be released. The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. Hearing on such application shall be held at the earliest practical time. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. In such action the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard.

24-72-205. Copies, printouts, or photographs of public records. (1) In all cases in which a person has the right to inspect any public record, he may request that he be furnished copies, printouts, or photographs of such record. The custodian may furnish such copies, printouts, or photographs for a reasonable fee, to be set by the official custodian, not to exceed one dollar and twenty-five cents per page unless actual costs exceed that amount. Where fees for certifed copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

24-72-206. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

TITLE 24
GOVERNMENT - STATE

ARTICLE 72
Public Records

PART 3
CRIMINAL JUSTICE RECORDS

24-72-301. Legislative declaration. (1) The general assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern and that, in defining and regulating those areas, only statewide standards in a state statute are workable.

(2) It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3, and that all other records of criminal justice agencies in this state may be open for inspection as provided in this part 3 or as otherwise specifically provided by law.

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Arrest and criminal records information" means information reporting the arrest, indictment, or other formal filing of criminal charges against a person; the identity of the criminal justice agency taking such official action relative to an accused person; the date and place that such official action was taken relative to an accused person; the name, birth date, last-known address, and sex of an accused person; the nature of the charges brought or the offenses alleged against an accused person; and one or more dispositions relating to the charges brought against an accused person.

(2) "Basic identification information" means the name, birth date, last-known address, physical description, and sex of any person.

(3) "Criminal justice agency" means any court with criminal jurisdiction and any agency of the state or of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority which performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release,

prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, which are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule.

(5) "Custodian" means the official custodian or any authorized person having personal custody and control of the criminal justice records in question.

(6) "Disposition" means a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive clemency.

(7) "Official action" means an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.

(8) "Official custodian" means any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of criminal justice records, regardless of whether such records are in his actual personal custody and control.

(9) "Person" means any natural person, corporation, partnership, firm, or association.

(10) "Person in interest" means the person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parents or duly appointed legal representative.

24-72-303. Records of official actions required - open to inspection. (1) Each official action as defined in this part 3 shall be recorded by the particular criminal justice agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 or as otherwise provided by law. The official custodian of any records of official actions may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested record of official action of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the agency which has custody or control of the record in question.

(3) If the requested record of official action of a criminal justice agency is in the custody and control of the person to whom application is made but is in active use or in storage and therefore not available at the time an applicant asks to examine it, the custodian shall forthwith notify the applicant of this fact in writing, if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the record will be available for inspection.

24-72-304. Inspection of criminal justice records. (1) Except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law, and the official custodian of any such records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested criminal justice records are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the requested records are not in the custody and control of the criminal justice agency to which the request is directed but are in the custody and control of a central repository for criminal justice records pursuant to law, the criminal justice agency to which the request is directed shall forward the request to the central repository. If such a request is to be forwarded to the central repository, the criminal justice agency receiving the request shall do so forthwith and shall so advise the applicant forthwith. The central repository shall forthwith reply directly to the applicant.

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in subsection (5) of this section:

(a) Such inspection would be contrary to any state statute;

(b) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) to (4) Repealed, L. 78, p. 407, section 4, effective May 5, 1978.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

(6) If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and shall be furnished forthwith to the applicant.

(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay

the applicant's court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount not to exceed twenty-five dollars for each day that access was improperly denied.

24-72-306. Copies, printouts, or photographs of criminal justice records - fees authorized. (1) Criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and copying of criminal justice records and may waive fees at their discretion. Where fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply. Where the criminal justice agency is an agency or department of any county or municipality, the amount of such fees shall be established by the governing body of the county or municipality.

(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow other arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

24-72-307. Challenge to accuracy and completeness - appeals. (1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional

time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the refusal of correction was proper, it shall order the custodian to make such correction, and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

24-72-308. Sealing of records. (1) (a) Any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged, in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

(b) (I) Any petition to seal criminal records shall include a listing of each custodian of the records to whom the sealing order is directed and any information which accurately and completely identifies the records to be sealed.

(II) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the prosecuting attorney by certified mail, the arresting agency, and any other person or agency identified by the petitioner.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records

with a copy of such order. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

(d) Upon the entry of an order to seal the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such records exist with respect to such person.

(e) Inspection of the records included in an order sealing criminal records may thereafter be permitted by the court only upon petition by the person who is the subject of such records or by the prosecuting attorney and only for those purposes named in such petition.

(f) (I) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction which comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall have no right to privacy or privilege which justifies his refusal to answer to any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

(g) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

(2) Advisements. Whenever a defendant has charges against him dismissed, is acquitted, or is sentenced following a conviction, the court shall provide him with a written advisement of his rights concerning the sealing of his criminal justice records if he complies with the applicable provisions of this section.

(3) Exceptions. (a) This section shall not apply to records pertaining to any class 1 or class 2 misdemeanor traffic offense or to any class A or class B traffic infraction.

(b) Court orders sealing records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

24-72-309. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

24-30-606. Existing and new equipment, personnel, applications, systems, subject to approval of director. On and after July 1, 1968, no automated data processing equipment shall be purchased, leased, or otherwise acquired by any state department, institution, or agency, nor shall any new automated data processing personnel be added to the state service, nor shall any new applications, systems, or programs begin except upon the written approval of the director, nor shall any automated data processing equipment presently leased or operated by any state department, institution, or agency continue to be so leased or operated after July 1, 1969, unless certified by the director to be in accordance with the approved plan.

24-30-607. Reports. (1) On or before December 1 of each year, the director shall prepare and submit the following reports and such other information as he deems advisable, including budgetary requirements, to the governor and the general assembly:

(a) A report on the use and cost of all automated data processing equipment which is owned, leased, or operated by the state government, including the cost of acquiring or leasing such equipment and a detailed report on the annual cost of operating such equipment including the cost of personnel, supplies, and other expenses in connection therewith.

(b) A complete inventory of all automated data processing equipment which is presently on order or otherwise scheduled for use by the state government or which has been requested of the division by any agency pursuant to the provisions of section 24-30-606, together with an estimate of the annual cost of acquiring or leasing such equipment and a detailed estimate of the annual cost of operating such equipment including the cost of personnel, supplies, and other expenses in connection therewith and the director's recommendations thereon.

(c) A report listing by agency the existing and requested uses, applications, and programs of automated data processing including such explanation and analysis as the director may deem advisable together with his recommendations thereon and specifically including, with respect to requested uses, applications, and programs, his recommendations for priorities in implementing the same.

County Officers

PART 1

GENERAL PROVISIONS

30-10-101. Offices - inspection of records - failure to comply - penalty. (1) Every sheriff, county clerk, county treasurer, and clerks of the district and county courts shall keep their respective offices at the county seat of the county and in the office provided by the county, if any such has been provided; or, if there is none provided, then at such place as the board of county commissioners shall direct. All books and papers required to be in their offices shall be open to the examination of any person, but no person, except parties in interest, or their attorneys, shall have the right to examine pleadings or other papers filed in any cause pending in such court.

(2) Any person or corporation and their employees engaged in making abstracts or abstract books shall have the right, during usual business hours and subject to such rules and regulations as the officer having the custody of such records may prescribe, to inspect and make memoranda, copies, or photographs of the contents of all such books and papers for the purpose of their business; but any such officer may make reasonable and general regulations concerning the inspection of such books and papers by the public. If, for the purpose of making such photographs, it becomes necessary to remove such records from the room where they are usually kept to some other room in the courthouse where such photographic apparatus may be installed for such purpose, the county clerk, in his discretion, may charge to the person or corporation making such photographic reproductions, a fee of one dollar per hour for the service of the deputy who has charge of such records while they are being so photographed; but such fees shall not be charged to one person or corporation unless the same fee is likewise charged to every person or corporation photographing such records.

(3) If any person or officer refuses or neglects to comply with the provisions of this section, he shall forfeit for each day he so refuses or neglects the sum of five dollars, to be collected by civil action, in the name of the people of the state of Colorado, and pay it into the school fund; but this shall not interfere with or take away any right of action for damages by any person injured by such neglect or refusal.

CONNECTICUT

Connecticut General Statutes Annotated

Criminal History Records

PART I. ERASURE

§ 54-142a. Erasure of criminal records

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken.

(b) Whenever in any criminal case prior to October 1, 1969, the accused, by a final judgment, was found not guilty of the charge or the charge was dismissed, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased by operation of law and the clerk or any person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased; provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition for erasure with the court granting such not guilty judgment or dismissal, or, where the matter had been before a municipal court, a trial justice, the circuit court or the court of common pleas with the records center of the judicial department and thereupon all police and court records and records of the state's attorney, prosecuting attorney or prosecuting grand juror pertaining to such charge shall be erased.

(c) Whenever any charge in a criminal case has been nolled in the superior court, or in the court of common pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased. However, in cases of nolles entered in the superior court, court of common pleas, circuit court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the judicial department, as the case may be, to have such records erased, in which case such records shall be erased. Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be construed to have been nolled as of the date of termination of such thirteen-month period and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolled cases.

(d) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction or with the records center of the judicial department if such conviction was in the court of common pleas, circuit court, municipal court or by a trial justice court, for an order of erasure, and the superior court or records center of the judicial department shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased. Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased.

(e) The clerk of the court or any person charged with retention and control of such records in the records center of the judicial department or any law enforcement agency having information contained in such erased records shall not disclose to anyone information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records. No fee shall be charged in any court with respect to any petition under this section. Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

(f) Upon motion properly brought, the court or a judge thereof, if such court is not in session, (1) may order disclosure of such records upon application of the accused, (2) may order disclosure to a defendant or the accused in an action for false arrest arising out of the proceedings so erased or (3) may order disclosure to the prosecuting attorney and defense counsel in connection with any perjury charges which the prosecutor alleges may have arisen from the testimony elicited during the trial. The court may also order such records disclosed to any hospital or institution to which an accused is confined under the provisions of section 53a–47. Such disclosure of such records is subject also to any records destruction program pursuant to which the records may have been destroyed. The jury charge in connection with erased offenses may be ordered by the judge for use by the judiciary, provided the names of the accused and the witnesses are omitted therefrom.

(g) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any count of any information or indictment which was nolled if the accused was convicted upon one or more counts of the same information or indictment.

(1958 Rev., § 54–90; 1963, P.A. 482; 1963, P.A. 642, § 72; 1967, P.A. 181; 1967, P.A. 663; 1969, P.A. 229, § 1; 1971, P.A. 635, § 1, eff. June 28, 1971; 1972, P.A. 20, § 2, eff. April 5, 1972; 1973, P.A. 73–276, § 1, eff. May 16, 1973; 1974, P.A. 74–52, § 1, eff. April 19, 1974; 1974, P.A. 74–163, §§ 1 to 3; 1974, P.A. 74–183, § 152, eff. Dec. 31, 1974; 1975, P.A. 75–541, §§ 1, 2; 1976, P.A. 76–345; 1976, P.A. 76–388, § 4, eff. Jan. 2, 1977; 1976, P.A. 76–436, §§ 10a, 551, eff. July 1, 1978; 1977, P.A. 77–429; 1977, P.A. 77–452, §§ 40 to 42, eff. July 1, 1978; 1981, P.A. 81–218, § 1.)

9. Civil discovery

In civil litigation arising out of motor vehicle accident, for which the defendant had been arrested and charged with certain criminal and motor vehicle offenses, which charges were subsequently dismissed, discovery in the civil litigation of questions directed to police officers and others on the subject of the evidence police officers collected at the scene of the accident was not barred by Connecticut criminal record erasure statute; however, no questions could be asked of police officers and others regarding any aspect of the investigation and prosecution which took place after the defendant in the criminal case was arrested and charged. Penfield v. Venuti (D.C.1981) 93 F.R.D. 364.

Discovery in civil litigation of physical evidence obtained at scene of motor vehicle accident, which otherwise would have been obtainable by private parties in the absence of criminal prosecution, was not barred by Connecticut criminal record erasure statute, notwithstanding fact that defendant in the civil litigation had been arrested and charged with certain criminal and motor vehicle offenses stemming from the accident, which charges were subsequently dismissed. Id.

Connecticut criminal record erasure statute, which provides that once a criminal prosecution has been dismissed "all police and court records and records of any state's attorney pertaining to such charge shall be immediately and automatically erased," does not prevent civil discovery of records compiled or materials collected routinely by police officers about a motor vehicle accident which formed part of an unsuccessful criminal prosecution. Id.

§ 54–142b. Erasure of record of girl found guilty of being in manifest danger

Any person who has been found guilty under section 17–379 or any statute predecessor thereto, if she has been convicted of no other offense prior to her twenty-first birthday, may file a petition with the court by which she was found guilty, or, if such finding was by a trial justice or municipal court or the circuit court, to the office of the chief court administrator for an order of erasure, and such court shall thereupon order all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(1958 Rev., § 54–90a; 1971, P.A. 192; 1974, P.A. 74–183, § 153, eff. Dec. 31, 1974; 1975, P.A. 75–567, § 23, eff. June 30, 1975; 1976, P.A. 76–336, § 12; 1976, P.A. 76–436, §§ 10a, 552, eff. July 1, 1978; 1977, P.A. 77–452, § 43, eff. July 1, 1978.)

§ 54–142c. Disclosure of erased records

(a) The clerk of the court or any person charged with retention and control of erased records by the chief court administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased record or information pertaining to any charge erased under any provision of part I of this chapter, except as otherwise provided in this chapter.

(b) Notwithstanding any other provisions of this chapter, within one year from the date of disposition of any case, the clerk of the court or any person charged with retention and control of erased records by the chief court administrator or any criminal justice agency having information contained in such erased records may disclose to the victim of a crime or his legal representative the fact that the case was dismissed. If such disclosure contains information from erased records, the identity of the defendant or defendants shall not be released. Any person who obtains criminal history record information by falsely representing to be the victim of a crime or his representative shall be fined not more than five thousand dollars or imprisoned not less than one year nor more than five years or both.

(1978, P.A. 78–200, § 15; 1981, P.A. 81–117; 1981, P.A. 81–218, § 2.)

§§ 54–142d to 54–142f. Reserved for future use

PART II. SECURITY AND PRIVACY OF CRIMINAL RECORDS

§ 54–142g. Definitions

For purposes of this part and sections 29–11 and 54–142c, the following definitions shall apply:

(a) "Criminal history record information" means court records and information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments, informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases; but does not include intelligence, presentence investigation, investigative information or any information which may be disclosed pursuant to subsection (d) of section 54–63d.

(b) "Criminal justice agency" means any court with criminal jurisdiction, the department of motor vehicles, or any other governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice; including but not limited to, organized municipal police departments, the division of state police, department of correction, office of adult probation, state's attorneys, assistant state's attorneys, deputy assistant state's attorneys,

parole board, pardon board, bail commissioners and chief medical examiner. It shall also include any component of a public, noncriminal justice agency if such component is created by statute and is authorized by law and, in fact, engages in activities constituting the administration of criminal justice as its principal function.

(c) "Conviction information" means criminal history record information which has not been erased, as provided in section 54–142a, and which discloses that a person has pleaded guilty or nolo contendere to, or was convicted of, any criminal offense, and the terms of the sentence.

(d) "Current offender information" means information on the current status and location of all persons who (1) are arrested or summoned to appear in court; (2) are being prosecuted for any criminal offense in superior court; (3) have an appeal pending from any criminal conviction; (4) are detained or incarcerated in any correctional facility in this state; or (5) are subject to the jurisdiction or supervision of any probation, parole or correctional agency in this state, including persons transferred to other states for incarceration or supervision.

(e) "Nonconviction information" means (1) criminal history record information that has been "erased" pursuant to section 54–142a; (2) information relating to persons granted youthful offender status; (3) continuances which are more than thirteen months old. Nonconviction information does not mean conviction information or current offender information.

(f) "Disclosure" means the communication of information to any person by any means.

(g) "Dismissal" means (1) prosecution of the charge against the accused was declined pursuant to rules of court or statute; or (2) the judicial authority granted a motion to dismiss pursuant to rules of court or statute; or (3) the judicial authority found that prosecution is no longer possible due to the limitations imposed by section 54–193.

(1977, P.A. 77–614, § 486, eff. Jan. 1, 1979; 1978, P.A. 78–200, § 1; 1978, P.A. 78–303, § 85, eff. June 6, 1978; 1979, P.A. 79–398; 1980, P.A. 80–190, § 13; 1980, P.A. 80–198; 1981, P.A. 81–437, § 5, eff. July 1, 1981; 1981, P.A. 81–472, § 96, eff. July 8, 1981; 1982, P.A. 82–346, § 4, eff. July 1, 1982.)

1982 Amendment

1982, P.A. 82-346, § 4, eff. July 1, 1982, deleted, from the first sentence of subsec. (b), "the Connecticut justice commission," following "office of adult probation,".

§ 54-142h. Data collection; audit; maintenance of records and log

(a) All criminal justice agencies that collect, store or disseminate criminal history record information shall institute a process of data collection, entry, storage and systematic audit that will minimize the possibility of recording and storing inaccurate criminal history record information, and shall notify, upon the discovery of any such inaccuracy, all criminal justice agencies known to have received such information.

(b) For the purpose of verifying the completeness and accuracy of criminal history record information collected and maintained by criminal justice information agencies subject to Title 28, Chapter 1, Part 20 of the Code of Federal Regulations, the division of criminal justice shall conduct an annual audit of the records maintained by such agencies. Said division shall provide for a random sample of criminal justice agencies to be audited each year.

(c) Criminal justice agencies subject to such audits shall maintain and retain records that will facilitate such audits, including, but not limited to, the keeping of a log which chronologically records the date nonconviction record information was disclosed, the information disclosed, how or where the information was obtained and the person or criminal justice agency to whom the information was disseminated. Such log shall be maintained for a minimum period of twelve months. It shall not be necessary to log the disclosure of nonconviction record information to any authorized officer or employee within such agency.

(1978, P.A. 78-200, § 8; 1982, P.A. 82-346, § 5, eff. July 1, 1982.)

§ 54-142i. Duties of criminal justice agencies re collection, storage or dissemination of criminal history record information. Personnel

All criminal justice agencies which collect, store or disseminate criminal history record information shall:

(a) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information;

(b) Initiate or cause to be initiated administrative action that could result in the transfer or removal of personnel authorized to have direct access to such information when such personnel violate the provisions of these regulations or other security requirements established for the collection, storage or dissemination of criminal history record information;

(c) Provide that direct access to computerized criminal history record information shall be available only to authorized officers or employees of a criminal justice agency, and, as necessary, other authorized personnel essential to the proper operation of a criminal history record information system;

(d) Provide that each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of the provisions in this section;.

(e) Whether manual or computer processing is utilized, institute procedures to assure that an individual or agency authorized to have direct access is responsible for the physical security of criminal history record information under its control or in its custody, and for the protection of such information from unauthorized access, disclosure or dissemination. The state police bureau of identification shall institute procedures to protect both its manual and computerized criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters;

(f) Where computerized data processing is employed, institute effective and technologically advanced software and hardware designs to prevent unauthorized access to such information and restrict to authorized organizations and personnel only, access to criminal history record information system facilities, systems operating environments, systems documentation, and data file contents while in use or when stored in a media library;

(g) Develop procedures for computer operations which support criminal justice information systems, whether dedicated or shared, to assure that: (1) Criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed purged, or overlaid in any fashion by noncriminal justice terminals; (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated; (3) the destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information; (4) operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file; (5) the programs specified in subdivisions (2) and (4) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals or agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the programs are kept continuously under maximum security conditions.

(1978, P.A. 78-200, § 6.)

§ 54-142j. Adoption of regulations and procedures

The commissioner of public safety shall adopt regulations to establish procedures for criminal justice agencies to query the central repository prior to dissemination of any criminal history disposition information to assure that the most up to date disposition data is being used. Inquiries to the state police bureau of identification shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

§ 54–142k. Inspection of criminal history records; to whom available

(a) Each person or agency holding criminal history record information shall establish reasonable hours and places of inspection of such information.

(b) Criminal history record information other than nonconviction information, shall be available to the public unless otherwise prescribed by law.

(c) Any person shall, upon satisfactory proof of his identity, be entitled to inspect, for purposes of verification and correction any nonconviction information relating to him and upon his request shall be given a computer print-out or photocopy of such information for which a reasonable fee may be charged provided that no erased record may be released except as provided in subsection (f) of section 54–142a. Before releasing any exact reproductions of nonconviction information to the subject, the agency holding such information may remove all personal identifying information from it.

(d) Any person may authorize in writing an agency holding nonconviction information pertaining directly to such person to disclose such information to his attorney-at-law. The holding agency shall permit such attorney to inspect and obtain a copy of such information if both his identity and that of his client are satisfactorily established; provided no erased record may be released unless such attorney attests to his client's intention to challenge the accuracy of such record.

(e) Any person who obtains criminal history record information by falsely representing to be the subject of the record shall be guilty of a class D felony.

(f) Notwithstanding any other provisions of law to the contrary, upon request to a criminal justice agency by the department of children and youth services or by any other youth service agency approved by the department such criminal justice agency shall provide information to the department or youth service agency concerning the criminal conviction record of an applicant for a paid or voluntary position, including one established by contract, whose primary duty is the care or treatment of children, including applicants for adoption or foster parents. All information, including any criminal conviction record, procured by the department of children and youth services or any other youth service agency shall be confidential and shall not be further disclosed by such agencies or their representatives. Any violation of the provisions of this subsection relative to the confidentiality of information received by the department of children and youth services or other youth service agencies shall be punishable by a fine of not more than one thousand dollars.

(1978, P.A. 78–200, § 10; 1979, P.A. 79–631, § 12; 1980, P.A. 80–218.)

§ 54–142*l*. Challenge to completeness or accuracy of record

(a) A person may challenge the completeness and accuracy of such information by giving written notice of his challenge to the state bureau of identification and to the agency at which he inspected the information, if other than the state police bureau of identification. The notice shall contain a sworn statement that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(b) Upon receipt of the notice, the state police bureau of identification shall conduct an audit of the part of such person's criminal history record information which is necessary to determine the accuracy of the challenge, and may require any criminal justice agency which was the source of the challenged information to verify such information. Within sixty days after the notice is received, the state bureau of identification shall notify the person in writing of the results of the audit, and of his right to appeal if the challenge is rejected.

(1978, P.A. 78–200, § 7.)

§ 54–142m. Disclosure of nonconviction information by criminal justice agency

(a) A criminal justice agency holding nonconviction information may disclose it to persons or agencies not otherwise authorized (1) for the purposes of research, evaluation or statistical analysis or (2) if there is a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to such agreement;

(b) No nonconviction information may be disclosed to such persons or agencies except pursuant to a written agreement between the agency holding it and the persons to whom it is to be disclosed;

(c) The agreement shall specify the information to be disclosed, the persons to whom it is to be disclosed, the purposes for which it is to be used, the precautions to be taken to insure the security and confidentiality of the information and the sanctions for improper disclosure or use;

(d) Persons to whom information is disclosed under the provisions of this section shall not without the subject's prior written consent disclose or publish such information in such manner that it will reveal the identity of such subject.

(1978, P.A. 78–200, § 11; 1980, P.A. 80–483, § 139, *eff.* June 6, 1980.)

§ 54–142n. Further provisions for disclosure of nonconviction information

Nonconviction information other than erased information may be disclosed only to: (a) Criminal justice agencies in this and other states and the federal government; (b) agencies and persons which require such information to implement a statute or executive order that

expressly refers to criminal conduct; (c) agencies or persons authorized by a court order, statute or decisional law to receive criminal history record information. Whenever a person or agency receiving a request for nonconviction information is in doubt about the authority of the requesting agency to receive such information, the request shall be referred to the state police bureau of investigation.

(1978, P.A. 78–200, § 13.)

§ 54–142o. Dissemination of nonconviction information to noncriminal justice agencies

(a) Nonconviction information disseminated to noncriminal justice agencies shall be used by such agencies only for the purpose for which it was given and shall not be redisseminated.

(b) No agency or individual shall confirm the existence or nonexistence of nonconviction information to any person or agency that would not be eligible to receive the information itself.

(1978, P.A. 78–200, § 12.)

§ 54–142p. Letter of criminal record or no criminal record to enter United States or foreign nation

(a) Any criminal justice agency may furnish criminal history record information or a no criminal record letter to an individual in conjunction with an application to enter the United States or any foreign nation when the subject of the record (1) certified that the information is needed to complete an application to enter the United States or a foreign nation, and (2) provides proof that he is the subject of the record.

(b) The disseminating agency shall certify that the information released is accurate as of ninety days prior to release and is being disclosed only for the purpose of assisting the subject of the record in gaining entry into the United States or a foreign nation.

(1978, P.A. 78–200, § 14.)

State Police
Bureau of Identification

§ 29–11. State police bureau of identification

The bureau in the division of state police within the department of public safety known as the state police bureau of identification shall be maintained for the purposes (1) of providing an authentic record of each person sixteen years of age or over who is charged with the commission of any crime involving moral turpitude, (2) of providing definite information relative to the identity of each person so arrested, (3) of providing a record of the final judgment of the court resulting from such arrest, unless such record has been erased pursuant to section 54–142a, and (4) for maintaining a central repository of complete criminal history record disposition information. The commissioner of public safety is directed to maintain the state police bureau of identification, which bureau shall receive, classify and file in an orderly manner all fingerprints, pictures and descriptions, including previous criminal records as far as known of all persons so arrested, and shall classify and file in a like manner all identification material and records received from the government of the United States, and from the various state governments and subdivisions thereof, and shall cooperate with such governmental units in the exchange of information relative to criminals. The record of all arrests reported to the bureau after March 16, 1976, shall contain information of any disposition within ninety days after the disposition has occurred.

§ 29–12. Fingerprinting and physical description of arrested persons

All persons arrested for crime as described in section 29–11 shall submit to the taking of their fingerprints and physical description and all sheriffs, constables and chiefs of police of organized police departments and the commanding officers of state police stations shall immediately furnish to the state police bureau of identification two copies of a standard identification card on which shall be imprinted fingerprints of each person so arrested, together with the physical description of, and such information as said bureau may require with respect to, such arrested person. All wardens, the community correctional center administrator and superintendents of correctional institutions shall furnish to the state police bureau of identification such information with respect to prisoners as said bureau requires. The commissioner of public safety may adopt regulations for the submission to and the taking of fingerprints as required under this section which will promote efficiency and be consistent with advances in automation and technology.

(1976, P.A. 76–333, § 2; 1977, P.A. 77–614, § 486, eff. Jan. 1, 1979; 1977, P.A. 77–614, § 587, eff. June 2, 1977; 1978, P.A. 78–200, § 4; 1978, P.A. 78–303, § 85, eff. June 6, 1978.)

§ 29–13. Notice of judgments

When the criminal charge against a person who has been arrested and fingerprinted in accordance with the provisions of this chapter [1] is disposed of in any court, the clerk of such court shall, within three days, notify the state police bureau of identification of the judgment of the court on printed forms provided by said bureau.

§ 29–14. Duties of bureau

Said bureau shall, on the receipt of any such identification card, immediately cause the files to be examined and shall promptly return to the police department or peace officer submitting such identification card a true transcript of the record of previous crimes committed by the person described on each such identification card, and said bureau shall assist police and prosecuting officials in the preparation and distribution of circulars relative to fugitives when so requested. When an arrest is made by an officer of a police department or other peace officer who is not equipped with necessary paraphernalia or skilled in the art of taking fingerprints and proper descriptions of criminals, he may call on the state police bureau of identification or on the nearest state police station for assistance and any officer or officers so called shall render such assistance immediately.

(1976, P.A. 76–333, § 4.)

§ 29–15. Return of fingerprints, pictures and descriptions

(a) On or after October 1, 1974, when any person, having no record of prior criminal conviction, whose fingerprints and pictures are so filed has been found not guilty of the offense charged, or has had such charge dismissed or nolled, his fingerprints, pictures and description and other identification data and all copies and duplicates thereof, shall, be returned to him not later than sixty days after the finding of not guilty or after such dismissal or in the case of a nolle within sixty days after thirteen months of such nolle.

(b) Any person having no record of prior criminal conviction whose fingerprints and pictures are so filed, who has been found not guilty of the offense charged or has had such charge dismissed or nolled prior to October 1, 1974, may, upon application to the person charged with the retention and control of such identification data at the state police bureau of identification, have his fingerprints, pictures and description and other identification data and all copies and duplicates thereof, returned to him not later than sixty days after the filing of such application provided in the case of a nolle, such nolle shall have occurred thirteen months prior to filing of such application.

(1975, P.A. 75–567, § 72, *eff.* June 30, 1975; 1978, P.A. 78–200, § 5.)

§ 29–16. Use of information

Information contained in the files of the state police bureau of identification relative to the commission of crime by any person shall be considered privileged and shall not be disclosed for any personal purpose or in any civil court proceedings except upon a written order of the judge of an established court wherein such civil proceedings are had. All information contained in the files of the state police bureau of identification relative to criminal records and personal history of persons convicted of crime shall be available at all times to all peace officers engaged in the detection of crime, to all prosecuting officials and probation officers for the purpose of furthering the ends of public justice and to the state bar examining committee for the purpose of ensuring that those individuals admitted to the practice of law are of the highest quality.

(1976, P.A. 76–333, § 5; 1985, P.A. 85–121.)

§ 29-17. Penalty

Any person who neglects or refuses to comply with the requirements of sections 29–11 to 29–16, inclusive, shall be fined not more than one hundred dollars.

CHAPTER 3

PUBLIC RECORDS AND MEETINGS

Sec. 1-7. Recording by photographic process. When any officer, office, court, commission, board, institution, department, agent or employee of the state, or of any political subdivision thereof, is required or authorized by law or has the duty to record or copy any document, plat, paper or instrument of writing, such recording or copying may be done by any photographic process, approved by the public records administrator, which clearly and accurately copies, photographs or reproduces the original document, plat, paper or instrument of writing. Properly certified photographic copies of any record made under the provisions of this section shall be admissible in evidence in the same manner and entitled to the same weight as copies made and certified from the original.

(1949 Rev., S. 8883.)
See Sec. 3-98.

Sec. 1-8. "Recorded" defined. When books, records, papers or documents are required to be recorded by law, the word "recorded" shall be construed to include, and such recording may be made by, photographic reproduction, including proper fixation, of such books, records, papers or documents, on such sensitized paper or cellulose acetate photographic film, and with the reproduced image in such ratio in size to the original object photographed, as may be approved by the public records administrator.

(1949 Rev., S. 8884.)

Sec. 1-9. Standard paper for permanent records. No person having custody of any permanent record or register in any department or office of the state, or of any political subdivision thereof, or of any probate district, shall use or permit to be used for recording purposes any paper other than a one hundred per cent rag content paper with dated watermark approved by the public records administrator. Said administrator shall furnish to each person having custody of any such permanent record a list of such papers. Any person who violates any provision of this section shall be fined not more than one hundred dollars.

(1949 Rev., S. 1638; 1959, P.A. 152, S. 83; 1967, P.A. 468.)
See Sec. 11-8.

Sec. 1-10. Standard ink for public records. No person having the care or custody of any book of record or registry in any department or office of this state, or of any town, city, borough or probate district, shall use or permit to be used upon such book any ink, including ink used on typewriters and typewriter ribbons, other than such as is approved by the public records administrator. Before the administrator approves of any ink, he shall cause a number of distinct and separate brands to be examined as to quality by a state chemist, and give his approval of not less than four different brands or manufacturers, and the inks so approved shall be standard inks for use in this state. Such approval may be revoked at any time by the administrator when he finds the ink furnished to be inferior to that approved. The administrator shall furnish to each department and office of the state, and to each custodian of public records and each recording office, a list of the brands or manufacturers of ink which have received his approval. Any custodian of records who uses, or causes or permits to be used, thereon any ink not so approved shall be fined not more than one hundred dollars.

Sec. 1-11. Loose-leaf binders for public records. The public records administrator shall furnish to each person having custody of any book of record or register in any department or office of the state or of any town, city, borough or probate district a list of approved loose-leaf binders for use for recording purposes and may revoke such approval at any time when he finds any such binder inferior to those approved. Any person having custody of any such book who uses or permits to be used for recording purposes any loose-leaf binder which has not been so approved shall be fined not more than one hundred dollars.

(1949 Rev., S. 1640; 1959, P.A. 152, S. 85.)

Sec. 1-12. Typewriting and printing. Legal force. All typewriting or printing executed or done on publicrecords, and in any instrument, and for any other purpose, shall have the same legal force, meaning and effect as writing, and "writing" shall be held to include typewriting or printing; provided this section shall not be so construed as in any manner to affect or change the law regarding signatures.

(1949 Rev., S. 1641.)
See Sec. 3-98.

Sec. 1-13. Making of reproductions. Any original books, records, papers or documents may be delivered by any recording agency to any department of the state, or to any political subdivision of the state, for the purpose of having such reproductions made, and, upon such reproduction, such original books, records, papers or documents shall be returned promptly to such delivering agency. Whenever provision is made by statute for the return of any original books, records, papers or documents to any person, such return shall be delayed until after the delivery back to such recording agency of the reproduced image or images properly fixed. Any reproduced image or images may be released for fixation to any processor approved by the public records administrator.

(1949 Rev., S. 8885.)

Sec. 1-14. "Certified copy" defined. Evidence. When the term "certified copy" is used in any statute relating to any recording agency, such term shall be construed to include a certified photographic reproduction of the reproduced

image or images of such books, records, papers or documents, in such ratio in size to the original object photographed as may be approved by the public records administrator. Any such photographic record or any such certified copy may be admitted in evidence with the same effect as the original thereof, and shall be prima facie evidence of the facts set forth therein.

(1949 Rev., S. 8886; February, 1965, P.A. 29.)

Sec. 1-15. Application for copies of public records. Certified copies. Fees. Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record. The fee for any copy, or printout, or transcription provided in accordance with this section and sections 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall not exceed the cost thereof to the public agency. The public agency shall waive any fee provided for in this section when (1) the person requesting the records is an indigent individual, (2) the records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-19, or (3) in its judgment, compliance with the applicant's request benefits the general welfare. Except as otherwise provided by law, the fee for any person who has the custody of any public records or files for certifying any copy of such records or files, or certifying to any fact appearing therefrom, shall be for the first page of such certificate, or copy and certificate, one dollar; and for each additional page, fifty cents. For the purpose of computing such fee, such copy and certificate shall be deemed to be one continuous instrument.

(1949 Rev., S. 3625; 1959, P.A. 352, S. 1; P.A. 75-342, S. 5.)
See Sec. 7-34a (a).

Sec. 1-16. Photographic reproduction of documents. Any officer of the state or any political subdivision thereof, any judge of probate and any person, corporation or association required to keep records, papers or documents may cause any or all such records, papers or documents to be photographed, microphotographed or reproduced on film. Such photographic film shall conform to standards specified in section 1-8, and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

(1949 Rev., S. 8887; 1963, P.A. 152, S. 1.)
See Sec. 4-34.
Cited. 169 C. 186.

Sec. 1-17. Reproductions to serve purposes of originals. Such photographs, microphotographs or photographic film shall for all purposes be considered the same as the original records, papers or documents. A transcript, exemplification or certified copy thereof shall for all purposes be deemed to be a transcript, exemplification or certified copy of the original.

(1949 Rev., S. 8888.)
Cited. 169 C. 186.

Sec. 1-18. Disposition of original documents. The original records, papers or documents so reproduced may be disposed of in such manner as may meet the approval of the head of the political subdivision in charge thereof, or the probate court administrator in the case of probate records, with the approval of the public records administrator. All other original records, papers or documents so reproduced may be disposed of at the option of the keeper thereof.

Sec. 1-18a. Definitions. As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(a) "Public agency" or "agency" means any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, and also includes any judicial office, official or body of the court of common pleas, probate court and juvenile court but only in respect to its or their administrative functions.

(b) "Meeting" means any hearing or other proceeding of a public agency and any convening or assembly of a quorum of a multi-member public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power, but shall not include any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business. "Meeting" shall not include strategy or negotiations with respect to collective bargaining nor a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency. "Caucus" means a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision.

(c) "Person" means natural person, partnership, corporation, association or society.

(d) "Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

(e) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (1) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (2) strategy and negotiations with respect to pending claims and litigation; (3) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (4) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (5) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-19.

(P.A. 75-342, S. 1.)

Sec. 1-19. Access to public records. Exempt records. (a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect or copy such records at such reasonable time as may be determined by the custodian thereof. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of any political subdivision or the secretary of the state, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy or such other person designated or empowered by law to so act, of such agency shall be competent evidence in any court of this state of the facts contained therein. Each such agency shall make, keep and maintain a record of the proceedings of its meetings.

(b) Nothing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be construed to require disclosure of (1) preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure; personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy; (2) records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known, (B) information to be used in a prospective law enforcement action if prejudicial to such action, (C) investigatory techniques not otherwise known to the general public, or (D) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes; (3) records pertaining to pending claims and litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled; (4) trade secrets, which for purposes of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are recognized by law as confidential, and commercial or financial information given in confidence, not required by law and obtained from the public; (5) test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations; (6) the contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision; (7) statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate or permit applied for; (8) records, reports and statements of strategy or negotiations with respect to collective bargaining; (9) records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship.

(c) The records referred to in subsection (b) shall not be deemed public records for the purposes of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, provided disclosure pursuant to the provisions of said sections shall be required of all records of investigation conducted with respect to any tenement house, lodging house or boarding house as defined in chapter 352, or any nursing home, home for the aged or rest home, as defined in sections 19-576 to 19-601, inclusive, by any municipal building department or housing code inspection department, any local or district health department, or any other department charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, ventilation or occupancy of such buildings.

Sec. 1-19a. Access to computer-stored records. Any public agency which maintains its records in a computer storage system shall provide a printout of any data properly identified.

(P.A. 75-342, S. 4.)

Sec. 1-19b. Agency administration. Disclosure of personnel, birth and tax records. Judicial records and proceedings. Nothing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be: (1) Construed as preventing any public agency from opening its records concerning the administration of such agency to public inspection, or (2) construed as authorizing the withholding of information in personnel files, birth records or of confidential tax data from the individual who is the subject of such records, or (3) be deemed in any manner to affect the status of judicial records as they existed prior to October 1, 1975, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state.

(P.A. 75-342, S. 3.)

Sec. 1-20. Refusal of access. Appeal. Section 1-20 is repealed.

(1957, P.A. 428, S. 2, 3; 1961, P.A. 521; 1969, P.A. 311; P.A. 74-183, S. 160, 291; P.A. 75-342, S. 17.)

Sec. 1-20a. Public employment contracts as public record. Any contract of employment to which the state or a political subdivision of the state is a party shall be deemed to be a public record for the purposes of sections 1-19 and 1-20.

(P.A. 73-271.)

Sec. 1-21. Meetings of government agencies to be public. Recording of votes. Schedule of meetings to be filed. Notice of special meetings. Executive sessions exempt. The meetings of all public agencies, except executive sessions as defined in subsection (e) of section 1-18a shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours, excluding any Saturday, Sunday or legal holiday, and shall also be recorded in the minutes of the session at which taken, which minutes shall be available for public inspection at all reasonable times. Each such public agency of the state shall file not later than January thirty-first of each year in the office of the secretary of the state the schedule of the regular meetings of such public agency for the ensuing year, except that such provision shall not apply to the general assembly, either house thereof or to any committee thereof. Any other provision of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive,

meetings of such public agency for the ensuing year, and no such meeting of any such public agency shall be held sooner than thirty days after such schedule has been filed. Notice of each special meeting of every public agency, except for the general assembly, either house thereof or any committee thereof, shall be given not less than twenty-four hours prior to the time of such meeting by posting a notice of the time and place thereof in the office of the secretary of the state for any such public agency of the state, and in the office of the clerk of such subdivision for any public agency of a political subdivision of the state; provided, however, in case of emergency, except for the general assembly, either house thereof or any committee thereof, any such special meeting may be held without complying with the foregoing requirement for the posting of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the secretary of the state or the clerk of such political subdivision, as the case may be, not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the public agency a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Nothing in this section shall be construed to prohibit any agency from adopting more stringent notice requirements. No member of the public shall be required, as a condition to attendance at a meeting of any such body to register his name, or furnish other information, or complete a questionnaire or otherwise fulfill any condition precedent to his attendance, except as provided in section 2-45. A public agency may hold an executive session as defined in subsection (e) of section 1-18a upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in said section.

Sec. 1-21a. *Broadcasting or photographing meetings. (a) At any meeting of a public agency which is open to the public, pursuant to the provisions of section 1-21, proceedings of such public agency may be photographed, broadcast or recorded for broadcast, subject to such rules as such public agency may have prescribed prior to such meeting, by any newspaper, radio broadcasting company or television broadcasting company. Any radio, television or photographic equipment may be so located within the meeting room as to permit the broadcasting either by radio, or by television, or by both, or the photographing of the proceedings of such public agency. The photographer or broadcaster and its personnel shall be required to handle the photographing or broadcast as inconspicuously as possible and in such manner as not to disturb the proceedings of the public agency. As used herein the term television shall include the transmission of visual and audible signals by cable.

(b) Any such public agency may adopt rules governing such photography or the use of such broadcasting equipment for radio and television stations but, in the absence of the adoption of such rules and regulations by such public agency prior to the meeting, such photography or the use of such radio and television equipment shall be permitted as provided in subsection (a).

(c) Whenever there is a violation or the probability of a violation of subsections (a) and (b) of this section the court of common pleas, or a judge thereof, for the county or judicial district in which such meeting is taking place shall, upon application made by affidavit that such violation is taking place or that there is reasonable probability that such violation will take place, issue a temporary injunction against any such violation without notice to the adverse party to show cause why such injunction should not be granted and without the plaintiff's giving bond. Any person or public agency so enjoined may immediately appear and be heard by the court or judge granting such injunction with regard to dissolving or modifying the same and after hearing the parties and upon a determination that such meeting should not be open to the public said court or judge may dissolve or modify the injunction. Any action taken by a judge upon any such application shall be immediately certified to the court to which such proceedings are returnable.

(1967, P.A. 851, S. 1, 2; 1969, P.A. 706; P.A. 74-183, S. 161, 291; P.A. 75-342, S. 12; P.A. 76-435, S. 24, 82.)

*See P.A. 76-436, S. 562 for amendment, effective July 1, 1978, relative to superior court jurisdiction.

Sec. 1-21b. Smoking in public meetings in rooms in public buildings prohibited. Penalty. (a) No person shall smoke in any room in a public building while a meeting open to the general public is in progress in such room. Any person found guilty of violating this section shall be fined not more than five dollars.

(b) Notwithstanding the provisions of subsection (a), no person shall be arrested for violating this section unless there is posted in such room a sign which indicates that smoking is prohibited. Such sign shall have letters at least four inches high with the principal strokes of letters not less than one-half inch wide and shall be visibly posted by the person having control over the premises.

(P.A. 74-126, S. 1—3.)

Sec. 1-21c. Mailing of notice of meetings to persons filing written request. Fees. The public agency shall, where practicable, give notice by mail of each regular meeting, and of any special meeting which is called, at least one week prior to the date set for the meeting, to any person who has filed a written request for such notice with such body, except that such body may give such notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting. Such notice requirement shall not apply to the general assembly, either house thereof or to any committee thereof. Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within thirty days after January first of each year. Such public agency may establish a reasonable charge for sending such notice based on the estimated cost of providing such service.

any regular or special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular meeting the clerk or the secretary of such body may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided in section 1-21, for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular or special meeting was held, within twenty-four hours after the time of the adjournment. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings, by ordinance, resolution, by law or other rule.

(P.A. 75-342, S. 8.)

Sec. 1-21e. Continued hearings. Notice. Any hearing being held, or noticed or ordered to be held, by the public agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of such agency in the same manner and to the same extent set forth in section 1-21d, for the adjournment of meeting, provided, that if the hearing is continued to a time less than twenty-four hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted on or near the door of the place where the hearing was held immediately following the meeting at which the order or declaration of continuance was adopted or made.

(P.A. 75-342, S. 9.)

Sec. 1-21f. Regular meetings to be held pursuant to regulation, ordinance or resolution. The public agency shall provide by regulation, in the case of a state agency, or by ordinance or resolution in the case of an agency of a political subdivision, the place for holding its regular meetings. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If it shall be unsafe to meet in the place designated, the meetings may be held at such place as is designated by the presiding officer of the public agency; provided a copy of the minutes of any such meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the secretary of the state or the clerk of the political subdivision, as the case may be, not later than seventy-two hours following the holding of such meeting.

(P.A. 75-342, S. 10.)

Sec. 1-21g. Executive sessions. At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance.

(P.A. 75-342, S. 11.)

Sec. 1-21h. Conduct of meetings. In the event that any meeting of a public agency is interrupted by any person or group of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by

the removal of individuals who are wilfully interrupting the meetings, the members of the agency conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit such public agency from establishing a procedure for readmitting an individual or individuals not responsible for wilfully disturbing the meeting.

(P.A. 75-342, S. 13.)

Sec. 1-21i. Denial of access of public records or meetings. Notice. Appeals. (a) Any denial of the right to inspect or copy records provided for under section 1-19, shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request. Failure to comply with a request to so inspect or copy such public record within such four business day period shall be deemed to be a denial.

(b) Any person denied the right to inspect or copy records under section 1-19 or wrongfully denied the right to attend any meeting of a public agency may appeal therefrom, within fifteen days, to the freedom of information commission, by filing a notice of appeal with said commission and a copy thereof with the agency. Said commission shall, within twenty days after receipt of the notice of appeal, hear such appeal after due notice to the parties and shall decide the appeal within fifteen days after such hearing, by confirming the action of the agency or ordering the agency to comply forthwith. It may, in its sound discretion, declare any or all actions taken at any meeting to which such person was denied the right to attend null and void.

(c) Any person who does not receive proper notice of any meeting of a public agency in accordance with the provisions of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, may appeal under the provisions of subsection (a) of this section. A public agency of the state shall be presumed to have given timely and proper notice of any meeting as provided for in said sections if notice is given in the Connecticut Law Journal or a Legislative Bulletin. A public agency of a political subdivision shall be presumed to have given proper notice of any meeting, if a notice is timely sent under the provisions of said sections by first-class mail to the address indicated in the request of the person requesting the same. If such commission, determines that notice was improper, it may, in its sound discretion, declare any or all actions taken at such meeting null and void.

(d) Any person aggrieved by the decision of said commission may appeal therefrom, within fifteen days, to the court of common pleas for the county or judicial district wherein such body, agency, commission, or official is located, which appeal shall be returnable to said court in the same manner as that prescribed for civil actions. Notice of such appeal shall be given by leaving a true and attested copy thereof with, or at the usual place of abode of, the chairman or secretary of said commission. The appeal shall state the reasons upon which it has been predicated and shall not stay proceedings upon the decision of said commission appealed from, but the court to which such appeal is returnable may, on application, on notice to the commission and on cause shown, grant

a restraining order. Said commission shall be required to submit either the original documents acted upon by it and constituting the record of the case appealed from, or certified copies thereof. The court, upon such appeal, shall review the proceedings of said commission and shall allow any party to introduce evidence in addition to the contents of the record of the case returned by said commission if the record does not contain a complete transcript of the entire proceedings before said commission or if, upon the hearing upon such appeal, it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court, upon such appeal and after a hearing thereon, may reverse or affirm, in whole or in part, or may modify or revise the decision appealed from. Such appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. Nothing in this section shall deprive any person of any rights he may have had at common law prior to January 1, 1958. The court, or the freedom of information commission, if it finds that the denial of any right created by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, was wilful and that there was no reasonable ground for such denial, shall fine the custodian or other official directly responsible for such denial not less than twenty nor more than five hundred dollars.

(P.A. 75-342, S. 14; P.A. 76-435, S. 25, 82.)

Sec. 1-21j. Freedom of information commission. Appointment. Duties. Powers. (a) There shall be a freedom of information commission consisting of three members appointed by the governor, with the advice and consent of either house of the general assembly, who shall serve for terms of six years from the July first of the year of their appointment, except that of the members first appointed, one shall serve for a period of four years from July 1, 1975, and one shall serve for a period of two years from July 1, 1975. No more than two members shall be members of the same political party. Said commission shall be an autonomous body within the office of the secretary of the state for fiscal and budgetary purposes only.

(b) Each member shall receive twenty-five dollars per day for each day such member is present at a commission hearing and an allowance for transportation, a sum not to exceed twelve cents per mile, for each day such member attends a commission hearing.

(c) The governor shall select one of its members as a chairman. The commission shall maintain a permanent office at Hartford in such suitable space as the public works commissioner provides; the secretary of the state shall provide such secretarial assistance as is needed. All papers required to be filed with the commission shall be delivered to such office.

(d) The commission shall, subject to the provisions of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, promptly review the alleged violation of said sections and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said sections and may for the purpose of investigating any violation hold a hearing, administer oaths, examine witnesses, receive oral and documentary evidence, have the power to subpoena witnesses under procedural rules adopted by the commission to compel attendance and to require the production for examination of any

books and papers which the commission deems relevant in any matter under investigation or in question. In case of a refusal to comply with any such subpoena or to testify with respect to any matter upon which that person may be lawfully interrogated, the court of common pleas for the county of Hartford, on application of the commission, may issue an order requiring such person to comply with such subpoena and to testify; failure to obey any such order of the court may be punished by the court as a contempt thereof.

(P.A. 75-342, S. 15, 19.)

Sec. 1-21k. Penalties. (a) Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to chapter 47, or who alters any public record, shall be guilty of a class A misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

(b) Any member of any public agency who fails to comply with an order of the freedom of information commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

PERSONAL DATA [NEW]

Sec.
4-190. Definitions.
4-191. Repealed.
4-192. Repealed.
4-193. Agency's duties re personal data.
4-194. Refusal to disclose. Medical doctor to review data. Judicial relief.
4-195. Petition to the court for failure to disclose.
4-196. Agencies to adopt regulations.
4-197. Action against agency for violation of chapter.

§ 4-190. Definitions

As used in this chapter:

(a) "Agency" means each state board, commission, department or officer, other than the legislature, courts, governor, lieutenant governor, attorney general or town or regional boards of education, which maintains a personal data system.

(b) "Attorney" means an attorney at law empowered by a person to assert the confidentiality of or right of access to personal data under this chapter.

(c) "Authorized representative" means a parent, or a guardian or conservator, other than an attorney, appointed to act on behalf of a person and empowered by such person to assert the confidentiality of or right of access to personal data under this chapter.

(d) "Automated personal data system" means a personal data system in which data is stored, in whole or part, in a computer or in computer accessible files.

(e) "Computer accessible files" means any personal data which is stored on-line or off-line, which can be identified by use of electronic means, including but not limited to microfilm and microfilm devices, which includes but is not limited to magnetic tape, magnetic film, magnetic disks, magnetic drums, internal memory utilized by any processing device, including computers or telecommunications control units, punched cards, optically scannable paper or film.

(f) "Maintain" means collect, maintain, use or disseminate.

(g) "Manual personal data system" means a personal data system other than an automated personal data system.

(h) "Person" means an individual of any age concerning whom personal data is maintained in a personal data system, or a person's attorney or authorized representative.

(i) "Personal data" means any information about a person's education, finances, medical or emotional condition or history, employment or business history, family or personal relationships, reputation or character which because of name, identifying number, mark or description can be readily associated with a particular person. "Personal data" shall not be construed to make available to a person any record described in subdivision (3) of subsection (b) of section 1-19.

(j) "Personal data system" means a collection of records containing personal data.

(k) "Record" means any collection of personal data, defined in subsection (i), which is collected, maintained or disseminated.

(1976, P.A. 76-421, § 1, eff. July 1, 1977; 1977, P.A. 77-431, §§ 1, 2, eff. Jan. 1, 1978; 1978, P.A. 78-200, § 2; 1979, P.A. 79-631, § 5.)

§§ 4-191, 4-192. Repealed. (1979, P.A. 79-538, § 2.)

The repealed § 4-191, which prohibited disclosure or transmission of personal data was derived from 1976, P.A. 76-421, § 2; 1977, P.A. 77-431, § 5.

The repealed § 4-192, which prescribed when personal data *may* be disclosed without permission, was derived from:
1976, P.A. 76-421, § 3.
1977, P.A. 77-431, § 6.
1978, P.A. 78-362, § 2.

§ 4-193. Agency's duties re personal data

Each agency shall:

(a) Inform each of its employees who operates or maintains a personal data system or who has access to personal data, of the provisions of (1) this chapter, (2) the agency's regulations adopted pursuant to section 4-196, (3) chapter 3 and (4) any other state or federal statute or regulation concerning maintenance or disclosure of personal data kept by the agency;

(b) Take reasonable precautions to protect personal data from the dangers of fire, theft, flood, natural disaster or other physical threats;

(c) Keep a complete record, concerning each person, of every individual, agency or organization who has obtained access to or to whom disclosure has been made of personal data pursuant to subsections (b) and (c) of section 4-192, and the reason for each such disclosure or access; and maintain such

record for not less than five years from the date of obtaining such access or disclosure or maintain such record for the life of the record, whichever is longer.

(d) Make available to a person, upon written request, the record kept under subsection (c) of this section;

(e) Maintain only that information about a person which is relevant and necessary to accomplish the lawful purposes of the agency;

(f) Inform an individual in writing, upon written request, whether the agency maintains personal data concerning him;

(g) Except as otherwise provided in section 4-194, disclose to a person, upon written request, on a form understandable to such person, all personal data concerning him which is maintained by the agency. If disclosure of personal data is made under this subsection, the agency shall not disclose any personal data concerning persons other than the requesting person;

(h) Establish procedures which:

(1) Allow a person to contest the accuracy, completeness or relevancy of his personal data;

(2) Allow personal data to be corrected upon request of a person when the agency concurs in the proposed correction;

(3) Allow a person who believes that the agency maintains inaccurate or incomplete personal data concerning him to add a statement to the record setting forth what he believes to be an accurate or complete version of that personal data. Such a statement shall become a permanent part of the agency's personal data system, and shall be disclosed to any individual, agency or organization to which the disputed personal data is disclosed.

(1976, P.A. 76-421, § 4, eff. July 1, 1977; 1977, P.A. 77-431, § 3, eff. Jan. 1, 1978; 1977, P.A. 77-604, §§ 3, 4, eff. July 6, 1977; 1979, P.A. 79-538, § 1.)

§ 4-194. Refusal to disclose. Medical doctor to review data. Judicial relief

(a) If an agency determines that disclosure to a person of medical, psychiatric or psychological data concerning him would be detrimental to that person, or that nondisclosure to a person of personal data concerning him is otherwise permitted or required by law, the agency may refuse to disclose that personal data, and shall refuse disclosure where required by law. In either case, the agency shall advise that person of his right to seek judicial relief.

(b) If an agency refuses to disclose personal data to a person and the nondisclosure is not mandated by law, the agency shall, at the written request of such person, permit a qualified medical doctor to review the personal data contained in the person's record to determine if the personal data should be disclosed. If disclosure is recommended by the person's medical doctor, the agency shall disclose the personal data to such person; if nondisclosure is recommended by such person's medical doctor, the agency shall not disclose the personal data and shall inform such person of the judicial relief provided under section 4-195.

§ 4–195. Petition to the court for failure to disclose

If disclosure of personal data is refused by an agency under section 4–194, any person aggrieved thereby may, within thirty days of such refusal, petition the superior court for the county or judicial district in which he resides for an order requiring the agency to disclose the personal data. Such a proceeding shall be privileged with respect to assignment for trial. The court, after hearing and an in camera review of the personal data in question, shall issue the order requested unless it determines that such disclosure would be detrimental to the person or is otherwise prohibited by law.
(1976, P.A. 76–421, § 6, eff. July 1, 1977; 1977, P.A. 77–431, § 5; 1977, P.A. 77–452, § 47, eff. July 1, 1978.)

§ 4–196. Agencies to adopt regulations

Each agency shall, within six months of July 1, 1977, adopt regulations pursuant to chapter 54 which describe:

(1) The general nature and purpose of the agency's personal data systems;

(2) The categories of personal and other data kept in the agency's personal data systems;

(3) The agency's procedures regarding the maintenance of personal data;

(4) The uses to be made of the personal data maintained by the agency.
(1976, P.A. 76–421, § 7, eff. July 1, 1977; 1977, P.A. 77–431, § 5, eff. June 14, 1977.)

§ 4–197. Action against agency for violation of chapter

Any agency which violates any provision of this chapter shall be subject to an action by any aggrieved person for injunction, declaratory judgment, mandamus or a civil action for damages. Such action may be brought in the superior court for the judicial district of Hartford-New Britain, or for the judicial district in which the person resides. Actions for injunction, declaratory judgment or mandamus under this section may be prosecuted by any aggrieved person or by the attorney general in the name of the state upon his own complaint or upon the complaint of any individual. Any aggrieved person who prevails in an action under this section shall be entitled to recover court costs and reasonable attorney's fees. An action under this section shall be privileged with respect to assignment for trial.
(1976, P.A. 76–421, § 8, eff. July 1, 1977; 1977, P.A. 77–431, § 5, eff. June 14, 1977; 1978, P.A. 78–280, § 6, eff. July 1, 1978.)

PART V

LAW-ENFORCEMENT ADMINISTRATION

83. State Police, §§ 8301 to 8393.
85. State Bureau of Identification, §§ 8501 to 8525.
86. Delaware Criminal Justice Information System, §§ 8601 to 8608.

CHAPTER 85. STATE BUREAU OF IDENTIFICATION

Sec.
8501. Purpose of chapter.
8502. Definitions.
8503. Function; administration; appointment of Director.
8504. Personnel.
8505. Duty to provide security of criminal history record information.
8506. Duty to maintain complete and accurate records; performance of annual audit.
8507. Information to be supplied by law-enforcement officers.
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8510. Information to be supplied by Department of Correction.
8511. Time period for submission of required information.
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8514. User agreements.
8515. Furnishing information of injured or deceased persons.
8516. Furnishing information without application.
8517. Local assistance.
8518. Scientific crime detection laboratory.
8519. Certified copies of records.
8520. Annual report.
8521. Access to files.
8522. Authority to take fingerprints, photographs and other data.
8523. Penalties.
8524. Admissible evidence.
8525. Information voluntarily supplied by individuals.

Revision of chapter. — 63 Del. Laws, c. 188, effective Oct. 21, 1981, amended and reenacted this chapter, substituting present §§ 8501 to 8525 for former §§ 8501 to 8522. No detailed explanation of the changes made by the 1981 Act has been attempted, but, where appropriate, the historical citations to the former sections have been added to the corresponding sections in the amended chapter.

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§ 8501. Purpose of chapter.

(a) The purpose of this chapter is to create and maintain an accurate and efficient criminal justice information system in Delaware consistent with this chapter and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(b) In order to achieve this result, the General Assembly finds that there is a need:

(1) To designate the State Bureau of Identification as the central state repository for criminal history record information;

(2) To require the rapid identification, classification and filing of fingerprints;

(3) To require the reporting of accurate, relevant and current information to the central repository by all criminal justice agencies;

(4) To insure that criminal history record information is kept accurate and current; and

(5) To prohibit the improper dissemination of such information.

(c) This chapter is intended to provide a basic statutory framework within which these objectives can be attained. (63 Del. Laws, c. 188, § 1.)

§ 8502. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Administration of criminal justice" shall mean performance of any of the following activities: Detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correction supervision, or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage and dissemination of criminal history record information.

(2) "Criminal history record information" shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. Nor shall the term include information contained in:

a. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

b. Original records of entry such as police blotters maintained by criminal justice agencies which are compiled chronologically and required by law with long-standing custom to be made public, if such records are organized on a chronological basis;

c. Court records of public judicial proceedings;

d. Published court or administrative opinions or public judicial, administrative or legislative proceedings;

e. Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation or renewal of driver's, pilot's or other operator's licenses;

f. Announcements of executive clemency.

(3) "Criminal justice agency" shall mean:

a. Every court of this State and of every political subdivision thereof;

b. A government agency or any sub-unit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

1. The Delaware State Police;

2. All law-enforcement agencies and police departments of any political subdivision of this state;

3. The State Department of Justice;

4. The Office of the Solicitor of the City of Wilmington; and

5. The Department of Correction.

(4) "Disposition" shall include, but not be limited to, trial verdicts of guilty or not guilty, nolle prosequis, Attorney General probations, pleas of guilty or nolo contendere, dismissals, incompetence to stand trial, findings of delinquency or nondelinquency and initiation and completion of appellate proceeding.

(5) "Dissemination" shall mean the transmission of criminal history record information, or the confirmation of the existence or nonexistence of such information. The term shall not include:

a. Internal use of information by an officer or employee of the agency which maintains such information;

b. Transmission of information to the State Bureau of Identification;

c. Transmission of information to another criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings;

d. Transmission of information in response to inquiries from criminal justice agencies via authorized system terminals, which agencies provide and/or maintain the information through those terminals.

(6) "Law-enforcement officer" shall include police officers, the Attorney General and his deputies, sheriffs and their regular deputies, prison guards and constables.

(7) "Release status" shall mean information concerning whether or not an individual is incarcerated and the reason therefor, which shall include but is not limited to information concerning releases on bail, or on own recognizance, commitments in default of bail, referrals to other agencies, decision of prosecutors not to commence or to postpone criminal proceedings, release from institutions and any conditions imposed concerning those released.

(8) "Conviction data" means any criminal history record information relating to an arrest which has led to a conviction or other disposition adverse to the subject. "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal or acquittal; provided, however, that a dismissal entered

after a period of probation, suspension or deferral of sentence shall be considered a disposition adverse to the subject.

(9) "Nonconviction data" means arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending, or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals. (63 Del. Laws, c. 188, § 1.)

§ 8503. Function; administration; appointment of Director.

(a) The State Bureau of Identification, hereinafter referred to as the "Bureau," is continued within the Division of State Police. The Bureau shall be the central state repository for criminal history record information (CHRI) and such additional information as specified in this chapter.

(b) Subject to this chapter, the Bureau shall be administered by the Superintendent of State Police. It shall be equipped and maintained by the State Police as a separate budget unit within the Department of Public Safety.

(c) The Superintendent of State Police shall appoint, subject to the approval of the Department of Public Safety, a Director of the Bureau. The Director shall be a regularly appointed member of State Police, who shall be trained and experienced in the classification and filing of fingerprints, and he and all other employees of the Bureau shall be subject to the same rules and regulations governing the State Police.

(d) A representative of the Bureau to be designated by the Superintendent shall be a member of any board or regulatory body established for the collection, retention and dissemination of criminal history information. (42 Del. Laws, c. 181, § 1; 11 Del. C. 1953, § 8501; 57 Del. Laws, c. 670, §§ 4A, 4B; 63 Del. Laws, c. 188, § 1.)

§ 8504. Personnel.

The Bureau personnel shall consist of regular appointed members of the State Police, and such other personnel as may be deemed necessary to carry out this chapter. The personnel so appointed shall each be experienced in the work to be performed by them. (42 Del. Laws, c. 181, § 2; 11 Del. C. 1953, § 8502; 63 Del. Laws, c. 188, § 1.)

§ 8505. Duty to provide security of criminal history record information.

The Director shall provide for the security of criminal history record information and other information pertaining to crimes and offenders by insuring that the Bureau and all other criminal justice agencies, and agencies providing computer support services to criminal justice agencies which collect, store or disseminate such information, comply with the following provisions:

(1) Where computerized data processing is employed, effective and technologically adequate software and hardware designs shall be instituted to prevent unauthorized access to and/or unauthorized additions, changes or deletions to such information;

(2) Access to computer system facilities, systems operating environments, data file contents, whether while in use or stored in a media library, and system documentation shall be restricted to specifically authorized organizations and personnel;

(3) Procedures shall be instituted to assure that the facilities of the Bureau provide safe and secure storage of all records;

(4) Procedures shall be instituted to assure that an individual agency authorized to access to either computerized records or data maintained in manual files by the Bureau is responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure or dissemination;

(5) Direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency, as necessary, to other authorized personnel essential to the proper operation of the criminal history record information system;

(6) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of this chapter. (63 Del. Laws, c. 188, § 1.)

§ 8506. Duty to maintain complete and accurate records; performance of annual audit.

(a) The Bureau shall maintain in a complete and accurate manner information received pursuant to this chapter to the maximum extent feasible.

(b) Any and all criminal history records and other information which is transmitted directly by computer terminal by a criminal justice agency shall be deemed to have been transmitted to the Bureau within the meaning of this chapter.

(c) The Bureau shall file all information received by it and shall make a systematic record and index thereof, to the end of providing a method of convenient reference and consultation. No information identifying a person received by the Bureau may be destroyed by it until 10 years after the person identified is known or reasonably believed to be dead, or until that person reaches age 80 or reaches age 75 with no criminal activity listed on his or her record in the past 40 years, whichever shall first occur, except as otherwise provided by statute.

(d) A criminal justice agency shall, upon finding inaccurate criminal history record information of a material nature, notify all criminal justice agencies, and all other persons and agencies, known to have received such information.

(e) When a criminal justice agency receives notification that an inaccuracy appears in criminal history record information having originated with that agency, such agency shall take appropriate steps to correct the inaccuracy.

(f) The Bureau shall assure that an annual audit is conducted of a representative sample of agencies accessing or maintaining data files as provided

in this chapter. This audit shall encompass both manual and computerized data systems, and shall be conducted at such time and according to procedures as the Bureau shall prescribe. A full report of the findings of each audit made pursuant to this subsection shall be communicated to the individual agency so audited. (42 Del. Laws, c. 181, § 9; 11 Del. C. 1953, § 8509; 63 Del. Laws, c. 188, § 1.)

§ 8507. Information to be supplied by law-enforcement officers.

(a) Every law-enforcement officer of the State and of any political subdivision thereof shall transmit to the Bureau:

(1) Within 48 hours after the arrest of any individual, the names, fingerprints if taken and such other data as the Director may from time to time prescribe of all individuals arrested for a criminal offense, including, but not limited to:

a. An indictable offense, or such nonindictable offense as is, or may hereafter be, included in the compilations of the United States Department of Justice;

b. Being a fugitive from justice;

(2) The fingerprints, photographs and other data prescribed by the Director concerning unidentified dead persons;

(3) The fingerprints, photographs and other data prescribed by the Director of all individuals making application for a permit to buy or possess illegal weapons or firearms or to carry concealed a deadly weapon;

(4) A record of the indictable offenses and such nonindictable offenses as are committed within the jurisdiction of the reporting officer, including a statement of the facts of the offense and a description of the offender, so far as known, the offender's method of operation, changes in release status and such other information as the Director may require;

(5) Copies of such reports as are required by law to be made, and as shall be prescribed by the Director, to be made by pawnshops, second-hand dealers and dealers in weapons.

(b) All photographs submitted of individuals described in this section shall be of a recent date, taken while such individuals are attired in civilian clothes. (42 Del. Laws, c. 181, §§ 3, 6; 11 Del. C. 1953, §§ 8503, 8506; 61 Del. Laws, c. 321, § 1; 63 Del. Laws, c. 188, § 1.)

§ 8508. Information to be supplied by court officials.

Every court of this State or of any political subdivision thereof other than Family Court having original or appellate jurisdiction over indictable offenses, or over such nonindictable offenses as are herein mentioned, shall transmit to the Bureau in such manner as the Director shall designate such information regarding every indictment, information or other formal criminal charge, and every change in release status, disposition and sentencing made thereof within 90 days of said action. The Family Court shall be required to transmit to the Bureau information regarding those proceedings charging a juvenile with

delinquency which were initiated by petition of the Attorney General. Such information shall likewise be transmitted in such a manner as the Director shall designate within 90 days of said action. (42 Del. Laws, c. 181, § 4; 11 Del. C. 1953, § 8504; 63 Del. Laws, c. 188, § 1.)

§ 8509. Information to be supplied by heads of institutions.

Every person in responsible charge of an institution to which there are committed individuals convicted of crime, or persons declared to be not guilty by reason of mental illness or declared incompetent to stand trial for criminal offenses, shall transmit to the Bureau the names, fingerprints, photographs and such other data prescribed by the Director, of all individuals so committed and shall report any subsequent change in release status. Every person in responsible charge of such institutions shall also forward to the Bureau the names and photographs of all individuals who are to be discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such individuals, and he or she shall be attired in civilian clothes. (42 Del. Laws, c. 181, § 5; 11 Del. C. 1953, § 8505; 63 Del. Laws, c. 188, § 1.)

§ 8510. Information to be supplied by Department of Correction.

The Department of Correction shall, within 48 hours, transmit to the Bureau:

(1) The names, fingerprints, photographs and other data prescribed by the Director, concerning all persons who are received or committed to such penal institution, or who are placed on parole or probation for any offense. Such photographs shall be of a recent date, and taken while such individuals are attired in civilian clothes;

(2) The names and photographs of all prisoners who are to be released or discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such persons, and he or she shall be attired in civilian clothes;

(3) Notice of all paroles granted, revoked or completed, changes in release status, conditional releases, commutations of sentence, pardons and deaths of all persons described in subdivisions (1) and (2) of this section. (63 Del. Laws, c. 188, § 1.)

§ 8511. Time period for submission of required information.

If no time period is prescribed in this chapter for the submission of information to the Bureau, the information required shall be submitted within such time period and in such manner as the Director shall designate. (42 Del. Laws, c. 181, § 7; 11 Del. C. 1953, § 8507; 63 Del. Laws, c. 188, § 1.)

§ 8512. Access to institutions and public records.

Any employee of the Bureau, upon written authorization by the Director, may enter any correctional center or mental institution to take or cause to be taken fingerprints or photographs or to conduct investigations relative to any person confined therein, for the purpose of obtaining information which may lead to the identification of criminals; and every person who has charge or custody of public records or documents from which it may reasonably be supposed that information described in this chapter can be obtained, shall grant access thereto to any employee of the Bureau upon written authorization by the Director or shall produce such records or documents for the inspection and examination of such employee. (42 Del. Laws, c. 181, § 8; 11 Del. C. 1953, § 8508; 63 Del. Laws, c. 188, § 1.)

§ 8513. Dissemination of criminal history record information.

(a) Upon application, the Bureau shall furnish a copy of all information available pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record to:

(1) Criminal justice agencies and/or courts of the State or of any political subdivision thereof or to any similar agency and/or court in any State or of the United States or of any foreign country for purposes of the administration of criminal justice and/or criminal justice employment;

(2) Any person or his attorney of record who requests a copy of his or her own Delaware criminal history record, provided that such person:

a. Submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify one's self as the person whose record this individual seeks; and

b. Pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police;

(3) The State Public Defender when he requests information about an individual for whom he is attorney of record.

(b) Upon application, the Bureau shall, based on the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record, provided that the requesting agency or individual submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of criminal history record information to:

(1) Individuals and public bodies for any purpose authorized by Delaware state statute or executive order, court rule or decision or order;

(2) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. Said agreement shall embody a user agreement as prescribed in § 8514 of this title;

(3) Individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to a specific agreement with a criminal justice agency. Said agency shall embody a user agreement as prescribed in § 8514 of this title;

(4) Individuals and agencies for purposes of international travel;

(5) Individuals and agencies required to provide a security clearance for matters of national security.

(c) Upon application the Bureau may, based upon the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and conviction data of any person or persons of whom the Bureau has record, provided that the requesting agency or individual submits to a reasonable procedure established by standard set forth by the Superintendent of State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of conviction data to:

(1) Individuals and agencies for the purpose of employment of the person whose record is sought, provided:

a. The requesting individual or agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police; and

b. The use of the conviction data shall be limited to the purpose for which it was given;

(2) Members of the news media, provided that the use of conviction data shall be limited to the purpose for which it was given, and the requesting media or news agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police.

(d) Dissemination of criminal history record information by any person or agency other than the Bureau or its designee is prohibited. This provision shall not prohibit dissemination by any criminal justice agency in those cases in which time is of the essence and the Bureau is technologically incapable of responding within the necessary time period. Under such circumstances the foregoing rules concerning dissemination are to be adhered to.

(e) Appropriate records of dissemination shall be retained by the Bureau and criminal justice agencies storing, collecting and disseminating criminal history record information to facilitate audits. Such records shall include, but not be limited to, the names of persons and agencies to whom information is disseminated and the date upon which such information is disseminated.

(f) Unless otherwise specified by the court order directing that a record be sealed, such sealing shall not preclude dissemination of the arrest or conviction information concerning the subject of the court order, nor shall it preclude dissemination of the fact a sealed record exists, providing any dissemination made is pursuant to this chapter and Chapter 43 of this title. (42 Del. Laws, c. 181, § 11; 11 Del. C. 1953, § 8511; 59 Del. Laws, c. 551; 63 Del. Laws, c. 188, § 1.)

§ 8514. User agreements.

(a) Use of criminal history record information disseminated to noncriminal justice agencies shall be restricted to the purpose for which it was given.

(b) No criminal justice agency shall disseminate criminal history record information to any person or agency pursuant to § 8513(a)(3) and (b)(1), (2) and (3) of this title unless said person or agency enters into a user agreement with the Bureau, which agreement shall:

(1) Specifically authorize access to the data or information;

(2) Limit the use of the data or information to purpose for which it was given;

(3) Insure the security and confidentiality of the data or information consistent with this chapter.

(c) An individual or agency which has entered into a user agreement as prescribed by subsection (b) of this section, and which knowingly or recklessly violates the terms of that agreement, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. Upon such violation, the user agreement shall be terminable at the option of the Bureau. (63 Del. Laws, c. 188, § 1.)

§ 8515. Furnishing information of injured or deceased persons.

If a law-enforcement officer or the Office of the Chief Medical Examiner transmits to the Bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of memory, the Bureau shall furnish to such officer or Office any information available pertaining to the identification of such person. (42 Del. Laws, c. 181, § 12; 11 Del. C. 1953, § 8512; 63 Del. Laws, c. 188, § 1.)

§ 8516. Furnishing information without application.

Although no application for information has been made to the Bureau as provided in § 8513 of this title, the Bureau may transmit such information as the Director, in his discretion, designates to such persons as are authorized by § 8513 of this title to make application for it and as are designated by the Director. (42 Del. Laws, c. 181, § 13; 11 Del. C. 1953, § 8513; 63 Del. Laws, c. 188, § 1.)

§ 8517. Local assistance.

(a) At the request of any officer or official described in §§ 8507, 8509 and 8510 of this Title, the Superintendent of State Police may direct the Director to assist such officer:

(1) In the establishment of local identification and record system;

(2) In investigating the circumstances of any crime and in the identification, apprehension and conviction of the perpetrator or perpetrators thereof, and for this purpose may detail such employee or employees of the Bureau, for such length of time as the Director deems fit; and

(3) Without such request the Director shall, at the direction of the Governor, detail such employee or employees, for such time as the Governor deems fit, to investigate any crime within this State, for the purpose of identifying, apprehending and convicting the perpetrator or perpetrators thereof.

(b) The Governor may, in his discretion, delegate to the Secretary of Public Safety the powers, duties or functions set forth in this section. (42 Del. Laws, c. 181, § 14; 11 Del. C. 1953, § 8514; 57 Del. Laws, c. 670, § 4C; 63 Del. Laws, c. 188, § 1.)

§ 8518. Scientific crime detection laboratory.

To the end that the Bureau may be able to furnish the assistance and aid specified in § 8517 of this title, the Superintendent of the State Police may direct the Director to organize in the Bureau and maintain therein scientific crime detection laboratory facilities. (42 Del. Laws, c. 181, § 15; 11 Del. C. 1953, § 8515; 63 Del. Laws, c. 188, § 1.)

§ 8519. Certified copies of records.

Any copy of a record, picture, photograph, fingerprint or other paper or document in the files of the Bureau certified by the Director or his designee to be a true copy of the original shall be admissible in evidence in any court of this State in the same manner as the original might be. (42 Del. Laws, c. 181, § 16; 11 Del. C. 1953, § 8516; 63 Del. Laws, c. 188, § 1.)

§ 8520. Annual report.

The Director shall submit to the Superintendent of State Police an annual report of the conduct of his office. This report shall present summary statistics of the information collected by the Bureau. (42 Del. Laws, c. 181, § 17; 11 Del. C. 1953, § 8517; 63 Del. Laws, c. 188, § 1.)

§ 8521. Access to files.

Only employees of the Bureau and persons specifically authorized by the Director shall have access to the files or records of the Bureau. No such file or record or information shall be disclosed by any person so authorized except to officials as in this chapter provided. (42 Del. Laws, c. 181, § 18; 11 Del. C. 1953, § 8518; 63 Del. Laws, c. 188, § 1.)

§ 8522. Authority to take fingerprints, photographs and other data.

(a) To the end that the officers and officials described in §§ 8507, 8509, 8510 and 8525 of this title may be enabled to transmit the reports required of them, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs and other data of persons described in such section. A like authority shall be had by employees of the Bureau who are authorized to enter any institution under § 8512 of this title, as to persons confined in such institutions.

(b) Every person arrested for a crime or crimes enumerated in § 8507 of this title shall submit to being fingerprinted, photographed and shall supply such information as required by the Superintendent. Whoever shall fail to comply with this section shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. (42 Del. Laws, c. 181, § 19; 11 Del. C. 1953, § 8519; 63 Del. Laws, c. 188, § 1.)

§ 8523. Penalties.

(a) Whoever intentionally neglects or refuses to make any report lawfully required of him under this chapter, or to do or perform any other act so required to be done or performed by him, or hinders or prevents another from doing an act so required to be done by such person, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(b) Any person who knowingly and wrongfully destroys or falsifies by addition or deletion any computerized or manual record of the Bureau or of a criminal justice agency, which contains criminal history record information, or who knowingly permits another to do so, shall be guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(c) Any person who knowingly provides CHRI to another for profit is guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(d) Any person who knowingly provides criminal history record information to a person or agency not authorized by this chapter to receive such information or who knowingly and wrongfully obtains or uses such information shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(e) Conviction of a violation of this section shall be prima facie grounds for removal from employment by the State or any political subdivision thereof, in addition to any fine or other sentence imposed. (42 Del. Laws, c. 181, §§ 20, 21; 11 Del. C. 1953, §§ 8520; 8521; 63 Del. Laws, c. 188, § 1.)

§ 8524. Admissible evidence.

Nothing in this chapter, or amendments adopted pursuant thereto, shall provide the basis for exclusion or suppression of otherwise admissible evidence in any proceeding before a court, or other official body empowered to subpoena such evidence. (63 Del. Laws, c. 188, § 1.)

§ 8525. Information voluntarily supplied by individuals.

Whenever a person appears before any of the officers mentioned in § 8507 of this title, and requests an impression of his fingerprints, such mentioned officer shall comply with the request, and make at least 2 copies of the impressions on forms supplied by the Bureau. One copy shall be forwarded to the Federal Bureau of Investigation at Washington, D.C., and 1 copy shall be forwarded promptly to the Bureau, subject to § 8513 of this title, together with any personal identification data obtainable. The Bureau shall accept and file such fingerprints and personal identification data submitted voluntarily by such resident in a separate filing system, for the purpose of securing a more

certain and easy identification in case of death, injury, loss of memory or change of appearance. (42 Del. Laws, c. 181, § 10; 11 Del. C. 1953, § 8510; 63 Del. Laws, c. 188, § 1.)

CHAPTER 86. DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

Sec.
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§ 8601. Purpose.

The purpose of this chapter is to maintain an accurate and efficient criminal justice information system in Delaware consistant with Chapter 85 of this title and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy. (63 Del. Laws, c. 352, § 1.)

§ 8602. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Administration of criminal justice" shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correction supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage and dissemination of criminal history record information.

(2) "Criminal history record information" shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprint records to the

extent that such information does not indicate involvement of the individual in the criminal justice system. Nor shall the term include information contained in:

a. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

b. Original records of entry such as police blotters maintained by criminal justice agencies which are compiled chronologically and required by law with long-standing custom to be made public, if such records are organized on a chronological basis;

c. Court records of public judicial proceedings;

d. Published court or administrative opinions or public judicial, administrative or legislative proceedings;

e. Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation or renewal of driver's, pilot's or other operator's licenses;

f. Announcements of executive clemency.

(3) "Criminal justice agency" shall mean:

a. Every court of this State and of every political subdivision thereof;

b. A government agency or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

1. The Delaware State Police;

2. All law enforcement agencies and police departments of any political subdivision of this State;

3. The State Department of Justice;

4. The Office of the Solicitor of the City of Wilmington; and

5. The Department of Correction.

(4) "Disposition" shall include, but not be limited to, trial verdicts of guilty or not guilty, nolle prosequis, Attorney General probations, pleas of guilty or nolo contendere, dismissals, incompetence to stand trial, findings of delinquency or nondelinquency and initiation and completion of appellate proceeding.

(5) "Dissemination" shall mean the transmission of criminal history record information, or the confirmation of the existence or nonexistence of such information. The term shall not include:

a. Internal use of information by an officer or employee of the agency which maintains such information;

b. Transmission of information to the State Bureau of Identification;

c. Transmission of information to another criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings;

d. Transmission of information in response to inquiries from criminal justice agencies via authorized system terminals, which agencies

provide and/or maintain the information through those terminals. (63 Del. Laws, c. 352, § 1.)

§ 8603. Board of Managers — Established; purpose; composition; term of office; staff; powers.

(a) The Delaware Justice Information System Board of Managers, hereinafter referred to as the "Board," is hereby established.

(b) The Board shall establish policy for the development, implementation and operation of comprehensive data systems in support of the agencies and courts of the criminal justice system of the State. Said data systems shall include, but not be limited to, criminal history record information with respect to individuals who are arrested, or against whom formal criminal charges are preferred within this State, or against whom proceedings relating to the adjudication of a juvenile as delinquent are instituted.

(c) The Board shall be composed of 13 members, 8 of whom shall be voting members as follows:

(1) One member of the Delaware State Police, to be designated by the Superintendent of the Delaware State Police;

(2) One member of a county or municipal police department, to be designated by the Delaware Police Chiefs' Council;

(3) Two members to be designated by the Commissioner of the Department of Correction, 1 of whom shall represent the Bureau of Adult Correction and 1, the Bureau of Juvenile Correction;

(4) Two members to be designated by the Chief Justice of the Supreme Court, 1 of whom shall represent the Family Court and 1, all other courts of this State;

(5) One member-at-large to be designated by the Governor; and

(6) One member to be designated by the Attorney General.

(d) In addition, there shall be 5 nonvoting members:

(1) Two members of the General Assembly, 1 Senator to be designated by the President Pro Tempore of the Senate, and 1 Representative to be designated by the Speaker of the House of Representatives;

(2) One member of the Delaware State Bureau of Identification, to be designated by the Superintendent of the Delaware State Police;

(3) One member of the State Division of Central Data Processing, to be designated by the Director of that Division; and

(4) One member of the Delaware Criminal Justice Planning Commission to be designated by the Director of that agency.

(e) Each Board member shall serve at the pleasure of, and for the term prescribed by, the officer or individual by whom such member was appointed.

(f) The agencies represented on the Board shall provide the Board with adequate staff support to assure that applicable provisions of this chapter are effectively carried out, not inconsistent with state law.

(g) The Board shall have the power and authority to:

(1) Designate an Executive Committee which may act between meetings of the Board, subject to confirmation of its decisions by a quorum of the Board, which Executive Committee shall consist of not less than 3 members of the Board and shall be chaired by the Board Chairman.

(2) Employ, supervise and evaluate an Executive Director and other personnel to implement and administer this chapter.

(3) Approve the Executive Director's annual budget request and other applications for funds from any sources.

(4) Recommend any legislation necessary for the implementation, operation and maintenance of the criminal justice information system.

(5) Establish and implement policy for providing management and administrative statistics and for coordinating technical assistance to serve the information needs of criminal justice agencies, planners, administrators, legislators and the general public.

(6) Perform all functions necessary to carry out the duties of this chapter. (63 Del. Laws, c. 352, § 1.)

§ 8604. Same — Duty to insure compliance with statute.

The Board shall insure that the State Bureau of Identification and all other criminal justice agencies collecting, storing or disseminating criminal history record information and other information concerning crimes and offenders comply with this chapter and Chapter 85 of this title. (63 Del. Laws, c. 352, § 1.)

§ 8605. Personnel.

(a) No person shall be appointed, promoted or transferred to any position with an agency which has or allows access to criminal history record information facilities, systems operating environments or data file contents, whether while in use or stored in a media library, without a criminal history record check by the employing agency. No person shall be appointed, promoted or transferred to such a position by an agency if promotion or transfer could endanger the security, privacy or integrity of such information.

(b) The Board shall initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have access to such information, where such personnel violated Chapter 85 of this title.

(c) The Board shall provide for the establishment of a plan for resolving employee grievances, complaints and appeals. (63 Del. Laws, c. 352, § 1.)

§ 8606. Rules and regulations.

The Board shall have the power and authority to promulgate rules and regulations to insure compliance with this chapter not inconsistent with Chapter 85 of this title. (63 Del. Laws, c. 352, § 1.)

§ 8607. Duties of Executive Director.

Under the direction of the Board, the Director's duties shall include but not be limited to:

(1) The employment and supervision of required employees.

(2) The preparation and control of an annual budget.

(3) The preparation of an annual report on the justice system's computerization status for presentation to the Governor, the Chief Justice of the Supreme Court and the General Assembly, which shall be made available to the general public upon request.

(4) The preparation of policy and procedure for implementing the audit, security and other provisions of this chapter and Chapter 85 of this title. (63 Del. Laws, c. 352, § 1.)

§ 8608. Denial of appointment, etc., to position allowing access to criminal history record information.

(a) Nothing in this chapter or in any rule promulgated hereunder shall limit the authority of a criminal justice agency or of the Board under § 8605 of this title to deny the appointment, promotion or transfer of any person to any position which has or allows access to criminal history record information.

(b) The Board shall have authority under the rules to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel of a criminal justice agency who are authorized to have or allow access to criminal history record information where such personnel violate Chapter 85 of this title.

(c) Any person who is otherwise qualified for a position under this chapter who is denied appointment, promotion or transfer to such position or who is transferred or removed from such position under § 8605 of this title shall be given a written statement of the reason or reasons therefor by the agency responsible for such action, and the agency shall promptly give written notice of its action to the Board. (63 Del. Laws, c. 352, § 1.)

* * *

Title 11

Subchapter VII. Expungement of Criminal Records

§ 4371. Statement of policy.

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, obtain an education or to obtain credit. This subchapter is intended to protect innocent persons from unwarranted damage which may occur as the result of arrest and other criminal proceedings which are unfounded or unproven. (62 Del. Laws, c. 317, § 2.)

§ 4372. Termination of criminal action in favor of accused.

(a) If a person is charged with the commission of a crime and

(1) Is acquitted; or

(2) A nolle prosequi is taken, or the charge is otherwise dismissed, he may file a petition setting forth the relevant facts and requesting expungement of the police records, and the court records relating to the charge.

(b) The petition shall be filed in the Superior Court in the county where the case was terminated, disposed of or concluded.

(c) A copy of the petition shall be served on the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on him. (62 Del. Laws, c. 317, § 2.)

§ 4373. Hearing by Court; granting or denial of expungement.

(a) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.

(b) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.

(c) If an order expunging the records is granted by the Court, all the records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. (62 Del. Laws, c. 317, § 2.)

§ 4374. Disclosure of expunged records.

(a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged

court or police record to open or review it or to disclose to another person any information from it without an order from the Court which ordered the record expunged.

(b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect and the crime being investigated is a felony or pursuant to an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this section shall require the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing herein shall require the destruction of court records or records of the Department of Justice. However, all such records, including docket books, relating to a charge which has been the subject of a destruction order shall be so handled to ensure that they are not open to public inspection or disclosure.

(e) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason.

(f) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor, and shall be punished accordingly. (62 Del. Laws, c. 317, § 2.)

§ 4375. Notification to federal government.

Upon the granting by the Court for an order for the expungement of records in accordance with this subchapter, a copy of such order shall be forwarded to the federal Department of Justice. (62 Del. Laws, c. 317, § 2.)

* * *

PART X

Public Records and Meetings

CHAPTER 100. FREEDOM OF INFORMATION ACT

Sec.
10001. Declaration of policy.
10002. Definitions.
10003. Examination and copying of public records.
10004. Open meetings.
10005. Enforcement.

§ 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that the citizens shall be advised of the performance of public officials and of the decisions that are made by such officials in formulating and executing public policy. Toward this end, this chapter is adopted, and shall be construed. (60 Del. Laws, c. 641, § 1.)

§ 10002. Definitions.

(a) "Public body" means any regulatory, administrative, advisory, executive or legislative body of the State or any political subdivision of the State including, but not limited to, any board, bureau, commission, department, agency, committee, counsel, legislative committee, association or any other entity established by an act of the General Assembly of the State, which: (1) Is supported in whole or in part by public funds; (2) expends or disburses public funds; or (3) is specifically charged by any other public body to advise or make recommendations.

(b) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(c) "Public funds" are those funds derived from the State or any political subdivision of the State, but not including grants-in-aid.

(d) "Public record" is written or recorded information made or received by a public body relating to public business. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of

identity, obtain a copy of his personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(8) Any records involving labor negotiations or collective bargaining;

(9) Any records pertaining to pending or potential litigation which are not records of any court;

(10) Any record of discussions allowed by § 10004(b) of this title to be held in executive session; or

(11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law-enforcement officers.

(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used.

(e) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.

(f) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting.

(g) "Public body," "public record" and "meeting" shall not include activities of the Farmers' Bank of the State of Delaware or the University of Delaware, except that the Board of Trustees of the University shall be a "public body," and University documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees shall be a "meeting." (60 Del. Laws, c. 641, § 1; 61 Del. Laws, c. 55, § 1.)

§ 10003. Examination and copying of public records.

(a) All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen. If the record is in active use or in storage and, therefore, not available at the time a citizen requests access, the custodian shall so inform the citizen and make an appointment for said citizen to examine such records as expediently as they may be made available. Any reasonable expense involved in the copying of such records shall be levied as a charge on the citizen requesting such copy.

(b) It shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. (60 Del. Laws, c. 641, § 1.)

§ 10004. Open meetings.

(a) Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (g) of this section.

(b) A public body at any meeting may call for an executive session closed to the public pursuant to subsection (c) of this section for any of the following purposes:

(1) Discussion of individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open;

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements;

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions with respect to collective bargaining, pending or potential litigation, when an open meeting would have effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed;

(10) Training and orientation sessions conducted to assist members of the public body in the fulfillment of their responsibilities;

(11) Discussion of potential or actual emergencies related to preservation of the public peace, health and safety;

(12) Where the public body has requested an attorney-at-law to render his legal advice or opinion concerning an issue or matter under discussion by the public body and where it has not yet taken a public stand or reached a conclusion in the matter; or

(13) Preliminary discussions resulting from tentative information relating to the management of the public schools in the following areas: School attendance zones; personnel needs; and fiscal requirements.

(c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The purpose for such executive session shall be announced ahead of time and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must be made at a public meeting and the results of the vote made public, unless disclosure of the existence or results of the vote would disclose information properly the subject of an executive session pursuant to subsection (b) of this section.

(d) This section shall not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting.

(e) (1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings; however, the agenda shall be subject to change to include additional items or the deletion of items at the time of the public body's meeting.

(3) All public bodies shall give public notice of the type set forth in paragraph (2) of this subsection of any special or rescheduled meeting no later than 24 hours be. re such meeting.

(4) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available.

(5) When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting.

(f) Each public body shall make available for public inspection and copying as a public record minutes of all regular, special and emergency meetings. Such minutes shall include a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer.

(g) This section shall not apply to the proceedings of:

(1) Grand juries;
(2) Petit juries;
(3) Special juries;
(4) The deliberations of any court;
(5) The board of Pardons and Parole; and
(6) Public bodies having only 1 member. (60 Del. Laws, c. 641, § 1.)

§ 10005. Enforcement.

Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 30 days of the citizen's learning of such action but in no event later than 6 months after the date of the action. Any citizen denied access to public records as provided in this chapter may bring suit within 10 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Remedies permitted by this section include a declaratory judgment, writ of mandamus and other appropriate relief. (60 Del. Laws, c. 641, § 1.)

§ 6412. Public information.

(a) Each agency shall make available promptly to the public upon request, for inspection, originals or legible copies of the following:

(1) Its regulations, orders, decisions, opinions and licenses;

(2) Any documents, papers and other materials considered by the agency in taking agency action; or

(3) Any records of the agency reasonably specified by the requesting person.

(b) When making its documents and other materials available to the public, the agency may:

(1) Take reasonable precautions to preserve the integrity and security of such documents or materials;

(2) Make available only at reasonable, specified intervals documents and materials being actively used by the agency;

(3) Limit the availability of information to its regular business hours and place of business;

(4) Decline to make available documents and other materials which:

a. Relate solely to the agency's internal procedural and personnel practices;

b. Pertain to ongoing enforcement investigations which have not yet resulted in agency action;

c. Are specifically exempted from disclosure by law; or

d. Are confidential or privileged for the same or similar reasons as the Court would hold its records confidential or privileged;

(5) Make a reasonable charge for the cost of reproducing or copying such documents or materials.

(c) The Court shall have jurisdiction of all actions to compel an agency to produce or disclose any documents, materials or information and the agency shall have the burden of sustaining its refusal to produce or disclose as requested. (60 Del. Laws, c. 585, § 1.)

Delaware State Police
State Bureau of Identification
Dover, Delaware

PROPOSED REGULATIONS PROVIDING FOR ADMINISTRATIVE REVIEW, CHALLENGE, AND APPEAL OF THE ACCURACY OF AN INDIVIDUAL'S CRIMINAL HISTORY RECORD.

1.1 PURPOSE - It is the purpose of these rules to provide individuals the right to access and review of criminal history record information maintained about that individual for purposes of insuring the accuracy and completeness of such information; to insure administrative review when the accuracy of such information is challenged; and to provide administrative appeal procedures in conformity with L.E.A.A. regulations, 28 C.F.R. 20.

1.2 AUTHORITY - These rules are issued by the Secretary of Public Safety pursuant to the authority vested in him by 29 Del.C. §8203(7) to establish and promulgate rules and regulations governing the administration and operation of his department.

1.3 DEFINITIONS - (A) Criminal History Record Information - means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arriving thereform, including post-judgment, appellate proceeding as well as corrections, probation, parole and release data. The term does not include:

(i) Identification information such as fingerprint records or photographs to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(ii) Posters, announcements or lists for identifying or apprehending fugitives or wanted persons.

(iii) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are accessed on a chronological basis.

(iv) Court records of public judicial proceedings compiled chronologically.

(v) Published court opinions or public judicial proceedings..

(vi) Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation or renewal of operator's licenses.

(vii) Announcements of executive clemency.

(B) Secretary means the Secretary of Public Safety.

1.4 INDIVIDUAL RIGHT OF ACCESS AND REVIEW - Any individual, upon adequate verification of his identity, who desires to review criminal history record information relating to him, or who believes that the information maintained is inaccurate, incomplete or maintained in violation of state or federal law shall be entitled to review such information in accordance with the following procedures:

(a) Verification of such individual's identity shall be effected through submission of name, date of birth, and a set of rolled fingerprints to the State Bureau of Identification.

(b) The request for review may be made at the headquarters of the State Bureau of Identification in Dover or in the case of incarcerated prisoner at any facility maintained by the Department of Corrections.

Such requests shall be accompanied by payment of a fee of $5.00 payable to the State Police and shall be made between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday (excepting state holidays).

1.5 INDIVIDUAL'S RIGHT TO CHALLENGE - (DELETED)

1.6 ADMINISTRATIVE APPEAL - (a) Any individual after challenging the accuracy and completeness of his criminal history record information file as provided for in Section 1.5 and whose record is not removed, modified, or corrected as he may request, or who is otherwise dissatisfied with the decision or action taken by the State Bureau of Identification may appeal to the Secretary within 30 days of the decision rendered by the State Bureau of Identification.

(b) The individual's request for review shall be made in writing to the Secretary alleging the nature of his appeal.

(c) Failure of the State Bureau of Identification to act within the time prescribed in Section 1.5 shall be deemed a decision adverse to the challenging individual.

1.7 PROCEDURE FOR HEARING APPEAL - (a) The Secretary in each case in which he finds a prima facie basis for complaint shall conduct a hearing.

(b) The complaining individual may appear with counsel, present evidence, examine and cross-examine witnesses. In testimony at this hearing the technical rules of evidence shall not apply. The complaining individual must show by a preponderance of the evidence the inaccuracy or incompleteness of the criminal history record being challenged.

(c) A written decision shall be issued by the Secretary within 60 days of the complaining individual's request for review. Such decision shall include the reasons therefore.

(d) If the record in question is found by the Secretary to be inaccurate, incomplete, or misleading, the State Bureau of Identification shall delete, amend, supplement, or modify the records accordingly and shall immediately notify criminal justice agencies not having direct access to C.L.U.E.S to which the records in question have been disseminated as well as the individual whose records have been corrected of said corrections and shall order such disseminees to conform their records to the corrected data.

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HOUSE OF REPRESENTATIVES

135TH GENERAL ASSEMBLY

HOUSE BILL NO. 588

AS AMENDED BY

HOUSE AMENDMENTS NO. 1, 3, 4

AN ACT TO AMEND TITLE 11, DELAWARE CODE RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR SALES OF FIREARMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 11, Delaware Code by adding thereto a new Section 1448A as follows:

"§1448A Criminal History Record Checks for Sales of Firearms.

(a) No licensed importer, licensed manufacturer, or licensed dealer shall sell or deliver from his inventory any firearm, as defined in 11 Del. C. 222 (9), to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until he has:

(1) obtained a completed consent form from the potential buyer or transferee, which form shall have been promulgated by the State Bureau of Identification (SBI) and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, address, birth, date, gender, race, and social security number, driver's license number or other identification number of such potential buyer or transferee and has inspected identification containing a photograph of the potential buyer or transferee;

(2) requested, by means of a toll-free telephone call pursuant to subsection (e) herein, the SBI to conduct a criminal history record check; and

(3) received a unique approval number for that inquiry from the SBI, and has recorded the date and approval number on the consent form.

(b) Upon receipt of a request for a criminal history record check, the SBI during the licensee's call or by return call, shall;

(1) review its criminal history records to determine if the potential buyer or

transferee is prohibited from receipt or possession of a firearm pursuant to 11 Del. C. §1448 or federal law; and

(2) inform the licensee making the inquiry either (i) that its records demonstrate that the potential buyer or transferee is so prohibited, or (ii) provide the licensee with a unique approval number.

(c) In the event of electronic failure or similar emergency beyond the control of the SBI, the SBI shall immediately notify the requesting licensee of the reason for, and estimated length of, such delay. After such notification, the SBI shall no later than the end of the third business day following a request for a criminal history record check of the licensee, either

(1) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to 11 Del. C. §1448 or federal law, or

(2) provide the licensee with a unique approval number. Unless notified by the end of the third business day following a request for a records check that the potential buyer or transferee is so prohibited, and without regard to whether he has received a unique approval number, the licensee may complete the sale or delivery and shall not be deemed in violation of this section with respect to such sale or delivery.

(d)(1) Any records containing any of the information set forth in subsection (a)(1) pertaining to a potential buyer or transferee who is not found to be prohibited from receipt or possession of a firearm by reason of 11 Del. C. §1448 or federal law shall be confidential and may not be disclosed by any officer or employee of SBI to any person or to another agency. The SBI shall destroy any such records after it communicates the corresponding approval number to the licensee and such records shall be destroyed within 30 days after the day of receipt of the licensee's request.

(2) Notwithstanding contrary provisions of this subsection, the SBI shall maintain a log of dates of requests for criminal history record checks and unique approval numbers corresponding to such dates for a period of not longer than one year.

(3) Nothing in this section shall be construed to allow the State of Delaware to maintain records containing the names of licensees who receive unique approval numbers or to maintain records of firearm transactions, including the names or other identification of licensees and potential buyers or transferees, involving persons not prohibited by 11 Del. C. §1448 and federal law from the receipt or possession of firearms.

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(e) The SBI shall establish a toll-free telephone number which shall be operational between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday and 9:00 a.m. and 5:00 p.m. Sunday for purposes of responding to inquiries as described in this section from licensed manufacturers, licensed importers, and licensed dealers. The SBI shall employ and train such personnel as are necessary to administer the provisions of this section.

(f) Any person who is denied the right to receive or purchase a firearm as a result of the procedures established by this section may request an amendment of any errors in the record pertaining to him by petitioning the SBI. If the SBI fails to amend the record within thirty (30) days, the person requesting the amendment may petition the Superior Court in the county of his residence for a writ of mandamus directing the SBI to amend the record. The court shall award the petitioner all reasonable attorney fees and other costs, if it determines that S.B.I. willfully refused to amend the record. If the record as corrected demonstrates that such person is not prohibited from receipt or possession of a firearm by 11 Del. C. §1448 or federal law, the SBI shall destroy any records it maintains which contain any information derived from the criminal history records check set forth in subsection (a)(1).

(g) The SBI shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided pursuant to this section.

(h) A licensed importer, licensed manufacturer, or licensed dealer is not required to comply with the provisions of this section in the event of:

(1) unavailability of telephone service at the licensed premises due to:

(a) the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located , or;

(b) the interruption of telephone service by reason of hurricane, tornado, flood, natural disaster, or other act of God, or war, invasion, insurrection, riot, or other bona fide emergency, or other reason beyond the control of the licensee; or

(2) failure of the SBI reasonably to comply with the requirements of subsection (b) and (c) of this section.

Within seventy-two (72) hours of the normalization of telephone service the licensed importer, licensed manufacturer or licensed dealer shall communicate to S.B.I. the identifying data as set forth in paragraph (1) of subsection (a) for each sale or delivery of a firearm during the unavailabiltiy of telephone service.

(i) Compliance with the provisions of this section shall be a complete defense to

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any claim or cause of action under the laws of this state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer to any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, of any firearm which has been shipped or transported in interstate or foreign commerce.

(j) The provisions of this section shall not apply to:

(1) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

(2) any replica of any firearm described in subparagraph (1) of this subsection if such replica;

(a) is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition, or

(b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(3) any shotgun, which is defined as a firearm designed or intended to be fired from the shoulder and designed or made to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

(4) the return, by a licensed pawnbroker, of a firearm to the person from whom it was received.

(6) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license pursuant to 11 Del. C. , §1441; and

(7) Transactions involving a law enforcement officer as defined by 11 Del. C., §222 (12);

(k) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who willfully and intentionally requests a criminal history record check from the SBI for any purpose other than compliance with subsection (a), or willfully and intentionally disseminates any criminal history record information to any person other than the subject of such information or discloses to any person the unique identification number shall be guilty of a Class A misdemeanor.

(l) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm pursuant to the subsection (a) willfully and intentionally makes any materially false oral or written statement or willfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee shall be guilty of a Class G felony.

(m) Any licensed importer, licensed manufacturer, licensed importer or employee thereof who willfully and intentionally sells or delivers a firearm in violation of this section shall be guilty of a Class A misdemeanor. Second or subsequent offenses by an individual shall be a Class G Felony.

(n) The SBI shall provide to the judiciary committees of the Senate and House of Repesentatives an annual report including the number of inquiries made pursuant to this section for the prior calendar year. Such report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to 11 Del. C. §1448 or federal law, and the estimated costs of administering this section.

(o) This section shall become effective six months from the date of enactment or at such time as the SBI has notified all licensed importers, licensed manufacturers, and licensed dealers in writing that the procedures and toll-free number described in this section are operational, which ever shall occur first.

(p) Violations of this Section shall be in the exclusive jurisdiction of Superior Court.

(q) Notwithstanding 11 Del. C., Chapter 89, 29 Del. C., Chapter 10, and other Delaware laws the S.B.I. is authorized and directed to release records and data required by this Section. The S.B.I. shall not release or disclose criminal records or data except as specified in subsections (b) and (c).

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District of Columbia Code
Title 1

SUBCHAPTER II.—FREEDOM OF INFORMATION [NEW]

§ 1–1521. Public policy

Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.
March 29, 1977, D.C.Law, No. 1–96, § 2(201), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1522. Right of access to public records—Allowable costs—Time limits

(a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by section 1–1524, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed 10 dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, 'unusual circumstances' are limited to:

(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request.

and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 1–1527 to review the deemed denial of the request.
March 29, 1977, D.C.Law, No. 1–96, § 2(202), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1523. Letters of denial

(a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 1–1524 relied on as authority for the denial;

(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) notification to the requester of any administrative or judicial right to appeal under section 1–1527.

(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.
March 29, 1977, D.C.Law, No. 1–96, § 2(203), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1524. Exemptions

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of personal privacy,

(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(E) disclose investigative techniques and procedures not generally known outside the government,

(F) endanger the life or physical safety of law enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

March 29, 1977, D.C.Law, No. 1-96, § 2(204), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1525. Recording of final votes

Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

March 29, 1977, D.C.Law, No. 1-96, § 2(205), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1526. Information which must be made public

Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information:

(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

(b) administrative staff manuals and instructions to staff that affect a member of the public;

(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

(g) the minutes of all proceedings of all agencies.

March 29, 1977, D.C.Law, No. 1-96, § 2(206), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1527. Administrative appeals and enforcement

(a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of section 1-1522, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public

body from withholding the record and to compel the production of the requested record.

(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter *de novo*, and may examine the contents of such records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 1-1524.

(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

March 29, 1977, D.C.Law, No. 1-96, § 2(207), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1528. Oversight

On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include:

(1) The number of determinations made by each agency not to comply with requests for records made to such agency under this subchapter and the reasons for each such determination;

(2) The number of appeals made by persons under Section 1-1527(a), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this subchapter, and the number of instances of participation for each such person;

(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this subchapter;

(5) Such other information as indicates efforts to administer fully this subchapter; and

(6) For the prior calendar year, a listing of the total number of cases arising under this subchapter, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 1-1524 was cited as a reason for denial of a request, and the total amount of fees collected under section 1-1522(b). Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

March 29, 1977, D.C.Law, No. 1-96, § 2(208), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1529. Definition

For the purposes of this subchapter, the terms "Mayor", "Council", "District", "agency", "rule", "rulemaking", "person", "party", "order", "relief", "proceeding", "public record", and "adjudication" shall have the meaning as provided in section 1-1502.

March 29, 1977, D.C.Law, No. 1-96, § 2(209), 23 D.C.Reg. No. 24, p. 3744.

* * *

Subchapter IV. Offenses and Penalties.

§ 33-541. Prohibited acts A; penalties.

(a) (1) Except as authorized by this chapter, it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance.

(2) Any person who violates this subsection with respect to:

(A) A controlled substance classified in Schedule I or II which is a narcotic drug, phencyclidine, or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 15 years, or fined not more than $100,000, or both; except that a person convicted of manufacturing phencyclidine or a phencyclidine immediate precursor may be imprisoned for not more than 25 years, fined not more than $200,000, or both;

(B) Any other controlled substance classified in Schedule I, II, or III, except for phencyclidine or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than $50,000, or both;

(C) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than $25,000, or both;

(D) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than 1 year, fined not more than $10,000, or both.

(b) (1) Except as authorized by this chapter, it is unlawful for any person to create, distribute, or possess with intent to distribute a counterfeit substance.

(2) Any person who violates this subsection with respect to:

(A) A counterfeit substance classified in Schedule I or II which is a narcotic drug, phencyclidine, or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 15 years, fined not more than $100,000, or both;

(B) Any other counterfeit substance classified in Schedule I, II, or III, except for phencyclidine or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than $50,000, or both;

(C) A counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than $25,000, or both;

(D) A counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than 1 year, fined not more than $10,000, or both.

(c) (1) Except as hereinafter specifically provided in this subsection, any person who violates subsection (a) (1) or (b) (1) of this section shall be imprisoned for a mandatory-minimum term as hereinafter prescribed and shall not be released on parole, granted probation, or granted suspension of sentence prior to serving such mandatory-minimum sentence.

(A) Any person who violates subsection (a) (1) or (b) (1) of this section with respect to a controlled or counterfeit substance classified in Schedule I or II, which is a narcotic drug, shall serve a mandatory-minimum sentence of not less than four (4) years;

(B) Any person who violates subsection (a) (1) or (b) (1) of this section with respect to any other controlled or counterfeit substance classified in Schedule I, II or III shall serve a mandatory-minimum sentence of not less than 20 months;

(C) Any person who violates subsection (a) (1) or (b) (1) of this section with respect to any other controlled or counterfeit substance classified in Schedule IV or V shall, if the quantity of such substance or counterfeit substance involved in such violation shall exceed $15,000 in retail value at the time of such violation, serve a mandatory-minimum sentence of not less than 1 year.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the court may, in its discretion, waive the mandatory-minimum sentencing provisions of subparagraphs (A) and (B) of paragraph (1) of this subsection when sentencing a person who has not been previously convicted in any jurisdiction in the United States for knowingly or intentionally manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance included in Schedule I, II or III if the court determines that the person was an addict at the time of the violation of subsection (a) (1) or (b) (1) of this section, and that such person knowingly or intentionally manufactured, distributed or possessed with intent to manufacture or distribute a controlled substance included in Schedule I, II or III for the primary purpose

of enabling the offender to obtain a narcotic drug or abusive drug which he required for his personal use because of his addiction to a narcotic drug or an abusive drug.

(d) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 1 year, fined not more than $1,000, or both.

(e) (1) If any person who has not previously been convicted of violating any provision of this chapter, or any other law of the United States or any state relating to narcotic drugs or depressant or stimulant substances is found guilty of a violation of subsection (d) of this section and has not previously been discharged and had the proceedings dismissed pursuant to this subsection, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him or her on probation upon such reasonable conditions as it may require and for such period, not to exceed 1 year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him or her from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under § 33-548 for 2nd or subsequent convictions) or for any other purpose.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such

arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.

(f) The prosecutor may charge any person who violates the provisions of subsection (a) or (b) of this section relating to the distribution of or possession with intent to distribute a controlled or counterfeit substance with a violation of subsection (d) of this section if the interests of justice so dictate. (Aug. 5, 1981, D.C. Law 4-29, § 401, 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(c)(1), 28 DCR 4348; Mar. 9, 1983, D.C. Law 4-166, §§ 9, 10, 30 DCR 1082; Sept. 26, 1984, D.C. Law 5-121, § 2(a), 31 DCR 4046; Mar. 15, 1985, D.C. Law 5-171, § 2(a), 32 DCR 730; Feb. 28, 1987, D.C. Law 6-201, § 2(c), 34 DCR 524.)

a person who is unable to pay the cost of an appeal to apply for leave to appeal *in forma pauperis*. There shall be no duty on the court to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty or *nolo contendere*. If the defendant so requests, the clerk of the court shall prepare and file further a notice of appeal on behalf of the defendant. (Revised 11/16/76)

(d) JUDGMENT. A judgment of conviction shall set forth the plea, verdict or finding, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. Except with respect to petty misdemeanors, the penalty for which does not exceed six months or a fine of not more than $500.00 or both, the judgment, indicating the sentence of commitment, shall be signed by the judge, certified by the clerk, and then transmitted to the authority taking custody of or having supervision over the defendant. (Revised 11/16/76)

(e) WITHDRAWAL OF PLEA OF GUILTY. A motion to withdraw a plea of guilty or of *nolo contendere* may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. (Revised 11/16/76)

(f) [ABROGATED] [11/1/82]

(g) DISCHARGE FROM PROBATION, DISMISSAL OF PROCEEDINGS, AND EXPUNGEMENT OF OFFICIAL RECORDS PURSUANT TO D.C. CODE 1983, §33-541(e).

(1) Discharge from Probation and Dismissal of Proceedings. If a person has been placed on probation pursuant to D.C. Code 1983, §33-541(e)(1), the Social Services Division shall, upon expiration of probation, notify the Court in writing as to whether the person has successfully completed probation. The Division shall mail a copy of the notice to the person, his attorney, the prosecutor, the Metropolitan Police Department, and the Clerk of the Criminal Division. The prosecutor may file and serve a response in opposition within ten (10) days. The Court may hold a hearing to determine whether the person has successfully completed probation. If the Court so determines, it shall enter an order discharging the person from probation and dismissing the proceedings against him. The Court may, with notice as provided above, take such action prior to the expiration of the maximum period of probation imposed. If an order of discharge and dismissal is entered, the clerk shall thereafter retain a nonpublic record of the case solely for use by the Courts in determining whether, in subsequent proceedings, such person qualifies for treatment under §33-541(e)(1).

RULE 32(g)(2) April 2, 1985

SUPERIOR COURT OF D.C. - CRIMINAL RULES

(2) EXPUNGEMENT OF OFFICIAL RECORDS. A person who has been discharged from probation and whose charges have been dismissed pursuant to §33-541(e)(1) and subparagraph (g)(1) of this rule may file with the Court and serve upon the prosecutor a motion for expungement of all official records relating to the offense. The prosecutor may file and serve an opposition within ten (10) days. If the Court, after hearing, determines that the person was discharged from probation and that the proceedings against him were dismissed under §33-541(c)(1), the Court shall enter an order expunging all official records of the offense to the extent required by §33-541(e)(2). In a case involving co-defendants, the Court shall first sanitize the records to be expunged. The order of expungement shall not affect the nonpublic record maintained under §§33-541(c)(1) and subparagraph (g)(1) of this rule.

COMMENT: This rule modifies Federal Rule of Criminal Procedure 32 in several instances. Generally, the structure of the Federal Rule has been revised to reflect more accurately the chronological sequence of sentence and judgment events. Where appropriate, the word "pronounce" rather than "impose" has been used in the rule.

Paragraph (1) of this Rule now prescribes the time when the Court may pronounce sentence. The Federal Rule merely provides for imposition "without unreasonable delay". (Revised 11/1/82)

Paragraph (b) of this Rule modifies paragraph (c) of the Federal Rule. First, this Rule exempts the District of Columbia Traffic Branch from the requirements in paragraph (b). Second, when consent of the defendant is needed for the judge's inspection of the presentence report, this Rule allows this consent to be on the record as an alternative to it being in writing. Third, the Rule provides for disclosure of material in a presentence report to both the counsel for the defendant and the prosecutor. Fourth, reports made by the Department of Corrections of the District of Columbia and the Board of Parole of the District of Columbia have been added to the list of reports considered to be a presentence investigation. Fifth, reports pursuant to 18 U.S.C. §§4208(b) and 5034 are not applicable to the Superior Court and thus were deleted from the list of reports considered to be a presentence investigation.

§ 4-131. Records — Required.

The Mayor of the District of Columbia shall cause the Metropolitan Police force to keep the following records:

(1) General complaint files, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant;

(2) Records of lost, missing, or stolen property;

(3) A personnel record of each member of the Metropolitan Police force, which shall contain his name and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment and separation from office, together with the cause of the latter;

(4) Arrest books, which shall contain the following information:

(A) Case number, date of arrest, and time of recording arrest in arrest book;

(B) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;

(C) Offense with which person arrested was charged and place where person was arrested;

(D) Name and address of complainant;

(E) Name of arresting officer; and

(F) Disposition of case; and

(5) Such other records as the Council of the District of Columbia considers necessary for the efficient operation of the Metropolitan Police force. (R.S., D.C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(a); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 1; 1973 Ed., § 4-134.)

§ 4-132. Same — Criminal offenses.

(a) In addition to the records kept under § 4-131, the Metropolitan Police force shall keep a record of each case in which an individual in the custody of any police force or of the United States Marshal is charged with having committed a criminal offense in the District (except those traffic violations and other petty offenses to which the Council of the District of Columbia determines this section should not apply). The record shall show:

(1) The circumstances under which the individual came into the custody of the police or the United States Marshal;

(2) The charge originally placed against him, and any subsequent changes in the charge (if he is charged with murder, manslaughter, or causing the death of another by the operation of a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, the charge shall be recorded as "homicide");

(3) If he is released (except on bail) without having his guilt or innocence of the charge determined by a court, the circumstances under which he is released;

(4) If his guilt or innocence is so determined, the judgment of the court;

(5) If he is convicted, the sentence imposed; and

(6) If, after being confined in a correctional institution, he is released therefrom, the circumstances of his release.

(b) The Attorney General, the Corporation Counsel, the United States Magistrate for the District, the Clerk of the District Court, the Clerk of the Superior Court of the District of Columbia, and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Mayor of the District of Columbia considers necessary to enable the Metropolitan Police force to carry out this section. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 362; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 4-134a.)

§ 4-133. Reports by other police.

Reports shall be made to the Chief of Police, in accordance with regulations prescribed by the Mayor of the District of Columbia, of each offense reported to, and each arrest made by, any other police force operating in the District. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 303; 1973 Ed., § 4-134b.)

§ 4-133.1. Participation of District of Columbia Metropolitan Police Department in the National Crime Information System.

(a) *Dissemination of adult arrest records to law enforcement agents.* — (1) Notwithstanding any other provision of law, the Metropolitan Police Department of the District of Columbia shall disseminate its unexpurgated adult arrest records to members of the court and law enforcement agents, including the Identification Division of the Federal Bureau of Investigation. Such dissemination shall be done without cost and without the authorization of the persons to whom such records relate.

(2) Any records disseminated under this section shall be used in a manner that complies with applicable federal law and regulations.

(b) *Definitions.* — For purposes of this section:

(1) The term "member of the court" shall include judges, prosecutors, defense attorneys (with respect to the records of their client defendants), clerks of the court, and penal and probation officers;

(2) The term "law enforcement agent" shall include police officers and federal agents having the power to arrest; and

(3) The term "unexpurgated adult arrest records" shall include arrest fingerprint cards. (Dec. 12, 1989, 103 Stat. 1903, Pub. L. 101-223, § 7.)

§ 4-134. Notice of release of prisoners.

(a) Whenever the Board of Parole of the District of Columbia has authorized the release of a prisoner under § 24-204, or the United States Board of Parole has authorized the release of a prisoner under § 24-206, it shall notify the Chief of Police of that fact as far in advance of the prisoner's release as possible.

(b) Except in cases covered by subsection (a) of this section, notice that a prisoner under sentence of 6 months or more is to be released from an institution under the management and regulation of the Director of the Department of Corrections shall be given to the Chief of Police as far in advance of the prisoner's release as possible. (June 29, 1953, 67 Stat. 100, ch. 159, title III § 304; 1973 Ed., § 4-134c.)

§ 4-135. Records open to public inspection.

The records to be kept by paragraphs (1), (2), and (4) of § 4-131 shall be open to public inspection when not in actual use, and this requirement shall be enforceable by mandatory injunction issued by the Superior Court of the District of Columbia on the application of any person. (R.S., D.C., § 389; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(b); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(13); Oct. 25, 1972, 86 Stat. 1108, Pub. L. 92-543, § 1; 1973 Ed., § 4-135.)

§ 4-140. Arrests — Limitation on period of questioning; advisement of rights; release uncharged; admissibility of confessions.

(a) Any person arrested in the District of Columbia may be questioned with respect to any matter for a period not to exceed 3 hours immediately following his arrest. Such person shall be advised of and accorded his rights under applicable law respecting any such interrogation. In the case of any such arrested person who is released without being charged with a crime, his detention shall not be recorded as an arrest in any official record.

* * *

1. That no record, copy, extract, compilation or statement concerning any record relating to any juvenile offender or relating to any juvenile with respect to whom the Metropolitan Police Department retains any record or writing, shall be released to any person for any purpose except as may be provided under D.C. Code, Section 11–1586; provided, that the release of such information to members of the Metropolitan Police Department, and the dissemination of such information by the Metropolitan Police Department to the police departments of other jurisdictions wherein juveniles apprehended in the District of Columbia may reside, shall be authorized; provided further, that the release of such information to individuals to whom the information may relate or to the parents or guardians or duly authorized attorneys of such individuals, shall be authorized in those cases in which applicants therefor present documents of apparent authenticity indicating need for such information for reasons other than employment. The term "employment", in the context of this paragraph, shall not include military service.
2. That unexpurgated adult arrest records, as provided under D.C. Code, Section 4–134a,[46] shall be released to law enforcement agents upon request, without cost and without the authorization of the persons to whom such records relate and without any other prerequisite, provided that such law enforcement agents represent that such records are to be used for law enforcement purposes. The term "law enforcement agent" is limited in this context to persons having cognizance of criminal investigations or of criminal proceedings directly involving the individuals to whom the requested records relate. The term includes judges, prosecutors, defense attorneys (with respect to the records of their client defendants), police officers, Federal agents having the power of arrest, clerks of courts, penal and probation officers and the like. It does not include private detectives and investigators; personnel investigators, directors and officers; private security agents or others who do not ordinarily participate in the process involving the detection, apprehension, trial or punishment of criminal offenders.
3. That, subject to the foregoing, adult arrest records, as provided under D.C. Code, Section 4–134a, shall be released in a form which reveals only entries relating to offenses which have resulted in convictions or forfeitures of collateral.
4. That, subject to the foregoing, adult arrest records, as provided under D.C. Code, Section 4–134a, shall be released in a form which reveals only entries relating to offenses committed not more than 10 years prior to the date upon which such records are requested; except that, where an offender has been imprisoned during all or part of

the preceding 10-year period, the record shall include entries relating to such earlier conviction.

5. That, subject to the foregoing, copies or extracts of adult arrest records, as provided under D.C. Code, Section 4–134a, or statements of the non-existence of such records shall be released to applicants therefor upon the payment of fees to be based upon the cost of editing and producing such copies, extracts or statements; provided, that applicants who are not the persons to whom such records may relate must, in addition to the required fees, present releases in appropriate form executed by the persons to whom the records may relate; provided further, that no fee shall be required with respect to any record solicited by any agent of the Federal or District of Columbia Government for a governmental purpose.

6. That Article 47 of the Police Regulations of the District of Columbia be amended to provide that it shall be an offense punishable by a fine not to exceed $50.00, for any person to require as a condition of employment the production of any arrest record or copy, extract or statement thereof at the expense of any employee or applicant for employment to whom such record may relate.[47]

SUPERIOR COURT OF D.C. - CRIMINAL RULES

RULE 118

SEALING OF ARREST RECORDS

(a) MOTION FOR SEALING AND DECLARATORY RELIEF. Any person arrested for the commission of an offense punishable by the District of Columbia Code, whose prosecution has been terminated without conviction and before trial, may file a motion to seal the records of the person's arrest within 120 days after the charges have been dismissed. For good cause shown and to prevent manifest injustice, the person may file a motion within three (3) years after the prosecution has been terminated, or at any time thereafter if the government does not object. As to arrests occurring on or after July 19, 1979, but before the adoption of this rule, a motion may be filed within 120 days after the adoption of this rule. The motion shall state facts in support of the movant's claim and shall be accompanied by a statement of points and authorities in support thereof. The movant may also file any appropriate exhibits, affidavits, and supporting documents. A copy of the motion shall be served upon the prosecutor.

(b) RESPONSE BY PROSECUTOR. If the prosecutor does not intend to oppose the motion, the prosecutor shall so inform the Court and the movant, in writing, within thirty (30) days after the motion has been filed. Otherwise, the prosecutor shall not be required to respond to the motion unless ordered to do so by the Court, pursuant to paragraph (c) of this rule.

(c) INITIAL REVIEW BY COURT; SUMMARY DENIAL; RESPONSE BY PROSECUTOR. If it plainly appears from the face of the motion, any accompanying exhibits and documents, the record of any prior proceedings in the case, and any response which the prosecutor may have filed, that the movant is not entitled to relief, the Court, stating reasons therefore on the record or in writing, shall deny the motion and send notice thereof to all parties. In the event the motion is not denied, the Court shall order the prosecutor to file a response to the motion, if the prosecutor has not already done so. Such response shall be filed and served within sixty (60) days after entry of the Court's order. The response shall be accompanied by a statement of points and authorities in opposition, and any appropriate exhibits and supporting documents.

(d) COURT'S DETERMINATION OF WHETHER TO HOLD A HEARING. Upon the filing of the prosecutor's response, the Court shall determine whether an evidentiary hearing is required. If it appears that a hearing is not required, the Court shall enter an appropriate order, pursuant to paragraph (f) of this rule. If the Court determines that a hearing is required, one shall be scheduled promptly.

SUPERIOR COURT OF D.C. - CRIMINAL RULES

(e) DETERMINATION OF MOTION. If a hearing is held, hearsay evidence shall be admissible. If, based upon the pleadings or following a hearing, the Court finds by clear and convincing evidence that the offense for which the movant was arrested did not occur or that the movant did not commit the offense, the Court shall order the movant's arrest records retrieved and sealed pursuant to paragraph (f).

(f) FINDINGS AND ORDER; DECLARATORY RELIEF.

(1) *Order Denying Motion.* If the Court denies the motion, it shall issue an order and shall set forth its reasons on the record or in writing.

(2) *Order Granting Motion.* If the Court grants the motion, it shall issue an order, in writing, pursuant to subparagraphs (f)(2)(A), (B), and (C) of this rule.

(A) *Retrieval of Arrest Records and Purging of Computer Records.* The Court shall order the prosecutor to collect from the prosecutor's office, the law enforcement agency responsible for the movant's arrest and/or the Metropolitan Police Department all records of the movant's arrest in their central files, including without limitation all photographs, fingerprints, and other identification data. The Court shall also direct the prosecutor to arrange for the elimination of any computerized record of the movant's arrest. However, the Court shall expressly allow the prosecutor and the law enforcement agency to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the prosecutor to request that the law enforcement agency responsible for the arrest retrieve any of the aforementioned records which were disseminated to pretrial services, corrections, and other law enforcement agencies, and to collect these records when retrieved.

(B) *Requirement that Arrest Records be Sealed.* The Court shall order the prosecutor to file with the Clerk of the Court, within sixty (60) days, all records collected by the law enforcement agency and in the prosecutor's own possession. These records shall be accompanied by a certification that to the best of the prosecutor's knowledge and belief no further records exist in the prosecutor's own possession and in the possession of the law enforcement agency's central records files or those of its disseminees, or that, if such records do exist, steps have been taken to retrieve them. The Court shall order the Clerk to collect all Superior Court records pertaining to the movant's arrest and cause to be purged any computerized record of such arrest. However, the Court shall expressly allow the Clerk to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the Clerk to file under seal all Superior Court records so retrieved, together with all records filed by the prosecutor pursuant to this paragraph, within seven (7) days after receipt of such records.

SUPERIOR COURT OF D.C. - CRIMINAL RULES

(C) *Declaratory Relief.* The Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant had been arrested or that no offense had been committed. A copy of the order shall be provided to the movant or his or her counsel. The movant may obtain a copy of the order at any time from the Clerk of the Court, upon proper identification, without a showing of need.

(g) SANITIZATION OF RECORDS INVOLVING CO-DEFENDANTS. In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be sealed. The Court may make an *in camera* inspection of these records in order to make this determination. If practicable, the Court may order those records relating to co-defendants returned to the prosecutor, with all references to the movant sanitized.

(h) INDEXING AND ACCESS TO SEALED RECORDS. The Clerk shall place the records ordered sealed by the Court in a special file, appropriately and securely indexed in order to protect its confidentiality, subject to being opened on further order of the Court only upon the showing of compelling need. A request for access to such sealed records may be made *ex parte*. However, unless otherwise ordered by the Court, the Clerk shall reply in response to inquiries concerning the existence of arrest records which may have been sealed pursuant to this rule that no records are available.

(i) APPEAL. An aggrieved party may note an appeal from a final order entered pursuant to this rule in accordance with Rule 4(II)(b)(1) of the General Rules of the District of Columbia Court of Appeals.

COMMENT: This rule implements a procedure providing in certain cases for the sealing of arrest records when a citizen has been arrested but not subsequently prosecuted. See District of Columbia v. Hudson, et al., *404 A.2d 175 (D.C. App. 1979) and* District of Columbia v. Hudson, et al., *449 A.2d 294 (D.C.App. 1982).*

If the Court determines to hold an evidentiary hearing before deciding whether to order sealing, paragraph (d) requires that the hearing be held "promptly". While no specific time period is set out in the rule, it is contemplated that the Court will consider the movant's interest in obtaining a speedy determination of his or her right to the equitable relief under this rule with the various other demands on the Court's schedule.

RULE 118 COMMENT November 1, 1983

SUPERIOR COURT OF D.C. - CRIMINAL RULES

Notations of arrests in precinct books and records compiled for statistical purposes only which are not practically retrievable to the public by name only, are not within the purview of this rule. See D.C. v. Hudson, et al., *404 A.2d 175, 180 n. 9 (D.C.App. 1979).*

In connection with paragraph (f), it is the intent of this rule that considerations surrounding the eligibility of certain documents and records should be viewed in a light favoring retrieval and sealing.

CHAPTER 10 ARREST RECORDS: THE DUNCAN ORDINANCE

1000 JUVENILE RECORDS

1000.1 No record, copy, extract, compilation, or statement concerning any record relating to any juvenile offender or relating to any juvenile with respect to whom the Metropolitan Police Department retains any record or writing, shall be released to any person for any purpose except as may be provided under D.C. Code, Section 11-1586 [§§16-2331 - 16-2335, D.C. Code, 1981 ed.].

1000.2 The release of the information specified in §1000.1 to members of the Metropolitan Police Department, and the dissemination of that information by the Metropolitan Police Department, to the police departments of other jurisdictions wherein juveniles apprehended in the District of Columbia may reside, shall be authorized.

1000.3 The release of any information specified in §1000.1 to individuals to whom the information may relate or to the parents or guardians or duly authorized attorneys of such individuals, shall be authorized in those cases in which applicants therefor present documents of apparent authenticity indicating need for that information for reasons other than employment. The term "employment", in the context of this paragraph, shall not include military service.

1001 - 1003 RESERVED

1004 ADULT RECORDS

1004.1 Unexpurgated adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], shall be released to law enforcement agents upon request, without cost and without the authorization of the persons to whom those records relate and without any other prerequisite, provided that the law enforcement agents represent that those records are to be used for law enforcement purposes.

1004 ADULT RECORDS (Continued)

1004.2 The term "law enforcement agent" shall be limited in this context to persons having cognizance of criminal investigations or of criminal proceedings directly involving the individuals to whom the requested records relate. The term includes judges, prosecutors, defense attorneys (with respect to the records of their client defendants), police officers, federal agents having the power of arrest, clerks of courts, penal and probation officers and the like.

1004.3 The term "law enforcement agent" does not include private detectives and investigators; personnel investigators, directors and officers; private security agents or others who do not ordinarily participate in the process involving the detection, apprehension, trial or punishment of criminal offenders.

1004.4 Subject to the provisions of §§1004.1 - 1004.3, adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], shall be released in a form which reveals only entries relating to offenses which have resulted in convictions or forfeitures of collateral.

1004.5 Subject to the provisions of §§1004.1 - 1004.3, adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], shall be released in a form which reveals only entries relating to offenses committed not more than 10 years prior to the date upon which those records are requested; except that, where an offender has been imprisoned during all or part of the preceding 10-year period, the record shall include entries relating to the earlier conviction.

1004.6 Subject to the provisions of §§1004.1 - 1004.3, copies or extracts of adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], or statements of the non-existence of thoserecords shall be released to applicants therefor upon the payment of fees to be based upon the cost of editing and producing such copies, extracts or statements.

1004.7 Applicants who are not the persons to whom those records may relate shall, in addition to the required fees, present releases in appropriate form executed by the persons to whom the records may relate.

1004.8 No fee shall be required with respect to any record solicited by any agent of the federal or District of Columbia Government for a governmental purpose.

CHAPTER 943. DEPARTMENT OF LAW ENFORCEMENT [NEW]

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943.01 Short title

This chapter shall be known as the "Department of Law Enforcement Act of 1974."

Laws 1974, c. 74-386, § 1, eff. Aug. 1, 1974. Amended by Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978.

943.02 Definitions

For the purpose of this chapter:

(1) "Department" means the Department of Law Enforcement.

(2) "Executive director" means the executive director of the Department of Law Enforcement.

Laws 1974, c. 74-386, § 2, eff. Aug. 1, 1974. Amended by Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978.

943.03 Department of Law Enforcement

(1) The executive director shall have served at least five (5) years as a police executive or possess training and experience in police affairs or public administration and shall be a bona fide resident of the state. It shall be the duty of the executive director to supervise, direct, coordinate, and administer all activities of the department and to exercise the duties prescribed for the State Law Enforcement Coordinator under Part VII of Chapter 23, known as the Florida Mutual Aid Act.

(2) The department shall employ such administrative, clerical, technical, and professional personnel, including division directors as hereinafter provided, as may be required, at salaries to be established by the department, to perform such duties as the department may prescribe.

(3) Pursuant to chapter 120, the department shall adopt the rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter.

(4) The department may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the department may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its power under this chapter. However, nothing in this chapter shall authorize the employment of private investigative personnel by contract to conduct investigations.

(5)(a) The department shall be governed by all laws regulating the purchase of supplies and equipment as other state agencies and may enter into contracts with other state agencies to make photographs and photostats, to transmit information by teletype, and to perform all those services consonant with the purpose of this chapter.

(b) It may use without charge the technical personnel and equipment of any state agency.

(6) The powers herein enumerated, or set forth in other parts of this chapter, shall be deemed an exercise of the state police power for the protection of the welfare, health, peace, safety, and morals of the people and shall be liberally construed.

(7) The Department of Legal Affairs shall be the legal advisor to and shall represent the department.

(8) The department may accept for any of its purposes and functions under this chapter any and all donations of property, real, personal, or mixed, and grants of money, from any governmental unit or public agency or from any institution, person, firm, or corporation. Such moneys shall be deposited, disbursed, and administered in a trust fund as provided by law.

(9) The department shall make an annual report of its activities to the governor and to the legislature and include in such report its recommendations for additional legislation.

(10) The department shall establish headquarters in Tallahassee. The Department of General Services shall furnish the department with proper and adequate housing for its operation.

Laws 1974, c. 74-386, § 3, eff. Aug. 1, 1974.

943.04 Division of Criminal Investigation; creation; investigative and related authority

(1) There is created a Division of Criminal Investigation within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed by the department upon the recommendation of the executive director. It shall be the duty of the director to supervise, direct, coordinate, and administer all activities of the division.

(2)(a) Under appropriate rules and regulations adopted by the department, or upon written order of the Governor or by direction of the Legislature acting by a concurrent resolution, and at the direction of the executive director, the Division of Criminal Investigation may investigate violations of any of the criminal laws of the state, and shall have authority to bear arms, make arrests and apply for, serve and execute search warrants, arrest warrants, capias and other process of the court.

(b) Investigations may also be conducted in connection with the faithful execution and effective enforcement of the laws of the state with reference to organized crime, vice, racketeering, rioting, inciting to riot and insurrection, and, upon specific direction by the governor in writing to the executive director, the misconduct, in connection with their official duties, of public officials and employees and of officials and members of public corporations and authorities subject to suspension or removal by the governor.

(c) All investigators employed by the department shall be considered peace officers for all purposes. The executive director shall have the authority to designate the person occupying any appropriate position within the department as a peace officer, if such person is qualified under the department's personnel regulations relating to agents, and all persons thus employed by the department shall be considered peace officers for all purposes and shall be entitled to the privileges, protection, and benefits of ss. 112.19, 121.051, 122.34, and 870.05.

(3) Whenever it shall appear to the department that there is cause for the prosecution of a crime, the department shall refer the evidence of such crime to the officials authorized to conduct the prosecution.

Laws 1974, c. 74-386, § 4, eff. Aug. 1, 1974. Amended by Laws 1976, c. 76-247, § 5, eff. July 1, 1976; Laws 1977, c. 77-127, § 1, eff. June 7, 1977; Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978; Laws 1979, c. 79-8, § 34, eff. Aug. 5, 1979.

943.045 Definitions

The following words and phrases as used in ss. 943.045–943.08 shall have the following meanings:

(1) "Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal justice information.

(2) "Administration of criminal justice" means performing functions of detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies.

(3) "Criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information. The term shall not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term shall not include criminal intelligence information or criminal investigative information.

(4) "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as fingerprint records, if the information does not indicate involvement of the person in the criminal justice system.

(5) "Criminal intelligence information" means information collected by a criminal justice agency with respect to an identifiable person or group in an effort to anticipate, prevent, or monitor possible criminal activity.

(6) "Criminal investigative information" means information about an identifiable person or group, compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators, informants, or any type of surveillance.

(7) "Record" means any and all documents, writings, computer memory, and microfilm, and any other form in which facts are memorialized, irrespective of whether such record is an official record, public record, or admissible record or is merely a copy thereof.

(8) "Comparable ordinance violation" means a violation of an ordinance having all the essential elements of a statutory misdemeanor or felony.

(9) "Disposition" means details relating to the termination of an individual criminal defendant's relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions.

(10) "Criminal justice agency" means:

(a) A court; or

(b) A governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

(11) "Dissemination" means the transmission of information, whether orally or in writing.

(12) "Research or statistical project" means any program, project, or component the purpose of which is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. The term does not include intelligence, investigative, or other information-gathering activities in which information is obtained for purposes directly related to enforcement of the criminal laws.

(13) "Expunction of a record" means the act of physical destruction or obliteration of a record or portion of a record. The process of expunction extends to all records, the continued existence of which would be contrary to the purpose of the expunction.

(14) "Sealing of a record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.

(15) "Adjudicated guilty" means that a person has been found guilty and that the court has not withheld an adjudication of guilt.

(16) "Criminal intelligence information system" means a system, including the equipment, facilities, procedures, agreement, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal intelligence information.

(17) "Criminal investigative information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal investigative information.

Formerly 943.07. Renumbered as 943.045 and amended by Laws 1980, c. 80-409, § 1, eff. Oct. 1, 1980.

Repeal

Laws 1978, c. 78-323, § 4, the "Sundown Act", providing for the repeal of boards, committees, and councils which have held official meetings since January 1, 1975, provides for the repeal of this section, relating to the criminal justice information systems council, on October 1, 1981. For a complete listing of all entities affected by Laws 1978, c. 78-323, see § 11.611 and notes thereunder.

943.05 Division of Criminal Justice Information Systems; duties; crime reports

(1) There is created a Division of Criminal Justice Information Systems within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed upon the recommendation of the executive director.

(2) The division shall:

(a) Establish a system of fingerprint analysis and identification.

(b) Establish a system of intrastate communication of vital statistics and information relating to crimes, criminals, and criminal activity. The division shall cooperate with state, county, municipal, and federal agencies in the establishment of such a system.

(c) Establish a system of uniform crime reports and statistical analysis.

1. All state, county, and municipal law enforcement agencies shall submit to the department uniform crime reports setting forth their activities in connection with law enforcement.

2. It shall be the duty of the division, under the supervision of the executive director, to adopt and promulgate rules prescribing the form, general content, and time and manner of submission of such uniform crime reports required pursuant to subparagraph 1. The rules so adopted and promulgated shall be filed with the Department of State pursuant to chapter 120 and shall have the force and effect of law. Willful or repeated failure by any state, county, or municipal law enforcement official to submit the uniform crime reports required by subparagraph 1. shall constitute neglect of duty in public office.

3. The division shall correlate the reports submitted to it pursuant to subparagraph 1. and shall compile and submit to the Governor and the Legislature semiannual reports based on such reports. A copy of these reports shall be furnished to all prosecuting authorities and law enforcement agencies.

(d) Exercise management control over all criminal justice information systems operated or maintained by the Department of Law Enforcement.

(e) Develop such rules in cooperation with the Criminal Justice Information Systems Council as are necessary to implement the provisions of ss. 943.045–943.058 and federal laws and regulations which pertain to criminal justice information systems in this state.

(f) When necessary, participate in interstate and federal criminal justice information systems and cooperate with agencies within the state, including the courts, in the operation of criminal justice information systems.

Laws 1974, c. 74-386, § 5, eff. Aug. 1, 1974. Amended by Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978; Laws 1980, c. 80-409, § 2, eff. Oct. 1, 1980.

943.051 Criminal justice information; collection and storage; fingerprinting

(1) The Division of Criminal Justice Information Systems, acting as the state's central criminal justice information repository, shall collect, process, and store criminal justice information and records necessary to the operation of the criminal justice information system of the Department of Law Enforcement.

(2) When practicable, the division may develop systems which inform one criminal justice agency of the general nature of criminal justice information held or maintained by other criminal justice agencies.

(3) The division shall collect, process, maintain, and disseminate information and records with due regard to the privacy interests of individuals and shall strive to maintain or disseminate only accurate and complete records.

(4) Each person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance by a state, county, municipal, or other law enforcement agency shall be fingerprinted, and such fingerprints shall be submitted to the Department of Law Enforcement. Exceptions to this requirement for specified misdemeanors or comparable ordinance violations may be made by the department by rule.

(5) Fingerprints shall be used as the basis for criminal history records.
Added by Laws 1980, c. 80-409, § 3, eff. Oct. 1, 1980.

943.052 Disposition reporting

Each criminal justice agency shall monitor its records and submit disposition reports to the Division of Criminal Justice Information Systems in such format and detail and at such times as the Department of Law Enforcement may prescribe by rule. No rule or exception thereto which would affect the courts or court clerks shall be noticed as a proposed rule without the approval of the Supreme Court or its designee.
Added by Laws 1980, c. 80-409, § 4, eff. Oct. 1, 1980.

943.0525 Criminal justice information systems; use by state and local agencies

As a condition of participating in any criminal justice information system established by the division or of receiving criminal justice information, state and local agencies shall be required to execute appropriate user agreements and to comply with applicable federal laws and regulations, this chapter, and [1] rules of the Department of Law Enforcement adopted thereunder. Failure to comply with such laws or rules shall constitute grounds for immediate termination of services or withholding of criminal justice information.
Laws 1980, c. 80-409, § 2, eff. Oct. 1, 1980.

[1] The word "and" was substituted by the division of statutory revision for the word "or."

943.053 Dissemination of criminal justice information; fees

(1) The Department of Law Enforcement shall disseminate criminal justice information only in accordance with federal and state laws, regulations, and rules.

(2) Criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

(3) Criminal history information compiled by the Division of Criminal Justice Information Systems from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge and, otherwise, to governmental agencies not qualified as criminal justice agencies on an approximate-cost basis. After providing the division with all known identifying information, persons in the private sector may be provided criminal history information upon tender of fees as established by rule of the Department of Law Enforcement. Such fees shall approximate the actual cost of producing the record information. Fees may be waived by the Executive Director of the Department of Law Enforcement for good cause shown.

(4) Criminal justice information provided by the Department of Law Enforcement shall be used only for the purpose stated in the request.
Added by Laws 1980, c. 80-409, § 5, eff. Oct. 1, 1980.

943.054 Exchange of federal criminal history records and information

(1) Criminal history information derived from any United States Department of Justice criminal justice information system is available:

(a) To criminal justice agencies for criminal justice purposes.

(b) Pursuant to applicable federal laws and regulations for use in connection with licensing or local or state employment or for such other uses only as authorized by federal or state laws which have been approved by the United States Attorney General or his designee. When no active prosecution of the charge is known to be pending, arrest data more than 1 year old is not disseminated unless accompanied by information relating to the disposition of that arrest.

(c) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(2) The exchange of federal criminal history information is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(3) A criminal justice agency may refer to federal criminal history records and disclose to the public factual information concerning the status of an investigation; the apprehension, arrest, release, or prosecution of an individual; the adjudication of charges; or the correctional status of an individual when such disclosure is reasonably contemporaneous with the event to which the information relates.

Added by Laws 1980, c. 80-409, § 6, eff. Oct. 1, 1980.

943.055 Records and audit

(1) Criminal justice agencies disseminating criminal justice information derived from a Department of Law Enforcement criminal justice information system shall maintain a record of dissemination in accordance with rules promulgated by the Department of Law Enforcement.

(2) The Division of Criminal Justice Information Systems shall arrange for any audits of state and local criminal justice agencies necessary to assure compliance with federal laws and regulations, this chapter, and rules of the Department of Law Enforcement pertaining to the establishment, operation, security, and maintenance of criminal justice information systems.

Added by Laws 1980, c. 80-409, § 7, eff. Oct. 1, 1980.

943.056 Access to, review and challenge of, criminal history records

(1) When a person requests a copy of his own criminal history record not otherwise available as provided by s. 119.07, the Department of Law Enforcement shall provide such record for review upon verification, by fingerprints, of the identity of the requesting person. The providing of such record shall not require the payment of any fees, except those provided for by federal regulations.

(2) Criminal justice agencies subject to chapter 120 shall be subject to hearings regarding those portions of criminal history records for which the agency served as originator. When it is determined what the record should contain in order to be complete and accurate, the Division of Criminal Justice Information Systems shall be advised and shall conform state and federal records to the corrected criminal history record information.

(3) Criminal justice agencies not subject to chapter 120 shall be subject to administrative proceedings for challenges to criminal history record information in accordance with rules established by the Department of Law Enforcement.

(4) Upon request, an individual whose record has been corrected shall be given the names of all known noncriminal justice agencies to which the data has been given. The correcting agency shall notify all known criminal justice recipients of the corrected information, and those agencies shall modify their records to conform to the corrected record.

Added by Laws 1980, c. 80-409, §§ 8, 9, eff. Oct. 1, 1980.

943.057 Access to criminal justice information for research or statistical purposes

The Department of Law Enforcement may provide by rule for access to and dissemination and use of criminal justice information for research or statistical purposes. All requests for records or information in the criminal justice information systems of the department shall require the requesting individual or entity to enter into an appropriate privacy and security agreement which provides that the requesting individual or entity shall comply with all laws and rules governing the use of criminal justice information for research or statistical purposes. The department may charge a fee for the production of criminal justice information hereunder. Such fee shall approximate the

actual cost of production. This section shall not be construed to require the release of confidential information or to require the department to accommodate requests which would disrupt ongoing operations beyond the extent required by s. 119.07.
Added by Laws 1980, c. 80-409, § 10, eff. Oct. 1, 1980.

943.0575 . Public access to records

Nothing in this act shall be construed to restrict or condition public access to records as provided by s. 119.07.
Laws 1980, c. 80-409, § 16, eff. Oct. 1, 1980.

943.058 Criminal history record expunction or sealing

(1) Notwithstanding statutes dealing more generally with the preservation and destruction of public records, the Department of Law Enforcement, in consultation with the Department of State, may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any nonjudicial record of arrest made contrary to law or by mistake or when the record no longer serves a useful purpose.

(2) The courts of this state shall continue to have jurisdiction over their own procedures, including the keeping, sealing, expunction, or correction of judicial records containing criminal history information. The courts may order the sealing or expunction of any other criminal history record provided:

(a) The person who is the subject of the record has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation;

(b) The person who is the subject of the record has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the records expunction petition pertains;

(c) The person who is the subject of the record has not secured a prior records expunction or sealing under this section, former s. 893.14, or former s. 901.33; and

(d) Such record has been sealed under this section, former s. 893.14, or former s. 901.33 for at least 10 years; except that, this condition shall not apply in any instance in which an indictment or information was not filed against the person who is the subject of the record.

(3) Notwithstanding subsection (2), criminal history records maintained by the Department of Law Enforcement may be ordered expunged only upon a specific finding by a circuit court of unusual circumstances requiring the exercise of the extraordinary equitable powers of the court. Upon a finding that the criteria set out in paragraphs (2)(a)-(c) have been met, the records maintained by the department may be ordered sealed by any court of competent jurisdiction; and thereafter such records and other records sealed pursuant to this section, former s. 893.14, former s. 901.33, or similar laws, shall be nonpublic records, available only to the subject, his attorney, or to criminal justice agencies for their respective criminal justice purposes. An order sealing criminal history records pursuant to this subsection shall not be construed to require that the records be surrendered to the court, and such records shall continue to be maintained by the department.

(4) In judicial proceedings under subsections (2) and (3), it shall not be necessary to make any agency other than the state a party. The appropriate state attorney shall be served with the petition and shall respond after a review of the petitioner's entire multistate criminal history record. If relief is granted, the clerk of the court shall certify copies of the order to the prosecutor and to the arresting agency. The arresting agency shall be responsible for forwarding the order to the Department of Law Enforcement and to any other agency to which the arresting agency itself disseminated the criminal history record information within the purview of the order. The Department of Law Enforcement shall forward the order to all agencies, including the Federal Bureau of Investigation, to which it disseminated the affected criminal history information. The clerk of the court shall certify a copy of the order to any other agency which the records of the clerk reflect has received the affected criminal history information from the court. A notation indicat-

ing compliance with an order to expunge may be retained for use thereafter only to confirm the expunction upon inquiry of the ordering court.

(5) Notwithstanding other laws to the contrary, a criminal justice agency may honor laws, court orders, and official requests of other jurisdictions relating to expunction, sealing, correction or confidential handling of criminal history records or information derived therefrom.

(6) The effect of expunction or sealing of criminal history records under this section or other provisions of law, including former ss. S93.14 and 901.33, shall be as follows:

(a) When all criminal history records, including the records maintained by the Department of Law Enforcement and the courts, have been expunged, the subject of such records shall be restored, in the full and unreserved contemplation of the law, to the status occupied before the arrest, indictment, information, or judicial proceedings covered by the expunged record.

(b) When all criminal history records, except for records retained under seal by the courts or the Department of Law Enforcement, have been expunged, the subject of such records may lawfully deny or fail to acknowledge the events covered by the expunged or sealed records except in the following circumstances:

1. When the person who is the subject of the record is a candidate for employment with a criminal justice agency;

2. When the person who is the subject of the record is a defendant in a criminal prosecution;

3. When the person who is the subject of the record subsequently petitions for relief under this section; or

4. When the person who is the subject of the record is a candidate for admission to The Florida Bar.

The courts or the Department of Law Enforcement may refer to and disseminate information contained in sealed records in any of these circumstances. Subject to the exceptions stated herein, no person as to whom an expunction or sealing has been accomplished shall be held thereafter under any provision of law of this state to be guilty of perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge expunged or sealed criminal history records.

(7) An order or request to expunge or seal a criminal history record shall be deemed an order or request to seek the expunction or sealing of such record by all other agencies and persons known to have received it.

(8) Each petition to a court for sealing or expunction of criminal history records shall be complete only when accompanied by the petitioner's sworn statement that, to the best of his knowledge and belief, he is eligible for such a sealing or expunction.

Added by Laws 1980, c. 80-409, § 11, eff. Oct. 1, 1980.

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§43.06 Criminal Justice Information Systems Council

There is created a Criminal Justice Information Systems Council within the Department of Law Enforcement.

(1) The council shall be composed of 10 members, consisting of the Attorney General or a designated assistant; the Secretary of the Department of Corrections; the chairman of the Parole and Probation Commission; the State Courts Administrator; and 6 members, to be appointed by the Governor, consisting of 2 sheriffs, 2 police chiefs, 1 public defender, and 1 state attorney.

(2) Members appointed by the Governor shall be appointed for terms of 4 years, except that in the first appointment under this section, two members shall be appointed for terms of 2 years, two members for terms of 3 years, and two members for terms of 4 years; and the terms of such members shall be designated by the Governor at the time of appointment. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Any member appointed to fill a vacancy occurring because of death, resig-

nation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies.

(3) The council shall annually elect its chairman and other officers. The council shall hold at least four regular meetings each year at the call of the chairman or upon the written request by three members of the council. A majority of the members of the council constitutes a quorum.

(4) Membership on the council shall not disqualify a member from holding any other public office or being employed by a public entity except that no member of the legislature shall serve on the council. The legislature finds that the council serves a state, county, and municipal purpose and that service on the council is consistent with a member's principal service in a public office or employment.

(5) Members of the council shall serve without compensation, but shall be entitled to be reimbursed for per diem and traveling expenses as provided by § 112.061.

Laws 1974, c. 74-386, § 6, eff. Aug. 1, 1974. Amended by Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978; Laws 1980, c. 80-409, § 12, eff. Oct. 1, 1980.

Repeal

Laws 1978, c. 78-323, § 4, the "Sundown Act", providing for the repeal of boards, committees, and councils which have held official meetings since January 1, 1975, provides for the repeal of this section, relating to the criminal justice information systems council, on October 1, 1981. For a complete listing of all entities affected by Laws 1978, c. 78-323, see § 11.611 and notes thereunder.

943.07 Renumbered as 943.045 and amended by Laws 1980, c. 80-409, § 1, eff. Oct. 1, 1980

943.08 Duties; Criminal Justice Information Systems Council

The council shall review operating policies and procedures and make recommendations to the Executive Director of the Department of Law Enforcement relating to the following areas:

(1) The management control of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the Department of Law Enforcement;

(2) The installation of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems by the Department of Law Enforcement and the exchange of information by such systems within the state and with similar systems and criminal justice agencies in other states and in the Federal Government;

(3) The exchange of criminal justice information and criminal justice intelligence information and the operation of criminal justice information systems and criminal justice intelligence information systems, both interstate and intrastate;

(4) The operation and maintenance of computer hardware and software within criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the department;

(5) The physical security of the system, to prevent unauthorized disclosure of information contained in the system and to ensure that the criminal justice information in the system is currently and accurately revised to include subsequently revised information;

(6) The security of the system, to ensure that criminal justice information, criminal intelligence information, and criminal investigative information will

be collected, processed, stored, and disseminated in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid by unauthorized individuals or agencies;

(7) The purging or sealing of criminal justice information upon order of a court of competent jurisdiction or when authorized by law;

(8) The dissemination of criminal justice information to persons or agencies not associated with criminal justice when such dissemination is authorized by law;

(9) The access to criminal justice information maintained by any criminal justice agency by any person about whom such information is maintained for the purpose of challenge, correction, or addition of explanatory material;

(10) The training of employees of the department and other state and local criminal justice agencies in the proper use and control of criminal justice information; and

(11) Such other areas as relate to the collection, processing, storage, and dissemination of criminal justice information, criminal intelligence information, and criminal justice investigative information.

Laws 1974, c. 74-386, § 6, eff. Aug. 1, 1974. Amended by Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1980, c. 80-409, § 13, eff. Oct. 1, 1980.

Repeal

Laws 1978, c. 78-323, § 4, the "Sundown Act", providing for the repeal of boards, committees, and councils which have held official meetings since January 1, 1975, provides for the repeal of this section, relating to the criminal justice information systems council, on October 1, 1981. For a complete listing of all entities affected by Laws 1978, c. 78-323, see § 11.611 and notes thereunder.

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CHAPTER 119

PUBLIC RECORDS

Sec.

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119.01 General state policy on public records

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

79. Work papers and inter-office memoranda, records subject to inspection

Written appraisal report obtained by county in connection with negotiations for proposed acquisition of property for a landfill site constituted a "public record," even if transaction had not been completed, and must be made available for inspection under this chapter providing for examination and inspection of public records, notwithstanding fact that disclosure of contents of appraisal during negotiations would be harmful to the county. Gannett Co., Inc. v. Goldtrap, App., 302 So.2d 174 (1974).

Work papers, work sheets, and papers used in making arithmetic computations or notes, or inter-office correspondence on items or matters under examination, etc., all for the benefit of the auditor, are not "public records" within the purview of this section and access to such information should be denied the public as a matter of public policy. Op.Atty. Gen., 066–88, Sept. 15, 1966.

Temporary records, maps, plats, cards and memoranda, or writings, from which the permanent or final tax assessment roll is prepared, are in the nature of work sheets and are not classified as public records, and, therefore, would not be subject to the personal inspection of a citizen of Florida as authorized by this section; however, the records, maps, plats, cards and writings of a permanent nature, used from year to year in the preparation of successive tax assessment rolls could be classified as public records and open for public inspection. Op.Atty.Gen., 061–102, June 29, 1961.

80. Private organizations, records subject to inspection

The legislature, in creating the governmental, hospital authority lessor, provided that the agreemeent to lease was to be consistent with this section and § 286.011, and this included the disclosure provisions so as to require the nonprofit private lessee to disclose its records and make them available to the public under the Public Records Law (this chapter). Cape Coral Medical Center, Inc. v. News-Press Pub. Co., Inc., App., 390 So.2d 1216 (1980).

Public access to financial records of nonpublic organizations in which membership consists solely of elected and appointed officials is not required under the public record laws of Chapter 119. Op.Atty.Gen., 072–184, June 2, 1972.

119.011 Definitions

For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons

collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime;

2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.07(3)(h);

3. The time, date, and location of the incident and of the arrest;

4. The crime charged;

5. Documents given or required by law or agency rule to be given to the person arrested; and

6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active crim-

inal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act,[1] during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.

[1] Section 895.01 et seq.

119.0115 Videotapes and video signals; exemption from chapter

Any videotape or video signal which, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from this chapter.

119.012 Records made public by public fund use

If public funds are expended by an agency defined in s. 119.011(2) in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group, or other organization, then all the financial, business and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of s. 119.07.

119.02 Penalty

Any public official who shall violate the provisions of s. 119.07(1) shall be subject to suspension and removal or impeachment and, in addition, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

119.031 Keeping records in safe places; copying or repairing certified copies

Insofar as practicable, custodians of public records shall keep them in fireproof and waterproof safes, vaults or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any state, county or municipal records are in need of repair, restoration or rebinding, the head of such state agency, department, board or commission, the board of county commissioners of such county or the governing body of such municipality may authorize that the records in need of repair, restoration or rebinding be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force and effect of the original.

119.04 Repealed by Laws 1969, c. 69-353, § 59

119.041 Destruction of records regulated

No public official may mutilate, destroy, sell, loan or otherwise dispose of any public record without the consent of the Division of Archives, History and Records Management of the Department of State.

119.05 Disposition of records at end of official's term

Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or if there be none, to the Division of Archives, History and Records Management of the Department of State, all records, books, writings, letters and documents kept or received by him in the transaction of his official business.

119.06 Demanding custody

Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. Any person unlawfully possessing public records shall upon demand of any person and within 10 days deliver such records to their lawful custodian unless just cause exists for failing to deliver such records.

119.07 Inspection and examination of records; exemptions.—

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8½ inches, upon payment of 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. However, the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with its duplication. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency. An agency may charge up to $1 per copy for a certified copy of a public record.

(b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information tech-

...ogy resources or the labor cost of the personnel providing the service that is actually incurred by the agency attributable to the agency for the clerical and supervisory assistance required, or both. "Information technology resources" shall have the same meaning as in s. 282.303(10).

(b) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or his employees shall touch the ballots. The supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(2)(a) A person who has custody of a public record and who asserts that an exemption provided in subsection (3) or in a general or special law applies to a particular public record or part of such record shall delete or excise from the record only that portion of the record with respect to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination. If the person who has custody of a public record contends that the record or part of it is exempt from inspection and examination, he shall state the basis of the exemption which he contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute, and, if requested by the person seeking the right under this subsection to inspect, examine, or copy the record, he shall state in writing and with particularity the reasons for his conclusion that the record is exempt.

(b) In any civil action in which an exemption to subsection (1) is asserted, if the exemption is alleged to exist under or by virtue of paragraph (e), paragraph (f), paragraph (g), paragraph (m), paragraph (n), or paragraph (q) of subsection (3), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of paragraph (d) of subsection (3), an inspection in camera will be discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection, examination, or copying as requested by the person seeking such access.

(c) Even if an assertion is made by the custodian of a public record that a requested record is not a public record subject to public inspection and examination under subsection (1), the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request requesting the right to inspect, examine, or copy the record was served on or otherwise made to the custodian of the record by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian shall not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(d) The absence of a civil action instituted for the purpose stated in paragraph (c) will not relieve the custodian of his duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and examination under subsection (1) and will not otherwise excuse or exonerate the custodian from any unauthorized or unlawful disposition of such record.

(3)(a) All public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, are exempt from the provisions of subsection (1).

(b) All public records referred to in ss. 110.1091, 199.222, 228.093, 257.261, 268.075, 624.319(3) and (4), and 655.057(1)(b), (3), and (4) are exempt from the provisions of subsection (1).

(c) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from the provisions of subsection (1). A person who has taken such an examination shall have the right to review his own completed examination.

(d) Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1).

(e) Any information revealing the identity of a confidential informant or a confidential source is exempt from the provisions of subsection (1).

(f) Any information revealing surveillance techniques or procedures or personnel is exempt from the provisions of subsection (1). Notwithstanding s. 119.14, any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34(2), are exempt from the provisions of subsection (1) and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Department of Community Affairs as having an official need for access to the inventory or comprehensive policies or plans. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(g) Any information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1).

(h) Any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794; the identity of the victim of the crime of lewd, lascivious, or indecent assault upon or in the presence of a child, as defined in chapter 800; or the identity of the victim of the crime of child abuse as defined by chapter 827 and any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 800, or chapter 827, is exempt from the provisions of subsection (1).

(j) Any criminal intelligence information or criminal investigative information which reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from the provisions of subsection (1).

(j) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from the provisions of subsection (1).

(k) The home addresses, telephone numbers, and photographs of active or former law enforcement personnel and personnel of the Department of Health and Rehabilitative Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from the provisions of subsection (1). These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(l) Any information provided to an agency of state government or to an agency of a political subdivision of the state for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his name for ridesharing arrangements as defined in s. 341.031(9), is exempt from the provisions of subsection (1).

(m) Any information revealing the substance of a confession of a person arrested is exempt from the provisions of subsection (1), until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(n) 1. A public record which was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from the provisions of subsection (1) until the conclusion of the litigation or adversarial administrative proceedings. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

2. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from the provisions of subsection (1) until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.53(5)(a)1. or within 10 days after bid or proposal opening, whichever is earlier.

3. In any case in which an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from the provisions of s. 119.01 and subsection (1) until execution of a valid option contract or a written offer to sell which has been conditionally accepted by the agency, at which time the exemption shall expire. The agency shall not finally accept the offer for a period of 30 days in order to allow public review of the transaction. The agency may give conditional acceptance to any option or offer subject only to final acceptance by the agency after the 30-day review period. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption from the provisions of this chapter shall expire at the conclusion of the condemnation litigation of the subject property. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from the provisions of s. 119.01 and subsection (1) to the same extent as appraisals, other reports relating to value, offers, and counteroffers. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Nothing in this section shall be construed to provide an exemption from or exception to s. 286.011. For the purpose of this paragraph "option contract" means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. This paragraph shall have no application to other exemptions from the requirements of s. 119.01 or subsection (1) which are contained in other provisions of law and shall not be construed to be an express or implied repeal thereof.

4. a. Data processing software obtained by an agency under a licensing agreement which prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software which is sensitive are exempt from the provisions of subsection (1). The designation of agency-produced software as sensitive shall not prohibit an agency head from sharing or exchanging such software with another public agency. As used in this paragraph:

(I) "Data processing software" has the same meaning as in s. 282.303(6).

(II) "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:

(A) Collect, process, store, and retrieve information which is exempt from the provisions of subsection (1);

(B) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or

(C) Control and direct access authorizations and security measures for automated systems.

b. A patient record obtained by the Department of Health and Rehabilitative Services pursuant to s. 641.3... from a health maintenance organization or from a pro-

...ber of a health maintenance organization as to subscribers treated by the provider pursuant to a provider contract with a health maintenance organization which record contains the name, the residential or business address, the telephone, social security, or other identifying number, or a photograph of any subscriber or of the spouse, relative, or guardian of the subscriber, or which record is patient-specific or otherwise identifies the patient, either directly or indirectly, is exempt from the provisions of subsection (1).

...A report obtained by the Department of Insurance from a health maintenance organization pursuant to s. 641.311 to the extent that such report contains the name, the residential or business address, the telephone, social security, or other identifying number, or a photograph of any subscriber or of the spouse, relative, or guardian of the subscriber or other subscriber-identifying information, is exempt from the provisions of subsection (1).

...All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing shall be exempt from the provisions of subsection (1) until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision shall not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency which is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section. This paragraph shall not be construed to modify or repeal any special or local act. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

...All complaints and other records in the custody of any agency in the executive branch of state government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities shall be exempt from the provisions of subsection (1) until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision shall not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency which is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

...A patient record obtained by the Department of Health and Rehabilitative Services or its agent pursuant to s. 395.385, which record contains the name, residence or business address, telephone number, social security or other identifying number or photograph of any person or the spouse, relative, or guardian of such person or which record is patient-specific or otherwise identifies the patient either directly or indirectly is exempt from the provisions of subsection (1).

...All records supplied by a telecommunications company to a state or local governmental agency which contain the name, address, and telephone number of subscribers are exempt from the provisions of subsection (1).

...All information relating to the medical condition or medical status of employees of the state, which is not relevant to the employee's capacity to perform his duties, is exempt from the provisions of subsection (1). Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits. All information which is exempt from subsection (1) pursuant to this paragraph shall be maintained separately from nonexempt employment information.

...The records of a medical review committee created pursuant to s. 766.101 or former s. 768.40 by the Department of Corrections or the Correctional Medical Authority, or both, are exempt from the provisions of subsection (1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

...Any document which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of subsection (1). Any state or federal agency which is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(4) Nothing in this section shall be construed to exempt from subsection (1) a public record which was made a part of a court file and which is not specifically closed by order of court, except as provided in paragraphs (e), (f), (g), (m), (n), and (q) of subsection (3) and except information or records which may reveal the identity of a person who is a victim of a sexual offense as provided in paragraph (h) of subsection (3).

(5) Nothing in subsection (3) shall be interpreted as providing an exemption from or exception to s. 286.011.

(6) Nothing in subsection (3) or any other general or special law shall limit the access of the Auditor General or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such auditor states in writing that such records are needed for a properly authorized audit or investigation. Such auditor shall maintain the confidentiality of any public records that are confidential or exempt from the provisions of subsection (1) and shall be subject to the same penalties

as the custodians of those public records for violating confidentiality.

(7)(a) Notwithstanding the provisions of paragraph (3)(a), any person or organization, including the Department of Health and Rehabilitative Services, may petition the court for an order making public the records of the Department of Health and Rehabilitative Services that pertain to investigations of alleged adult or child abuse, neglect, abandonment, or exploitation. The court shall determine if good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interest of the adult or child who is the focus of the investigation, and in the case of the child, the interest of that child's siblings, together with the privacy right of other persons identified in the reports against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Health and Rehabilitative Services and the court system in providing aged persons, disabled adults, and children of this state with the protections enumerated in ss. 415.101 and 415.502. However, nothing in this subsection shall contravene the provisions of s. 415.51(7), which protect the name of any person reporting adult or child abuse, neglect, or exploitation.

(b)1. In cases involving the death of an aged person or disabled adult as the result of abuse, neglect, or exploitation, there shall be a presumption that the best interest of the aged person or disabled adult and the public interest will be served by full public disclosure of the circumstances of the investigation of the death and any other investigation concerning the aged person or disabled adult.

2. In cases involving the death of a child as the result of abuse, neglect, or abandonment, there shall be a presumption that the best interest of the child and the child's siblings and the public interest will be served by full public disclosure of the circumstances of the investigation of the death of the child and any other investigation concerning the child and the child's siblings.

(c) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of and other identifying information with respect to any person identified in any unfounded report, indicated-perpetrator undetermined report, or proposed confirmed report, or in any report which has not yet been classified pursuant to s. 415.504(4) until such time as the court finds that there is probable cause to believe that the person identified committed an act of aged abuse, neglect, or abandonment.

(8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution.

119.072 Criminal intelligence or investigative information obtained from out-of-state agencies

Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

119.08 Photographing public records

(1) In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy.

(2) Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the room where the said records, documents and instruments are kept as determined by the lawful custodian thereof.

(3) Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the lawful custodian thereof.

the office of such custodian. Op. Atty.Gen., 057-280, Sept. 17, 1957.

Though former § 119.03 (see, now, this section) seemed to authorize custodian of public records to agree with persons procuring microfilm negatives of public records as to compensation to be paid therefor, compensation to be charged should be approved by board of county commissioners, and compensation should be such as would fully compensate custodian for his time, for use of county facilities and equipment, and electricity and other things necessary. Id.

Where abstract companies or title companies use electricity of county for operation of electrical equipment to photograph public records in office of clerk of circuit court, a reasonable fee may be collected from such companies for the electricity used. Op. Atty.Gen., 057-240, Aug. 12, 1957.

3. Court records and files—In general

A Florida citizen or a Florida corporation, acting through its representatives, if also Florida citizens, may, pursuant to this section, photograph worthless check affidavits or warrants on file in the office of a justice of the peace, under such rules and upon payment of such compensation as may be prescribed by the custodian thereof. Op.Atty.Gen., 072-413, Nov. 29, 1972.

4. —— Juvenile court records

Subject to the approval of the records screening board, which board was empowered by former § 119.04 (now, this section) to specify which records shall be photographed prior to their destruction, the juvenile courts had authority to destroy all records pertaining to a child, except the records which permanently sever the custody of a child from its parents, which records must be preserved permanently as required by subsection 2 of § 39.12. Op.Atty.Gen., 062-56, April 20, 1962.

5. Insurance rate information

Under former § 119.03, (see, now, this section) the representatives of one insurance company could be allowed to make photographs of the rate information filed with the commissioner by another company in compliance with former § 630.03 (see, now, chapter 627, part I). Op.Atty. Gen., 1952, p. 658.

6. Maps and plats

Maps and plats purchased and used by the tax assessing offices do not become public property for general reproduction, sale and use so long as the copyright or common law rights remain. Op.Atty.Gen., 060-112, June 30, 1960.

119.09 Assistance of the Division of Archives, History and Records Management of the Department of State

The Division of Archives, History and Records Management of the Department of State shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing and making available the public records in their custody. When requested by the division, public officials shall assist the division in the preparation of an inclusive inventory of public records in their custody to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the division, establishing a time period for the retention or disposal of each

series of records. Upon the completion of the inventory and schedule, the division shall (subject to the availability of necessary space, staff and other facilities for such purposes) make available space in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

119.092 Registration by federal employer's registration number

Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

119.10 Violation of chapter a misdemeanor

Any person willfully and knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

119.11 Accelerated hearing; immediate compliance

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period. The filing of a notice of appeal shall not operate as an automatic stay.

(3) A stay order shall not be issued unless the court determines that there is substantial probability that opening the records for inspection will result in significant damage.

119.12 Attorney's fees

(1) Whenever an action has been filed against an agency to enforce the provisions of this chapter and the court determines that such agency unreasonably refused to permit public records to be inspected, the court shall assess a reasonable attorney's fee against such agency.

(2) Whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such agency.

RULES
OF THE
DEPARTMENT OF LAW
ENFORCEMENT

DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS

CHAPTER 11C-4
CRIME INFORMATION BUREAU;
CRIMINAL HISTORY RECORDS;
FINGERPRINTING AND REPORTS

11C-4.01	Bureau Chief.
11C-4.02	Duties of Bureau.
11C-4.03	Arrest Fingerprint Card Submission.
11C-4.04	Identification Manual.
11C-4.05	Deceased Notification Submission.
11C-4.06	Final Disposition Reporting.
11C-4.07	Juvenile Offender Fingerprinting; Records.

11C-4.01 Bureau Chief. The Crime Information Bureau is supervised by a Bureau Chief under the direction of the Division Director, Executive Director and the Governor and Florida Cabinet.
Specific Authority 120.53, 943.03, 943.05 FS. Law Implemented 20.04, 20.05, 20.201, 120.53, 943.03, 943.05 FS. History—New 11-28-75.

11C-4.02 Duties of Bureau.
(1) The Crime Information Bureau maintains criminal histories as to non-juvenile offenders in Florida.
(2) It serves as a screening point for dissemination of criminal history record information contained in the files of the Florida Crime Information Center and the National Crime Information Center.
(3) It expunges or seals individual records of criminal history pursuant to federal and state law and regulations and carries out orders of court in this regard.
(4) It maintains a non-public juvenile file for identification purposes only and a confiscated weapons file for audit purposes only.
(5) When authorized by law and federal regulations, it assists licensing and regulatory agencies in the screening of applicants for licenses, permits, and the like.
Specific Authority 120.53, 943.03, 943.05 FS. Ch. 1, Title 28, U. S. C. and C. F. R. Law Implemented 20.201, 120.53, 943.03, 943.05 FS. Ch. 1, Title 28, U. S. C. and C. F. R. History—New 11-28-75, Amended 6-27-78.

11C-4.03 Arrest Fingerprint Card Submission. In order for the Department to properly carry out those mandates in Section 943.05, Florida Statutes, pertaining to the establishment and maintenance of criminal histories based on positive identification using fingerprint comparison, all law enforcement agencies of the State shall take the following action on all misdemeanor and felony arrests made:
(1) Complete at the time of arrest, as outlined in the Department's Identification Manual and on forms provided by the Department, a criminal arrest fingerprint card.
(2) Submit on a daily basis all completed fingerprint cards to the Department, attention: Crime Information Bureau, using procedures as outlined under the "Single Fingerprint Card Submission Program", in the Department's Identification Manual.
(3) The only exceptions to the foregoing requirements shall be that charges regarding drunkenness and minor traffic offenses as well as charges made the subject of a field citation under statutes such as Section 901.28, Florida Statutes, need not be submitted to the Department unless, of course, the arresting agency requires a criminal history check or major charges are associated with such charges.
(4) Charges regarding "minor traffic offenses" do not include:
(a) Driving while intoxicated;
(b) Leaving the scene of an accident;
(c) Fleeing or attempting to elude a police officer;
(d) Making a false accident report;
(e) Reckless driving;
(f) Other offenses against the traffic and motor vehicle laws which have not been decriminalized.
Specific Authority 943.03, 943.05 FS. Law Implemented 943.05 FS. History—New 6-24-76, Amended 6-27-78.

11C-4.04 Identification Manual.
(1) The Department publishes an Identification Manual to assist and advise agencies in the taking and proper submission of fingerprint cards. The identification Manual also contains exhibits of other forms that can be used by local agencies in submitting and requesting criminal history record information.
(2) The criminal justice community shall be provided with updates and/or changes to the Identification Manual by the Department as they are needed.
Specific Authority 120.53, 943.03, 943.05 FS. Law

Implemented 120.53, 943.05 FS. History—New 6-24-76, Amended 6-27-78.

11C-4.05 Deceased Notification Submission.

(1) The cognizant law enforcement agency shall submit a set of fingerprints on unknown deceased individuals to the Department for the purpose of positive identification.

(2) If agencies are unable to print the deceased or furnish a previous set of prints, they shall submit to the Department of F. B. I. R-88 Death Notification form, furnishing as much information on the deceased as possible.
Specific Authority 943.03, 943.05 FS. Law Implemented 943.05 FS. History—New 6-24-76.

11C-4.06 Final Disposition Reporting.

(1) In order for the Department to properly carry out those mandates set forth in sections 943.05, Chapter 1, Title 28, Part 20, C. F. R. and 42 U. S. C. 3371 in regard to the establishment and maintenance of current, complete, and accurate criminal histories, agencies, offices and officers in the Florida criminal justice community shall, to the maximum extent feasible, submit disposition data on criminal arrests, pretrial dispositions, trials, sentencing, confinement, parole and probation.

(2) Agencies, offices, and officers in the Florida criminal justice community operating a manual system for the submission of disposition data shall report such data in the following manner:

(a) Agencies, officers, and offices shall, to the maximum extent feasible, submit disposition data to the Department for each arrest as soon as the charge(s) receive a final disposition. Responsibility for completing and forwarding the final disposition report to the Department may reside with an arresting agency, prosecuting authority or clerk of the court, according to arrangements agreed upon by appropriate authorities within each county or municipality.

(3) Agencies, offices, and officers in the Florida criminal justice community possessing the technical requirements to collect, process, store, and disseminate disposition data in an automated information management system may submit disposition information to the Department in an automated format as approved by the Director of the Division of Criminal Justice Information Systems.

(4) Although interim transactions (i.e., turned over to, held for, pending) should be indicated in the designated area of the fingerprint card but not made the subject of a disposition report, it is essential that final disposition reports as more fully described in Chapter 1, Title 28, C. F. R. 20.3(e), be submitted within 90 days after the final disposition occurs.

(5) If within 180 days after an arrest no disposition report to the Department has been made, the Department shall notify the arresting agency and request a disposition report. The arresting agency may forward the notice to the agency responsible for responding to the Department's request according to arrangements agreed upon by appropriate authorities within each county or municipality. Thereafter the responsible agency shall provide such disposition report within 30 days.

Specific Authority 943.03, 943.05(2)(e) FS (1980 Supp.). Law Implemented 943.052 FS (1980 Supp.). History—New 6-24-76, Amended 11-12-81.

11C-4.065 Orders of Executive Clemency; Disposition.

(1) When it appears that an individual has obtained any form of executive clemency by order of the Governor and the cabinet, such clemency shall be treated by the Department as a final disposition. It shall be the responsibility of the individual to forward to the Department a copy of the order together with a fingerprint card for assurance of positive identification.

(2) Individuals seeking expunction of affected criminal history records based upon unconditional or full pardons must first obtain the appropriate circuit court order as provided by applicable Florida law. It shall be responsibility of the individual to forward to the Department those documents identified in subsection (1) of this section.
Specific Authority 943.03, 943.05(2)(e) FS (1980 Supp.). Law Implemented 943.058 FS (1980 Supp.). History—New 11-12-81.

11C-4.07 Juvenile Offender Fingerprinting; Records.

(1) Notwithstanding other provisions of this rule chapter, minors shall be fingerprinted and processed in accordance with this rule and Chapter 39, Florida Statutes.

(2) Irrespective of the gravity of an alleged offense, fingerprints of minors shall not be used to create an adult criminal history or arrest record unless and until the minor is transferred for prosecution as an adult in accordance with Section 39.02 and 39.09, Florida Statutes.

(3) Fingerprint cards and records relating to juvenile offenders and delinquent children shall not be open for public inspection except as authorized by Chapter 39, Florida Statutes, and shall not be commingled with fingerprint cards and records relating to adult offenders.

(4) Upon discovery that fingerprints of an alleged or adjudicated juvenile offender or delinquent have been mistakenly or improperly filed or forwarded to the Department of Law Enforcement for processing and retention as adult criminal history records or upon discovery that fingerprints of an adult have mistakenly or improperly been processed or filed as those of an alleged or adjudicated juvenile offender or delinquent, the agency making such discovery shall initiate corrective steps to insure that the requirements of law, including those contained in these rules, have been met. These corrective steps may appropriately include, but are not necessarily limited to:

(a) Fingerprinting or refingerprinting of subjects still in custody;

(b) Notification to all agencies known to have improperly received the information or to have received improper information or instructions;

(c) Removal of fingerprint cards and records from the adult criminal record system and files and reentry of such information into

the juvenile offender system and files (or vice versa);

(d) Transfer of fingerprint cards and records from one agency to another;

(e) Expunction of annotations and other cross-references to meet the requirements of law or to comply with orders of court;

(f) Commencement of judicial proceedings necessary to accomplish any of the foregoing or to otherwise correct the mistake.

(5) This rule shall not be deemed authority for noncompliance with orders of court regarding juvenile offender records or adult criminal history records. However, when it appears that in formulating orders in regard to juvenile offender or adult criminal history records, the court has been misinformed, then the court or prosecutor shall be so advised and clarification of the order shall be requested. Thereafter, action shall be taken in accordance with the order as modified, rescinded or affirmed. If no clarification is forthcoming within a reasonable time, action shall be taken in accordance with the original order.

(6) Because of the sensitivity of these matters, steps should be taken to ascertain the validity of correspondence. To this end, officers in charge of agencies are urged to attend to these matters personally or to designate in advance those officers who will otherwise attend to these matters on their behalf. The exchange of sample signatures is recommended.

Specific Authority 943.03(3), 943.05(2)(a) FS. Law Implemented 39.02(5)(a), 39.03(6), 39.09(2), 39.12, 943.05(2)(a), 943.08(1), 943.08(3), 943.08(4), 943.08(5), 943.08(7) FS. Ch. 1, Title 28, Section 20.21(d), C. F. R., 1969 AGO 277 No. 070-75. History—New 12-9-76.

RULES OF THE DEPARTMENT OF LAW ENFORCEMENT

DIVISION OF CRIMINAL JUSTICE INFORMATION SYSTEMS

CHAPTER 11C-5 CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL

11C-5.01 Creation, Membership, Terms, Compensation.
11C-5.02 Powers and Duties of Council.

11C-5.01 Creation, Membership, Terms, Compensation.

(1) The Criminal Justice Information Systems Council is created within the Department of Law Enforcement.

(2) The membership is comprised of the Attorney General or a designated assistant, the Secretary of The Department of Corrections; the Chairman of the Parole and Probation Commission, the State Courts Administrator, and six other members appointed by the Governor, consisting of two sheriffs, two police chiefs, one public defender and one state attorney.

(3) The terms and compensation of the members, the method of electing a chairman and other officers, etc. are described with particularity in section 943.06, Florida Statutes.

Specific Authority 120.53, 943.03, 943.05 FS. Law Implemented 943.08 FS. History—New 11-28-75, Amended 11-12-81.

11C-5.02 Powers and Duties of Council.

The Council shall review operating policies and procedures and make recommendations to the Executive Director of the Department of Law Enforcement relating to:

(1) The management control of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the Department of Law Enforcement;

(2) The installation of criminal justice information systems, and criminal intelligence information systems, and criminal investigative information systems by the Department of Law Enforcement and the exchange of information by such systems within the state and with similar systems and criminal justice agencies in other states and in the Federal Government;

(3) The exchange of criminal justice information and criminal intelligence information and the operation of criminal justice information systems and criminal intelligence information systems, both interstate and intrastate;

(4) The operation and maintenance of computer hardware and software within criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the Department;

(5) The physical security of the system, to prevent unauthorized disclosure of information contained in the system and to insure that the criminal justice information in the system is currently and accurately revised to include subsequently revised information;

(6) The security of the system, to insure that criminal justice information, criminal intelligence information, and criminal investigative information will be collected, processed, stored, and disseminated in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid by unauthorized individuals or agencies;

(7) The purging or sealing of criminal justice information upon order of court of competent jurisdiction or when required by law;

(8) The dissemination of criminal justice information to persons or agencies outside the criminal justice community if authorized by law;

(9) The access to criminal justice information maintained for the purpose of challenge, correction, or addition of explanatory material;

(10) The training of employees of the Department and other state and local criminal justice agencies in the proper use and control of criminal justice information; and

(11) Such other areas as may relate to the collection, processing, storage, and dissemination of criminal justice information, criminal intelligence information, and criminal investigative information.

Specific Authority 120.53, 943.03 FS, 943.05 FS (1980 Supp.). Law Implemented 943.08 FS (1980 Supp.). History—New 11-28-75, Amended 11-12-81.

RULES OF THE DEPARTMENT OF LAW ENFORCEMENT

DIVISION OF CRIMINAL JUSTICE INFORMATION SYSTEMS

CHAPTER 11C-6 CRIMINAL HISTORY RECORDS DISSEMINATION POLICY

11C-6.01	Posture of Department and Other Agencies.
11C-6.02	Present Policy.
11C-6.03	System Security and Public Access.
11C-6.04	Procedures for Requesting Criminal History Records.

11C-6.01 Posture of Department and Other Agencies.

(1) The Department receives funding from the Law Enforcement Assistance Administration of the U. S. Department of Justice and is therefore subject to federal regulations contained in Ch. 1, Title 28, Subpart 20B, C. F. R.

(2) The Department utilizes the services of U. S. Department of Justice criminal history record information systems and therefore must abide by and demand adherence to federal dissemination policy when using such services. The federal policy is contained in Ch. 1, Title 28, Subpart 20C, C. F. R.

(3) Most criminal justice agencies and some non-criminal justice agencies in Florida are themselves similarly situated. Moreover, any person or agency receiving criminal justice information directly from this Department or indirectly through any of these other agencies is subject to Ch. 1, Title 28, Subpart 20B, C. F. R., and will additionally be subject to Ch. 1, Title 28, Subpart 20C, if such information was derived from the criminal justice information systems of the United States Department of Justice.

Specific Authority 120.53, 943.03 FS. Ch. 1, Title 28, Part 20, C. F. R. Law Implemented 120.53, 943.05 FS. Ch. 1, Title 28, Part 20, C. F. R. History—New 6-24-76.

11C-6.02 Present Policy.

(1) Pending legislative or judicial direction to the contrary and to the maximum extent that it may act consistent with Chapter 119, Florida Statutes, the Department adopts by reference the definitions contained in Ch. 1, Title 28, Subpart 20A, C. F. R., and will make and hereby authorized dissemination to the fullest extent authorized under Ch. 1, Title 28, Subpart 20B and Ch. 1, Title 28, Subpart 20C, C. F. R., also incorporated herein by reference.

(2) Ch. 1, Title 28, Part 20, C. F. R., was published in the Federal Register, Vol. 40, No. 98, dated Tuesday, May 20, 1975. Significant amendments thereto were published in the Federal Register, Vol. 41, No. 55, dated Friday, March 19, 1976. These regulations have been filed with The Florida Department of State.

(3) In order for the Department to respond to requests for Florida criminal history information, the person or entity who wishes to review or secure such information shall provide to the Department the subject's full name and approximate age or date of birth. If available, the social security number, completed fingerprint card, and any other identifiers shall be provided.

Specific Authority 943.03, 943.05 FS. Law Implemented 943.05, 943.08 FS. Ch. 1, Title 28, Part 20, Sections 20.20, 20.21 and 20.33, C. F. R. History—New 6-24-76.

11C-6.03 System Security and Public Access.

(1) Not all criminal history records contained in or available through the record systems of the Florida Department of Law Enforcement are available to the public under the Florida Public Records Law. (e.g., records sealed under Section 893.14, F. S., or derived from the Federal Bureau of Investigation criminal history record systems). And because federal and state privacy and security laws, rules and regulations preclude members of the public from personally making searches of the criminal history systems and records of the department, searches for criminal history records shall be conducted only by personnel of the department and those criminal justice agencies having access thereto through secure remote terminals.

(2) Personnel conducting such searches shall insure that copies of records made available to the public contain no information deemed confidential by law.

(3) Depending upon whether the request for a record check is in writing or accompanied by a properly executed fingerprint card and upon the results of the record check, the letter of request, fingerprint card, and/or record will be returned bearing one of the following notations:

(a) "Subject identical with subject of attached Florida Department of Law Enforcement record number ———— ."

(b) "Based on the information provided,

subject of attached Florida Department of Law Enforcement record number(s) ————, may be the same as your subject."

(c) "Because the information provided is inadequate, the subject inquired upon cannot be associated with any individual having a record in the criminal history record systems of the Florida Department of Law Enforcement."

(d) "Based upon the information provided, you are advised that the subject has no criminal history records in the systems of the Florida Department of Law Enforcement."

(4) Copies of records made available to the public pursuant to the Florida Public Records Law shall be prominently annotated to indicate whether the record is based upon positive identification using fingerprints and shall be signed and dated by the processing technician.

(5) The public is advised that criminal history record checks conducted without the use of fingerprint identification procedures are unreliable. Moreover, the record provided may be inaccurate or incomplete due to the failure of an agency to make a report or because portions of the record are sealed, have been expunged, or are otherwise unavailable except to certain law enforcement or criminal justice agencies under state or federal law.

Specific Authority 120.53(1), 943.03(3), 943.05(2) FS. Law Implemented 119.07, 120.53(1), 943.05(2), 943.08(3), 943.08(5), 943.08(7) FS. Ch. 1, Title 28, Section 20.21(f), C. F. R. History—New 12-9-76.

ANNOTATIONS

Public access

Investigatory records and materials compiled by State Attorney's Office prior to trial of criminal case pursuant to its statutory investigatory or prosecutorial duties, F. S. A. §§ 27.02, 27.03, 27.04, 27.255, are confidential pursuant to "police secrets" rule and therefore exempted from public inspection under Public Records Law, prior to and following prosecution and final judgment unless such information or materials become part of public record of trial, where such records and materials contain information which, if released publicly, would burden effective law enforcement. "Police secrets" rule does not exempt records such as arrest records, autopsy reports, business records, copies of informations and indictments, and like. These records are public records subject to public inspection under F. S. A. Ch. 119, unless specific exemption exists by statute. Op. Atty. Gen., 076-156, August, 1976.

11C-6.04 Procedures for Requesting Criminal History Records.

(1) Requests for Florida criminal history records contained in the systems of the Florida Department of Law Enforcement are to be directed to the following address:

Florida Department of Law Enforcement
Post Office Box 1489, Tallahassee, Florida 32302
Attn: Crime Information Bureau

(2) The request will be subject to processing in the following declining order of priorities:

(a) Requests from law enforcement and criminal justice agencies for criminal justice purposes, including criminal justice agency applicant processing;

(b) Requests for a personal record review pursuant to 11C-8.01, FAC;

(c) Requests from the Judicial Qualifications Commission, the Governor, and the President of the Senate relating to the appointment of officers;

(d) Requests from non-criminal justice agencies having specific statutory authority to receive this information;

(e) Requests from other governmental agencies relying upon the Public Records Law (Ch. 119, F. S.);

(f) Requests from private individuals relying upon the Public Records law.

(3) There shall be no charge for producing records under subsections 11C-6.04(2)(a) through 11C-6.04(2)(c). A duplicating fee of $2. shall be charged for each subject inquired upon under subsections 11C-6.04(2)(d) through 11C-6.04(2)(f) unless the Executive Director of the Department determines that dissemination of the record in the premises would be in the interest of law enforcement or criminal justice or if the fee is otherwise legally waiverable.

(4) The duplication fee of $2. shall not be deemed tendered by a non-governmental agency until actual receipt and acceptance thereof by the department. Personal checks will not be accepted.

Specific Authority 120.53(1), 943.03(3), 943.05(2) FS. Law Implemented 114.05(2), 119.07, 943.03(5)(a), 942.05(2), 943.08(5), 943.08(7) FS. 524(b) Pub. L. 93-83; Ch. 1, Title 28, Section 20.21(g)(1), C. F. R., Art. V, Section 12(e), Art. IV, Section 1(a), Fla. Const. History—New 12-30-76.

RULES
OF THE
DEPARTMENT OF LAW
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DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS

CHAPTER 11C-6
CRIMINAL HISTORY RECORDS
DISSEMINATION POLICY

11C-6.05	Access to Criminal Justice Information for Research or Statistical Purposes.
11C-6.06	Facsimile Transmission.
11C-6.07	Record Validation.
11C-6.08	User Agreements.

11C-6.05 Access to Criminal Justice Information for Research or Statistical Purposes.

(1) Each request of the Department of Law Enforcement for criminal justice information for research or statistical purposes shall be processed through the Director's Office of the Division of Criminal Justice Information Systems.

(2) All requests shall be made in writing and directed to:

Florida Department of Law Enforcement
Division of Criminal Justice Information Systems
Director's Office
Post Office Box 1489
Tallahassee, Florida 32302

(a) A request shall contain the name, address, and telephone number of the applicant; a brief description of the project; the type of criminal justice information desired; and the intended use for the criminal justice information.

(3) Requests shall be processed on a priority basis for:

(a) Criminal Justice Agencies;

(b) Other government agencies with statutory authority to conduct research or statistical projects to advance knowledge in the administration of criminal justice;

(c) Noncriminal Justice Government Agencies;

(d) Private Corporations and private individuals.

(4) The request will be evaluated by the Director of the Division of Criminal Justice Information Systems or his designated assistant for the feasibility of complying.

(5) If criminal justice information cannot be provided to the applicant as requested, written notice will be forwarded to the applicant within 21 days after receipt of the request, explaining why it is not possible.

(6) If the request can be met, written notice will be forwarded to the applicant within 21 days after receipt of the request along with a systems request form and a privacy and security agreement.

(a) The systems request form is prepared by the Division of Criminal Justice Information Systems and is to be utilized by the applicant to describe the type of information desired from the Department's criminal justice information system.

(b) The privacy and security agreement is prepared by the Division of Criminal Justice Information Systems and is to be utilized by the Division to assure that criminal justice information disseminated for use in a research or statistical project is used only for the purpose stated in the original request.

(7) The privacy and security agreement and systems request form should be completed and returned to the Division of Criminal Justice Information Systems. The Division will complete the request as soon as practical upon receipt of the documents. At which time, the information can be obtained in person or will be forwarded to the applicant.

(8) Criminal justice information which has been sealed upon order of a court of competent jurisdiction will be disseminated in accordance with applicable law.

(9) Each applicant requesting criminal justice information for research or statistical purposes shall be assessed a fee based on:

(a) Procedures as described in subsection 11C-6.04(3), F. A. C., or

(b) Data processing support requirements including but not limited to:

1. Salaries of required computer programming personnel, at the overtime rate, to develop and validate an extraction program;

2. Extraction time required to obtain the criminal justice information from the computer file(s) or for other special processing requirements; and

3. Print time required to reproduce the criminal justice information in hardcopy form.

Specific Authority 943.03, 943.05(2)(e) FS (1980 Supp.). Law Implemented 943.057 FS (1980 Supp.). History—New 11-12-81.

11C-6.06 Facsimile Transmission.

(1) The Division of Criminal Justice Information Systems shall accept facsimile transmission only from criminal justice agencies.

(2) The Division shall accept for processing, transmissions of documents which

meet the following criteria:

(a) Finger print cards of unknown deceased persons, amnesia victims, and suspected missing persons or wanted persons;

(b) Documents requiring immediate attention, where delay due to routine mailing and processing would adversely impact operations within the requesting agency. Such documents may include, but are not limited to, fingerprint cards, photographs, and court orders.

(3) An agency submitting a transmission to the Division shall bear all costs for the transmission.

(4) The Division shall respond to a facsimile transmission by contacting the requesting agency by one of the following means, as deemed appropriate by the operator:

(a) Telephone;

(b) On-line telecommunications;

(c) Facsimile transmission of a document.

(5) When submitting transmissions to the FBI, the Division shall adhere to all policies and regulations established by the FBI for the use of the facsimile transmission system.

(6) A record of all transmissions received and sent by the Division shall be maintained by the Crime Information Bureau.

(7) The facsimile transmission equipment maintained by the Division shall be placed in a secure location. Access will be restricted to specifically designated personnel.

Specific Authority 943.03(3), 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.05(2)(a) FS (1980 Supp.). History—New 11-12-81.

11C-6.07 Record Validation. In order for the Department of Law Enforcement to carry out its duties as designated state control agency and to comply with pertinent requirements of the United States Department of Justice, the Department of Law Enforcement carries out a program for the validation of information and records entered into the Florida Crime Information Center/National Crime Information Center systems. The records subject to periodic validation include records relating to stolen vehicles and other goods, wanted persons and missing persons. The specific procedures for validation are as follows:

(1) Three (3) times each year, validation reports will be produced by the Florida Crime Information Center and supplied to each agency participating in the Florida Crime Information Center and, through it, with the National Crime Information Center.

(2) Upon receipt of the validation report, each agency will review its records to insure that:

(a) All records which are no longer current have been removed from FCIC and all records remaining in the system are valid and active;

(b) All records contain all available information;

(c) The information contained in each of the records is accurate.

(3) The letter of certification, signed by the head of the agency, attesting to the completion of the validation process must be returned to the Department within 31 days after receipt of the validation report.

(4) In the event that an agency fails to comply with the requirements of this rule, federal regulations provide that the FCIC and NCIC may proceed to remove any or all of the noncomplying agency's records from the state and national information system files.

Specific Authority 943.03(3), 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.05(2)(b) FS (1980 Supp.). History—New 11-12-81.

11C-6.08 User Agreements.

(1) In accordance with federal regulations and pursuant to state statute, the Department of Law Enforcement has entered into an agreement with the United States Department of Justice wherein the Department has agreed to comply with all federal statutes, regulations and policies of the National Crime Information Center (NCIC) and to serve as state control terminal agency for all Florida criminal justice agencies participating in, and exchanging records and information through, the NCIC. All criminal justice agencies in Florida participating in the Florida Crime Information Center of the Department of Law Enforcement and, through it, with the NCIC are required to execute appropriate user agreements.

(2) User agreements executed between criminal justice agencies in Florida and the Department of Law Enforcement typically include, but are not necessarily limited to, the following terms and conditions:

(a) Fiscal arrangements between the User and the Department of Law Enforcement;

(b) User acknowledgement of pertinent state and federal laws, regulations, and established operating procedures relating to privacy and security of records and information, interagency cooperation and assistance, liability for errors and omissions, system data entry, retrieval, validations and confirmation, and employee screening and training; and

(c) Other provisions ordinarily found in contracts between governmental agencies and necessary to protect the respective interests of the contracting agencies.

Specific Authority 943.03(3), 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.0525 FS (1980 Supp.). History—New 11-12-81.

RULES OF THE DEPARTMENT OF LAW ENFORCEMENT

DIVISION OF CRIMINAL JUSTICE INFORMATION SYSTEMS

CHAPTER 11C-7 CRIMINAL HISTORY RECORDS; EXPUNCTION POLICY AND PROCEDURES

11C-7.01	Policy Governing Court-Ordered Expunction and Sealing.
11C-7.02	Procedure on Court-Ordered Expunctions.
11C-7.035	Administrative Expunction.

11C-7.01 Policy Governing Court-Ordered Expunction and Sealing.

(1) Except when it appears to the Department that the court ordering an expunction and/or sealing has not been fully informed as to the existence of statutorily enumerated factors which may affect the eligibility of an individual for relief under Section 943.058(2) and (3), Florida Statutes, the Department shall comply with any such order entered by a court of competent jurisdiction. When it appears that the court ordering a statutory expunction and/or sealing has not been fully informed as to the prior criminal record of an individual, the Department shall so inform the court or prosecuting authority and request modification or clarification of such order.

(2) When an order to expunge gives no clear indication as to the intention of the circuit court to have the record expunged pursuant to its equitable powers, it will be presumed that it is the intent of the court that the Department will seal the record in accordance with Section 943.058(2), Florida Statutes.

Specific Authority 943.03, 943.05(2)(e) FS (1980 Supp.). Law Implemented 943.058 FS (1980 Supp.). History—New 6-24-76, Amended 11-12-81.

11C-7.02 Procedure on Court-Ordered Expunctions.

(1) The order of the court as to an expunction of arrest records should specify the agencies to which it applies, including this Department, and should be directed to the law enforcement agency which made the arrest and forwarded the arrest information to the Department.

(2) Upon receipt of any order to expunge a criminal history record the arresting authority shall:

(a) Make a positive association between the individual and arrest covered by the order and the arrest record generated by it;

(b) Forward a certified copy of the order along with a letter of transmittal to the Department.

(3) The letter of transmittal shall make specific reference to identifying information, including:

(a) Date of arrest;

(b) Arrest number and original charges.

(4) The letter of transmittal shall be signed by the chief law enforcement officer of the agency or a person designated by him in accordance with Rule 11C-7.035(4), F. A. C.

(5) Orders of courts of non-Florida jurisdictions, when certified by the counterpart of the Department in such other jurisdiction, shall be processed as requests for administrative expunction.

Specific Authority 943.03, 943.05, 943.058 FS (1980 Supp.). Law Implemented 943.058 FS (1980 Supp.). History—New 6-24-76, Amended 11-12-81.

11C-7.035 Administrative Expunction.

(1) Non-judicial records of arrest which are entered by mistake, made contrary to law, or which no longer serve a useful purpose will be administratively expunged by the Department.

(2) If such records reflect an arrest which was made in Florida solely on the basis of an alleged offense against the laws of a non-Florida jurisdiction and if under the laws of such other jurisdiction the person arrested is entitled to and has taken such steps as are necessary to accomplish expunction of criminal records in such other jurisdiction, the Department shall honor any request for expunction of that part of the Florida record which is properly brought to its attention.

(3) If the chief law enforcement officer of an arresting agency in Florida requests an administrative expunction as to a particular record of an arrest made by the agency, the Department shall comply provided that:

(a) The request is in writing and signed by the chief law enforcement officer in charge;

(b) The prosecuting authority has also certified in writing that there has been no prosecution of the charges in the trial courts and that there is no present intent to pursue a course of action.

(4) If the chief law enforcement officer of an agency wishes to delegate the authority to request administrative expunctions under this rule or other expunctions under Rule 11C-7.02(4), F. A. C., he shall submit a letter to the Department stating this delegation and include therein specimen signatures of the law enforcement personnel who will perform this function.

(5) The procedures by which an individual may secure an administrative correction or expunction of the criminal history record pertaining to himself are set out in Chapter 11C-8.

RULES OF THE DEPARTMENT OF LAW ENFORCEMENT

DIVISION OF CRIMINAL JUSTICE INFORMATION SYSTEMS

CHAPTER 11C-8 CRIMINAL HISTORY RECORD; REVIEW AND CORRECTION

11C-8.01 Review Procedures.

11C-8.01 Review Procedures.

(1) Any individual wishing to review his criminal history record must submit a request in writing to a local law enforcement agency and should specifically indicate whether a multistate (FBI/NCIC) check is desired.

(2) The individual must then be fingerprinted by a local law enforcement agency for identification purposes. The fingerprint card will contain all required identifying data and a conspicuous notation that the card is submitted in order to provide positive identification for a personal record review.

(3) Requests and completed fingerprint cards received by local law enforcement agencies will then be mailed by the local law enforcement agency to the Department.

(4) The fingerprint card will be processed by the Department and if a positive fingerprint identification is established against an existing criminal history record, a single copy of the record, the submitted fingerprint card, and the original letter of request will be returned to the local law enforcement agency. If no arrest record is found in the Florida Crime Information Center/Computerized Criminal History System, the fingerprint card and the letter of request will be so stamped on the reverse side and will be returned to the local law enforcement agency forwarding same.

(5) The Department will mail a letter to the requesting individual advising him that a copy of his criminal history record, if any, has been mailed to the local law enforcement agency.

(6) It will then be the responsibility of the individual requesting said record to personally call for such record at that local law enforcement agency. It will be the responsibility of the local law enforcement agency to determine that the person reviewing the criminal history record is the same person that was fingerprinted by that agency. A statement will be placed on each criminal history record or fingerprint card returned by the Department which states, "Released to (subject's name) Date (date released) by (releasing agency)". This statement must be completed by the local law enforcement agency that delivers the record to the individual.

(7) If after reviewing his record, the individual feels that the record is incorrect or incomplete, it is his responsibility to contact the agency submitting that part of the record in question. It then will be the responsibility of that agency to determine the merit of the assertion, to make any and all corrections or deletions that may be required, and to notify the Department of any corrections or deletions.

RULES
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DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS

CHAPTER 11C-8
CRIMINAL HISTORY RECORD;
REVIEW AND CORRECTION

11C-8.01 Review Procedures.

11C-8.01 Review Procedures.

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(8) If, after an individual reviews his own criminal history record as authorized in Rule 11C-8.01, F. A. C., the agency and the individual are unable to resolve their differences as to what that portion of the person's record ought to contain and if, more particularly, the agency responsible for the portion of the record in issue refuses to correct its own records or to advise the Florida Department of Law Enforcement to correct or supplement the state records in accordance with the individual's wishes, then the administrative review procedures set out in 11C-8.01(9) or 11C-8.01(10), as appropriate, shall be followed.

(9) If the agency responsible for the portion of the record in issue is subject to the Florida Administrative Procedures Act Chapter 120, Florida Statutes, the individual may initiate and the agency shall submit itself to administrative adjudication and judicial review of the issue in accordance with the act, and Section 943.056(2), F. S.

(10) If the agency responsible for the portion of the record in issue is not subject to the Florida Administrative Procedures Act, the individual shall petition the agency in writing to convene a special hearing panel for the purpose of conducting an informal hearing. Such panel shall consist of one panelist nominated by the individual, one panelist nominated by the agency and a presiding panelist mutually agreeable to the other two panelists. If within ten days after the petition is filed no third panelist has been agreed upon or has agreed to serve, a third member of the panel will be appointed by the Executive Director, Florida Department of Law Enforcement. Thereafter:

(a) Within twenty days after the petition is filed, the agency shall make written answer to the allegations in the petition, attaching thereto copies of such official records as it deems necessary to support its refusal or to controvert the petitioner's allegations.

(b) Within thirty days after the petition is filed, the special hearing panel shall convene at a place provided by the agency and at such time as is not inconvenient to the members of the panel, the agency and the individual.

(c) The special hearing panel shall consider the petition, answer, other written documents, official records, oral arguments, and such other information or testimony as either the agency or the individual deems pertinent, material or relevant. The special hearing panel may request and the agency and individual shall provide such additional non-privileged affidavits, statements, answers to interrogatories and copies of documents and records as are necessary to the resolution of the issues.

(d) The individual shall have the burden of proving by substantial competent evidence that the criminal history record information contained in the agency's records or submitted by the agency to the Florida Department of Law Enforcement is incorrect or incomplete. However, upon failure of the agency to answer the petition, to answer the individual's interrogatives or reasonable requests for other non-privileged written materials or copies of records, or to otherwise proceed in good faith hereunder, the burden shall shift to the agency.

(e) The special hearing panel, after consideration of all evidence and materials submitted to it and upon the agreement of at least two panelists, shall make tentative written findings of fact and law and make a tentative but specific finding as to how the individual's record ought to be corrected or supplemented, if at all, and shall certify its findings to the individual and the agency. Default and summary findings are authorized in the event either party unreasonably refuses to proceed in good faith hereunder.

(f) Within ten days of receipt of the tentative findings, the individual or agency shall serve their written exceptions upon the other party and each member of the panel. Thereafter, the panel shall reconvene for the purpose of considering only the prior record, the written exceptions, timely written responses thereto, and such additional evidence as any member of the panel may demand of either the agency or the individual. The tentative findings described in 11C-8.02(10)(e) may be modified as a majority of the members of the panel may deem appropriate, and shall become the final administrative findings of fact and law. If no written exceptions are filed within ten days of

the party's receipt of the tentative findings, the tentative findings shall become the final administrative findings of fact and law. The special panel shall be deemed to have concluded its business when its final findings are certified to the agency, the individual, and the Florida Department of Law Enforcement. The record of proceedings hereunder shall be retained by the presiding panelist but may be copied by either party as necessary for appropriate review.

(g) A party who has been adversely affected by the findings of the special hearing panel may, within ten days of receipt of the final administrative findings of fact and law, petition the Executive Director of the Department of Law Enforcement for review of such findings. Review by the Executive Director shall be confined to the record transmitted. In the event no such petition is filed by either party, the agency and the Department of Law Enforcement shall conform their respective criminal history records in accordance with the final findings of the panel.

(h) The Executive Director, upon review of the record shall make known his findings to the individual, the agency, and the presiding panelist in writing within thirty days after the filing of the petition for review. In the event the Executive Director is in agreement with the final findings of the special hearing panel, he shall so state and may adopt said findings; however, should the Executive Director reach a contrary result, he shall state with specificity the reason therefor.

(i) If fifteen days after rendition of the Executive Director's final findings, neither the agency nor the individual have notified the Florida Department of Law Enforcement of its filing of suit to seek judicial review, the agency and the Department shall forthwith conform their respective criminal history records in accordance with the Executive Director's findings. In the event timely notice is received that judicial review has been initiated, the records in issue shall remain unchanged pending the outcome of the judicial review.

(11) Proceedings under subpart 11C-8.02(10) shall be as informal as fairness and principles of due process will allow. No evidence shall be rejected or deemed inadmissible merely because it is not best evidence, is hearsay, is not in proper form, or is not predicated or formally introduced as the rules of evidence would dictate in judicial proceedings. However, the special hearing panel may disregard or discount evidence which is without credibility, materiality, pertinency, or relevancy. As the interests of justice and fairness may require, it may counsel and assist in the presentation of a more effective case by either party. The panel shall synopsize its own rulings and oral testimony before it and reduce it to writing.

Specific Authority 943.03(3) FS. Law Implemented 943.056 FS (1980 Supp.). History—New 6-24-76, Amended 11-12-81.

THE FULL TEXT OF THE PROPOSED RULE AMENDMENT IS:

11C-6.04 Procadures for Requesting Criminal History Records.

(1) Requests for Florida criminal history records contained in the systems of the Florida Department of Law Enforcement are to be directed to the following address:

Florida Department of Law Enforcement

Division of Criminal Justice Information Systems

Post Office Box 1489

Tallahassee, Florida 32302

[Attn: Crime Information Bureau]

(2) No Change

(3) There shall be no charge for [producing records] conducting record checks under subsections 11C-6.04 (2) (a) through 11C-6.04 (2) (c). A [duplicating] processing fee of [$2.] $5. shall be charged for each subject inquired upon under subsections 11C-6.04 (2) (d) through 11C-6.04 (2) (f) unless the Executive Director of the Department determines that [dissemination of the record in the premises] conducting the record check would be in the interest of law enforcement or criminal justice or if the fee is otherwise legally [waiverable.] waivable.

(4) The [duplication] processing fee of [$2.] $5. shall not be deemed tendered by a non-governmental agency until actual receipt and acceptance thereof by the Department. Personal checks will not be accepted.

Specific Authority 120.53(1), 943.03(3), 943.05(2), F.S.

Law Implemented 114.05(2), 119.07, 943.03(5)(a), 943.05(2), 943.08(5), 943.08(7), F.S. 524(b) Pub. L. 93-83, Ch 1, Title 28, Section 20.21(g)(1), D.F.R., Art. V, Section 12(e), Art. IV, Section 1(a), Fla. Const. History - New 12-30-76, Amended

Opinion of Attorney General

PUBLIC RECORDS

AVAILABILITY OF ARREST RECORDS

To: William A. Troelstrup, Commissioner, Department of Criminal Law Enforcement, Tallahassee

Prepared by: Sharyn L. Smith, Assistant Attorney General

QUESTIONS:

1. Is Ch. 119, F. S., the Public Records Law, applicable to the criminal history records (rap sheets) compiled and maintained in the computers of FDCLE?

2. Assuming an affirmative response to question 1, does Ch. 119 qualify as the type of Public Records Law described in Ch. 1, 28 C.F.R., 20b and commentary thereto so as to authorize dissemination of "nonconviction data"?

3. Should Ch. 119 be read *in pari materia* with Ch. 1, 28 C.F.R., 20b, *supra*, so that, for example, the requesting party might be required to execute an agreement wherein the purpose of the request and identity of the requester is stated and it is agreed that the information derived shall only be used for the purpose for which requested, etc., consistent with such regulations?

4. Having in mind that the practice of searching for criminal histories without use of fingerprint identification procedures is fraught with dangers and that the subjects of these records may have a privacy interest or are owed some duty of care, could Ch. 119 be offended if the information was withheld until the requesting party complied with the above conditions, and, additionally, provided enough identifying information on the subject so as to eliminate all but one possible record?

SUMMARY:

Chapter 119, F. S., Florida's Public Records Law, is applicable to criminal history information compiled and maintained by the Florida Department of Criminal Law Enforcement.

Chapter 119, F. S., qualifies as the type of public records law described in 28 C.F.R. s. 20 and commentary thereto so as to authorize dissemination of nonconviction as well as conviction data.

Chapter 119, F. S., should not be read *in pari materia* with 28 C.F.R. s. 20b, since the state public records law does not permit a custodian of public documents to require a person to execute an agreement for purposes of ascertaining the identity of the requester and the purpose for such request in the absence of a state statute authorizing the same.

The United States Supreme Court decision in Paul v. Davis, 424 U.S. 693 (1976), has apparently foreclosed the possibility that a federal constitutional privacy interest exists in relation to state dissemination of nonconviction arrest data.

Your questions are apparently prompted, in part, by recent activity at both the state and federal levels concerning the question of access to criminal history information. On May 20, 1975, regulations were published in the Federal Register, 40 Fed. Reg. 11714, which related to the collection, storage, and dissemination of criminal history record information. Hearings were held during December 1975 to consider comments from interested parties on the limitations placed on dissemination of criminal history information to noncriminal justice agencies. The purpose of these hearings was to determine whether the regulations, as they were drafted, appropriately balanced the public's right to know with the individual's right to privacy.

Upon examining the regulations proposed by the Department of Justice, Law Enforcement Assistance Administration, a number of states, including Florida, objected to the restrictions placed on dissemination of criminal history information insofar as the same conflicted with state law governing access to state records. On January 6, 1976, the Governor and Cabinet, as head of the Florida Department of Criminal Law Enforcement, adopted a resolution urging the Department of Justice, Law Enforcement Assistance Administration, to adopt rules recognizing the State of Florida's right to make criminal history information a matter of state public record pursuant to Ch. 119, F. S., the Public Records Law, without running the risk of incurring a fine of up to $10,000 or the loss of Law Enforcement Assistance Administration funds.

As a result of the objections raised by Florida and other states, the federal regulations were modified to recognize that access to state and local public records is an area that should appropriately be left to regulation by the states.

The regulations were drawn in order to implement s. 524(b) of the Crime Control Act of 1973 which provides in pertinent part:

> All criminal history information collected, stored and disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein: The Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, and maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information to obtain a copy of it for the purpose of challenge or correction.

The dispute between the states and the federal government centered on whether access mandated pursuant to state or local public records laws was a "lawful purpose" as contemplated by the federal act set forth above. The amended regulations, 41 Fed. Reg. 11714, proposed March 19, 1976, 28 C.F.R. s. 20.1-20.28, now provide that conviction data may be disseminated without limitation and that criminal history record information relating to the offense for which an individual is currently within the criminal justice system may be disseminated without limitations. Insofar as nonconviction record information is concerned, the regulations now provide that after December 31, 1977, most noncriminal justice access would require authorization pursuant to a statute, ordinance, executive order, court rule, decision, or order. The regulations no longer require express authority authorizing access to such information. Such a requirement can now be construed from a general requirement in a statute or order. A state public records law which has been interpreted by a state to require that criminal history information, including nonconviction data, be made available to the public is an example of such a general requirement. Determinations as to the purposes for which dissemination of criminal history record information is authorized by state law, executive order, local ordinance, court rule, decision, or order are left to the appropriate state or local officials.

It should also be noted that, prior to the amendments, the regulations contained a requirement that criminal history record information in court records of public judicial proceedings be accessed on a chronological basis. As amended, the regulations are inapplicable to records of public judicial proceedings whether accessed on a chronological or alphabetical basis.

On the basis of this background information, your questions will now be addressed.

AS TO QUESTION 1:

Pursuant to Ch. 119, F. S., records of arrest have been considered matters of public record which are subject to public inspection and examination. *See, e.g.*, Grays v. State, 217 So.2d 133 (3 D.C.A. Fla., 1969); Malone v. State, 222 So.2d 769 (3 D.C.A. Fla., 1969); Williams v. State, 285 So.2d 13 (Fla. 1973); AGO's 057-157, 072-168, 073-166, 075-9, and 076-156. The "police secrets" rule recognized in the cases and opinions previously cited does not make records of arrest confidential. Similarly, I am unaware of any general or special law which prohibits or limits access to such information. There are, however, statutes which do serve to make certain arrest information confidential. *See, e.g.*, ss. 39.03(6)(a) and 39.12(3)-(4) and AGO's 070-113 and 070-75 relating to records of juvenile offenses; s. 905.26, concerning disclosure of the finding of an indictment against a person not in custody until the person has been arrested. In the absence of such a statutory provision, arrest information compiled by FDCLE is subject to s. 119.07(1).

AS TO QUESTION 2:

As contemplated by the federal regulations, Ch. 119, F. S., constitutes a state public records law which has been construed to authorize dissemination of arrest information. Pursuant to 28 C.F.R. s. 20.21(b)(2), after December 31, 1977, dissemination of *nonconviction data* is limited to, *inter alia*, individuals and agencies authorized to receive such information by *statutes*, ordinance, executive order, or court rule, decision, or orders as construed by appropriate state or local officials of agencies. Accordingly, your question is answered in the affirmative.

AS TO QUESTION 3:

It has been consistently held that Ch. 119, F. S., does not require a citizen to demonstrate a particular or special interest in a record as a condition to obtaining access to public documents. Thus, mere curiosity or commercial purposes do not vest in either the courts or the custodian discretion to deny inspection. *See* State *ex rel.* Davis v. McMillan, 38 So. 666 (Fla. 1905), holding that abstract companies may copy public documents from the clerk's office for their own use and sell such copies to the public for a profit. Chapter 119 concerns itself solely with what may be disclosed and not to whom, in the absence of a particular statute setting forth such a special requirement for inspection. *Accord:* State *ex rel.* Davidson v. Couch, 156 So. 297 (Fla. 1934), in which the court noted that one does not have to be a taxpayer or have a "special interest" in public documents to inspect them, and Warden v. Bennett, 340 So.2d 977, 978 (2 D.C.A. Fla., 1977), holding that a person need not show a special interest or proper motive or purpose in order to inspect public records. *Also see* AGO's 074-113, in which it was stated that a private person may inspect, copy, and/or photograph worthless check affidavits without demonstrating a personal interest therein, and AGO 073-167, which held that a person may inspect records maintained by the abandoned property section of the Department of Banking and Finance without being required to show a special interest in such inspection.

Accordingly, a person who demands access to arrest records which are public records under Ch. 119, F. S., cannot be required as a condition of inspection to execute an agreement such as that contemplated by your third question.

AS TO QUESTION 4:

Since the answer to your third question is in the negative, it would appear that your fourth question is now moot. I would note, however, that in Paul v. Davis, 424 U. S. 693 (1976), the United States Supreme Court refused to recognize that the dissemination by the police of defamatory nonconviction arrest information violated an individual's right to privacy. As one federal court has recognized, the court's decision in *Paul* appears to have cut short the full development of nascent doctrines which sought some accommodation between values of individual privacy and the recordkeeping responsibilities of the executive branch. Hammons v. Scott, 423 F.Supp. 618 (N.D. Calif. 1976); Hammons v. Scott, 423 F.Supp. 625 (N.D. Calif. 1976). The issue of what, if any, restraints should be imposed upon the practices of public agencies regarding the maintenance and dissemination of arrest records of persons who were never convicted of the crime for which they were arrested has concerned numerous courts. *See, e.g.*, Utz v. Crellinane, 520 F.2d 467 (D.C. Cir. 1975); Tarlton v. Saxbe, 507 F.2d 1116 (D.C. Cir. 1974); Menard v. Saxbe, 498 F.2d 1017 (D.C. Cir. 1974); Menard v. Mitchell, 430 F.2d 486 (D.C. Cir. 1970); United States v. Dooley, 364 F.Supp. 74 (E.D. Pa. 1973); United States v. Kalish, 271 F.Supp. 968 (D.P.R. 1967); *see also*, Davidson v. Dill, 503 P.2d 157 (Colo. 1972); Eddy v. Moore, 487 P.2d 211 (Wash. 1971). The decision in *Paul* suggests that the constitutional right to privacy claim underlying the above decisions would not be adopted by the United States Supreme Court.

Accordingly, the question of access to arrest records is a matter not of federal constitutional law but rather state statutory law, and the conditions which may be imposed as a precondition inspection must either be found in Ch. 119, F. S., or in other applicable state statutes.

FLORIDA

STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

INFORMATION COPY

October 1, 1990

90-80

The Honorable Ronald A. Silver
Chairman, Committee on Criminal Justice
Florida House of Representative
18 House Office Building
Tallahassee, Florida 32399-1300

Dear Representative Silver:

You ask substantially the following question:

> Does s. 119.07(3)(z), F.S. (1990 Supp.), exempt police reports and other records which are generated, as opposed to received by, a public agency?

In sum, I am of the opinion:

> Section 119.07(3)(z), F.S. (1990 Supp.), does not exempt police reports and other records which are generated by a public agency.

Section 4, Ch. 90-211, Laws of Florida, added paragraph (aa) to s. 119.07(3), F.S. Renumbered as s. 119.07(3)(z), it provides:

> Any document which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, <u>which document is received</u> by any agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of subsection (1). Any state or federal agency which is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. (e.s.)

Section 119.07(3)(z), F.S. (1990 Supp.), became effective October 1, 1990.[1]

You state that it was the intent of drafters of the amendment to exempt only those documents which are received by an agency that regularly receives information about crime victims, such as the Bureau of Crimes Compensation and Victim Witness Services, and not to exempt those documents generated by law enforcement agencies. However, in light of the apparent uncertainty that exists with respect to the scope of this exemption, you state that it is necessary to determine whether amendatory language may be desirable.

It is a basic principle of statutory construction that a statute should be construed so as to ascertain and give effect to the intent of the Legislature as expressed in the statute.[2] However, the intent of the Legislature is to be determined primarily from the language of the statute.[3] Thus, in determining the legislative intent, a court will look to the plain language of the statute.[4]

Section 119.07(3)(z), F.S. (1990 Supp.), provides that any document revealing certain victim information which is received by an agency that regularly receives information from or concerning crime victims is exempt from s. 119.07(1), F.S.[5] "Agency" is defined for purposes of Ch. 119, F.S.[6] The term "regularly," however, is not defined within the statute or chapter.

Where not defined by statute, words of common usage when used in a statute should be construed in their plain and ordinary sense.[7] The term "regularly" has been defined as suggesting a practice; it implies uniformity, continuity, consistency and method. The term excludes isolated, unusual, occasional or casual transactions or use.[8]

A law enforcement agency, as an agency whose primary responsibility is the prevention and detection of crime and the enforcement of the penal, criminal, traffic or highway laws of this state, routinely receives information concerning victims of crime in carrying out its duties. A law enforcement agency, therefore, would appear to qualify as an "agency that regularly receives information from or concerning the victims of crime." I find nothing in the plain language of s. 119.07(3)(z), F.S. (1990 Supp.), which limits the exemption contained therein to documents received by agencies such as the Bureau of Crimes Compensation and Victim Witness Services.

The exemption contained in s. 119.07(3)(z), F.S. (1990 Supp.), however, only applies to documents received by such agencies, not agency generated documents. The distinction between records received and records made by an agency is recognized elsewhere in Ch. 119, F.S. Section 119.011(1), in defining the term "Public records" for purposes of Ch. 119, F.S., refers to "all documents . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." (e.s.) Had the term "made" and the term "received" been considered synonymous by the Legislature, there would have been no need to use both terms.[9]

Moreover, s. 119.07(3)(z), F.S. (1990 Supp.), does not refer to information received by the agency but to the document received by the agency which contains certain victim information.[10] It is, therefore, the document which is exempt from the provisions of s. 119.07(1), F.S.

Therefore, I am of the opinion that s. 119.07(3)(z), F.S. (1990 Supp.), exempts documents which reveal the identity, home or employment address or telephone number, or personal assets of a crime victim when such document is received by an agency which regularly receives information from or concerning crime victims. The exemption, however, applies only to the document which the agency receives and does not include agency generated documents, such as police reports.

Such an interpretation would appear to be consistent with the provisions of Ch. 90-280, Laws of Florida, also enacted during the 1990 Legislative Session.[11] Section 1 of Ch. 90-280 creates s. 119.105, F.S., to provide:

> Police reports are public records except as otherwise made exempt or confidential by general or special law. Every person is allowed to examine nonexempt or nonconfidential police reports. No person who inspects or copies police reports for the purpose of obtaining the names and addresses of the victims of crimes or accidents shall use any information contained therein for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents. Nothing herein shall prohibit the publication of such information by any news media or the use of such information for any other data collection or analysis purposes.

Section 119.105, F.S. (1990 Supp.), thus recognizes that police reports are public records and prohibits the use of information relating to a crime victim's name and address obtained in such records for commercial solicitation of the crime victims or their relatives.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

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[1] See, s. 19, Ch. 90-211, Laws of Florida, providing that except as otherwise provided therein, the act shall take effect October 1, 1990.

[2] See, e.g., City of Tampa v. Thatcher Glass Corporation, 445 So.2d 578 (Fla. 1984).

[3] See, St. Petersburg Bank & Trust Co. v. Hamm, 414 So.2d 1071 (Fla. 1982); S.R.G. Corporation v. Department of Revenue, 365 So.2d 687 (Fla. 1978).

[4] Thayer v. State, 335 So.2d 815 (Fla. 1976).

[5] See, s. 119.07(1), F.S., which provides in part that every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The statute further provides for the furnishing of copies of such records upon payment of the fees for duplication as set forth therein.

[6] See, s. 119.011(2), F.S., defining "Agency" for purposes of Ch. 119, F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[7] See, e.g., Citizens of State v. Public Service Commission, 425 So.2d 534 (Fla. 1982); Southeastern Fisheries Association, Inc. v. Department of Natural Resources, 453 So.2d 1351 (Fla. 1984) (where statute does not specifically define words of common usage, such words must be given their plain and ordinary meaning).

[8] See, 76 C.J.S. Regularly pp. 609-610; and see, Black's Law Dictionary Regularly p. 1451 (4th rev. ed. 1968); Webster's Third New International Dictionary Regular p. 1913 (unabridged ed. 1981) (a steady occurrence; recurring).

[9] See, Terrinoni v. Westward Ho!, 418 So.2d 1143 (1 D.C.A. Fla., 1982) (statutory language is not to be assumed to be superfluous; statute must be construed to give meaning to all words and phrases contained within the statute); City of Pompano Beach v. Capalbo, 455 So.2d 468 (4 D.C.A. Fla., 1984).

[10] See generally, Black's Law Dictionary Document p. 568 (4th rev. ed. 1968) (an instrument on which is recorded, by means of letters, figures, or marks, matter which may be evidentially used; in this sense the term applies to writings); Webster's Third New International Dictionary Document p. 666 (unabridged ed. 1981) (an original or official paper relied on as the basis, proof, or support of something).

[11] See, State ex rel. School Board of Martin County v. Department of Education, 317 So.2d 68 (Fla. 1975) (it is to be presumed that different statutes on the same subject passed at the same session of the Legislature are imbued by the same spirit and they should be construed in light of each other); Markham v. Blount, 175 So.2d 526 (Fla. 1965).

ARTICLE 2

GEORGIA CRIME INFORMATION CENTER

Administrative Rules and Regulations. — As to organization, practices, and procedures of the Georgia Crime Information Center, see Official Compilation of Rules and Regulations of the State of Georgia, Rules of Georgia Crime Information Center, Chs. 140-1 and 140-2.

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Council may direct center to furnish data for pre-employment checks for criminal justice purposes. — The Georgia Crime Information Center Council may direct the Georgia Crime Information Center to furnish criminal history data to state agencies and political subdivisions, or federal agencies, for their use in preemployment checks but only if the council feels that such information is being furnished for the prevention or detection of crime or the apprehension of criminal offenders. 1976 Op. Att'y Gen. No. 76-110.

35-3-30. Definitions.

As used in this article, the term:

(1) "Center" means the Georgia Crime Information Center.

(2) "Council" means the Georgia Crime Information Center Council.

(3) "Criminal justice agencies" means those public agencies at all levels of government which perform as their principal function activities relating to the apprehension, prosecution, adjudication, or rehabilitation of criminal offenders.

(4) "Criminal justice information" means the following classes of information:

(A) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information, such as fingerprint records, to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(B) "Restricted data" means data which contains information relating to data gathering techniques, distribution methods, manuals, and forms.

(C) "Secret data" means data which includes information dealing with those operational and programming elements which prevent unlawful intrusion into the Georgia Crime Information Center/Criminal Justice Information System computer system, the communications network, and satellite computer systems handling criminal justice information.

(D) "Sensitive data" means data which contains statistical information in the form of reports, lists, and documentation, which information may identify a group characteristic. It may apply to groups of persons, articles, vehicles, etc., such as white males or stolen guns.

(5) "Criminal justice information system" means all those agencies, procedures, mechanisms, media, and forms, as well as the information itself, which are or which become involved in the origination, transmittal, storage, retrieval, and dissemination of information related to reported offenses, offenders, and the subsequent actions related to such events or persons.

(6) "Law enforcement agency" means a governmental unit of one or more persons employed full-time or part-time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(7) "Offense" means an act which is a felony, a misdemeanor, or a violation of a county or municipal ordinance. (Ga. L. 1973, p. 1301, § 1; Ga. L. 1976, p. 617, § 1.)

35-3-31. Establishment of Georgia Crime Information Center; staff and equipment generally; merit system status of personnel.

(a) There is established for the state, within the Georgia Bureau of Investigation, a system for the intrastate communication of vital information relating to crimes, criminals, and criminal activity, to be known as the Georgia Crime Information Center.

(b) Central responsibility for the development, maintenance, and operation of the center shall be vested with the director of the center with the assistance and guidance of the Georgia Crime Information Council, the establishment of which is provided for in Code Section 35-3-32.

(c) The director of the center shall maintain the necessary staff along with support services to be procured within the Georgia state govern-

ment, such as computer services from the Department of Administrative Services, physical space and logistic support from the Department of Public Safety, and other services or sources as necessary, to enable the effective and efficient performance of the duties and responsibilities ascribed to the center in this article.

(d) All personnel of the center shall be administered according to appropriate special and standard schedules by the State Merit System of Personnel Administration with due recognition to be given by the latter to the special qualifications and availability of the types of individuals required in such an agency. (Ga. L. 1973, p. 1301, § 2; Ga. L. 1974, p. 109, § 2; Ga. L. 1976, p. 617, § 2; Ga. L. 1982, p. 3, § 35.)

35-3-32. Establishment of Georgia Crime Information Center Council; composition; duties and responsibilities of council generally.

(a) There is created the Georgia Crime Information Center Council.

(b) The duties and responsibilities of the council are to:

(1) Advise and assist in the establishment of policies under which the center is to be operated;

(2) Ensure that the information obtained pursuant to this article shall be restricted to the items specified in this article and ensure that the center is administered so as not to accumulate any information or distribute any information that is not specifically approved in this article;

(3) Ensure that adequate security safeguards are incorporated so that the data available through this system is used only by properly authorized persons and agencies;

(4) Establish appropriate disciplinary measures to be taken by the center in the instance of violations of data reporting or dissemination of laws, rules, and regulations by criminal justice agencies or members thereof covered by this article; and

(5) Establish other policies which provide for the efficient and effective use and operation of the center under the limitations imposed by the terms of this article.

(c) The members of the board shall serve ex-officio as members of the council and shall constitute the council. (Ga. L. 1973, p. 1301, § 5; Ga. L. 1976, p. 617, § 7; Ga. L. 1979, p. 613, § 1.)

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Functions of the council include functions which are clearly executive functions within the meaning of the Constitution. 1975 Op. Att'y Gen. No. 75-142.

And former provision including judges as council members void. — The former statutory mandate that the council include a member of the Georgia Council of Superior Court Judges and a member of the Georgia Association of Municipal Judges is in conflict with the Constitution and is therefore void. 1975 Op. Att'y Gen. No. 75-142.

35-3-33. Powers and duties of center generally.

The center shall:

(1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(A) Have been or are hereafter arrested or taken into custody in this state:

(i) For an offense which is a felony;

(ii) For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under division (ii) of this subparagraph;

(iv) As a fugitive from justice; or

(v) For any other offense designated by the Attorney General;

(B) Are or become well-known or habitual offenders;

(C) Are currently or become confined to any prison, penitentiary, or other penal institution; or

(D) Are unidentified human corpses found in this state.

(2) Compare all fingerprint and other identifying data received with those already on file and, whether or not a criminal record is found for a person, at once inform the requesting agency or arresting officer of

such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information;

(3) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state, as defined and provided for in this article;

(4) Develop procedures for periodically auditing crime reporting practices of local law enforcement agencies to ensure compliance with the standards of national and state uniform crime reporting systems;

(5) Develop, operate, and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this article consistent with those principles of scope, security, and responsiveness prescribed by this article;

(6) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards, and related training assistance necessary for the uniform operation of the center;

(7) Offer assistance and, when practicable, instruction to all local law enforcement agencies in establishing efficient local records systems;

(8) Compile statistics on the nature and extent of crime in the state and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons, and make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual, written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by the center;

(9) Periodically publish statistics, no less frequently than annually, that do not identify persons, agencies, corporations, or other legal entities and report such information to the Governor, the General Assembly, the State Crime Commission, state and local criminal justice agencies, and the general public. Such information shall accurately reflect the level and nature of crime in the state and the operations in general of the different types of agencies within the criminal justice system;

(10) Make available, upon request, to all local and state criminal justice agencies, all federal criminal justice agencies, and criminal justice agencies in other states any information in the files of the center

which will aid these agencies in the performance of their official duties. For this purpose the center shall operate on a 24 hour basis, seven days a week. Such information when authorized by the council may also be made available to any other agency of the state or political subdivision of the state and to any other federal agency upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders;

(11) Cooperate with other agencies of the state, the crime information agencies of other states, and the Uniform Crime Reports and National Crime Information Center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national, and international system of criminal identification, records, and statistics;

(12) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for in this article and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual;

(13) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this article. Such security measures must meet standards to be set by the council as well as those set by the nationally operated systems for interstate sharing of information; and

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to law enforcement agencies. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 617, § 5; Ga. L. 1980, p. 394, § 1; Ga. L. 1982, p. 3, § 35.)

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Center records crimes necessary to establish and maintain uniform system. — This article empowers the Georgia Crime Information Center to record crime as it deems necessary to establish and maintain a uniform system of crime reporting. 1976 Op. Att'y Gen. No. 76-33.

Center limits its gathering of data to information concerning arrests and convictions. 1976 Op. Att'y Gen. No. 76-11.

Center identifies persons charged with crime, generally not persons charged with disorderly conduct. — The center is authorized to maintain records of reported crime and, in some instances, to record information identifying persons charged with the commission of crime; however, the center is not generally authorized to maintain records identifying persons charged with disorderly conduct. 1976 Op. Att'y Gen. No. 76-33.

Law enforcement agencies obtain fingerprints from arrested persons and forward prints to center. — This article requires persons in charge of law enforcement agencies to obtain fingerprints each time a person is arrested or taken into custody and to forward such prints to the center. 1975 Op. Att'y Gen. No. U75-34.

First offender probationer to be recorded, maintained, and reported. — A person who has been placed on or discharged from first offender probation is in a disposition to be accurately recorded, maintained, and reported by the center. 1975 Op. Att'y Gen. No. 75-110.

For a list of offenses designated by the Attorney General under division (1)(a)(v), see 1979 Op. Att'y Gen. No. 79-56.

Section does not authorize disseminations to private, nongovernmental individuals. 1975 Op. Att'y Gen. No. 75-144.

Center can provide information to court in connection with civil election contests. — The Georgia Crime Information Center and other criminal justice agencies can, in connection with civil election contests between private parties, provide criminal history record information to the court. 1975 Op. Att'y Gen. No. 75-144.

And candidate information to district attorneys and state court solicitors. — The center and all criminal justice agencies should disseminate to district attorneys and state court solicitors appropriate criminal history record information concerning any past or present candidate for public office. 1975 Op. Att'y Gen. No. 75-144.

And information to State Election Board. — Since the State Election Board is empowered to investigate and enforce this section by civil actions, it would be entitled to receive criminal history record information in connection with any such investigation or litigation for offenses under § 21-2-8. 1975 Op. Att'y Gen. No. 75-144.

Limitations on the center are not applicable to blood alcohol reports. 1976 Op. Att'y Gen. No. 76-11.

Administrative discretion determines when sufficient information received for record's dissemination. — It is a matter of administrative discretion to determine when sufficient identification has been received for dissemination of the proper record under paragraph (2). 1975 Op. Att'y Gen. No. 75-144.

Center should purge its records only when they are inaccurate. 1975 Op. Att'y Gen. No. 75-110.

35-3-34. Dissemination of records by center and local criminal justice systems to private persons and businesses; disclosure of all information pertinent to an adverse employment decision; responsibility and liability of center; authority to adopt necessary rules, regulations, and forms.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting criminal history records shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed and notarized consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; and

(B) The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by law; or

(2) Make criminal history records available to parties to any criminal action upon receipt of a written request of such party or his attorney. Such request shall contain the style of the action, the name of the person whose records are requested, and a statement that such person is a party or a prospective witness in said case; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate criminal history records, without fingerprint comparison or prior contact with the center, to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations.

(e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. (Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 1401, § 2; Ga. L. 1977, p. 1243, § 1; Ga. L. 1978, p. 1981, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1988, p. 203, § 1; Ga. L. 1989, p. 1080, § 2.)

35-3-35. Dissemination of records by center and local criminal justice agencies to public agencies, political subdivisions, etc.; disclosure of all information pertinent to an adverse employment decision; responsibility and liability of center; authority to adopt necessary rules, regulations, and forms.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:

(A) Public agencies or political subdivisions shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed and notarized consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; and

(B) The center may not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by law; and

(2) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event an employment or licensing decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, nor any other claim in connection with any dissemination pursuant to this Code section and shall be immune from suit based upon such claims.

(d) Local criminal justice agencies may disseminate criminal history records to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations.

(e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. (Ga. L. 1978, p. 1981, § 1; Ga. L. 1988, p. 203, § 2.)

35-3-36. Duties of state criminal justice agencies as to submission of fingerprints, photographs, etc., to center.

(a) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs when specifically requested, and other identifying data on persons who have been lawfully arrested or taken into custody in the state for all felonies and for the misdemeanors and violations designated in subparagraph (A) of paragraph (1) of Code Section 35-3-33 and for persons in the categories enumerated in subparagraphs (B), (C), and (D) of paragraph (1) of Code Section 35-3-33.

(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation officers, wardens, or other persons in charge of penal and correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

(c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of

Investigation full face and profile photographs if photo equipment is available, and other available identifying data of each person arrested or taken into custody for an offense of a type designated in paragraph (1) of Code Section 35-3-33, of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions; but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order and any such dispositions must also be reported to the center.

(d) Fingerprints and other identifying data required to be taken under subsection (c) of this Code section shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the center so requests.

(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all arrest warrants of this type which continue to be outstanding.

(f) All persons in charge of state penal and correctional institutions shall obtain fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation or as otherwise directed by the center and full-face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the center together with any other identifying data requested within ten days after the arrival at the institution of the person committed. At the time of release of any person committed to a correctional institution, the institution shall again obtain fingerprints as provided for in this subsection and forward them to the center within ten days along with any other related information requested by the center. Immediately upon release, the institution shall notify the center of the release of the person.

(g) All persons in charge of law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all justices of the peace, and all persons in charge of state and county probation and parole offices shall supply the center with the information described in Code Section 35-3-33 on the basis of the forms and instructions to be supplied by the center.

(h) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the center copies of identifying data, as required in accordance with center guidelines, in those files as will aid in establishing the nucleus of the state criminal identification file.

(i) All criminal justice agencies within the state shall submit to the center, periodically at a time and in such form as prescribed by the center, information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Such report shall be known as the "uniform crime report" and shall contain crimes reported and otherwise processed during the period preceding the period of report, including the number and nature of offenses committed, the disposition of such offenses, and such other information as the center shall specify, relating to the method, frequency, cause, and prevention of crime.

(j) Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report provided for in subsection (i) of this Code section but which desires to submit a report shall be furnished with the proper forms by the center. When a report is received by the center from a governmental agency not required to make a report, the information contained therein shall be included within the periodic compilation provided for in paragraph (9) of Code Section 35-3-33.

(k) Upon the request of the center, local law enforcement agencies shall periodically provide for audit samples of incident reports for the preceding reporting period so that the center may help ensure agency compliance with national and state uniform crime reporting requirements.

(l) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has

committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery. (Ga. L. 1973, p. 1301, § 4; Ga. L. 1976, p. 617, § 6; Ga. L. 1980, p. 396, § 2; Ga. L. 1982, p. 3, § 35.)

OPINIONS OF THE ATTORNEY GENERAL

Center records crimes necessary to establish and maintain uniform system. — This article empowers the Georgia Crime Information Center to record crime as it deems necessary to establish and maintain a uniform system of crime reporting. 1976 Op. Att'y Gen. No. 76-33.

Law enforcement agencies obtain fingerprints from arrested persons and forward prints to center. — This article requires persons in charge of law enforcement agencies to obtain fingerprints each time a person is arrested or taken into custody and forward such prints to the center. 1975 Op. Att'y Gen. No. U75-54.

35-3-37. Inspection of criminal records; purging, modifying, or supplementing of criminal records.

(a) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this article.

(b) The center shall make a person's criminal records available for inspection by him or his attorney upon written application to the center. Should the person or his attorney contest the accuracy of any portion of the records, it shall be mandatory upon the center to make available to the person or his attorney a copy of the contested record upon written

application identifying the portion of the record contested and showing the reason for the contest of accuracy. Forms, procedures, identification, and other related aspects pertinent to access to records may be prescribed by the center.

(c) If an individual believes his criminal records to be inaccurate or incomplete, he may request the original agency having custody or control of the detail records to purge, modify, or supplement them and to notify the center of such changes. Should the agency decline to act or should the individual believe the agency's decision to be unsatisfactory, the individual or his attorney may, within 30 days of such decision, enter an appeal to the superior court of the county of his residence or to the court in the county where the agency exists, with notice to the agency, to acquire an order by the court that the subject information be expunged, modified, or supplemented by the agency of record. The court shall conduct a de novo hearing and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as appeals are entered from the probate court, except that the appellant shall not be required to post bond or pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at the first term or in chambers. A notice sent by registered or certified mail shall be sufficient service on the agency having custody or control of disputed record that such appeal has been entered. Should the record in question be found to be inaccurate, incomplete, or misleading, the court shall order it to be appropriately expunged, modified, or supplemented by an explanatory notation. Each agency or individual in the state with custody, possession, or control of any such record shall promptly cause each and every copy thereof in his custody, possession, or control to be altered in accordance with the court's order. Notification of each such deletion, amendment, and supplementary notation shall be promptly disseminated to any individuals or agencies, including the center, to which the records in question have been communicated, as well as to the individual whose records have been ordered so altered.

(d) Agencies, including the center, at which criminal offender records are sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures, fees not to exceed $3.00, or restrictions including fingerprinting as are reasonably necessary to assure the records' security, to verify the identities of those who seek to inspect them, and to maintain an orderly and efficient mechanism for inspection of records.

(e) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply to proceedings under this Code section. (Ga. L. 1973, p. 1301, § 6.)

OPINIONS OF THE ATTORNEY GENERAL

Center may allow private researchers access to information under imposed conditions. — Art. 5, Ch. 18, T. 50, permits the Georgia Crime Information Center to allow private researchers access to criminal history record information and to impose such conditions on that access as the center deems appropriate. 1975 Op. Att'y Gen. No. 75-75.

Center should purge its records only when they are inaccurate. 1975 Op. Att'y Gen. No. 75-110.

35-3-38. Unauthorized requests, disclosures, etc., of criminal history record information; disclosure, etc., of techniques used to ensure security or privacy of criminal history records.

(a) Any person who knowingly requests, obtains, or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the center, the council, or any participating agency who knowingly falsifies criminal history record information or any records relating thereto shall for each such offense, upon conviction thereof, be fined not more than $5,000.00, or imprisoned for not more than two years, or both.

(b) Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than $100.00, or imprisoned not more than ten days, or both.

(c) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems except in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than $5,000.00, or imprisoned not more than two years, or both.

(d) Any person who discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems in a manner not permitted by this article shall for each such offense, upon conviction thereof, be fined not more than $100.00, or imprisoned not more than ten days, or both. (Ga. L. 1973, p. 1301, § 7; Ga. L. 1976, p. 617, § 8; Ga. L. 1982, p. 3, § 35.)

35-3-39. Effect of neglect or refusal of officer or official to do act required by article.

Any officer or official mentioned in this article who shall neglect or refuse to make any report or to do any act required by any provision of this article shall be deemed guilty of nonfeasance in office and subject to removal therefrom. (Ga. L. 1973, p. 1301, § 8.)

35-3-40. Construction of article.

(a) In the event of conflict, this article shall to the extent of the conflict supersede all existing statutes which regulate, control, or otherwise relate, directly or by implication, to the collection, storage, and dissemination or usage of fingerprint identification, offender criminal history, uniform crime reporting, and criminal justice activity data records or any existing statutes which relate directly or by implication to any other provisions of this article.

(b) Notwithstanding subsection (a) of this Code section, this article shall not be understood to alter, amend, or supersede the statutes and rules of law governing the collection, storage, dissemination, or usage of records concerning individual juvenile offenders in which they are individually identified by name or by other means. (Ga. L. 1973, p. 1301, § 9.)

Article 4

CHAPTER 40-27. INSPECTION OF PUBLIC RECORDS

40-2701 Right of public to inspect records

40-2701 [50-18-70] Right of public to inspect records

(a) All state, county, and municipal records, except those which by order of a court of this state or by law are prohibited from being open to inspection by the general public, shall be open for a personal inspection of any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

(b) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article. In no event shall this time exceed three business days.
(Acts 1959, p. 88; 1982, p. 1789.)

40-2702 Supervision of persons photographing records; charge for services of deputy

40-2702 [50-18-71] Copies or extracts from public records; supervision of persons photographing records; charge for services of deputy

In all cases where an interested member of the public has a right to inspect or take extracts or make copies from any public records, instruments, or documents, any such person shall have the right of access to the records, documents, or instruments for the purpose of making photographs of the same while in the possession, custody, and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the records, who shall have the right to adopt and enforce reasonable rules governing the work. The work shall be done in the room where the records, documents, or instruments are kept by law. While the work is in progress, the custodian may charge the person making the photographs of the records, documents, or instruments at a rate of compensation to be agreed upon by the person making the photographs and the custodian for his services or the services of a deputy in supervising the work.
(Acts 1959, pp. 88, 89; 1982, p. 1789.)

Cited. Northside Realty Associates, Inc. v. Community Relations Comm. of Atlanta, 240 Ga. 432, 241 S. E. 2d 189 (1978); Op. Atty. Gen. 81-71.

Charges

If State Personnel Board furnishes copies of hearing file or transcript to interested parties, Board may charge party fee for providing copies. Op. Atty. Gen. 78-55.

Copying records

If investigation or inspection report of State Fire Marshal is public record as defined in § 40-3301 (f), citizen desiring to inspect and copy such reports pursuant to Open Records Act cannot be required to first serve subpoena requiring same. Op. Atty. Gen. 80-105.

Furnishing copies

Open Records Law provides for inspection and copying of public records by citizens, but does not require State Department of Education to itself prepare and furnish copies of public records to interested persons. Op. Atty. Gen. U76-43.

Separation of information

Nowhere in § 40-2702 is there authority for trial court's order which required appellant to maintain two separate forms which separate information that public may see from information that public may not see. Manner of separating this information is left to discretion of public agency. Griffin-Spalding County Hosp. Auth. v. WKEU, 240 Ga. 444, 241 S. E. 2d 196 (1978).

40-2703 Exception of certain records

40-2703 [50-18-72] Exception of certain records

(a) This article shall not be applicable to records that are specifically required by the federal government to be kept confidential or to medical records and similar files, the disclosure of which would be an invasion of personal privacy. All records of hospital authorities other than the foregoing shall be subject to this article. All state officers and employees shall have a privilege to refuse to disclose the identity of any person who has furnished medical or other similar information which has or will become incorporated into any medical or public health investigation, study, or report of the Department of Human Resources. The identity of such informant shall not be admissible in evidence in any court of the state unless the court finds that the identity of the informant already has been disclosed otherwise.

(b) This article shall not be applicable to any application submitted to or any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to licenses to carry pistols or revolvers, or pursuant to any other requirement for maintaining records relative to the possession of firearms. This subsection shall not preclude law enforcement agencies from obtaining records relating to licensing and possession of firearms as provided by law.
(Acts 1967, p. 455; 1970, p. 163; 1982, p. 1789.)

Cited. Northside Realty Associates, Inc. v. Community Relations Comm. of Atlanta, 240 Ga. 432, 241 S. E. 2d 189 (1978); Op. Atty. Gen. 78-16; Op. Atty. Gen. 78-55; Athens Observer, Inc. v. Anderson, 245 Ga. 63, 263 S. E. 2d 123 (1980); Op. Atty. Gen. U80-6; Atchison v. Hospital Auth. &c. St. Marys, 245 Ga. 494, 265 S. E. 2d 801 (1980).

Stated. Dennis v. Adcock, 138 Ga. App. 425, 226 S. E. 2d 292 (1976).

Personnel files

Access to personnel files under Georgia's "Open Records Law." Op. Atty. Gen. 81-71.

School personnel files

Local school boards may lawfully maintain policy of confidentiality with respect to personnel files. Op. Atty. Gen. 77-56.

Student information

University of Georgia has no obligation by law to disclose publicly information concerning students' degrees without having first designated such information to be directory information or having obtained permission from student. Op. Atty. Gen. 81-48.

*40-2704 [50-18-73] **Actions to enforce provisions***

The superior courts of this state shall have jurisdiction to entertain actions against persons or agencies having custody of records open to the public under his article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. The court may award to the prevailing party reasonable attorney's fees and other litigation expenses reasonably incurred in bringing or defending the action to enforce compliance with this article, in addition to such other relief as may be granted by the court.

(Acts 1982, p. 1789.)

*40-2705 [50-18-74] **Penalties***

Any person who willfully refuses to provide access to public records as provided in Code Section 50-18-70 of this article or who refuses to allow the examination and copying of records as provided in Code Section 50-18-71 of this article shall be guilty of a misdemeanor.

(Acts 1982, p. 1789.)

Article 2

Arrest by Law Enforcement Officers Generally

*27-220 [17-4-27] **Names, addresses and ages of persons arrested to be obtained and recorded by sheriffs, chiefs of police and heads of other State law enforcement agencies***

It shall be the duty of all sheriffs, chiefs of police, and the heads of any other law enforcement agencies of this state to obtain, or cause to be obtained, the name, address, and age of each person arrested by law enforcement officers under the supervision of such sheriffs, chiefs or police, or heads of any other law enforcement agencies of this state, when any such person is charged with an offense against the laws of this state, any other state, or the United States. The information shall be placed on appropriate records which each law enforcement agency shall maintain. The records shall be open for public inspection unless otherwise provided by law.

(Acts 1967, pp. 839, 840.)

Article 3

Probation of First Offenders

*27-2727 [42-8-60] **Probation for first offenders; when applicable; violation of probation***

(a) Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication of guilt, in the case of a defendant who has not been previously convicted of a felony, the court may, without entering a judgment of guilt and with the consent of the defendant:

(1) Defer further proceeding and place the defendant on probation as provided by law; or

(2) Sentence the defendant to a term of confinement as provided by law.

(b) Upon violation by the defendant of the terms of probation or upon a conviction for another crime, the court may enter an adjudication of guilt and proceed as otherwise provided by law. No person may avail himself of this article on more than one occasion.

(Acts 1968, pp. 324, 325; 1982, p. 1807.)

Editorial Note to Code of 1981

Acts 1982, p. 1807, entirely superseded the former section.

27-2728 [42-8-62] ***Same; discharged defendant not to be considered to have criminal conviction; records of probation***

Upon fulfillment of the terms of probation, upon release by the court prior to the termination of the period thereof, or upon release from confinement, the defendant shall be discharged without court adjudication of guilt. The discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. Should a person be placed under probation or in confinement under this article, a record of the same shall be forwarded to the Georgia Crime Information Center. Without request of the defendant a record of discharge and exoneration, as provided in this Code section, shall in every case be forwarded to the Georgia Crime Information Center. In every case in which the record of probation or confinement shall have been previously forwarded to the Department of Offender Rehabilitation, to the Georgia Crime Information Center, and to the Identification Division of the Federal Bureau of Investigation and a record of a subsequent discharge and exoneration of the defendant has not been forwarded as provided in this Code section, upon request of the defendant or his attorney or representative the record of the same shall be forwarded by the clerk of court so as to reflect the discharge and exoneration.

(Acts 1968, pp. 324, 325; 1978, p. 1621; 1982, pp. 1807, 1808.)

27-2728.1 [42-8-63] ***Same; discharge not to be used to disqualify person for employment or appointment to office***

Except as otherwise provided in this article, a discharge under this article is not a conviction of a crime under the laws of this state and may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector.

(Acts 1978, pp. 1621, 1622.)

27-2729 [42-8-61] ***Same; defendant to be informed of terms of law***

The defendant shall be informed of the terms of this article at the time of imposition of sentence.

(Acts 1968, pp. 324, 325; 1982, p. 1807, 1808.)

27-2730 [42-8-65] ***Same; pleading and proof of finding of guilt on subsequent prosecutions; release of record of discharge***

(a) If otherwise allowable by law in any subsequent prosecution of the defendant for any other offense, a prior finding of guilt may be pleaded and proven as if an adjudication of guilt had been entered and relief had not been granted pursuant to this article. Except as provided in subsection (b), the record of discharge shall be released solely to the Attorney General, a district attorney, a solicitor of a state court, the Department of Offender Rehabilitation, the office of a county probation system or of a state or county probation system of another state or of the United States, an office of the State Board of Pardons and Paroles, an office of the pardons and paroles division of another state or of the United States, or a prosecuting attorney of another state or of the United States, upon certification by such probation system or prosecuting attorney that there are pending in a court of competent jurisdiction criminal charges against any person discharged under this article.

(b) Upon certification by the chief executive officer of any law enforcement agency of a pending criminal investigation and the need for the record of discharge of a named person to be released, the record of discharge of such person may be released to such law enforcement agency. For the purposes of this subsection, the term "law enforcement agency" means a

governmental unit of one or more persons employed full time or part time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.
(Acts 1968, pp. 324, 325; 1978, pp. 1621, 1623; 1982, pp. 1807, 1809.)

27-2731 [42-8-64] Same; right to appeal
A defendant sentenced pursuant to this article shall have the right to appeal in the same manner and with the same scope and same effect as if a judgment of conviction had been entered and appealed from.
(Acts 1968, pp. 324, 326.)

42-8-65. Use of prior finding of guilt in subsequent prosecutions; release of records of discharge; modification of records to reflect conviction; effect of confinement sentence where guilt not adjudicated.

(a) If otherwise allowable by law in any subsequent prosecution of the defendant for any other offense, a prior finding of guilt may be pleaded and proven as if an adjudication of guilt had been entered and relief had not been granted pursuant to this article. Except as provided in subsection (b) or (c) of this Code section, the record of discharge shall be released solely to the Attorney General, a district attorney, a solicitor of a state court, the Department of Corrections, the office of a county probation system or of a state or county probation system of another state or of the United States, an office of the State Board of Pardons and Paroles, an office of the pardons and paroles division of another state or of the United States, or a prosecuting attorney of another state or of the United States, upon certification by such probation system or prosecuting attorney that there are pending in a court of competent jurisdiction criminal charges against any person discharged under this article. No such agency, law enforcement agency, or court may release any information regarding an adjudication of guilt under this article except to disclose the fact that the defendant has exercised his or her right to first offender treatment under Georgia law and that such person has been discharged.

(b) Upon certification by the chief executive officer of any law enforcement agency of a pending criminal investigation and the need for the record of discharge of a named person to be released, the record of discharge of such person may be released to such law enforcement agency. For the purposes of this subsection, the term "law enforcement agency" means a governmental unit of one or more persons employed full time or part time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

42-8-65

(c) The records of the Georgia Crime Information Center shall be modified, without a court order, to show a conviction in lieu of treatment as a first offender under this article whenever the conviction of a person for another crime during the term of probation is reported to the Georgia Crime Information Center. If a report is made showing that such person has been afforded first offender treatment under this article on more than one occasion, the Georgia Crime Information Center may report information on first offender treatments subsequent to the first such first offender treatment as if they were convictions. Such records may be disseminated by the Georgia Crime Information Center in the same manner and subject to the same restrictions as any other records of convictions.

(d) Notwithstanding any other provision of this article, any person who is sentenced to a term of confinement pursuant to paragraph (2) of subsection (a) of Code Section 42-8-60 shall be deemed to have been convicted of the offense during such term of confinement for all purposes except that records thereof shall be treated as any other records of first offenders under this article and except that such presumption shall not continue after completion of such person's confinement sentence. Upon completion of the confinement sentence such person shall be treated in the same manner and the procedures to be followed by the court shall be the same as in the case of a person placed on probation under this article. (Ga. L. 1968, p. 324, § 4; Ga. L. 1978, p. 1621, § 3; Ga. L. 1982, p. 1807, § 4; Ga. L. 1983, p. 3, § 31; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 380, § 2.)

JUDICIAL DECISIONS

Cited in Sims v. Fox, 492 F.2d 1088 (5th Cir. 1974); Johnson v. GMC, 144 Ga. App. 805, 241 S.E.2d 30 (1977); Dominy v. Mays, 150 Ga. App. 187, 257 S.E.2d 317 (1979); Miller v. State, 162 Ga. App. 730, 292 S.E.2d 102 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Cases to which section applies. — Provision of this section regarding release of record of discharge applies to records in cases where finding of guilt was made, pursuant to conviction or plea, but where adjudication of guilt was withheld pending successful completion of probation. 1981 Op. Att'y Gen. No. U81-32.

Confidentiality of record upon discharge. — While the 1978 amendment to this section does not specifically say that record becomes confidential once discharge has been granted, that is its only logical construction, as it is presumed that by adding this language the General Assembly intended to effectuate a change in the law. 1981 Op. Att'y Gen. No. U81-32.

It is clear that General Assembly intended that court records of first offenders who have been discharged be confidential and clerks of court should take whatever steps are necessary to restrict access to those records to those officials listed in § 42-8-65. 1981 Op. Att'y Gen. No. U81-32.

Evil to be avoided is stigma of criminal record and employment disqualification due to first offender record, and the 1978 amendment, if construed to restrict access to records in which a discharge has been granted, would effectively remedy both those evils, in that the record could be seen by only those officials in a position to use it "in any subsequent prosecution of the defendant for any other offense." 1981 Op. Att'y Gen. No. U81-32.

Discharge under § 42-8-62 does not prevent use of record in subsequent prosecution for later offense. 1981 Op. Att'y Gen. No. U81-32.

Confidentiality of first offender records. — First offender records are not required to be kept confidential until the first offender has been discharged after fulfilling the requirements of the first offender sentence. 1985 Op. Att'y Gen. No. U85-37.

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RULES
OF
GEORGIA CRIME INFORMATION CENTER
COUNCIL

CHAPTER 140-1
ORGANIZATION

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140-1-.01 Organization. Amended.

(1) There is a Director responsible for development, maintenance and operation of the Georgia Crime Information Center (GCIC).

(2) There is a Council responsible for providing assistance and guidance. The GCIC Director shall attend all Council meetings and shall maintain records of the proceedings.

(3) All legal notices and correspondence regarding administrative proceedings shall be directed to the GCIC Director.

(4) The GCIC mailing address is Box 370748, Decatur, Georgia 30037-0748.

(5) The GBI shall function as the State Control Terminal Agency (SCTA) for Georgia as per the service agreement between Georgia and the National Crime Information Center. The GCIC Director shall be the State Control Terminal Officer (SCTO).

(6) The GBI shall provide the Georgia representative to the governing body of the National Law Enforcement Telecommunications System, as per the service agreement between Georgia and the National Law Enforcement Telecommunications System.

(7) The Rules of the GCIC Council rest on the authority of federal law and rules as well as on state law.

140-1-.02 General Definitions. Amended.

(1) All words defined in O.C.G.A. 35-3-30 shall have the same meaning for these Rules.

(2) The following definitions shall apply generally to all Rules of the GCIC Council:

(a) "GCIC" — The Georgia Crime Information Center as created by O.C.G.A. 35-3-31.

(b) "CJIS" — The Criminal Justice Information System as defined by O.C.G.A. 35-3-30.

(c) "Criminal Justice Information" — Includes the following classes:

1. "Secret" — Information involving elements of the operation, programming, and security constraints of the GCIC/CJIS and satellite computer systems.

2. "Restricted" — Information involving data gathering techniques, CJIS network operational procedures, manuals and forms.

3. "Criminal History Record Information" — Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, informations or other formal criminal charges, and any dispositions arising therefrom, including sentences, correctional supervision, and releases.

(d) "Dispositions" — The results of criminal proceedings including information disclosing that arresting agencies elected not to refer a matter to a prosecutor or that a prosecutor elected not to commence criminal proceedings and also disclosing the nature of the termination in proceedings; or, information disclosing the reason for such postponement. "Dispositions" may also include: acquittal, acquittal due to incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo

contendere plea, guilty, guilty but insane, youthful offender, determination, deceased, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendent discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(e) "Hearings" — A right of GCIC and parties affected by any action of GCIC to formally or informally present relevant information, testimony, documents. evidence and arguments as to why specified actions should or should not be taken.

(f) "Designated Representative" — the person specifically named to receive criminal history record information from GCIC on behalf of any private person, business, commercial establishment, or authorized public agency eligible to request such information.

(g) "Law Enforcement Agency" — a governmental unit of one or more persons employed full time or part-time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(h) "Criminal Justice Agencies" — those public agencies, at all levels of government, statutorily responsible for the the performance of tasks relating to the investigation, arrest, prosecution, adjudication, surveillance, or custody/supervision of criminal offenders.

(i) "Government Dispatch Center" — a non-criminal justice agency established by act of local government to provide communications support services to agencies of the local government, including criminal justice agencies.

(j) "Governmental Regional Dispatch Center" — a non-criminal justice agency established by act(s) of local government(s) to provide multijurisdictional communications support services to public service agencies, including criminal justice agencies.

(k) "Terminal Agency Coordinator" (TAC) — The employee in a CJIS network terminal agency who is designated by the agency head to be responsible for ensuring compliance with Georgia, NCIC, and NLETS policies and regulations, including the GCIC/NCIC validation program.

(l) "Terminal Operator" — A full-time or part-time employee hired by a CJIS network terminal agency to perform communications services duties which include the operation of a CJIS network terminal.

(m) The terms "data" and "information" are used interchangeably through the Rules.

Authority O.C.G.A. Sec. 35-3-30, 28 CFR 20.3. **Administrative History.** Original Rule entitled "General Definitions" was filed on February 25, 1976, effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983, effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984, effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Filed January 6, 1988, effective January 27, 1988, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

Chapter 140-1-.03 Administrative Declaratory Rulings. Amended.

(1) Availability of declaratory ruling. Any person whose legal rights are impaired by the application of any statutory provision, or by any GCIC Rule or order, may petition GCIC and request a declaratory ruling. GCIC will not render advisory opinions, resolve questions which are moot or hypothetical, or otherwise act hereunder except in actual controversies or in other cases upon which a superior court would be required to act under the Georgia declaratory judgement statutes as construed by the appellate courts of Georgia.

(2) Form of petition. Each petition filed with GCIC shall be in writing and shall include:

(a) The names and post office address of the petitioner;

(b) The full test of the statute, rule or order upon which a ruling is requested;

(c) A detailed statement of all pertinent facts necessary for a determination;

(d) The petitioner's contention, if any, as to the applicability of cited legal authorities which authorize, support or require a decision in accordance therewith; and

(e) A statement setting forth in detail the petitioner's interest in the matter. The statement shall be verified under oath by, or in behalf of, the petitioner.

(3) Proceedings on petition. If GCIC determines that a decision can be rendered on the petition without further proceedings, a summary decision shall be rendered. Otherwise, parties shall be notified and the matter shall be reviewed in an informal hearing.

(4) Informal interpretations and rulings.

(a) Any person may request GCIC to interpret or otherwise rule informally upon the applicability of any pertinent statute or Rule by personal appearance at GCIC, or by letter or telegram addressed to GCIC.

(b) GCIC may respond to such requests at its own discretion, or may issue interpretive rulings on its own initiative.

(5) Requests presented in any manner other than in accordance with the provision of 140-1-.03(2) above shall be answered with an informal interpretation.

Authority O.C.G.A. Sec. 50-13-9. **Administrative History.** Original Rule entitled "Administrative Declaratory Rulings" was filed on February 25, 1976; effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-1-.04 Petition for Adoption of Rules. Amended.

(1) Form of petition. Each petition for adoption of Rules made pursuant to the Georgia Administrative Procedure Act shall be filed with GCIC in writing, under oath, and shall include:

(a) The name and post office of the petitioner;

(b) The full text of the Rule(s) requested to be amended, repealed or promulgated;

(c) A detailed statement of the reason such Rule should be amended, repealed or promulgated, including a statement of the petitioner's interest in the matter; and

(d) Citations of legal authorities, if any, which authorize, support or require the action requested by the petitioner.

(2) Proceedings on petition. The GCIC Council shall consider each petition at regularly scheduled meetings. The Council may decline to

take action or may initiate rule-making or rule-changing proceedings in accordance with the Georgia Administrative Procedure Act. The Council shall notify the petitioner by certified mail of its decision and shall state its reasons if it declines to act.

Authority O.C.G.A. Sec. 50-13-9. **Administrative History.** Original Rule entitled "Petition for Adoption of Rules" was filed on February 25, 1976; effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-1-.05 Approval and Disciplinary Procedures. Amended.

(1) Information exchange and service from GCIC. Persons and agencies shall exchange information and receive service from GCIC only when approved by the Director. GCIC shall not provide any service or exchange any information unless the Director finds that:

(a) The person or agency is permitted by Georgia law and these Rules to exchange information or receive service; and

(b) There is no significant danger that the person or agency will use the information or service in a manner which would violate Georgia law or these Rules.

(2) Notification and resolution of violations. Whenever the Director determines that any law concerning criminal justice information, or any Rule, regulation or policy of the GCIC Council has been violated, is being violated, or is about to be violated, he shall immediately advise the person or head of the responsible agency of the existence and nature of such violation. If possible, the Director and concerned parties shall agree on a mutually satisfactory solution. If a solution is determined, it shall be documented and signed by the Director and the person or the agency head. When any such agreement is reviewed and approved by the GCIC Council, it shall be the final disposition of the matter. If the GCIC Council requires modification of the agreement and the modification is accepted by concerned parties, it shall be the final disposition of the matter. If no agreement can be reached which is satisfactory to the GCIC Council and to the concerned parties, suspension proceedings may be initiated.

(3) Suspension. If an agreement satisfactory to the Director and concerned parties cannot be reached within ten days after the initial notification of violation, the Director may, at his discretion, cause any or

all services rendered by GCIC to be suspended. In such cases, the Director shall notify the Chairman of the GCIC Council.

(4) Reinstatement. Upon petition of concerned parties which have had any service suspended, the Director, at his discretion, may reinstate full or partial service, pending a final decision by the Council, if he finds that reinstatement will not create a significant danger of future violations.

(5) Contested Cases. Hearings and appeals regarding refusals by the Director to exchange information or provide services, or regarding any disciplinary measure taken by the Director or the GCIC Council pursuant to this Rule, shall be conducted pursuant to the Georgia Administrative Procedure Act and the following:

(a) Initiating a contested case. Any person or agency legally entitled to contest a refusal to exchange information, or provide services, or entitled to contest any disciplinary measure under this Rule, may do so by filing a request for hearing with the Director which shall include:

1. The complete name and post office address of the party filing the request;

2. The name and post office address of all other interested parties;

3. A detailed statement of the facts upon which the GCIC action is contested;

4. A statement describing the relief sought; and

5. The name and post office address of counsel, if the party filing the request is represented by counsel.

(b) Limitations on right to a hearing. A hearing to contest the imposition of a disciplinary measure will be granted as a matter of right only if it is filed within 30 days of the imposition of the action. A hearing upon a refusal to exchange information or provide services upon a request for reinstatement of suspended services shall be granted as a matter of right at any time while service is partially or wholly suspended. A petition for such a hearing may be denied only when the petition presents no substantial grounds which have not been previously presented. The Council may, at its discretion, allow extensions of time and amendment of requests for good cause.

(c) Reponses to requests for hearing. The GCIC Council will respond to all requests for hearings with scheduling notices or with orders denying requests and reasons for denials.

(d) Motions. Any application to the Director or the GCIC Council to enter any order or to take any action, after filing a request for hearing, shall be made by motion which, unless made during the hearing, shall be made in writing, stating the specific grounds therefor, and shall set forth the action or order sought. No motion shall be ruled upon except when the case-in-chief is ruled upon, unless the moving party specifically requests a ruling at some other time and the Council deems such ruling appropriate.

(e) Hearings. Hearings in contested cases shall be conducted by three members of the GCIC Council appointed by the Chairman or by their designees. Following each hearing, Council members shall notify the Director and each interested party of their findings. Each party shall have 20 days following the notification to file written exceptions and briefs. At the next scheduled meeting of the GCIC Council, the Director and all concerned parties shall have an opportunity to present oral arguments. The Council shall then render a final decision.

(6) Notwithstanding anything previously stated, if it appears that O.C.G.A. 35-3-38 has been violated, the Director or the GCIC Council may refer the matter to the appropriate prosecuting authority.

Authority O.C.G.A. Secs. 35-3-32; 35-3-33; 42 U.S.C. 3771, 28 CFR 20,21. **Administrative History.** Original Rule entitled "Approval and Disciplinary Procedures" was filed on February 25, 1976; effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted Filed July 2, 1986; effective July 22, 1986. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-1-.06 Contested Cases Governed by Express Statutory Provisions. Amended. Contested cases concerning an individual's right to access and make corrections to his criminal record which arise under O.C.G.A. 35-3-37 are governed by provisions contained therein rather than by the Administrative Procedure Act. Contested cases thereunder shall be processed in accordance with the provisions of the cited statute.

RULES
OF
GEORGIA CRIME INFORMATION CENTER COUNCIL

CHAPTER 140-2
PRACTICE AND PROCEDURE

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140-2-.01 Scope. Amended.

(1) These Rules shall apply to all criminal justice agencies within the State and to all other agencies or persons with access to criminal justice information.

(2) These Rules do not restrict any criminal justice agency from publicly disclosing certain factual information. Such information includes:

(a) The status of a current investigation;

(b) The recent arrest, release or prosecution of an individual.

(3) A criminal justice agency is not prohibited from releasing prior criminal record information to members of the news media or any other person if the criminal record information is based on data contained in:

(a) Posters, announcements, or flyers prepared to aid in the identification or arrest of fugitives or wanted persons;

(b) Incident reports, accident reports, and arrest/booking reports prepared by law enforcement agencies and defined by law as public records;

(c) Official records of public judicial proceedings.

(4) The names of living victims of sexual offenses and the names of living juveniles involved in police investigations are not to be released.

(5) Nothing in these Rules shall close any record that is now or hereafter made public by law.

(6) Nothing in these Rules shall mandate the exchange of criminal justice information except where specifically required by these Rules.

Authority O.C.G.A. Secs. 16-6-23, 35-3-34; 35-3-35, 50-18-72, 42 U.S.C. 3371; 28 CFR 20.21. **Administrative History.** Original Rule entitled "Scope" was filed on February 25, 1976, effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983, effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.02 Security Policy for Criminal Justice Information. Amended.

(1) Handling Procedures.

(a) Secret Information:

1. When not in use, it shall be stored in locking, fire-resistant vaults or safes. Duplicate computer files and program tapes should be similarly secured in a separate location.

2. Areas in which the information is processed and handled shall be restricted to authorized personnel in the performance of their official duties.

3. The information shall be under the absolute control of criminal justice agencies, with access regulated by agency heads or their designees.

4. A log or other record shall be maintained when information is removed from or returned to the vault.

(b) Criminal History Record Information:

1. Shall be stored in a secure location when not controlled by authorized criminal justice agency employees.

2. Areas in which the information is processed and handled shall be restricted to authorized personnel in the performance of their official duties;.

3. It shall be under the absolute control of criminal justice agencies except as exempted by these Rules.

(c) Restricted information shall be used and stored in a controlled access area.

(2) Any secret information, criminal history record information, or restricted information is a "Secret of State" which is required by State policy, the interest of the community, and the right of privacy of the citizens of this State to be confidential. Such information shall not be divulged except as permitted by Georgia law and these Rules. When documents containing secret information, criminal history record information, or restricted information are no longer required for criminal justice agency operations, such documents shall be destroyed in a manner which precludes access to the information by unauthorized persons.

(3) Criminal justice agencies shall disseminate criminal justice information only to agencies and persons requiring such information to perform duties serving the administration of criminal justice or as otherwise provided by statute, executive order or these Rules. Under no circumstances will criminal history record information be transmitted via the CJIS network to terminals not authorized to access the GCIC criminal history record information data base.

(4) Heads of criminal justice agencies shall provide the GCIC Director with written notifications of violations of the security policy for criminal justice information committed by employees of these agencies.

Authority O.C.G.A. Secs. 35-3-30; 35-3-32. 28 C.F.R. 20.21. **Administrative History.** Original Rule entitled "Data Security Requirements for Criminal Justice Information" was filed on February 25, 1976; effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule entitled "Security Policy for Criminal Justice Information" adopted. Filed July 2, 1986; effective July 22, 1986. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.03 Completeness and Accuracy of Criminal History Record Information. Amended.

(1) Each law enforcement agency arresting persons charged with those criminal offenses described in O.C.G.A. 35-3-33 is responsible for obtaining fingerprints of the arrested persons, each time they are arrested, on fingerprint cards reflecting the arresting agency's assigned Originating Agency Identifier (ORI). The fingerprint cards used by all Georgia law enforcement agencies shall be the criminal fingerprint cards provided gratis by the FBI or other criminal fingerprint cards which are procured at the expense of submitting agencies and approved by GCIC prior to their use. Fingerprints shall be rolled using black printer's ink or an alternative medium authorized by the FBI; GCIC approval should be obtained before buying/using any alternative medium or system.

(a) All data fields on the fingerprint cards shall be completed for each arrested person. Fingerprint cards of persons under 18 years of age who are being treated as adults should be annotated on the reverse side in the Additional Information Block with the following phrase: Treat as Adult.

(b) Fully-rolled fingerprint impressions shall be obtained and data fields completed only by criminal justice agency employees. Under no circumstances shall arrested persons themselves, or inmates of jails or correctional institutions, be permitted to assist in obtaining fingerprints or completing the data fields.

(c) Two original criminal fingerprint cards, taken for each arrested person, shall be forwarded to GCIC within 24 hours, but the period of 24 hours may be extended to cover any intervening holiday or weekend. GCIC will retain one fingerprint card and forward the second card to the FBI Identification Division after entering the arrested person's State Identification (SID) number on the card.

(2) At the same time and place that fingerprints are obtained, two-part disposition reports (OBTS forms) shall be initiated by arresting or booking agencies. Original OBTS forms are to be enclosed with the fingerprint cards forwarded to GCIC. Copies of OBTS forms are to be forwarded with warrants/citations/charges to appropriate prosecutors/courts. GCIC will return original OBTS forms to originating agencies after annotating the forms with SID numbers. Copies of OBTS forms forwarded to prosecutors/courts are to be used for reporting post-arrest dispositions of charges to GCIC.

(a) When dispositions are determined by law enforcement agencies prior to referral of arrested persons to prosecuting officials or to the courts, it shall be the duty of these law enforcement agencies to forward completed OBTS forms to GCIC.

(b) When dispositions are determined by prosecuting officials prior to referral of arrested persons to the courts, it shall be the duty of prosecuting officials to forward completed OBTS forms to GCIC.

(c) When dispositions, or modifications of earlier dispositions, are determined by the courts, it shall be the duty of clerks of court, probate and municipal judges where no clerks exist, and magistrates to forward disposition reports or reports of their modifications of earlier dispositions to GCIC.

(d) When the sentences of convicted persons are modified by the State Board of Pardons and Parole, when paroles are revoked, or when parolees are discharged from parole status, it shall be the duty of the Board to forward disposition reports of sentence modifications to GCIC.

(e) When conditions of probation are imposed on convicted persons, or when probationary sentences are revoked, or when terms of probation are completed, it shall be the duty of all persons in charge of probation offices to forward disposition reports to GCIC.

(f) When decisions or orders of the Court of Appeals or the Supreme Court of Georgia modify or suspend the findings or sentences of trial courts regarding individual defendants, it shall be the duty of the clerks of the Court of Appeals and the Supreme Court of Georgia to forward reports of such modifications or suspensions to GCIC.

(3) GCIC will provide OBTS forms to criminal justice agencies and officials responsible for reporting dispositions. Alternatively, responsible officials are encouraged to develop plans for automated reporting of dispositions using computer tape or diskette media; plans for automated disposition reporting must be approved by GCIC prior to implementation.

(4) Completed OBTS forms shall be forward to GCIC not more than 30 days after disposition decisions.

(5) GCIC will prepare a list of fingerprintable criminal offenses and will revise the list when necessary. Copies will be provided by GCIC to

all law enforcement agencies which arrest persons charged with criminal offenses.

Authority O.C.G.A. Secs. 35-3-33; 35-3-36; 42 U.S.C. 3771; 28 C.F.R. 20.21. **Administrative History.** Original Rule entitled "Completeness and Accuracy of Criminal History Record Information" was filed on February 25, 1976; effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Amended:** Filed January 6, 1988; effective January 27, 1988, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988; effective July 27, 1988 **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.04 Criminal Justice Information Exchange and Dissemination. Amended.

(1) Exchange and dissemination of criminal justice information by criminal justice agencies:

(a) Criminal justice agencies shall exchange criminal justice information with other bona-fide criminal justice agencies to facilitate the administration of criminal justice and criminal justice employment. Bona-fide status of Georgia agencies shall be determined by the Director. Disseminations of criminal justice information to such agencies shall be made in accordance with the provisions of user agreements executed between GCIC and all bona-fide agencies. Bona-fide status can be presumed when criminal justice agencies in Georgia and in other states have unrestricted ORIs assigned by the National Crime Information Center (NCIC).

1. Requests for CHRI by defense attorneys for use in pending criminal cases should be referred to GCIC when fingerprints and/or signed notarized consent forms are not furnished.

2. Criminal records containing information on charges disposed of under the provisions of the First Offender Act may be disseminated by state and local criminal justice agencies in the same circumstances and under the same conditions described in Subparagraph (2)(a)2. of this Rule.

(b) Criminal justice agencies may disseminate criminal history records to private persons, businesses, public agencies, political subdivisions, authorities and instrumentalities, including state or federal licensing and regulatory agencies, or to their designated representatives. For dissemination purposes, criminal history records include all available State of Georgia or local agency criminal history record information; except: information relating to any arrest on charges disposed of under the provisions of the Georgia First Offender Act shall not be provided

after the person has been discharged from First Offender status and exonerated of the charges.

1. At the time of each request, requestors shall provide the fingerprints or the signed and notarized consent of the person whose record is requested. The signed and notarized consent must be in a format approved by GCIC and must include the person's full name, address, social security number, race, sex, and date of birth.

2. Criminal justice agencies may charge fees for disseminating criminal history records or "No Record" reports to private individuals, to public and private agencies, or to their designated representatives. When fees are charged, they should approximate, as nearly as possible, the agencies' direct and indirect costs associated with providing such disseminations.

3. Criminal justice agencies which disseminate criminal history records to private individuals and to public and private agencies shall advise all requestors that, if an employment or licensing decision adverse to the record subject is made, the record subject must be informed by the individual or agency making the adverse decision of all information pertinent to that decision. This disclosure must include information that a criminal history record check was made, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision is a misdemeanor. This disclosure requirement applies to criminal justice agencies when such agencies make employment or licensing decisions adverse to record subjects.

(c) Federal law exempts the Federal Bureau of Investigation, Defense Investigative Service, Central Intelligence Agency, and Office of Personnel Management from these provisions of Georgia law. Authorized representatives of these agencies are not required to provide the fingerprints or signed/notarized consents of the persons for whom they request criminal record checks. All criminal justice agencies are obliged by federal law to provide these agencies with criminal history record information, as described in Subparagraph (1)(b) of this Rule, on security clearance applicants and persons being considered for employment in sensitive national security jobs. Established fees may be charged.

(d) Criminal justice agencies may allow access to information by individuals and agencies, pursuant to specific GCIC user agreements, to provide for the development of and operation of computerized informa-

tion systems or for the operation of consolidated radio dispatch centers related to the administration of criminal justice. These agreements shall authorize specific access to information, limit the use of information to purposes for which it was disseminated, require the signing of Awareness Statements, and ensure the security and confidentiality of the data consistent with these Rules.

(e) Criminal justice agencies are required by law to conduct criminal history record checks on applicants for employment with Georgia fire departments, without payment of any fees, and to disseminate criminal history records or no-record reports to such fire departments. The criminal history records to be disseminated are the same as described in subparagraph (1)(b) of this Rule. The procedures described in subparagraph (1)(b)1. of this Rule apply.

(f) Criminal justice agencies may disseminate information to individuals and agencies for the express purpose of research when the projects have been approved in advance by the Director. In each case, GCIC shall execute a special user agreement with the requestor prior to any dissemination of criminal justice information. The agreement shall provide for nonidentification of specific individuals in published research reports and shall provide that information furnished by criminal justice agencies shall be immune from legal process and shall not, without the consent of any criminal justice agency providing the information, be admitted as evidence for any purpose in any action, suit, or other judicial or administrative proceedings.

(g) Use of information disseminated shall be limited to the purposes for which it was disseminated. It may not be disseminated further. Recipients must be so advised.

(h) Criminal justice agencies are authorized to access the FBI's Interstate Identification Index (III) for criminal justice administration and criminal justice employment purposes. Criminal justice agencies may not utilize CJIS network terminals to access III for information on license/permit applicants or on applicants for non-criminal justice employment.

(i) When necessary to alert law enforcement officers before they confront potentially violent individuals, coded warnings based on review or knowledge of relevant criminal history record information may be broadcast.

(j) No criminal justice information shall be disseminated except as provided by law and these Rules.

(2) Exchange and dissemination of criminal justice information by GCIC.

(a) GCIC shall exchange criminal justice information with bona-fide criminal justice agencies to serve the administration of criminal justice and to facilitate criminal justice employment, based on the following criteria:

1. GCIC shall execute appropriate user agreements with all bona-fide criminal justice agencies.

2. GCIC shall provide any information in its files or in files available to GCIC which may aid these agencies in the performance of their duties.

(i) GCIC shall disseminate records of discharge of First Offenders to prosecutors and probation officers at state and federal levels. Such disseminations shall be made only upon certification that pending criminal charges against the individuals have been filed in a court of competent jurisdiction. Certifications may be delivered to GCIC by CJIS network terminal message, by phone, by mail, or in person.

(ii) GCIC shall disseminate records of discharge of First Offenders to law enforcement agencies only upon certification by the chief executives of requesting agencies that such information is needed in active criminal investigations. Certifications may be delivered to GCIC by CJIS network terminal message, by phone, by mail, or in person.

(iii) GCIC shall disseminate records of discharge of First Offenders, when violations of the Georgia Controlled Substances Act were charged, to public officials authorized by specific Georgia statutes to receive and use such records.

(iv) Information relating to any arrest on charges disposed of under the provisions of the Georgia First Offender Act shall neither be requested, provided by GCIC, nor used by any criminal justice agency for employment purposes after the applicant has been discharged from First offender status and exonerated of the charges.

(b) GCIC shall exchange criminal justice information with:

1. The Governor, when acting in his capacity as the Chief Law Enforcement Officer of the State;

2. The Attorney General, when performing activities relating to the apprehension or prosecution of criminal offenders;

3. The Supreme Court, when the Court's administrative arm is evaluating candidates for admission to the Georgia Bar.

(c) Because GCIC's Automated Fingerprint Identification System (AFIS) technology assures positive identifications of individuals with criminal records on file, GCIC will accept and process criminal history record check requests only when such requests are accompanied by two sets of the fingerprints of each person for whom a criminal history record check is requested. Fingerprints shall be submitted on cards comparable to the standard FBI Applicant Card. GCIC will supply suitable cards at a cost of $.50 per card, upon request. Criminal history records provided by GCIC shall be identical in content and scope to the records described in Subparagraph (1)(b) of this Rule.

1. If criminal records provided by GCIC are to be used to make employment of licensing decisions, GCIC shall provide the guidance to requestors which is contained in Subparagraph (1)(b)3. of this Rule.

2. Public agencies and officials requesting criminal history record checks shall be subject to periodic audits by GCIC to assure their compliance with the relevant provisions of Georgia law and these Rules.

3. Public agencies, private individuals, and businesses requesting such record checks, except individuals requesting checks of their own criminal history records, shall sign special user agreements prepared by GCIC. Requestors shall pay a $7.50 fee for each criminal history record or "No Record" report disseminated by GCIC. Out-of-state requestors shall pay fees in advance.

(d) When GCIC employees are asked to fingerprint individuals, for any purpose other than criminal justice employment, in order to provide fingerprint cards for GCIC criminal history record checks, the fee for such record checks is $15.00.

(e) All criminal history record checks for other than criminal justice purposes will be made by GCIC only after GCIC has fulfilled its duties and obligations to criminal justice agencies as required by law.

(f) GCIC may allow access to the CJIS network and to computerized files containing criminal justice information, pursuant to special user agreements with governmental computerized information systems, with governmental dispatch centers, and with governmental regional dispatch centers, in order to provide for the development and operation of such systems and centers in support of criminal justice agencies.

(g) Use of information disseminated by GCIC shall be limited to the purposes for which it was disseminated. Recipients shall be so advised.

(h) No information shall be disseminated by GCIC except as provided by these Rules.

Authority O.C.G.A. Secs. 16-11-129, 35-3-33, 35-3-34, 35-3-35, 40-5-2, 42-8-60, 42-8-62, 42-8-63, 42-8-65, 43-38-6, 47-5-90, 49-2-14, 49-5-91, 49-5-92, 49-5-93, 49-5-94, 42 U.S.C. 3771, 5 U.S.C. 9101, 28 C.F.R. 20.21. **Administrative History.** Original Rule entitled "Criminal Justice Information Exchange and Dissemination" was filed on February 25, 1976, effective March 16, 1976. **Amended:** Filed June 11, 1976; effective July 1, 1976. **Amended:** Filed July 29, 1976, effective August 18, 1976. **Amended:** Filed August 25, 1976, effective September 14, 1976. **Amended:** Filed June 10, 1977, effective June 30, 1977. **Amended:** Filed May 26, 1978, effective July 1, 1978, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983, effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Amended:** Filed January 6, 1988; effective January 27, 1988, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990, eff. Nov. 27, 1990.

140-2-.05 Integrity of Criminal Justice Information. Documents containing criminal justice information, regardless of its source, shall not be altered, obtained, copied, destroyed, delayed, misplaced, misfiled, given, bought, or sold when the intent of such action is to obstruct justice or to facilitate the violation of any law or these Rules.

Authority O.C.G.A. Secs. 35-3-35, 35-3-38; 42 U.S.C. 3771, 28 C.F.R. 20.21. **Administrative History.** Original Rule entitled "Security and Privacy of Criminal Justice Information" was filed on February 25, 1976, effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983, effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984, effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Repealed:** New Rule entitled "Integrity of Criminal Justice Information" adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.06 Criminal History Logs. Amended.

(1) Criminal History Logs shall be maintained by all criminal justice agencies to record all criminal history record disseminations.

(2) The logs shall make it possible to identify and correct any dissemination of inaccurate information and to identify individuals responsible for wrongful disseminations.

(3) Upon the discovery of inaccurate information of a material nature, it is the duty of the criminal justice agency making the discovery to notify

all criminal justice agencies or persons known to have received such information.

(4) The following minimum information shall be maintained in the logs:

(a) Date and purpose of each dissemination;

(b) Requestor's name;

(c) Identifying record data including:

1. Each record subject's name;

2. Each record subject's local, state and federal identifying numbers, when known;

3. Agency case numbers, when known.

(5) Computer system log.

(a) A computer system log may be maintained as a computerized file on tape, disk, or diskette.

(b) When computerized log entries are retrieved and printed, each printout should reflect the data fields listed in Paragraph (4) above.

(6) All log entries shall be available for four years for inspection by the GCIC Security Officer and Auditors.

Authority O.C.G.A. Sec. 35-3-35; 42 U.S.C. 3771; 28 C.F.R. 20.21. **Administrative History.** Original Rule entitled "Criminal History Logs" was filed on February 25, 1976; effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988; effective July 27, 1988. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.07 Audit Procedures. Amended.

(1) The Director shall appoint a Security Officer and other employees who shall audit criminal justice agencies to enforce compliance with these Rules, relevant Georgia statutes, and pertinent federal statutes and regulations.

(a) A representative sample of agencies shall be audited annually;

CJIS network terminal agencies will be audited at least once every two years.

(b) Auditors shall report the results of audits to the Director. The Director shall furnish written reports to agencies which have been audited.

(2) The following shall be made available for GCIC audits:

(a) Facility access policy;

(b) Personnel records, including records of relevant training and signed Awareness Statements;

(c) Criminal history record files;

(d) Criminal history record information handling procedures;

(e) Criminal history logs;

(f) UCR program reports and files (law enforcement agencies only);

(g) Case file documents supporting GCIC/NCIC computerized file entries.

1. Documents must include copies of LEDS worksheets; supplies of worksheets are provided by GCIC upon request.

2. Documents supporting wanted person file entries must include original arrest warrants.

(h) Computer system hardware, when requested;

(i) Computer system software, when requested;

(j) Computer system documentation, when requested.

(3) Auditors shall audit a representative sample of non-criminal justice recipients of criminal history record information annually, as authorized by Rule 140-2-.04.

140-2-.08 Physical Security Standards. Amended.

(1) Criminal justice agencies shall provide secure area(s), out of public view, in which criminal justice information is handled.

(2) Criminal justice agencies with CJIS network terminals shall place those terminals in secure area(s).

(3) Criminal justice agencies shall institute reasonable procedures to protect any central depository of criminal history record information from unauthorized access, theft, sabotage, fire, wind, flood, power failure or other natural or man-made disasters.

(4) Criminal justice agencies which operate computer systems connected to the CJIS network, and non-criminal justice agencies which operate such computer systems in support of criminal justice agencies shall provide:

(a) Heavy duty non-exposed walls; fire, smoke and intrusion detectors; emergency power systems, and electronic or manually-guarded access;

(b) An off-site fire resistant vault or safe for storage of auxiliary programming software and duplicate files.

Authority O C G A Secs 35-3-32, 35-3-33, 28 C F R 20 21 **Administrative History.** Original Rule entitled "Physical Security Standards for Criminal Justice Agencies" was filed on February 25, 1976, effective March 16, 1976 **Amended:** Rule repealed and a new Rule of the same title adopted Filed January 7, 1983, effective February 1, 1983, as specified by the Agency **Amended:** Rule repealed and a new Rule of the same title adopted Filed September 6, 1984, effective October 8, 1984, as specified by the Agency **Amended:** Rule repealed and a new Rule entitled "Physical Security Standards" adopted Filed July 2, 1986, effective July 22, 1986 **Repealed:** New Rule of same title adopted F Nov 7, 1990; eff Nov 27, 1990

140-2-.09 Personnel Security Standards. Amended.

(1) Public agency employees who handle criminal justice information shall consent to investigations of their moral character, reputation and honesty. All applicants shall submit to fingerprint identification checks. Investigations should produce sufficient information to determine applicants' suitability and fitness for employment.

(2) Criminal justice agencies shall disqualify applicants for employment who have been convicted by any state or the federal government of

any felony or who have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law.

(3) Giving false information shall disqualify applicants and be cause for employee dismissals.

(4) All personnel directly associated with the maintenance, processing, or dissemination of criminal history record information shall be specially trained. The training shall provide employees with a working knowledge of federal and state regulations and laws governing the security and processing of criminal history information. Employers are responsible for ensuring that their personnel receive such training.

(5) Criminal justice agencies shall establish security constraints for all personnel who work in secure areas where criminal justice information is stored, collected or disseminated.

(6) Within their political subdivisions, law enforcement agencies must monitor the selection, utilization, and retention of non-criminal justice personnel who are authorized direct access to criminal justice information in support of criminal justice operations.

(7) All personnel whose jobs require them to access or process criminal justice information shall sign Awareness Statements. Awareness Statements signed by employees shall be filed permanently in their personnel records. Awareness Statements shall read as follows:

AWARENESS STATEMENT

Access to Criminal Justice Information, as defined in GCIC Council Rule 140-1-.02 (amended), and dissemination of such information is governed by state and federal laws and by GCIC Council Rules. Criminal Justice Information cannot be accessed or disseminated by any employee except as directed by superiors or as authorized by approved standard operating procedures which are based on controlling state and federal laws, relevant federal regulations, and the Rules of the GCIC Council.

State law provides specific criminal penalties for unlawfully accessing or disseminating Criminal Justice Information (defined in GCIC Council Rule 140-1-.02). The Georgia Code states:

"35-3-38. Penalties for violations.

(a) Any person who knowingly requests, obtains, or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the center, the council, or any participating agency who knowingly falsified criminal history record information or any records relating thereto shall for each such offense, upon conviction thereof, be fined not more than $5,000.00, or imprisoned for not more than two years, or both.

(b) Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than $100.00, or imprisoned for not more than two years, or both.

(c) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems except in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than $5,000.00 or imprisoned not more than two years, or both.

(d) Any person who discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems in a manner not permitted by this article shall for each such offense, upon conviction thereof, be fined not more than $100.00 or imprisoned not more than ten days, or both."

I acknowledge that I have read and understood the above section of the Georgia Law.

Signed: _____ Date: _____

Witnessed: _____

140-2-.10 Procedures for an Individual to Inspect His Criminal History Record File. Amended.

(1) GCIC processing procedures:

(a) All applications must be accompanied by a current set of the individual's fingerprints taken by a GCIC or local law enforcement agency employee.

(b) A money order or cash in the amount of $3.00 must accompany each application.

1. Money orders shall be made payable to the Georgia Bureau of Investigation.

2. Receipts shall be issued by GCIC.

(c) Applications will be accepted at GCIC between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. No applications shall be accepted on legal State holidays.

(2) An attorney may review and obtain a copy of his client's criminal history record at GCIC if:

(a) He provides his client's fingerprints or other proof of positive identification;

(b) A letter from the client is included with the application, requesting inspection of his record by his attorney;

(c) The attorney is properly identified.

(3) General processing procedures:

(a) Pursuant to these Rules, agencies other than GCIC which maintain criminal history record information may prescribe their own applicable forms and procedures for an individual or his attorney to review and obtain a copy of the individual's local file.

(b) The fee for record inspections shall not exceed $3.00.

(c) All agencies shall impose only such procedures and restrictions as are reasonably necessary to:

1. Ensure the integrity of their records;

2. Verify the identities of those who seek to inspect their records; verification procedures may include fingerprinting;

3. Establish orderly and efficient procedures for inspections.

(4) Records determined by GCIC, or by other criminal justice agencies, to be in error shall be corrected without delay; the individual, or his attorney, shall be notified when record corrections have been made.

(5) When the record in question is judged to be accurate by GCIC, or by any criminal justice agency processing record inspections, the individual may initiate further actions under the provisions of Georgia law.

Authority O C G A Secs. 35-3-33; 35-3-37, 42 U.S.C. 3771, 28 C F R. 20 21. **Administrative History.** Original Rule entitled "Procedures Whereby An Individual May Access His Criminal History Record File" was filed on February 25, 1976, effective March 16, 1976. **Amended:** Rule repealed and a new Rule entitled "Procedures for an Individual to Inspect His Criminal History Record File" adopted. Filed January 7, 1983, effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988; effective July 27, 1988. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.11 Security Requirements for Criminal Justice Information in a Data Processing Environment. Amended.

(1) Where criminal history record information is collected, stored or disseminated by computers, it shall be protected from access by unauthorized persons by means of software or hardware control systems which include the logging of all access attempts by unauthorized terminals or persons.

(2) Where criminal history record information is transmitted from one point to another by computers, such transmissions shall be protected from access by unauthorized persons by means of software or hardware control systems.

(a) Message switching computers other than the GCIC computers shall be programmed to prevent unauthorized copying or retention of the test of messages containing criminal history record information.

(b) Message switching computers may log any message traffic and record such data elements as date, time, message number, origin, and destination.

(3) Computers storing or disseminating criminal history record information shall perform logging activities pursuant to Rule 140-2-.06.

(4) Computers and the agencies operating or administratively responsible for the operation of computers utilized in whole or part for the collection, storage, dissemination or message switching or criminal history record information shall be subject to GCIC audits pursuant to Rule 140-2-.07.

(5) Physical security standards for these computers shall be maintained pursuant to Rule 140-2-.08.

(6) Personnel security standards for persons employed to operate, program or maintain these computers shall be established pursuant to Rule 140-2-.09 and as follows:

(a) The criminal justice agency responsible for the collection, storage, dissemination or transmission of criminal history record information by computers under the direct administrative control of that criminal justice agency shall not employ any person who has been convicted by any state or the federal government of any felony nor shall said person have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law.

(b) The law enforcement agency responsible for the collection, storage, dissemination or transmission of criminal history record information by means of a computer center not under the direct administrative control of the law enforcement agency shall have the right and responsibility to investigate computer center job applicants and employees and to disqualify any applicant or employee who has been convicted by any state or the federal government of any felony or of sufficient misdemeanors to establish a pattern of disregard for the law.

(7) Secret data or criminal history record information contained in a computer system, whether dedicated or shared, shall be kept under maximum security conditions. Destruction of documents containing secret data or criminal history record information, when no longer required to support criminal justice operations, must be accomplished in a secure manner which precludes access to the information by unauthorized persons.

(8) Liability for misuse of secret data or criminal history record information stored in a shared computer environment shall be the

responsibility of the agency administratively responsible for the direct supervision of the person or computer hardware or software involved in the misuse.

Authority O.C.G.A. Secs. 35-3-32, 35-3-33, 35-3-34, 35-3-35, 35-3-38; 42 U.S.C. 3771; 28 C.F.R. 20.21. **Administrative History.** Original Rule entitled "Security Requirements for Criminal Justice Information in a Data Processing Environment" was filed on February 25, 1976; effective March 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.12 Uniform Crime Reporting. Amended.

(1) Each law enforcement agency is required by law to participate in the Uniform Crime Reporting (UCR) program. UCR reports include:

(a) Reports of criminal offenses reported to or investigated by law enforcement agencies (Incident Reports).

(b) Reports of persons arrested (Arrest/Booking Reports).

(c) Reports of offenses cleared by arrest or cleared exceptionally (Clearance Reports).

(d) Special reports on juveniles arrested for Driving Under the Influence (Juvenile DUI Arrest Reports).

(e) Special reports on all criminal homicides (Supplementary Homicide Reports).

(f) Special reports on law enforcement officers killed or assaulted in the line of duty (LEOKA Reports).

(g) Special reports on known or suspected arsons (Arson Reports).

(h) Special reports on juvenile arrests or administrative dispositions of juvenile offenders (Police Disposition of Juveniles Reports).

(i) Special reports on the number and types of law enforcement agency employees (Law Enforcement Employees Reports).

(2) UCR reports shall be submitted to GCIC on UCR reporting forms as prescribed in this subparagraph:

(a) A copy of each Incident Report, Arrest/Booking Report, and Clear-

ance Report prepared during each month shall be submitted to GCIC not later than the fifth working day of the following month.

(b) Juvenile DUI Arrest Reports are special single-page reports which may be substituted for Incident Reports, Arrest/Booking Reports, and Clearance Reports when reporting DUI arrests of juveniles. When Juvenile DUI Arrest Reports are used, the reports prepared during each month shall be submitted to GCIC not later than the fifth working day of the following month.

(c) Supplementary Homicide Reports, LEOKA Reports, Arson Reports, and Police Disposition of Juveniles Reports are special monthly reports, to be prepared at the end of each month and submitted to GCIC not later than the fifth working day of the following month. These reports are not required when no reportable activity has occurred.

(d) Law Enforcement Employees Reports are annual reports. Submitted to GCIC in November each year, these reports will contain employee data for the preceding 12 months.

(3) GCIC will provide all standard UCR report forms to law enforcement agencies at no cost to the agencies. Additionally, to the extent permitted by available funding, GCIC will provide law enforcement agencies with other operational forms needed for the Georgia law enforcement records management system.

(4) Law enforcement agencies are encouraged to make special arrangements with GCIC, in advance, to submit UCR reports via computer tape, computer diskettes, or via modified UCR report forms specially designed for agencies which do not use the standard UCR report forms.

(5) Crime and offender data derived from UCR reports will be made available by GCIC to agencies, officials, and individuals who are authorized by law to request and receive such data. However, no data will be released in formats that permit identification of submitting agencies without the prior approval of these agencies.

(6) Law enforcement agencies will maintain copies of all UCR reports prepared during the entire calendar year preceding the current calendar year. Copies of Incident Reports which support active wanted/missing person and/or stolen property records entered in GCIC/NCIC computerized files will be maintained until the record entries are cleared, cancelled, or purged.

(7) UCR program procedures, records, and supporting documents are subject to GCIC audits.

Authority O.C.G.A. Secs. 35-3-33, 35-3-36. **Administrative History.** Original Rule entitled "Uniform Crime Reporting" was filed on January 7, 1983; effective February 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same titled adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988; effective July 27, 1988. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov 27, 1990.

140-2-.13 Wanted/Missing Persons and Stolen/Abandoned Property. Amended. Responsible agencies shall enter (or cause the entry of) information in GCIC and/or NCIC computerized files pertaining to wanted and missing persons, unidentified dead bodies, and serial-numbered property reported as stolen when required data elements become available. The computerized files maintained by GCIC comprise the Georgia Law Enforcement Data System (LEDS), commonly referred to as the "Georgia Hot Files". Record entry forms (LEDS and NCIC work sheets) shall be provided without cost by GCIC upon request.

(a) LEDS and NCIC work sheets and CJIS network codes, formats, and procedures established by GCIC and NCIC shall be used when making entries. GCIC will provide manuals, bulletins, and notices containing the prescribed codes, formats, and procedures and will provide revisions and updates as necessary.

1. Heads of criminal justice agencies are responsible for ensuring that GCIC manuals, bulletins, and notices are maintained and used as the authoritative CJIS network operational directives within their agencies.

2. Heads of agencies are also responsible for training employees involved in entering, modifying, clearing, cancelling, and validating record entries. Training shall emphasize that a second employee must verify each record entry for completeness and accuracy.

(b) Agencies operating CJIS network terminals are required to assist criminal justice agencies which do not have direct CJIS network access by providing controlled and monitored opportunities for such access.

(c) Each record entered in GCIC/NCIC computerized file must contain the valid identifier (ORI) of the criminal justice agency responsible for the entry record.

1. Any law enforcement terminal agency, governmental dispatch center, or governmental regional dispatch center may act as holder of the

record on behalf of another agency and may place its own ORI in the wanted person or stolen property record entry only when a written service agreement exists between the entering agency and agency on whose behalf the record is entered. The agreement must state each agency's legal responsibilities for records entered in the computerized files.

2. Responsibilities for the record include entering and updating the record, confirming a hit on the record, and removing the record when it is no longer active or valid.

(d) Record entries shall be made within 12 hours after a determination by the investigating law enforcement agency that a wanted person should be arrested or that a vehicle or other property identifiable by serial number or owner-applied number was stolen.

(e) All record entries must be supported by official documents which reflect initial and continuing efforts to apprehend wanted persons or to recover identifiable, serial-numbered stolen property. Arrest warrants must be available to support GCIC/NCIC wanted person record entries.

1. Agencies with terminals on the Georgia CJIS network shall maintain these supporting documents in their files until such time as wanted/missing persons are located, stolen property is recovered, or the record entries are removed from the computerized files.

2. Agencies with terminals on the Georgia CJIS network shall further require copies of such supporting documents to be provided by non-terminal agencies prior to making record entries on behalf of such agencies. If emergencies arise in which the speed of record entry is critical to the quick apprehension of wanted persons or recovery of stolen property, supporting documents may be provided after entry of the record.

3. If supporting documents are not provided within 48 hours of record entry, record entries shall be removed from GCIC and NCIC computerized files. Whenever record entries authorized by non-terminal agencies are removed by servicing terminal agencies, terminal agencies must notify the non-terminal agencies.

(f) Any agency which causes records to be entered in GCIC/NCIC computerized files must respond to other agencies' hit confirmation

request messages. A response may be a notification that a specific period of time will be required for record verification or a response may be the requested record verification.

1. In all cases, responses must be transmitted within 10 minutes of receipt of hit confirmation request messages.

2. Record entry verification must be provided to the agency originating the request for hit confirmation. Verification messages must include the status of record entries for wanted or missing persons or for stolen property.

(g) When records are no longer valid, they must be removed from GCIC and NCIC computerized files immediately.

1. Agencies operating Georgia CJIS network terminals are responsible for the timely removal of their own record entries when they are no longer valid.

2. Non-terminal agencies are responsible for the prompt removal of their records from GCIC and NCIC computerized files when the records are no longer valid, by furnishing requests for cancellation to the terminal agencies which made the record entries on behalf of the non-terminal agencies.

(h) When non-terminal agencies do not maintain 24-hour operations, they may not cause the entry of records under their ORIs. Record entries required by law should be made using the ORIs of their designated terminal agencies as per service agreements executed in compliance with the provisions of subparagraph (c)1. of this Rule.

(i) GCIC provides a computerized file for the entry of records describing abandoned motor vehicles which have been recovered by law enforcement agencies and/or reported to them by operators of wrecker services or vehicle storage facilities. Georgia law requires law enforcement agencies to make record entries and to furnish operators of wrecker services and vehicle storage facilities, upon request, with the names and addresses of last known registered owners. Names and addresses of Georgia owners can be obtained from Department of Revenue files via CJIS network terminals. Names and addresses of last known owners, of abandoned vehicles registered in other states, can be obtained from the other states' motor vehicle files via the Georgia CJIS network and

NLETS. Owners of abandoned motor vehicles, later determined to be stolen, are required by law to be notified of recoveries by law enforcement agencies after they receive notice that such abandoned vehicles have been stolen. Records entered in GCIC's abandoned vehicle file are automatically purged, if not removed earlier by entering agencies, after 90 days. NCIC does not maintain an abandoned vehicle file.

Authority O C G A Secs. 35-3-33, 35-3-36, 40-11-2 **Administrative History.** Original Rule entitled "Wanted/Missing Persons and Stolen Property" was filed on September 6, 1984; effective October 8, 1984, as specified by the Agency **Amended:** Rule repealed and a new Rule entitled "Wanted/Missing Persons and Stolen Property" adopted Filed July 2, 1986, effective July 22, 1986 **Amended:** Filed January 6, 1988, effective January 27, 1988, as specified by the Agency **Amended:** Rule repealed and a new Rule entitled "Wanted/Missing Persons and Stolen/Abandoned Property" adopted Filed July 7, 1988, effective July 27, 1988 **Repealed:** New Rule of same title adopted F Nov 7, 1990; eff Nov 27, 1990

140-2-.14 Validation Procedures for Wanted/Missing Person and Stolen Property Records. Amended.

(1) All law enforcement and criminal justice agencies with wanted/missing persons and/or stolen property record entries in GCIC and NCIC computerized files are required to participate in the record validation program established and administered by GCIC and NCIC.

(a) Record entries subject to validation are: wanted/missing persons, unknown deceased, stolen vehicles, stolen guns, stolen boats and stolen securities.

(b) GCIC will produce listings of record entries to be validated and will send them to agencies of record each month.

(c) Agencies of record shall review the listings; compare them to LEDS and NCIC work sheets and to other departmental case file documents on which the record entries were based; determine the current validity of record entries by checking for changes in extradition limits, by determining from owners of stolen property if recoveries have been made or if ownership has changed, by verifying that arrest warrants are still active and that persons reported missing have not returned; and take appropriate action(s).

1. Cancel record entries which are no longer valid.

2. Modify record entries which contain erroneous information or which are incomplete. Create supplemental record entries as required.

3. When record entries have been verified as accurate and current or have been modified or cancelled, complete the validation certification

form, and mail it so as to ensure its arrival at GCIC prior to the cited suspense date.

(d) Non-receipt of validation certification forms at GCIC by the cited suspense date will result in automatic removal from GCIC and NCIC computerized files of all record entries contained in the listing.

(2) Validation procedures, records, and supporting documents are subject to GCIC and NCIC audits.

Authority O C G A Secs 35-3-33, 35-3-36 **Administrative History.** Original Rule entitled "Validation Procedures for Wanted/Missing Persons and Stolen Property Records" was filed on September 6, 1984, effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.15 Special Handling Provisions for Missing and Unidentified Deceased Persons. Amended.

(1) All law enforcement agencies shall collect information about each person reported missing by a parent, guardian or next of kin. Information about unknown deceased persons shall also be collected and preserved, for identification purposes. Information to be collected includes physical descriptions, descriptions of clothing, dental charts and other personal data useful in identifying missing persons or unknown deceased persons.

(2) Agencies receiving missing person reports, or conducting investigations of unknown deceased cases, shall record entries in GCIC and NCIC computerized files.

(a) With respect to missing minors, including juveniles reported as runaways, record entries shall be made immediately.

(b) GCIC shall provide assistance in making record entries for agencies handling missing person and unknown deceased cases. GCIC assistance will include the entry and any subsequent modifications of dental chart information in the computerized files following the receipt of this information from the law enforcement agencies handling the cases. Copies of the record entries made by GCIC will be provided to the agencies handling the cases.

(c) Non-terminal agencies may request assistance in making missing person and/or unknown deceased record entries from the terminal agencies which provide CJIS network service for them.

(d) Agencies which make or authorize the entry of missing person and unknown deceased records in GCIC and NCIC computerized files shall respond within 10 minutes to messages from other agencies reference possible identifications.

(3) Agencies authorizing record entries for missing persons or unknown deceased persons shall cause these records to be removed from GCIC and NCIC computerized files immediately upon the location of missing persons or the identifications of unknown deceased persons.

Authority O.C.G.A. Secs. 35-1-8, 35-3-4, 35-3-33, 35-3-36, 45-16-1. **Administrative History.** Original Rule entitled "Special Handling Provisions for Missing and Unidentified Deceased Persons" was filed on September 6, 1984, effective October 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 7, 1988; effective July 27, 1988. **Repealed:** New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.16 Training. Amended.

(1) Criminal justice officials and agency heads shall provide for training to ensure their employees' effective performance of job-specific tasks relating to:

(a) The use of the Georgia CJIS network and the Georgia Law Enforcement Data System, including CJIS network terminal operations;

(b) The use of the National Crime Information Center;

(c) The use of the National Law Enforcement Telecommunications System;

(d) The dissemination and use of criminal history record information;

(e) State and national UCR programs;

(f) Fingerprinting of arrested persons and the initiation of OBTS forms;

(g) The preparation and submission of reports of final dispositions of charges.

(2) Computer center managers, managers of governmental dispatch centers, and managers of governmental regional dispatch centers shall ensure that employees who support criminal justice operations are

trained to perform job-specific tasks relating to the functions described in Paragraph (1) above.

(3) The head of each CJIS network terminal agency shall appoint a Terminal Agency Coordinator (TAC) to serve as the agency point of contact on record validations, hit confirmations, training, and all other NCIC/CJIS network related matters. GCIC shall provide job-specific training for TACs and any assistant TACs who may be appointed.

(4) TACs shall be subject to certification testing within 60 days of their appointments.

(5) TACs shall be responsible, within their agencies, for the administration of terminal operator training and certification testing programs developed by GCIC.

(6) Terminal operators shall be subject to certification testing within six months of their employment or assignments to terminal operator duties and subject to re-certification testing every two years thereafter for the duration of their employment as terminal operators. Employees who use CJIS network terminals occasionally, other than dispatchers and radio operators, are not required to participate in the certification/recertification testing programs.

(7) During December each year, TACs will report to GCIC the certification/recertification status of all terminal operators employed by their agencies. Terminal operators assigned additional duties as TACs shall be trained, tested, and certified as both terminal operators and TACs.

(8) The appointment of a TAC, the immediate appointment of a new TAC when required to fill a TAC vacancy, the training, testing, and certification of the TAC, and the training, testing, certification, and recertification of terminal operators are mandatory for terminal agency status on the Georgia CJIS network.

CHAPTER 831
UNIFORM ACT ON STATUS OF CONVICTED PERSONS

SECTION

831-1 DEFINITION
831-2 RIGHTS LOST
831-3 RIGHTS RETAINED BY CONVICTED PERSON
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831-3.2 EXPUNGEMENT ORDERS
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831-5 CERTIFICATE OF DISCHARGE
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§831-3.2 Expungement orders. (a) The attorney general, or the attorney general's duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not issue (1) in the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture; (2) for a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture; and (3) in the case of an arrest of any person for any offense where conviction has not been obtained because the person has rendered prosecution impossible by absenting oneself from the jurisdiction.

Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with the person's arrest. The attorney general or the attorney general's duly authorized representative within the department of the attorney general, within 120 days after receipt of such written application, shall, when so requested, deliver, or cause to be delivered, all such fingerprints or photographs of such person, unless such person has a prior record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

(b) Upon the issuance of the expungement order, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section.

(c) Upon the issuance of the expungement order, all records pertaining to the arrest which are in the custody or control of any law enforcement agency of the state or any county government, and which are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the records in a confidential file or, if the records are on magnetic tape or in a computer memory bank, shall be erased.

(d) Records filed under subsection (c) shall not be divulged except upon inquiry by:

(1) A court of law or an agency thereof which is preparing a presentence investigation for the court; or

(2) An agency of the federal government which is considering the subject person for a position immediately and directly affecting the national security.

Response to any other inquiry shall not be different from responses made about persons who have no arrest record.

(e) The attorney general or the attorney general's duly authorized representative within the department of the attorney general shall issue to the person for whom an expungement order has been entered, a certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest. Such a statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.

(f) The meaning of the following terms as used in this section shall be as indicated:

(1) "Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court.

(2) "Arrest record" means the document, magnetic tape or computer memory bank, produced under authority of law, which contains the data of legal proceedings against a person beginning with the person's arrest for the alleged commission of a crime and ending with final disposition of the charges against the person by nonconviction.

(g) The attorney general shall adopt rules pursuant to chapter 91 necessary for the purpose of this section.

(h) Nothing in this section shall affect the compilation of crime statistics as provided in chapter 846. [L 1974, c 92, §2; am L 1975, c 103, §1; am L 1976, c 116, §§1, 2; am L 1980, c 12, §1; am L 1983, c 78, §4; am imp L 1984, c 90, §1]

[CHAPTER 846]
HAWAII CRIMINAL JUSTICE DATA CENTER

PART I. DATA CENTER

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Note. L 1983, c 78, §3(1) and (2) amended the title of this chapter and designated sections 846-1 to 846-16 as "Part I. Data Center".

PART I. DATA CENTER

[§846-1] **Definitions.** In this chapter, unless a different meaning plainly is required:

(1) "Dissemination" means transmission of criminal history record information to individuals and agencies, other than the criminal justice agency which maintains the criminal history record information, but it does not include the reporting of such information as required by law, the reporting of data on a particular transaction to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings, the use of such information by an employee or officer of the agency maintaining the records, and the reporting of a criminal justice transaction to a state, local, or federal repository;

(2) "Criminal history record information system" or "system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of intrastate, interstate, and national criminal justice data;

(3) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release; but does not include intelligence or investigative information, identification information to the extent that such information does not indicate involvement of the individual in the criminal justice system, and information derived from offender-based transaction statistics systems which do not reveal the identity of individuals;

(4) "Criminal justice agency" means:
   (A) Courts; or
   (B) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice;

(5) "Administration of criminal justice" means performance of any of the following activities: detection; apprehension; detention; pretrial release; post-trial release; prosecution; adjudication; correctional supervision; or rehabilitation of accused persons or criminal offenders; and includes criminal identification activities and the collection, storage, and dissemination of criminal history record information; but does not include crime prevention activities or criminal defense functions;

(6) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination of the proceedings, or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement, and shall include but is not limited to acquittal, acquittal by reason of in[illegible]ty, acquittal by reason of mental incompetence, case continued [illegible]ut

finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, nolo contendere plea, convicted, youthful offender determination or transfer to juvenile jurisdiction, deceased, deferred disposition, dismissed–civil action, found insane or mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial–defendant discharged, executive clemency, placed on probation, paroled, released from correctional supervision, or fugitive from justice;

(7) "Complete" refers to the fact that criminal history record information should show all dispositions as the case moves through the various segments of the criminal justice system;

(8) "Accurate" refers to the fact that criminal history record information contains no erroneous information of a material nature; and

(9) "Nonconviction data" means arrest information without a disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or

that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals; and

(10) "Data center" means the state agency responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data and related functions, including but not limited to, functioning as the state repository for criminal history records, providing technical assistance in the development of information systems, and conducting appropriate research and statistical studies. [L 1979, c 129, pt of §2; am L 1983, c 78, §3(3)]

§846-2 Establishment of the data center. There shall be a data center established in the department of the attorney general. The data center shall be directed and managed by a director appointed by the attorney general without regard to chapters 76 and 77. There shall also be a committee, appointed by the attorney general, composed of selected criminal justice user-agency personnel, to act in an advisory capacity to the data center in matters related to interagency coordination and user needs. [L 1979, c 129, pt of §2; am L 1980, c 269, §2; am L 1982, c 57, §1; am L 1983, c 78, §3(4)]

§846-2.5 Purpose of the criminal justice data center. (a) The Hawaii criminal justice data center, hereinafter referred to as the "data center", shall be responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data from all criminal justice agencies, including, the collection, storage, and dissemination of criminal history record information by criminal justice agencies in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to utilize the tools needed to prevent crimes and detect criminals in support of the right of the public to be free from crime and the fear of crime.

(b) The attorney general shall select and enforce systems of identification, including fingerprinting, of all persons arrested for a criminal offense, or persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge, and provide for the collection, recording, and compilation of data and statistics relating to crime.

The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of such systems of identification and statistics in their respective jurisdictions; provided that all such expenses in connection with prison matters exclusively within the control of the State shall be borne by the State.

The systems shall be uniform throughout the State, shall be continuous in operation, and shall be maintained as far as possible in such manner as shall be in keeping with the most approved and modern methods of identification and of the collection and compilation of the statistics.

The attorney general shall keep a uniform record of the work of the courts, prosecuting officers, the police, and other agencies or officers for the prevention or detection of crime and the enforcement of law in a form suitable (1) for the study of the cause and prevention of crime and delinquency and of the efforts made and efficacy thereof to detect or prevent crime and to apprehend and punish violators of law and (2) for the examination of the records of the operations of such officers and the results thereof.

(c) The attorney general may prescribe, establish, and change forms to be followed in keeping records and in making reports to the data center. All courts and the judges and other officers thereof and all prosecuting officers, chiefs of police, and other agencies and officers for the prevention or detection of crime and for the enforcement of law shall use such forms, keep such records, and make such reports to the data center as may be so required.

(d) In order to accomplish this purpose, the data center shall develop systems and provide the structure that support criminal justice information systems, provide statistical research and data analysis, and make public periodic reports which shall provide the public with a clear view of the criminal justice systems. [L 1980, c 269, §1; am L 1982, c 57, §2; am L 1983, c 78, §3(5); am L 1985, c 119, §1]

[§846-3] **Reporting to data center.** The chiefs of the police of the counties of the State and agencies of state and county governments having power of arrest shall furnish the data center with descriptions of all such persons who are arrested by them for any felony or misdemeanor, or as fugitives from the criminal justice system of another jurisdiction, or for any offense declared by rule or regulation promulgated by the attorney general to be a significant offense necessary to be reported for the proper administration of criminal justice. The data center shall in all appropriate cases forward necessary identifying data and other information to the system maintained by the Federal Bureau of Investigation. [L 1979, c 129, pt of §2]

[§846-4] **Query of data center.** Criminal justice agencies shall query the data center to assure that the most up-to-date disposition data is being used. Such inquiries shall be made prior to any dissemination except in those cases where the agency determines that time is of the essence and the center is technically incapable of responding within the necessary time period, provided, however, that where local criminal justice agencies have entered into agreements for the sharing of a computerized criminal history record information system, the agency operating such system shall not be required to query the data center prior to disseminating information to the agencies which are party to the agreements. [L 1979, c 129, pt of §2]

[§846-5] **Reporting of dispositions.** It shall be the responsibility of every criminal justice agency in this State to report to the data center the disposition of cases which enter their area in the administration of criminal justice to insure that all systems maintained in this State shall contain complete and accurate criminal history record information. All dispositions shall be reported as promptly as feasible but not later than ninety days after the happening of an event which constitutes a disposition. [L 1979, c 129, pt of §2]

[§846-6] **Systematic audit.** All criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify all criminal justice agencies known to have received such information. All criminal justice agencies shall:

(1) Maintain for a minimum period of one year a listing of the individuals or agencies both in and outside of the State to which criminal history record information was released, a record of what information was released, and the date such information was released;
(2) Establish a delinquent disposition monitoring system; and
(3) Verify all record entries for accuracy and completeness. [L 1979, c 129, pt of §2]

[§846-7] **Security.** Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system shall:

(1) Have power to determine for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;
(2) Select and supervise all personnel authorized to have direct access to such information;
(3) Assure that an individual or agency authorized direct access is administratively held responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure, or dissemination;
(4) Institute procedures to reasonably protect any data center of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;
(5) Provide that each employee working with or having access to criminal history record information is to be made familiar with the substance and intent of this chapter and of regulations promulgated thereunder; and
(6) Require that direct access to criminal history record information is to be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

Where a noncriminal justice agency operates a system, the participating criminal justice agency shall be responsible for review, approval, and monitoring of procedures developed to assure compliance with this section. [L 1979, c 129, pt of §2]

[§846-8] **Exclusions.** This chapter shall not apply to criminal history record information contained in:

(1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;
(2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are organized on a chronological basis;
(3) Court records of public judicial proceedings;
(4) Published court or administrative opinions or public judicial, administrative, or legislative proceedings;
(5) Records of traffic offenses maintained for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's, or other operators' license;
(6) Announcements of executive clemency or pardon, by the Hawaii paroling authority or the governor of the State.

Nothing in this chapter shall prevent a criminal justice agency from disclosing, to the public, criminal history record information related to the offense for which an individual is currently within the criminal justice system, including his

place of incarceration; and, nothing in this chapter shall prevent a criminal justice agency from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or other formal charge was filed, on a specific date, if the arrest record information or criminal history record information disclosed is based on data excluded by the first paragraph of this section. Nothing in this chapter prohibits the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship. [L 1979, c 129, pt of §2]

[§846-9] **Limitations on dissemination.** Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
(2) Individuals and agencies specified in section 846-10;
(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement, provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;
(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;
(5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and
(6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data.

Criminal history record information disseminated to non-criminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself. [L 1979, c 129, pt of §2]

[§846-10] **Dissemination.** Criminal history record information may be disseminated to:

(1) The governor in individual cases or situations wherein he elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with his constitutional duty to insure that the laws be faithfully executed;
(2) The attorney general in connection with his statutory authority and duties in the administration and enforcement of the criminal laws and

for the purpose of administering and insuring compliance with the provisions of this chapter;

(3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation. [L 1979, c 129, pt of §2]

[§846-11] **Office of correctional information and statistics.** The data center shall coordinate its activities with the records system of the intake service centers of the office of correctional information and statistics. Criminal history record information shall be provided from this office to the data center and the functions of each shall be coordinated so that there will be no overlap, or duplication of efforts. [L 1979, c 129, pt of §2]

[§846-12] **Juvenile records.** Dissemination and disposition of records concerning proceedings relating to the adjudication of a juvenile as a delinquent or in need of supervision (or the equivalent) in family court to non-criminal justice agencies is prohibited, unless a statute, court order, rule, or decision, or federal executive order specifically authorizes such dissemination, except that juvenile records may be disseminated to individuals and agencies set forth in paragraphs (3) and (4) of section 846-9. Juvenile records disseminated to non-criminal justice agencies shall be used only for the purposes for which they were given and may not be disseminated further. [L 1979, c 129, pt of §2]

[§846-13] **Annual audits.** The attorney general shall conduct annual audits of a representative sample of criminal justice agencies which may be chosen on a random basis, to verify the accuracy and completeness of criminal history record information maintained by such agencies, and to determine adherence with this chapter and regulations promulgated thereunder. Criminal justice agencies shall retain appropriate records to facilitate the annual audits. Audit of the data center shall be performed by another state agency. [L 1979, c 129, pt of §2]

[§846-14] **Access and review.** Any individual who asserts that he has reason to believe that criminal history record information relating to him is maintained by any information system in this State shall be entitled to review such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory identification which shall be positively verified by fingerprints. Rules and regulations promulgated under this section shall include provisions for administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete; provisions for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates; provisions for supplying to an individual whose record has been corrected, upon his request, the names of all non-criminal justice agencies to which the data have been given; and provisions requiring the correcting agency to notify all criminal justice recipients of corrected information. The review authorized by this section shall be limited to a review of criminal history record information. [L 1979, c 129, pt of §2]

[§846-15] **Rules and regulations.** The attorney general shall adopt rules and regulations, as may be necessary, which will insure compliance with the provisions of this chapter by the most efficient and effective means possible. [L 1979, c 129, pt of §2]

[§846-16] Violations. Any person who knowingly permits unauthorized access to criminal history record information, or who knowingly disseminates criminal history record information in violation of the provisions of this chapter, or any person violating any agreement authorized by paragraphs (3) and (4) of section 846-9, or any person who gains unauthorized access to criminal history record information shall be guilty of a misdemeanor. [L 1979, c 129, pt of §2]

Chapter 831

Uniform Act on Status of Convicted Persons

§831-3.1 Prior convictions; criminal records; noncriminal standards. (a) A person shall not be disqualified from public office or employment by the State or any of its political subdivisions or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime; provided that with respect to liquor licenses, this subsection shall not apply to a person who has been convicted of a felony.

§831-3.2 Expungement orders. (a) The attorney general, or his duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not issue (1) in the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture; (2) for a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture; and (3) in the case of an arrest of any person for any offense where conviction has not been obtained because he has rendered prosecution impossible by absenting himself from the jurisdiction.

Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with his arrest. The attorney general or his duly authorized representative within the department of the attorney general, within 120 days after receipt of such written application, shall, when so requested, deliver, or cause to be delivered, all such fingerprints or photographs of such person, unless such person has a prior record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

* * *

(h) Nothing in this section shall affect the compilation of crime statistics as provided in chapter 846.

[am L 1980, c 12, §1; am L 1983, c 78, §4]

CHAPTER 853
CRIMINAL PROCEDURE: DEFERRED ACCEPTANCE OF GUILTY PLEA, NOLO CONTENDERE PLEA

SECTION

853-1 DEFERRED ACCEPTANCE OF GUILTY PLEA, OR NOLO CONTENDERE PLEA; DISCHARGE AND DISMISSAL, EXPUNGEMENT OF RECORDS
853-2 PLEA OF GUILTY OR NOLO CONTENDERE; PROCEDURE
853-3 VIOLATION OF TERMS AND CONDITIONS DURING DEFERMENT; RESULT
853-4 CHAPTER NOT APPLICABLE; WHEN

Note. Title change, see L 1983, c 290, §1.

§853-1 Deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records. (a) Upon proper motion as provided by this chapter:

(1) When a defendant voluntarily pleads guilty or nolo contendere, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor;

(2) It appears to the court that the defendant is not likely again to engage in a criminal course of conduct; and

(3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law,

the court, without accepting the plea of nolo contendere or entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceedings.

(b) The proceedings may be deferred upon any of the conditions specified by section 706-624. The court may defer the proceedings for such period of time as the court shall direct but in no case to exceed the maximum sentence allowable. The defendant may be subject to bail or recognizance at the court's discretion during the period during which the proceedings are deferred.

(c) Upon his completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge against him.

(d) Discharge of the defendant and dismissal of the charge against him under this section shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction.

(e) Upon discharge of the defendant and dismissal of the charge against him under this section, the defendant may apply for expungement not less than one year following discharge, pursuant to section 831-3.2. [L 1976, c 154, pt of §2; am L 1979, c 147, §1 and c 155, §1; am L 1980, c 232, §42; am L 1983, c 290, §2(1), (2)]

Retroactive relief. L 1979, c 155, §3, provides that "all misdemeanor records preserved at any police department pursuant to section 853-1(e) [as it existed prior to amendment by L 1979, c 155, §1]...shall be transmitted to the office of the attorney general and shall be expunged pursuant to the provisions of section 831-3.2..."

§853-2 Plea of guilty or nolo contendere; procedure. Upon motion made before sentence by the defendant, the prosecutor, or on its own motion, the court will either proceed in accordance with section 853-1, or deny the motion and accept the defendant's plea of guilty or nolo contendere, or allow the defendant to withdraw his plea of guilty or nolo contendere only for good cause. [L 1976, c 154, pt of §2; am L 1983, c 290, §3]

§853-3 Violation of terms and conditions during deferment; result. Upon violation of a term or condition set by the court for a deferred acceptance of guilty plea or deferred acceptance of nolo contendere plea, the court may enter an adjudication of guilt and proceed as otherwise provided. [L 1976, c 154, pt of §2; am L 1983, c 290, §4]

§853-4 Chapter not applicable; when. This chapter shall not apply when:

(1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
(2) The offense charged involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person;
(3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
(4) The offense charged is a class A felony;
(5) The offense charged is nonprobationable;
(6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct which if perpetrated in this State would be punishable as a felony;

(7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct which if perpetrated in this State would constitute a felony;
(8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
(9) A firearm was used in the commission of the offense charged;
(10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
(11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, whether or not the period of deferral has already expired;
(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
(13) The offense charged is:
(A) Escape in the first degree;
(B) Escape in the second degree;
(C) Promoting prison contraband in the first degree;
(D) Promoting prison contraband in the second degree;
(E) Bail jumping in the first degree;
(F) Bail jumping in the second degree;
(G) Bribery;
(H) Bribery of a witness;
(I) Intimidating a witness;
(J) Bribery of or by a juror;
(K) Intimidating a juror;
(L) Jury tampering.

CRIMINAL PROCEDURE: GUILTY PLEA Sec. 853-4

The court may by rule adopt other criteria in this area. [L 1976, c 154, pt of §2; am L 1980, c 292, §2]

Chapter 712

§712-1255 Conditional discharge. (1) Whenever any person who has not previously been convicted of any offense under this part of chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under sections 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

(5) After conviction, for any offense under this part or chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant's first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant's identity with the person previously convicted. [L 1972, c 9, pt of §1]

§712-1256 Expunging of court records. (1) Upon the dismissal of such person and discharge of the proceeding against him under section 712-1255, this person, if he was not over twenty years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section.

(2) If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty years of age at the time of the offense, it shall enter such order.

(3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of him for any purpose. [L 1972, c 9, pt of §1]

Chapter 92

Sec. 92-50 PUBLIC PROCEEDINGS AND RECORDS

§92-50 Definition. As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual. [L 1975, c 166, pt of §2]

§92-51 Public records; available for inspection. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person. [L 1975, c 166, pt of §2; am L 1976, c 212, §4]

§92-52 Denial of inspection; application to circuit courts. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause. [L 1975, c 166, pt of §2]

[CHAPTER 92E]
FAIR INFORMATION PRACTICE
(CONFIDENTIALITY OF PERSONAL RECORD)

SECTION

[92E-1] DEFINITIONS
[92E-2] INDIVIDUAL'S ACCESS TO OWN PERSONAL RECORD
[92E-3] EXEMPTIONS AND LIMITATIONS ON INDIVIDUAL ACCESS
[92E-4] LIMITATION ON PUBLIC ACCESS TO PERSONAL RECORD
[92E-5] LIMITATIONS ON DISCLOSURE OF PERSONAL RECORD TO OTHER AGENCIES
[92E-6] ACCESS TO PERSONAL RECORD; INITIAL PROCEDURE
[92E-7] COPIES
[92E-8] RIGHT TO CORRECT PERSONAL RECORD; INITIAL PROCEDURE
[92E-9] ACCESS AND CORRECTION; REVIEW PROCEDURES
[92E-10] RULES AND REGULATIONS
[92E-11] CIVIL ACTIONS AND REMEDIES
[92E-12] VIOLATIONS; DISCIPLINARY ACTION AGAINST EMPLOYEES
[92E-13] ACCESS TO PERSONAL RECORDS BY ORDER IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS; ACCESS AS AUTHORIZED OR REQUIRED BY OTHER LAW

[§92E-1] Definitions. As used in this chapter:

(1) "Agency" means every office, officer, employee, department, division, bureau, authority, board, commission, or other entity of the executive branch of the State or of each county, but excludes:
   (A) The legislature and the council of each county, including their respective committees, offices, bureaus, officers, and employees; and
   (B) The judiciary, including the courts, and its offices, bureaus, officers, and employees.

(2) "Individual" means a natural person.

(3) "Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's educational, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. "Personal record" includes a "public record," as defined under section 92-50. [L 1980, c 226, pt of §2]

[§92E-2] **Individual's access to own personal record.** Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1980, c 226, pt of §2]

Legislative purpose, see L 1980, c 226, §1.

[§92E-3] **Exemptions and limitations on individual access.** An agency is not required by this [chapter] to grant an individual access to personal records, or information in such records:

(1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the enforcement of criminal laws or any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
   (A) Information which fits or falls within the definition of "criminal history record information" in section 846-1; or
   (B) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or
   (C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
(2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
(3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
(4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
(5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1980, c 226, pt of §2]

[§92E-4] **Limitation on public access to personal record.** No agency may disclose or authorize disclosure of personal record by any means of communication to any person other than the individual to whom the record pertains unless the disclosure is:

(1) To a duly authorized agent of the individual to whom it pertains;
(2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;

(3) Pursuant to a statute of this State or the federal government that expressly authorizes the disclosure;
(4) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual. [L 1980, c 226, pt of §2]

[§92E-5] Limitations on disclosure of personal record to other agencies. No agency may disclose or authorize disclosure of personal record to any other agency unless the disclosure is:

(1) Compatible with the purpose for which the information was collected or obtained;
(2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
(3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
(4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
(5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;
(6) To the legislature or any committee or subcommittee thereof;
(7) Pursuant to an order of a court of competent jurisdiction;
(8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that receives federal monies. [L 1980, c 226, pt of §2]

[§92E-6] Access to personal record; initial procedure. Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section 92E-3. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [L 1980, c 226, pt of §2]

[§92E-7] Copies. The agency may charge the individual for any copies and for the certification of any copies; provided that such charges or fees shall not exceed the actual cost of duplication or of transcription into readable or intelligible form and duplication and shall not include any costs of searching for the record. [L 1980, c 226, pt of §2]

[§92E-8] Right to correct personal record; initial procedure. (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record, an agency shall acknowledge the request in writing, and promptly:

(1) Make the requested correction or amendment; or
(2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1980, c 226, pt of §2]

[§92E-9] **Access and correction; review procedures.** (a) Not later than thirty business days after receipt of request for review of an agency refusal to allow access to, or correction or amendment of, a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow access to, or correction or amendment of, a personal record, the agency shall so state in writing and:

(1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for his disagreement with the refusal of the agency to correct or amend it; and
(2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1980, c 226, pt of §2]

[§92E-10] **Rules and regulations.** Each agency shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this chapter.

Such procedures and rules, subject to the direction of and review by the attorney general in the case of state agencies and by the corporation counsel or county attorney of each county in the case of county agencies, shall be uniform, insofar as practicable, respectively, among state agencies and among the county agencies of each county. [L 1980, c 226, pt of §2]

[§92E-11] **Civil actions and remedies.** (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this chapter, and after appropriate administrative remedy under sections 92E-6, 92E-8, and 92E-9 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that the agency acted in a manner which was intentional or wilful, the agency shall be liable to the complainant in an amount equal to the sum of:

(1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of $100; and
(2) The costs of the action together with reasonable attorney's fees as determined by the court.

(d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than

two years after the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance. [L 1980, c 226, pt of §2]

[§92E-12] Violations; disciplinary action against employees. A knowing or intentional violation of any provision of this chapter, or of any rule adopted to implement or administer this chapter, by any employee or officer of an agency shall be cause for disciplinary action, including suspension or discharge, by the head of the agency. Any person may file a complaint, with the head of the applicable agency, alleging such a violation. [L 1980, c 226, pt of §2]

[§92E-13] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. Nothing in this chapter, including section 92E-3, shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

(1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or

(2) Where any statute, administrative rule, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1980, c 226, pt of §2]

Severability clause, see L 1980, c 226, §3.

CHAPTER 463
PRIVATE INVESTIGATORS AND GUARDS

§463-5 Private detectives, guards, and agencies; license required. No person shall engage in the business of private detective or guard, represent oneself to be, hold oneself out as, list oneself or advertise as a private detective or guard or as furnishing detective investigating services or guard services without first obtaining a license as a private detective or guard from the board of detectives and guards upon payment of application, examination and license fees and no firm, corporation, partnership, or association shall engage in the business of private detective or guard, represent itself to be, hold itself out as, list itself or advertise as a private detective or guard agency or bureau or as furnishing detective, investigating, or guard services without first obtaining a license as a private detective or guard agency from the board upon payment of application and license fees. [L 1961, c 77, pt of §1; Supp, §165A-5; HRS §463-5; am L 1983, c 40, §2; am L 1984, c 7, §68]

19-4807. Cooperation and exchange of information.—The * * *Idaho state police* shall cooperate and exchange information with any other department or authority of the state or with other police forces, both within this state and outside it, and with federal * * * *agencies to achieve* greater success in preventing and detecting crimes and apprehending criminals. [1939, ch. 60, § 7, p. 105; am. 1955, ch. 173, § 6, p. 345.]

19-4812. Criminal identification, records and statistics. — (1) Definitions as used in this section and section 19-4813, Idaho Code:

(a) "Bureau" means the criminal identification, records and communications bureau in the department of law enforcement of the state of Idaho.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a petty misdemeanor.

(2) The bureau shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. for an offense which is a felony;

2. for an offense which is a misdemeanor or petty misdemeanor involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

3. for an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subdivision 2;

4. as a fugitive from justice;

5. for any other offense designated by the director of the bureau.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in paragraph (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state in which the law enforcement agency desires the return of the person described in said warrant but which is not served

because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the number and nature of all offenses designated by the director of the bureau, including, but not limited to, Part I and Part II offenses as defined by the federal bureau of investigation under its system of uniform crime reports for the United States which are known to have been committed in this state, the legal action taken in connection with such offenses from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The director of the bureau may determine any other information to be obtained regarding crime statistics. However, the information shall include such data as may be requested by the federal bureau of investigation under its system of uniform crime reports for the United States.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under paragraphs (a) to (f), inclusive, the time it is to be forwarded, the method of classifying and such other matters as shall facilitate collection and compilation.

(h) Cooperate with and assist all law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in paragraphs (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing efficient local bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement agencies with the fingerprints and the descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement agencies concerned and supply copies of the criminal records to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(*l*) Prepare and publish reports and releases at least once a year and no later than July 1, containing the statistical information gathered under this section and presenting an accurate picture of crime in this state and of the operation of the agencies of criminal justice.

(m) Make available upon request, to all local and state law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the files of the bureau which aid these agencies in the performance of their official duties. For this purpose the bureau shall operate on a twenty-four (24) hour a day basis,

seven (7) days a week. Such information may also be made available to any other agency of this state or political subdivision thereof, and to any other federal agency as authorized, and upon assurance by the agency concerned that the information is to be used for official purposes only.
(n) Cooperate with other agencies of this state, the criminal justice agencies of other states, and the uniform crime reports and the national crime information center systems of the federal bureau of investigation in developing and conducting an interstate, national and international system of criminal identification, records and statistics.
(o) Permit any individual upon completion of satisfactory fingerprint identification to review all criminal history record information pertaining to that individual contained within the files of the criminal identification bureau. [I.C., § 19-4812, as added by 1972, ch. 238, § 1, p. 621; am. 1974, ch. 27, § 8, p. 811; am. 1979, ch. 204, § 1, p. 585.]

19-4813. Cooperation in criminal identification, records and statistics.—(1) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the federal bureau of investigation, full face, profile and full length photographs, if possible, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in section 19-4812(2)(a), Idaho Code, of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the bureau. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in section 19-4812(2)(a), Idaho Code, may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request and pursuant to judicial order.

(2) Fingerprints and other identifying data required to be taken under subsection (1) shall be forwarded to the bureau within fourteen (14) days after taking for filing and classification but the period of fourteen (14) days may be extended to cover any intervening holiday or weekend.

(3) All persons in charge of law enforcement agencies shall forward to the bureau copies or detailed descriptions of the arrest warrants and the identifying data described in section 19-4812(2)(c), Idaho Code, immediately upon determination of the fact that the warrant cannot be served for the reason stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the bureau of such service or withdrawal. In any case, the law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the bureau all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the federal bureau of investigation, and full face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the bureau, together with any other identifying data requested, within ten (10) days after the arrival at the institution of the person committed. Full length photographs in release dress shall be taken immediately prior to the release of such persons from these institutions. Immediately after release, these photographs shall be forwarded to the bureau.

(5) All persons in charge of law enforcement agencies, all clerks of court, all persons in charge of state, county and municipal penal and correctional institutions, and all persons in charge of state and county probation and parole offices shall supply the bureau with the information described in section 19-4812(2)(f), Idaho Code, on the basis of the forms and instructions to be supplied by the bureau under section 19-4812(2)(g), Idaho Code. Provided, however, that clerks of court are not required to provide said information to the bureau if they have previously provided the information to the law enforcement agency submitting the offense report and the law enforcement agency has forwarded the information to the bureau.

(6) All persons in charge of law enforcement agencies in this state shall furnish the bureau with any other identifying data required in accordance with guidelines established by the bureau. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the bureau copies of such items presently in these files as will aid in establishing the nucleus of the state criminal identification file. [I. C., § 19-4813, as added by 1972, ch. 238, § 2, p. 621; am. 1974, ch. 27, § 9, p. 811.]

Chapter 26

19-2604. Discharge of defendant — Amendment of judgment. — 1. If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant: and this shall apply

to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

2. If sentence has been imposed but suspended during the first one hundred and twenty (120) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in 4 of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of his probation, the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

3. Subsection 2 of this section shall not apply to any judgment of conviction for a violation of the provisions of sections 18-1506, 18-1507 or 18-1508, Idaho Code. A judgment of conviction for a violation of the provisions of any section listed in this subsection shall not be expunged from a person's criminal record. [1915, ch. 104, part of § 1, p. 245; reen. C.L., § 8002; am. 1919, ch. 134, § 2, p. 429; C.S., § 9046; I.C.A., § 19-2506; am. 1951, ch. 99, § 1, p. 224; am. 1970, ch. 143, § 4, p. 425; am. 1971, ch. 97, § 2, p. 210; am. 1989, ch. 305, § 1, p. 759.]

Evidence
Chapter 3
Public Writings

9-301. Public writings — Right to inspect and take copy. — Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. [C.C.P. 1881, § 902; R.S., R.C., & C.L., § 5965; C.S., § 7940; I.C.A., § 16-301.]

9-302. Furnishing of certified copy — Duty of officer having custody — Copy as evidence — Fees. — Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing. When the amount of the legal fees for such certified copies is not otherwise specified, the officer furnishing the copies shall demand and receive therefor twenty cents (20¢) for each folio of one hundred (100) words: provided, however, that when the copies are furnished said public officer, and that proofreading and correction alone is necessary, said officer shall, whether the amount of legal fees for certified copies is specified herein or elsewhere, charge five cents (5¢) per folio, which shall be in lieu of all other charges, including certificate. [C.C.P. 1881, § 903; R.S., R.C., & C.L., § 5966; C.S., § 7941; am. 1923, ch. 64, § 1, p. 71; am. 1925, ch. 124, § 1, p. 170; I.C.A., § 16-302.]

Chapter 10

59-1009. Official records open to inspection. — The public records and other matters in the office of any officer are, at all times during office hours, open to the inspection of any citizen of this state. [R.S., § 454; am. R.C., § 341; reen. C.L., § 341; C.S., § 479; I.C.A., § 57-1009.]

IDAHO REGULATIONS

5.4-2 DISSEMINATION POLICY

1. Conviction and non-conviction data will be released for criminal justice purposes to any criminal justice agency or law enforcement agency; or any federal, state or local agency authorized by statute, ordinance, executive order, court order, rule or decision to receive such information.

2. Conviction data contained in the criminal history records of the Criminal Identification Bureau shall be released to anyone, providing they furnish:

a. the name of the requestor,
b. the name of the record subject, a release signed by the record subject and any one of the following:

1. the fingerprints of the record subject or,

2. the State Identification Number (SID) assigned to the record subject by CIB or,

3. Date of Birth or,

4. Social Security Account Number (SSAN)

3. Agencies having a continuous need for criminal history record information will be required to sign a User Agreement with CIB. The User Agreement will be used to facilitate the billing process. A "continuous need" is a requirement for five or more criminal history record checks per month.

4. If the identifying information supporting a request for disclosure matches the criminal history record of more than one individual, CIB will not disclose any of the records until further identifying information is provided by the requestor.

5. CIB will maintain a record of all disclosures made under the preceding, noting the identity of the requestor and the record subject and the date of disclosure.

6. Requests made under Pargarph 2 will be charged reasonable fees to cover administrative costs to the Criminal Identification Bureau.

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2213. Facilities for child care—Licenses and permits—Notice of operation of part day child care facility

§ 3. (a) No person, group of persons or corporation may operate or conduct any facility for child care, as defined in this Act, without a license or permit issued by the Department or without being approved by the Department as meeting the standards established for such licensing, with the exception of facilities for whom standards are established by the Department of Corrections under Section 3-15-2 of the "Unified Code of Corrections" [1] and with the exception of facilities defined in Section 2.10 of this Act,[2] and with the exception of programs or facilities licensed by the Illinois Department of Alcoholism and Substance Abuse under the Illinois Alcoholism and Other Drug Dependency Act.[3]

(b) No part day child care facility as described in Section 2.10 may operate without written notification to the Department or without complying with Section 7.1.[4] Notification shall include a notarized statement by the facility that the facility complies with state or local health standards and state fire safety standards, and shall be filed with the department every 2 years.

(c) The Director of the Department shall establish policies and coordinate activities relating to child care licensing, licensing of day care homes and day care centers.

(d) Any facility or agency which is exempt from licensing may apply for licensing if licensing is required for some government benefit.

Amended by P.A. 85-965, Art XII, § 1, eff. July 1, 1988.

[1] Chapter 38, ¶ 1003-15-2.

[2] Paragraph 2212.10 of this chapter.

[3] Chapter 111½, ¶ 6351-1 et seq.

[4] Paragraph 2217.1 of this chapter.

2214. Licenses for facilities—Application—Examination of personnel and facilities—Issuance

§ 4. Any person, group of persons or corporation who or which receives children or arranges for care or placement of one or more children unrelated to the operator must apply for a license to operate one of the types of facilities defined in Sections 2.05 through 2.19 of this Act.[1] Application for a license to operate a child care facility must be made to the Department in the manner and on forms prescribed by it. If, upon examination of the facility and investigation of persons responsible for care of children, the Department is satisfied that the facility and responsible persons reasonably meet standards prescribed for the type of facility for which application is made, it shall issue a license in proper form, designating on that license the type of child care facility and, except for a child welfare agency, the number of children to be served at any one time.

2214.1. Criminal background investigations

§ 4.1. Criminal Background Investigations. The Department shall require that each child care facility license applicant as part of the application process, and each employee of a child care facility as a condition of employment, authorize an investigation to determine if such applicant or employee has ever been charged with a crime and if so, the disposition of those charges; this authorization shall indicate the scope of the inquiry and the agencies which may be contacted. Upon this authorization, the Director shall request and receive information and assistance from any federal, State or local governmental agency as part of the authorized investigation. The Department of State Police shall provide information concerning any criminal charges, and their disposition, now or hereafter filed, against an applicant or child care facility employee upon request of the Department of Children and Family Services when the request is made in the form and manner required by the Department of State Police.

Information concerning convictions of a license applicant investigated under this Section, including the source of the information and any conclusions or recommendations derived from the information, shall be provided, upon request, to such applicant prior to final action by the Department on the application. Such information on convictions of employees or prospective employees of child care facilities licensed under this Act shall be provided to the operator of such facility, and, upon request, to the employee or prospective employee. Any information concerning criminal charges and the disposition of such charges obtained by the Department shall be confidential and may not be transmitted outside the Department, except as required herein, and may not be transmitted to anyone within the Department except as needed for the purpose of evaluating an application or a child care facility employee. Only information and standards which bear a reasonable and rational relation to the performance of a child care facility shall be used by the Department or any licensee. Any employee of the Department of Children and Family Services, Department of State Police, or a child care facility receiving confidential information under this Section who gives or causes to be given any confidential information concerning any criminal convictions of a child care facility applicant, or child care facility employee, shall be guilty of a Class A misdemeanor unless release of such information is authorized by this Section.

A child care facility may hire, on a probationary basis, any employee authorizing a criminal background investigation under this Section, pending the result of such investigation. Employees shall be notified prior to hiring that such employment may be terminated on the basis of criminal background information obtained by the facility.

Added by P.A. 84-158, § 2, eff. July 1, 1987.

2214.2. License or employment—Eligibility

§ 4.2. No applicant may receive a license from the Department and no person may be employed by a licensed child care facility who refuses to authorize an investigation as required by Section 4.1.[1]

No applicant may receive a license from the Department and no person may be employed by a child care facility licensed by the Department who has been declared a

sexually dangerous person under "An Act in relation to sexually dangerous persons, and providing for their commitment, detention and supervision", approved July 6, 1938, as amended,[2] or convicted of committing or attempting to commit any of the following offenses stipulated under the Criminal Code of 1961:[3]

(1) murder;

(2) a sex offense under Article 11,[4] except offenses described in Sections 11-7, 11-8, 11-12, 11-13 and 11-18;[5]

(3) kidnapping;

(4) aggravated kidnapping;

(5) child abduction;

(6) aggravated battery of a child;

(7) criminal sexual assault;

(8) aggravated criminal sexual assault;

(9) criminal sexual abuse;

(10) aggravated sexual abuse;

(11) an offense in any other state the elements of which are similar and bear a substantial relationship to any of the foregoing offenses.

Amended by P.A. 85-293, Art. III, § 7, eff. Sept. 8, 1987.

[1] Paragraph 2214.1 of this chapter.

[2] Chapter 38, ¶ 105-1.01 et seq.

[3] Chapter 38, ¶ 1-1 et seq.

[4] Chapter 38, ¶ 11-1 et seq.

[5] Chapter 38, ¶¶ 11-7, 11-8, 11-12, 11-13 and 11-18.

CHAPTER 38
Criminal Law and Procedure

Article 12
Bodily Harm

12-4.3. Aggravated battery of a child

§ 12-4.3. Aggravated Battery of a Child. (a) Any person of the age 18 years and upwards who intentionally or knowingly, and without legal justification and by any means, causes great bodily harm or permanent disability or disfigurement to any child under the age of 13 years, commits the offense of aggravated battery of a child.

Aggravated battery of a child is a Class 2 felony.

(b) Aggravated Battery of a Child when committed by a person engaged in the actual care of the child-special penalty provision.

(1) When a person engaged in the actual care of the victim child, as determined by the court on the facts before it, pleads guilty to, or is found guilty of the offense of aggravated battery of a child, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place such person upon probation upon such reasonable terms and conditions as it may require. At least one such term of probation shall be that the person report to and cooperate with the Department of Children and Family Services at such times and in such programs as the Department of Children and Family Services may require.

(2) Upon fulfillment of the terms and conditions imposed, the court shall discharge such person and dismiss the proceedings. Discharge and dismissal under this Section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime and shall in no way be considered as a prior conviction for purposes of any habitual offender provisions of this Code. However, a record of the disposition shall be maintained and provided to any civil authority in connection with a determination of whether the person is an acceptable candidate for the care, custody, and supervision of children.

(3) Discharge and dismissal under this Section may occur only once.

(4) Probation under this Section shall be for not less than 2 years.

(5) In the event that the child dies of the injuries alleged, this Section shall be inapplicable.

(6) Subsection (b) is intended to be supplemental to, not in derogation of, any other proceeding available under the Juvenile Court Act.

Laws 1961, p. 1983, § 12-4.3, added by P.A. 81-1520, § 1, eff. Dec. 18, 1980.

CRIMINAL IDENTIFICATION AND INVESTIGATION

Paragraph
206–1. Powers of Department—Employees or assistants.
206–2. Records of convicted persons.
206–2.1. Arrest, charge, disposition, fingerprint and corrections information—Notice.
206–3. Information to be furnished peace officers and commanding officers of certain military installations in Illinois.
206–3.1. Conviction records—Registration and licensing of private detectives and security officers.
206–3.2. Notification of treatment of firearm injury and injury sustained in commission of or received from criminal offense.
206–4. Systems of identification.
206–5. Fingerprints and arrest records—Expungement of alias.
206–5.1. Reporting of domestic crime.
206–6. Repealed.
206–7. Records not to be public.
206–8. Crime statistics.
206–9. Dental examinations and records.
206–10. Judicial remedies.

AN ACT in relation to criminal identification and investigation. Laws 1931, p. 464, approved and eff. July 2, 1931. Title amended by Laws 1951, p. 1920, approved and eff. Aug. 2, 1951.

206–1. Powers of Department—Employees or assistants

§ 1. The Department of State Police hereinafter referred to as the "Department", is hereby empowered to cope with the task of criminal identification and investigation.

The Director of the Department of State Police shall, from time to time, appoint such employees or assistants as may be necessary to carry out this work. Employees or assistants so appointed shall receive salaries subject to the standard pay plan provided for in the "Personnel Code", approved July 18, 1955, as amended.[1]

Amended by P.A. 84–25, Art. IV, § 12, eff. July 18, 1985.

[1] Chapter 127, ¶ 63b101 et seq.

206–2. Records of convicted persons

§ 2. The Department shall procure and file for record, as far as can be procured from any source, photographs, all plates, outline pictures, measurements, descriptions and information of all persons who have been arrested on a charge of violation of a penal statute of this State and such other information as is necessary and helpful to plan programs of crime prevention, law enforcement and criminal justice, and aid in the furtherance of those programs.

Amended by P.A. 76–444, § 1, eff. Jan. 1, 1970.

206-2.1 Criminal case information - Final dispositions - Notice of charges

Amended by Public Act 86-575 as follows:

(Ch. 38, par. 206-2.1)

Sec. 2.1. For the purpose of maintaining complete and accurate criminal records of the Department of State Police, it is necessary for all policing bodies of this State, the clerk of the circuit court, the Illinois Department of Corrections, the sheriff of each county, and State's Attorney of each county to submit certain criminal arrest, charge, and disposition information to the Department for filing at the earliest time possible. Unless otherwise noted herein, it shall be the duty of all policing bodies of this State, the clerk of the circuit court, the Illinois Department of Corrections, the sheriff of each county, and the State's Attorney of each county to report such information as provided in this Section, both in the form and manner required by the Department and within 30 days of the criminal history event. Specifically:

(a) Arrest Information. All agencies making arrests for offenses which are required by statute to be collected, maintained or disseminated by the Department of State Police shall be responsible for furnishing daily to the Department fingerprints, charges and descriptions of all persons who are arrested for such offenses. All such agencies shall also notify the Department of all decisions not to refer such arrests for prosecution. An agency making such arrests may enter into arrangements with other agencies for the purpose of furnishing daily such fingerprints, charges and descriptions to the Department upon its behalf.

(b) Charge Information. The State's Attorney of each county shall notify the Department of all charges filed, including all those added subsequent to the filing of a case, and whether charges were not filed in cases for which the Department has received information required to be reported

pursuant to paragraph (a) of this Section.

(c) Disposition Information. The clerk of the circuit court of each county shall furnish the Department, in the form and manner required by the Supreme Court, with all final dispositions of cases for which the Department has received information required to be reported pursuant to paragraphs (a) or (d) of this Section. Such information shall include, for each charge, all (1) judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges and dismissals in the court; (2) reviewing court orders filed with the clerk of the circuit court which reverse or remand a reported conviction or vacate or modify a sentence; (3) continuances to a date certain in furtherance of an order of supervision granted under Section 5-6-1 of the Unified Code of Corrections or an order of probation granted under ~~either~~ Section 10 of the Cannabis Control Act, or Section 410 of the Illinois Controlled Substances Act, or Section 12-4.3 of the Criminal Code of 1961; and (4) judgments terminating or revoking a sentence to probation, supervision or conditional discharge and any resentencing after such revocation.

(d) Fingerprints After Sentencing. (1) After the court pronounces sentence, or issues ~~including~~ an order of supervision or an order of probation granted under ~~either~~ Section 10 of the Cannabis Control Act, or Section 410 of the Illinois Controlled Substances Act, or Section 12-4.3 of the Criminal Code of 1961, for any offense which is required by statute to be collected, maintained, or disseminated by the Department of State Police, the State's Attorney of each county shall ask the court to order a law enforcement agency to fingerprint immediately all persons appearing before the court who have not previously been fingerprinted for the same case. The court shall so order the requested fingerprinting, if it determines that any such ~~so-sentenced~~ person has not previously been fingerprinted for the same case. The law

enforcement agency shall submit such fingerprints to the Department daily.

(2) After the court pronounces sentence for any offense which is not required by statute to be collected, maintained, or disseminated by the Department of State Police, the prosecuting attorney may ask the court to order a law enforcement agency to fingerprint immediately all persons appearing before the court who have not previously been fingerprinted for the same case. The court may so order the requested fingerprinting, if it determines that any so sentenced person has not previously been fingerprinted for the same case. The law enforcement agency may retain such fingerprints in its files.

(e) Corrections Information. The Illinois Department of Corrections and the sheriff of each county shall furnish the Department with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency or discharge of an individual who has been sentenced to the agency's custody for any offenses which are mandated by statute to be collected, maintained or disseminated by the Department of State Police. For an individual who has been charged with any such offense and who escapes from custody or dies while in custody, all information concerning the receipt and escape or death, whichever is appropriate, shall also be so furnished to the Department.

206–3. Information to be furnished peace officers and commanding officers of certain military installations in Illinois

§ 3. (A) The Department shall file or cause to be filed all plates, photographs, outline pictures, measurements, descriptions and information which shall be received by it by virtue of its office and shall make a complete and systematic record and index of the same, providing thereby a method of convenient reference and comparison. The Department shall furnish, upon application, all information pertaining to the identification of any person or persons, a plate, photograph, outline picture, description, measurements, or any data of which there is a record in its office. Such information shall be furnished to peace officers of the United States, of other states or territories, of the Insular possessions of the United States, of foreign countries duly authorized to receive the same, to all peace officers of the State of Illinois and, conviction information only, to units of local government, school districts and private organizations, under the provisions of Section 55a of The Civil Administrative Code of Illinois.[1] Applications shall be in writing and accompanied by a certificate, signed by the peace officer or chief administrative officer or his designee making such application, to the effect that the information applied for is necessary in the interest of and will be used solely in the due administration of the criminal laws or for the purpose of evaluating the qualifications and character of employees or prospective employees of units of local government and school districts and of employees, prospective employees, volunteers or prospective volunteers of such private organizations.

For the purposes of this subsection, "chief administrative officer" is defined as follows:

a) The city manager of a city or, if a city does not employ a city manager, the mayor of the city.

b) The manager of a village or, if a village does not employ a manager, the president of the village.

c) The chairman or president of a county board or, if a county has adopted the county executive form of government, the chief executive officer of the county.

d) The president of the school board of a school district.

e) The supervisor of a township.

f) The official granted general administrative control of a special district, an authority, or organization of government establishment by law which may issue obligations and which either may levy a property tax or may expend funds of the district, authority, or organization independently of any parent unit of government.

g) The executive officer granted general administrative control of a private organization defined in subsection 27 of Section 55a of The Civil Administrative Code of Illinois.

(B) Upon written application and payment of fees authorized by this subsection, State agencies and units of local government, not including school districts, are authorized to submit fingerprints of employees, prospective employees and license applicants to be Department for the purpose of obtaining conviction information maintained by the Department and the Federal Bureau of Investigation about such persons. The Department shall submit such fingerprints to the Federal Bureau of Investigation on behalf of such agencies and units of local government. The Department shall charge an application fee, based on actual costs, for the dissemination of conviction information pursuant to this subsection. The Department is empowered to establish this fee and shall prescribe the form and manner for requesting and furnishing conviction information pursuant to this subsection.

(C) Upon payment of fees authorized by this subsection, the Department shall furnish to the commanding officer of a military installation in Illinois having an arms storage facility, upon written request of such commanding officer or his designee, and in the form and manner prescribed by the Department, all criminal history record information pertaining to any individual seeking access to such a storage facility, where such information is sought pursuant to a federally-mandated security or criminal history check.

The Department shall establish and charge a fee, not to exceed actual costs, for providing information pursuant to this subsection.

Amended by P.A. 85–921, § 1, eff. July 1, 1988.

[1] Chapter 127, ¶ 55a.

206–3.1. Conviction records—Registration and licensing of private detectives and security officers

§ 3.1. (a) The Department may furnish, pursuant to positive identification, records of convictions to the Department of Professional Regulation for the purpose of meeting registration or licensure requirements under The Private Detective, Private Alarm, and Private Security Act of 1983.[1]

(b) The Department may furnish, pursuant to positive identification, records of convictions to policing bodies of this State for the purpose of assisting local liquor control commissioners in carrying out their duty to refuse to issue licenses to persons specified in paragraphs (4), (5) and (6) of Section 6–2 of The Liquor Control Act of 1934.[2]

(c) The Department shall charge an application fee, based on actual costs, for the dissemination of records pursuant to this Section. Fees received for the dissemination of records pursuant to this Section shall be deposited in the State Police Services Fund. The Department is empowered to establish this fee and to prescribe the form and manner for requesting and furnishing conviction information pursuant to this Section.

(d) Any dissemination of any information obtained pursuant to this Section to any person not specifically authorized hereby to receive or use it for the purpose for which it was disseminated shall constitute a violation of Section 7.[3]

Amended by P.A. 85-1042, § 2, eff. July 13, 1988; P.A. 85-1209, Art. III, § 3-35, eff. Aug. 30, 1988; P.A. 85-1440, Art. II, § 2-10, eff. Feb. 1, 1989.

[1] Chapter 111, ¶ 2651 et seq.

[2] Chapter 43, ¶ 120.

[3] Paragraph 206-7 of this chapter.

206-3.2. Notification of treatment of firearm injury and injury sustained in commission of or received from criminal offense

§ 3.2. It is the duty of any person conducting or operating a medical facility, or any physician or nurse as soon as treatment permits to notify the local law enforcement agency of that jurisdiction upon the application for treatment of a person, who is not accompanied by a law enforcement officer, when it reasonably appears that the person requesting treatment has received:

(1) Any injury resulting from the discharge of a firearm:

(2) Any injury sustained in the commission of or as a victim of a criminal offense.

Any hospital, physician or nurse, shall be forever held harmless from any civil liability for their reasonable compliance with the provisions of this Section.

Added by P.A. 77-1424, § 1, eff. Sept. 2, 1971.

206-4. Systems of identification

§ 4. The Department may use the following systems of identification: The Bertillion system, the finger print system, and any system of measurement or identification that may be adopted by law or rule in the various penal institutions or bureaus of identification wherever located.

The Department shall make a record consisting of duplicates of all measurements, processes, operations, signalletic cards, plates, photographs, outline pictures, measurements, descriptions of and data relating to all persons confined in penal institutions wherever located, so far as the same are obtainable, in accordance with whatever system or systems may be found most efficient and practical.

Amended by Laws 1957, p. 1422, eff. July 6, 1957.

206-5. Fingerprints and arrest records - Expungement of alias

Amended by Illinois Public Act 86-575 as follows:

(Ch. 38, par. 206-5)

Sec. 5. (a) All policing bodies of this State shall furnish to the Department, daily, in the form and detail the Department requires, ~~copies of~~ fingerprints and descriptions, of all persons who are arrested on charges of violating any penal statute of this State, for offenses which are classified as felonies and Class A or B misdemeanors, of all minors who have been arrested or taken into custody before their 17th birthday for an offense which if committed by an adult would constitute the offense of unlawful use of weapons under Section 24-1 of the Criminal Code of 1961 or a forcible felony as defined in Section 2-8 of the Criminal Code of 1961. ~~and of all persons who have in their possession, inks, dye, paper or other articles necessary in the making of counterfeit notes or in the alteration of bank notes or dies, molds or other articles used in the making of counterfeit money and intended to be used by them for such unlawful purposes. Provided, however, that the information required to be furnished to the Department pursuant to this Section shall be required only for offenses which are classified as felonies and Class A or B misdemeanors.~~ Moving or nonmoving traffic violations under "The Illinois Vehicle Code" shall not be reported except for violations of Chapter 4 and Section 11-204.1 of that Code. In addition, conservation offenses, as defined in the Supreme Court Rule 501(c), which are classified as Class B misdemeanors shall not be reported. ~~The Department may by its promulgated rule exempt specific police departments which have acceptable machine record reports from sending any "raw" material to the Department required by this Section except finger prints and~~

~~photographs.--Whenever a policing body is so exempted by rule it shall furnish to the Department acceptable copies of their machine record reports covering the exempted "raw" material. All photographs, finger prints or other records of identification so taken shall, upon the acquittal of an adult or minor prosecuted as an adult charged with the crime, or upon his being released without being convicted, be returned to him.~~ Whenever an adult or minor prosecuted as an adult, not having previously been convicted of any criminal offense or municipal ordinance violation, charged with a violation of a municipal ordinance or a felony or misdemeanor, is acquitted or released without being convicted, the Chief Judge of the circuit wherein the charge was brought, or any judge of that circuit designated by the Chief Judge, may upon verified petition of the defendant order the record of arrest and the records of the circuit court relating to such arrest expunged from the official records of the arresting authority and the records of the clerk of the circuit court.

(b) Whenever a person has been convicted of a crime or of the violation of a municipal ordinance, in the name of a person whose identity he has stolen or otherwise come into possession of, the aggrieved person from whom such identity was stolen or otherwise obtained without authorization, upon learning of the person having been arrested using his identity, may, upon verified petition to the chief judge of the circuit wherein such arrest was had, have a court order entered by such chief judge expunging the arrest record, conviction, if any, and all official records of the arresting authority and trial court, if any, and may have his name

removed from all court records in connection with the arrest and conviction, if any, changed by order of the court to show a correction Nunc pro tunc, including the insertion in such records of the real name of the offender, if known or ascertainable, in lieu of the aggrieved's name. Nothing in this Section shall limit the Department of State Police or local law enforcement agencies from listing under an offender's real name the false names he or she has used. For purposes of this Section, convictions for moving and nonmoving traffic violations other than convictions for violations of Chapter 4 and Section 11-204.1 of "The Illinois Vehicle Code" shall not be a bar to expunging the record of arrest and court records for violation of a misdemeanor or municipal ordinance. Notice of the above petition shall be served upon the State's Attorney or prosecutor charged with the duty of prosecuting the offense. Unless the State's Attorney or prosecutor objects to the petition within 30 days from the date of the notice, the court shall enter an order granting or denying the petition. The clerk of the court shall promptly mail a copy of the order to the accused.

Nothing herein shall prevent the Department of State Police from maintaining all records of any person who is admitted to probation upon terms and conditions and who fulfills those terms and conditions pursuant to Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act or Section 12-4.3 of the Criminal Code of 1961. No court order issued pursuant to the expungement provisions of this Section shall become final for purposes of appeal until 30 days after notice is received by the Department.

206–5.1. Reporting of domestic crime

§ 5.1. Reporting of domestic crime. All law enforcement agencies in Illinois which have received complaints and had its officers investigate any alleged commission of a domestic crime, shall indicate the incidence of any alleged commission of said crime with the Department through the Illinois Uniform Crime Reporting System as part of the data reported pursuant to Section 8 of this Act.[1]

Domestic crime for the purposes of this Section means any crime attempted or committed between husband and wife or between members of the same family or household.

Added by P.A. 81–921, § 1, eff. Jan. 1, 1980.

206–6. § 6. Repealed by P.A. 76–444, § 2, eff. Jan. 1, 1970.

206–7. Records not to be public

Text of paragraph effective until July 1, 1990.

§ 7. No file or record of the Department hereby created shall be made public, except as may be necessary in the identification of persons suspected or accused of crime and in their trial for offenses committed after having been imprisoned for a prior offense; and no information of any character relating to its records shall be given or furnished by said Department to any person, bureau or institution other than as provided in this Act or other State law, or when a governmental unit is required by state or federal law to consider such information in the performance of its duties. Violation of this Section shall constitute a Class A misdemeanor.

However, if an individual requests the Department to release information as to the existence or nonexistence of any criminal record he might have, the Department shall do so upon determining that the person for whom the record is to be released is actually the person making the request. The Illinois Criminal Justice Information Authority shall establish reasonable fees and rules to allow an individual to review and correct any criminal history record information the Department may hold concerning that individual upon verification of the identity of the individual. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.[1]

Amended by P.A. 83–1496, § 3, eff. Dec. 21, 1984.

[1] Chapter 127, ¶ 1001 et seq.

For text of paragraph effective July 1, 1990, see ¶ 206–7, post.

206–7. Records not to be public

Text of paragraph effective July 1, 1990.

§ 7. No file or record of the Department hereby created shall be made public, except as provided in the "Illinois Uniform Conviction Information Act"[1] or other Illinois law or as may be necessary in the identification of persons suspected or accused of crime and in their trial for offenses committed after having been imprisoned for a prior offense; and no information of any character relating to its records shall be given or furnished by said Department to any person, bureau or institution other than as provided in this Act or other State law, or when a governmental unit is required by state or federal law to consider such information in the performance of its duties. Violation of this Section shall constitute a Class A misdemeanor.

However, if an individual requests the Department to release information as to the existence or nonexistence of any criminal record he might have, the Department shall do so upon determining that the person for whom the record is to be released is actually the person making the request. The Department shall establish reasonable fees and rules to allow an individual to review and correct any criminal history record information the Department may hold concerning that individual upon verification of the identity of the individual. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.[2]

Amended by P.A. 85–922, § 26, eff. July 1, 1990.

206–8. Crime statistics

§ 8. The Department shall be a central repository and custodian of crime statistics for the State and it shall have all power incident thereto to carry out the purposes of this Act, including the power to demand and receive cooperation in the submission of crime statistics from all units of government.

Added by P.A. 76–444, § 1, eff. Jan. 1, 1970.

206–9. Dental examinations and records

§ 9. (a) Every county medical examiner and coroner shall, in every death investigation where the identity of a dead body cannot be determined by visual means, fingerprints, or other identifying data, have a qualified dentist, as determined by the county medical examiner or coroner, conduct a dental examination of the dead body. If the county medical examiner or coroner, with the aid of the dental examination and other identifiers, is still unable to establish the identity of the dead body, the medical examiner or coroner shall forthwith submit the dental records to the Department.

(b) If a person reported missing has not been found within 30 days, the law enforcement agency to whom the person was reported missing shall, within the next 5 days, make all necessary efforts to locate and request from the family or next of kin of the missing person written consent to contact and receive from the dentist of the missing person that person's dental records and shall forthwith make every reasonable effort to acquire such records. Within 5 days of the receipt of the missing person's dental records, the law enforcement agency shall submit such records to the Department.

(c) The Department shall be the State central repository for all dental records submitted pursuant to this Section. The Department may promulgate rules for the form and manner of submission of dental records, reporting of the location or identification of persons for whom dental records have been submitted and other procedures for program operations.

(d) When a person who has been reported missing is located and that person's dental records have been submitted to the Department, the law enforcement agency which submitted that person's dental records to the Department shall report that fact to the Department and the Department shall expunge the dental records of that person from the Department's file. The Department shall also expunge from its files the dental records of those dead and missing persons who are positively identified as a result of comparisons made with its files, the files maintained by other states, territories, insular possessions of the United States, or the United States.

Amended by P.A. 84-255, § 1, eff. Jan. 1, 1986.

206-10. Judicial remedies

Paragraph effective July 1, 1990.

§ 10. Judicial Remedies. The Attorney General or a State's Attorney may bring suit in the circuit courts to prevent and restrain violations of the Illinois Uniform Conviction Information Act,[1] enacted by the 85th General Assembly and to enforce the reporting provisions of Section 2.1 of this Act.[2] The Department of State Police may request the Attorney General to bring any such action authorized by this subsection.

Added by P.A. 85-922, § 26, eff. July 1, 1990.

[1] Paragraph 1601 et seq. of this chapter.

[2] Paragraph 206-2.1 of this chapter.

INTERSTATE CORRECTIONS COMPACT

207-1, 207-2. (P.A. 77-651). Repealed by P.A. 77-2097, § 8-5-1, eff. Jan. 1, 1973.

STATE APPELLATE DEFENDER ACT

Paragraph

208-1. Short title.
208-2. Definitions.
208-3. Creation of office.
208-4. Commission.
208-5. Powers of Supreme Court.
208-6. Powers and duties of commission.
208-7. Oath of office.
208-8. Salary.
208-9. Organization of office.
208-9.1. Sharing of attorney or staff position.
208-10. Powers and duties of State Appellate Defender.
208-11. Recovery of funds.

AN ACT creating the office of State Appellate Defender, defining its powers and duties, and making an appropriation therefor. P.A. 77-2633, approved Aug. 18, 1972, eff. Oct. 1, 1972.

208-1. Short title

§ 1. Short title. This Act may be cited as the "State Appellate Defender Act".

208-2. Definitions

§ 2. Definitions. In this Act, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Commission" means the State Appellate Defender Commission; and

(2) "State Appellate Defender", when used with reference to representation under this Act, includes Deputy Defender and Assistant Appellate Defender.

208-3. Creation of office

§ 3. Creation of office. There is created the office of State Appellate Defender as an agency of state government.

208-4. Commission

§ 4. Commission. (a) There is created the State Appellate Defender Commission, to consist of 9 members appointed as follows:

(1) A chairman appointed by the Governor;

(2) One member appointed by the Supreme Court;

(3) One member appointed by each of the 5 Appellate Courts;

(4) One member appointed by the Supreme Court from a panel of 3 persons nominated by the Illinois State Bar Association;

(5) One member appointed by the Governor from a panel of 3 persons nominated by the Illinois Public Defender Association.

All appointments shall be filed with the Secretary of State by the appointing authority.

The terms of the original members shall be as follows:

One one year term and until a successor is appointed and qualified;

One 2 year term and until a successor is appointed and qualified;

One 3 year term and until a successor is appointed and qualified;

2 4 year terms and until a successor is appointed and qualified;

2 5 year terms and until a successor is appointed and qualified;

2 6 year terms and until a successor is appointed and qualified.

Thereafter all terms shall be for 6 years and until a successor is appointed and qualified. The Chairman, at the first meeting of the Commission, shall conduct a drawing by lot to determine the length of each original member's term.

(b) No member may serve more than one full 6 year term. Vacancies in the membership of the commission are filled in the same manner as original appointments. Appointment to fill vacancies occurring before the expiration of a term are for the remainder of the unexpired term.

(c) Members of the commission shall elect a vice-chairman and secretary from the membership of the commission. The commission shall meet once every six months. The chairman shall determine the time and place of meetings. Additional meetings may be held upon petition to the chairman by four or more members of the commission or upon the call of the Chairman after seven days written notice to the members.

CRIMINAL JUSTICE INFORMATION ACT [NEW]

Par.
210–1. Short title.
210–2. Purpose of Act.
210–3. Definitions.
210–4. Illinois Criminal Justice Information Authority—Creation, membership and meetings.
210–5. No compensation—Expenses.
210–6. Executive Director.
210–7. Powers and duties.
210–8. Criminal justice agency.
210–9. Criminal Justice Information Systems Trust Fund.
210–10. Supersedure and transfer.
210–11. Other functions.
210–12. Administrative action—Review under Administrative Review Law.
210–13. Construction of Act.
210–14. Illinois Law Enforcement Commission.

210–2. Purpose of Act

§ 2. Purpose of Act. The purpose of this Act is to coordinate the use of information in the criminal justice system; to promulgate effective criminal justice information policy; to encourage the improvement of criminal justice agency procedures and practices with respect to information; to provide new information technologies; to permit the evaluation of information practices and programs; to stimulate research and development of new methods and uses of criminal justice information for the improvement of the criminal justice system and the reduction of crime; and to protect the integrity of criminal history record information, while protecting the citizen's right to privacy.

P.A. 82–1039, § 2, eff. Jan. 1, 1983.

210–3. Definitions

§ 3. Definitions. Whenever used in this Act, and for the purposes of this Act unless the context clearly denotes otherwise:

(a) The term "criminal justice system" includes all activities by public agencies pertaining to the prevention or reduction of crime or enforcement of the criminal law, and particularly, but without limitation, the prevention, detection, and investigation of crime; the apprehension of offenders; the protection of victims and witnesses; the administration of juvenile justice; the prosecution and defense of criminal cases; the trial, conviction, and sentencing of offenders; as well as the correction and rehabilitation of offenders, which includes imprisonment, probation, parole and treatment.

PRIVACY OF CHILD VICTIMS OF CRIMINAL SEXUAL OFFENSES ACT

Paragraph
1451. Short title.
1452. Child.
1453. Confidentiality of law enforcement and court records.

AN ACT in relation to juries; and criminal law, procedure and sentencing. P.A. 84–1428, approved Sept. 24, 1986 and eff. July 1, 1987.

1451. Short title

§ 1. This Act shall be known and may be cited as the "Privacy of Child Victims of Criminal Sexual Offenses Act".

1452. Child

§ 2. As used in this Act, "Child" means any person under 18 years of age.

1453. Confidentiality of law enforcement and court records

§ 3. Confidentiality of Law Enforcement and Court Records. Notwithstanding any other law to the contrary, inspection and copying of law enforcement records maintained by any law enforcement agency or circuit court records maintained by any circuit clerk relating to any investigation or proceeding pertaining to a criminal sexual offense, by any person, except a judge, state's attorney, assistant state's attorney, psychologist, psychiatrist, social worker, doctor, parent, defendant or defendant's attorney in any criminal proceeding or investigation related thereto, shall be restricted to exclude the identity of any child who is a victim of such criminal sexual offense or alleged criminal sexual offense. A court may for the child's protection and for good cause shown, prohibit any person or agency present in court from further disclosing the child's identity.

A court may prohibit such disclosure only after giving notice and a hearing to all affected parties. In determining whether to prohibit disclosure of the minor's identity the court shall consider:

(a) the best interest of the child; and

(b) whether such nondisclosure would further a compelling State interest.

ILLINOIS UNIFORM CONVICTION INFORMATION ACT

Paragraph
1601. Short title.
1602. Legislative findings and purposes.
1603. Definitions.
1604. Applicability.
1605. Public availability of conviction information.
1606. Dissemination time frames and priorities.
1607. Restrictions on the use of conviction information.
1608. Form, manner and fees for requesting and obtaining conviction information.
1609. Procedural requirements for disseminating conviction information.
1610. Dissemination requests based upon fingerprint identification.
1611. Dissemination requests not based upon fingerprint identification.
1612. Error notification and correction procedure.
1613. Limitation on further dissemination.
1614. Judicial remedies.
1615. Civil damages.
1616. Attorney's fees and costs.
1617. Administrative sanctions.
1618. Criminal penalties.
1619. Coordinating and implementing policy.
1620. State liability and indemnification of units of local government.
1621. Audits.
1622. Supplementary remedies.
1623. Construction.
1624. Statute of limitations.

AN ACT providing for uniform, public access to conviction records maintained by the Illinois Department of State Police, amending certain Acts in relation thereto. P.A. 85-922, certified Dec. 1, 1987, eff. July 1, 1990.

1601. Short title

Paragraph effective July 1, 1990.

§ 1. Short Title. This Act shall be known and may be cited as the "Illinois Uniform Conviction Information Act."

1602. Legislative findings and purposes

Paragraph effective July 1, 1990.

§ 2. Legislative Findings and Purposes. (A) The legislature finds and hereby declares that conviction information maintained by the Illinois Department of State Police shall be publicly available in the State of Illinois.

(B) The purpose of this Act is: (1) to establish uniform policy for gaining access to and disseminating conviction information maintained by the State of Illinois; (2) to establish guidelines and priorities which fully support effective law enforcement and ongoing criminal investigations and which ensure that conviction information is made accessible within appropriate time frames; (3) to ensure the accuracy and completeness of conviction information in the State of Illinois; and (4) to establish procedures for effectively correcting errors and providing individuals with redress of grievances in the event that inaccurate or incomplete information may be disseminated about them.

1603. Definitions

Paragraph effective July 1, 1990.

§ 3. Definitions. Whenever used in this Act, and for the purposes of this Act, unless the context clearly indicates otherwise:

(A) "Accurate" means factually correct, containing no mistake or error of a material nature.

(B) The phrase "administer the criminal laws" includes any of the following activities: intelligence gathering, surveillance, criminal investigation, crime detection and prevention (including research), apprehension, detention, pretrial or post-trial release, prosecution, the correctional supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, or the collection, maintenance or dissemination of criminal history record information.

(C) "The Authority" means the Illinois Criminal Justice Information Authority.

(D) "Automated" means the utilization of computers, telecommunication lines, or other automatic data processing equipment for data collection or storage, analysis, processing, preservation, maintenance, dissemination, or display and is distinguished from a system in which such activities are performed manually.

(E) "Complete" means accurately reflecting all the criminal history record information about an individual that is required to be reported to the Department pursuant to Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended.[1]

(F) "Conviction information" means data reflecting a judgment of guilt or nolo contendere. The term includes all prior and subsequent criminal history events directly relating to such judgments, such as, but not limited to: (1) the notation of arrest; (2) the notation of charges filed; (3) the sentence imposed; (4) the fine imposed; and (5) all related probation, parole, and release information. Information ceases to be "conviction information" when a judgment of guilt is reversed or vacated.

For purposes of this Act, continuances to a date certain in furtherance of an order of supervision granted under Section 5–6–1 of the Unified Code of Corrections [2] or an order of probation granted under either Section 10 of the Cannabis Control Act [3] or Section 410 of the Illinois Controlled Substances Act [4] shall not be deemed "conviction information".

(G) "Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pretrial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

(H) "Criminal justice agency" means (1) a government agency or any subunit thereof which is authorized to administer the criminal laws and which allocates a substantial part of its annual budget for that purpose, or (2) an agency supported by public funds which is authorized as its principal function to administer the criminal laws and which is officially designated by the Department as a criminal justice agency for purposes of this Act.

(I) "The Department" means the Illinois Department of State Police.

(J) "Director" means the Director of the Illinois Department of State Police.

(K) "Disseminate" means to disclose or transmit conviction information in any form, oral, written, or otherwise.

(L) "Exigency" means pending danger or the threat of pending danger to an individual or property.

(M) "Non-criminal justice agency" means a State agency, Federal agency, or unit of local government that is not a criminal justice agency. The term does not refer to private individuals, corporations, or non-governmental agencies or organizations.

(N) "Requester" means any private individual, corporation, organization, employer, employment agency, labor organization, or non-criminal justice agency that has made a written application pursuant to this Act to obtain conviction information maintained in the files of the Department of State Police regarding a particular individual.

(O) "Statistical information" means data from which the identity of an individual cannot be ascertained, reconstructed, or verified and to which the identity of an individual cannot be linked by the recipient of the information.

1604. Applicability

Paragraph effective July 1, 1990.

§ 4. Applicability. (A) The provisions of this Act shall apply only to conviction information mandated by statute to be reported to or to be collected, maintained, or disseminated by the Department of State Police.

(B) The provisions of this Act shall not apply to statistical information.

(C) In the event of conflict between the application of this Act and the statutes listed in paragraphs (1), (2), (3), (4), or (5) below, the statutes listed below, as hereafter amended, shall control unless specified otherwise:

(1) The Juvenile Court Act; [1] or

(2) Section 5–3–4 of the Unified Code of Corrections; [2] or

(3) Paragraph (4) of Section 12 of "An Act providing for a system of probation, for the appointment and compensation of probation officers, and authorizing the suspension of final judgment and the imposition of sentence upon persons found guilty of certain defined crimes and offenses, and legalizing their ultimate discharge without punishment", approved June 10, 1911, as amended;[3] or

(4) Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended; [4] or

(5) "An Act in relation to pretrial services", certified January 5, 1987.[5]

1605. Public availability of conviction information

Paragraph effective July 1, 1990.

§ 5. Public Availability of Conviction Information. All conviction information mandated by statute to be collected and maintained by the Department of State Police shall be open to public inspection in the State of Illinois. All persons, state agencies and units of local government shall have access to inspect, examine and reproduce such information, in accordance with this Act, and shall have the right to take memoranda and abstracts concerning such information, except to the extent that the provisions of this Act or other Illinois statutes might create specific restrictions on the use or disclosure of such information.

1606. Dissemination time frames and priorities

Paragraph effective July 1, 1990.

§ 6. Dissemination Time Frames and Priorities. (A) The Department's duty and obligation to furnish criminal history record information to peace officers and criminal justice agencies shall take precedence over any requirement of this Act to furnish conviction information to non-criminal justice agencies or to the public. When, in

the judgment of the Director, such duties and obligations are being fulfilled in a timely manner, the Department shall furnish conviction information to requesters in accordance with the provisions of this Act. The Department may give priority to requests for conviction information from non-criminal justice agencies over other requests submitted pursuant to this Act.

(B) The Department shall attempt to honor requests for conviction information made pursuant to this Act in the shortest time possible. Subject to the dissemination priorities of subsection (A) of this Section, the Department shall respond to a request for conviction information within 2 weeks from receipt of a request.

1607. Restrictions on the use of conviction information

Paragraph effective July 1, 1990.

§ 7. Restrictions on the Use of Conviction Information. (A) The following provisions shall apply to requests submitted pursuant to this Act for employment or licensing purposes or submitted to comply with the provisions of subsection (B) of this Section:

(1) A requester shall, in the form and manner prescribed by the Department, submit a written application to the Department, signed by the individual to whom the information request pertains. The Department shall furnish the requester with 2 copies of its response.

(2) Each requester of conviction information furnished by the Department shall provide the individual named in the request with a copy of the response furnished by the Department. Within 7 working days of receipt of such copy, the individual shall have the obligation and responsibility to notify the requester if the information is inaccurate or incomplete.

(3) Unless notified by the individual named in the request or by the Department that the information furnished is inaccurate or incomplete, no requester of conviction information shall be liable for damages to any person to whom the information pertains for actions the requester may reasonably take in reliance on the accuracy and completeness of conviction information received from the Department pursuant to this act, if: (a) the requester in good faith believes the conviction information furnished by the Department to be accurate and complete; (b) the requester has complied with the requirements of paragraphs (1) and (2) of this subsection (A); and (c) the identifying information submitted by the requester to the Department is accurate with respect to the individual about whom the information was requested.

(4) Consistent with rules adopted by the Department pursuant to Section 7 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended,[1] the individual to whom the conviction information pertains may initiate proceedings directly with the Department to challenge or correct a record furnished by the Department pursuant to this subsection (A). Such correction proceedings shall be given priority over other individual record review and challenges filed with the Department.

(B) Regardless of the purpose of the request, no requester of conviction information shall be liable for damages to any person to whom the information pertains for actions the requester may reasonably take in reliance on the accuracy and completeness of conviction information received from the Department pursuant to this Act, if: (1) the requester in good faith believes the conviction information furnished by the Department to be accurate and complete; (2) the requester has complied with the requirements of paragraphs (1) and (2) of subsection (A) of this Section; and (3) the identifying information submitted by the requester to the Department is accurate with respect to the individual about whom the information was requested.

1608. Form, manner and fees for requesting and obtaining conviction information

Paragraph effective July 1, 1990.

§ 8. Form, Manner and Fees for Requesting and Obtaining Conviction Information. (A) The Department shall prescribe the form and manner for requesting and furnishing conviction information pursuant to this Act. The Department shall prescribe the types of identifying information that must be submitted by written application to the Department in order to process any request for conviction information and the form and manner for making such application, consistent with this Act.

(B) The Department shall establish the maximum fee it shall charge and assess for processing requests for conviction information, and the Authority shall establish the maximum fee that other criminal justice agencies shall charge and assess for processing requests for conviction information pursuant to this Act. Such fees shall include the general costs associated with performing a search for all information about each person for which a request is received including classification, search, retrieval, reproduction, manual and automated data processing, telecommunications services, supplies, mailing and those general costs associated with the inquiries required by subsection (B) of Section 9 and Section 13 of this Act,[1] and, when applicable, such fees shall provide for the direct payment to or reimbursement of a criminal justice agency for assisting the requester or the Department pursuant to this Act. In establishing the fees required by this Section, the Department and the Authority may also take into account the costs relating to multiple or automated requests and the costs relating to any other special factors or circumstances required by statute or rule. The maximum fees established by the Authority pursuant to this Section shall be reviewed annually, and may be waived or reduced at the discretion of a criminal justice agency.

[1] Paragraphs 1609 and 1613 of this chapter.

1609. Procedural requirements for disseminating conviction information

Paragraph effective July 1, 1990.

§ 9. Procedural Requirements for Disseminating Conviction Information. (A) In accordance with the time parameters of Section 6 [1] and the requirements of subsections (B) and (C) of this Section 9, the Department shall either: (1) transmit conviction information to the requester, including an explanation of any code or abbreviation; (2) explain to the requester why the information requested cannot be transmitted; or (3) inform the requester of any deficiency in the request.

(B) Before disseminating conviction information pursuant to this Act, the Department shall first conduct a formal update inquiry and review to make certain that the information to be disseminated is complete, except (1) in cases of exigency, (2) upon request by another criminal justice agency, (3) for conviction information that is less

than 30 days old, or (4) for information intentionally fabricated upon the express written authorization of the Director of State Police to support undercover law enforcement efforts.

(C) It shall be the responsibility of the Department to retain a record of every extra-agency dissemination of conviction information for a period of not less than 3 years. Such records shall be subject to audit by the Department, and shall, upon request, be supplied to the individual to whom the information pertains for requests from members of the general public, corporations, organizations, employers, employment agencies, labor organizations and non-criminal justice agencies. At a minimum, the following information shall be recorded and retained by the Department:

(1) The name of the individual to whom the disseminated information pertains;

(2) The name of the individual requesting the information;

(3) The date of the request;

(4) The name and address of the private individual, corporation, organization, employer, employment agency, labor organization or non-criminal justice agency receiving the information;

(5) The date of the dissemination; and

(6) The name of the Department employee releasing the information.

1610. Dissemination requests based upon fingerprint identification

Paragraph effective July 1, 1990.

§ 10. Dissemination Requests Based Upon Fingerprint Identification. When fingerprint identification accompanies a request for conviction information maintained by the Department, an appropriate statement shall be issued by the Department indicating that the information furnished by the Department positively pertains to the individual whose fingerprints were submitted and that the response contains all the conviction information that has been reported to the Department pursuant to Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended.[1]

1611. Dissemination requests not based upon fingerprint identification

Paragraph effective July 1, 1990.

§ 11. Dissemination Requests Not Based Upon Fingerprint Identification. (A) When a requester is not legally mandated to submit positive fingerprint identification to the Department or when a requester is precluded from submitting positive fingerprint identification to the Department due to exigency, an appropriate warning shall be issued by the Department indicating that the information furnished cannot be identified with certainty as pertaining to the individual named in the request and may only be relied upon as being accurate and complete if the requester has first complied with the requirements of subsection (B) of Section 7.[1]

(B) If the identifying information submitted by the requester to the Department corresponds to more than one individual found in the files maintained by the Department, the Department shall not disclose the information to the requester, unless it is determined by the Department that dissemination is still warranted due to exigency or to administer the criminal laws. In such instances, the Department may require the requester to submit additional identifying information or fingerprints in the form and manner prescribed by the Department.

1612. Error notification and correction procedure

Paragraph effective July 1, 1990.

§ 12. Error Notification and Correction Procedure. It is the duty and responsibility of the Department to maintain accurate and complete criminal history record information and to correct or update such information after determination by audit, individual review and challenge procedures, or by other verifiable means, that it is incomplete or inaccurate. Except as may be required for a longer period of time by Illinois law, the Department shall notify a requester if a subsequent disposition of conviction or a subsequent modification of conviction information has been reported to the Department within 30 days of responding to the requester.

1613. Limitation on further dissemination

Paragraph effective July 1, 1990.

§ 13. Limitation on Further Dissemination. Unless otherwise permitted by law or in the case of exigency, the subsequent dissemination of conviction information furnished by the Department pursuant to this Act shall only be permitted by a requester for the 30 day period immediately following receipt of the information. Except as permitted in this Section, any requester still wishing to further disseminate or to rely on the accuracy and completeness of conviction information more than 30 days from receipt of the information from the Department shall request that the Department conduct a formal update inquiry and review to verify that the information originally provided is still accurate and complete.

1614. Judicial remedies

Paragraph effective July 1, 1990.

§ 14. Judicial Remedies. (A) The Attorney General or a State's Attorney may bring suit in the circuit courts to prevent and restrain violations of this Act and to enforce the reporting provisions of Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended.[1] The Department may request the Attorney General to bring any such action authorized by this subsection.

(B) An individual aggrieved by a violation of this Act by a State agency or unit of local government shall have the right to pursue a civil action for damages or other appropriate legal or equitable remedy, including an action to compel the Department to disclose or correct conviction information in its files, once administrative remedies have been exhausted.

(C) Any civil action for damages alleging the negligent dissemination of inaccurate or incomplete conviction information by a State agency or by a unit of local government in violation of this Act may only be brought against the State agency or unit of local government and shall not be brought against any employee or official thereof.

(D) Civil remedies authorized by this Section may be brought in any circuit court of the State of Illinois in the county in which the violation occurs or in the county where the State agency or unit of local government is situated; except all damage claims against the State of Illinois for violations of this Act shall be determined by the Court of Claims.

1615. Civil damages

Paragraph effective July 1, 1990.

§ 15. Civil Damages. (A) In any action brought pursuant to this Act, an individual aggrieved by any violation of this Act shall be entitled to recover actual and general compensatory damages for each violation, together with costs and attorney's fees reasonably incurred, consistent with Section 16 of this Act.[1] In addition, an individual aggrieved by a willful violation of this Act shall be entitled to recover $1,000. In addition, an individual aggrieved by a non-willful violation of this Act for which there has been dissemination of inaccurate or incomplete conviction information shall be entitled to recover $200; provided, however, if conviction information is determined to be incomplete or inaccurate, by audit, by individual review and challenge procedures, or by other verifiable means, then the individual aggrieved shall only be entitled to recover such amount if the Department fails to correct the information within 30 days.

(B) For the purposes of this Act, the State of Illinois shall be liable for damages as provided in this Section and for attorney's fees and litigation costs as provided in Section 16 of this Act. All damage claims against the State of Illinois or any of its agencies for violations of this Act shall be determined by the Court of Claims.

(C) For purposes of limiting the amount of civil damages that may be assessed against the State of Illinois or a unit of local government pursuant to this Section, a State agency, a unit of local government, and the officials or employees of a State agency or a unit of local government may in good faith rely upon the assurance of another State agency or unit of local government that conviction information is maintained or disseminated in compliance with the provisions of this Act. However, such reliance shall not constitute a defense with respect to equitable or declaratory relief.

(D) For purposes of limiting the amount of damages that may be assessed against the State of Illinois pursuant to this Section, the Department may in good faith presume that the conviction information reported to it by a clerk of the circuit court or a criminal justice agency is accurate. However, such presumption shall not constitute a defense with respect to equitable or declaratory relief.

1616. Attorney's fees and costs

Paragraph effective July 1, 1990.

§ 16. Attorney's Fees and Costs. (A) Attorney's fees and other costs shall be awarded to any plaintiff who obtains declaratory, equitable, or injunctive relief. The amount awarded shall represent the reasonable value of the services rendered, taking into account all the surrounding circumstances, including but not limited to: the amount of attorney time and other disbursements determined by the court to be reasonably required by the nature of the case; the benefit rendered to the public; the skill demanded by the novelty or complexity of the issues; and the need to encourage the enforcement of this Act.

(B) Attorney's fees and other costs shall, consistent with subsection (A) of this Section, also be awarded to any plaintiff who obtains monetary relief for damages. However, in no event shall such an award exceed the actual amount of monetary damages awarded to the plaintiff.

(C) The court shall, consistent with subsection (A) of this Section, assess attorney's fees and litigation costs reasonably incurred by the State, a unit of local government, or government official or employee to defend against any private party or parties bringing an action pursuant to this Act, upon the court's determination that the action was brought in bad faith or is malicious, vexatious, or frivolous in nature.

1617. Administrative sanctions

Paragraph effective July 1, 1990.

§ 17. Administrative Sanctions. The Department shall refuse to comply with any request to furnish conviction information maintained in its files, if the requester has not acted in accordance with the requirements of this Act or rules and regulations issued pursuant thereto. The requester may appeal such a refusal by the Department to the Director. Upon written application by the requester, the Director shall hold a hearing to determine whether dissemination of the requested information would be in violation of this Act or rules and regulations issued pursuant to it or other federal or State law pertaining to the collection, maintenance or dissemination of criminal history record information. When the Director finds such a violation, the Department shall be prohibited from disseminating conviction information to the requester, under such terms and conditions and for such periods of time as the Director deems appropriate.

1618. Criminal penalties

Paragraph effective July 1, 1990.

§ 18. Criminal Penalties. Any person who intentionally and knowingly (A) requests, obtains, or seeks to obtain conviction information under false pretenses, or (B) disseminates inaccurate or incomplete conviction information in violation of this Act, or (C) fails to disseminate or make public conviction information as required under this Act, or (D) fails to correct or update a conviction record after it is determined by audit, by individual review and challenge procedures, or by other verifiable means to be inaccurate or incomplete for the purpose of causing harm to the individual named in the request or to whom the information pertains, or (E) violates any other provision of this Act, shall for each offense be guilty of a Class A misdemeanor.

1619. Coordinating and implementing policy

Paragraph effective July 1, 1990.

§ 19. Coordinating and Implementing Policy. The Department shall adopt rules to prescribe the appropriate form, manner and fees for complying with the requirements of this Act. The Authority shall adopt rules to prescribe form, manner and maximum fees which the Authority is authorized to establish pursuant to subsection (B) of Section 8 of this Act.[1] Such rulemaking is subject

to the provisions of the Illinois Administrative Procedure Act.[2]

[1] Paragraph 1608 of this chapter.

[2] Chapter 127, ¶ 1001 et seq.

1620. State liability and indemnification of units of local government

Paragraph effective July 1, 1990.

§ 20. State Liability and Indemnification of Units of Local Government. (A) The State of Illinois shall guarantee the accuracy and completeness of conviction information disseminated by the Department that is based upon fingerprint identification. The State of Illinois shall not be liable for the accuracy and completeness of any information disseminated upon identifying information other than fingerprints.

(B) The State of Illinois shall indemnify a clerk of the circuit court, a criminal justice agency, and their employees and officials from, and against, all damage claims brought by others due to dissemination by the Department of inaccurate or incomplete conviction information based upon positive fingerprint identification, provided that the conviction information in question was initially reported to the Department accurately and in the timely manner mandated by Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended.[1]

[1] Paragraph 206–2.1 of this chapter.

1621. Audits

Paragraph effective July 1, 1990.

§ 21. Audits. The Department shall regularly conduct representative audits of the criminal history record keeping and criminal history record reporting policies, practices, and procedures of the repositories for such information in Illinois to ensure compliance with the provisions of this Act and Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended.[1] The findings of such audits shall be reported to the Governor, General Assembly, and, upon request, to members of the general public.

[1] Paragraph 206–2.1 of this chapter.

1622. Supplementary remedies

Paragraph effective July 1, 1990.

§ 22. Supplementary Remedies. The remedies provided in this Act are supplementary to, and in no way modify or supplant, any other applicable causes of action arising under the Constitution, statutes, or common law of the State of Illinois.

1623. Construction

Paragraph effective July 1, 1990.

§ 23. Construction. (A) The provisions of this Act shall be construed to afford the maximum feasible protection to the individual's right to privacy and enjoyment of his good name and reputation and shall be construed to apply to both manual and automated criminal history record information systems wherever possible.

(B) The provisions of this Act shall be construed to make government agencies accountable to individuals in the collection, use, and dissemination of conviction information based upon positive fingerprint identification relating to them.

(C) Nothing in this Act shall be construed as restricting or prohibiting the dissemination of criminal history record information to a requesting criminal justice agency or peace officer or the dissemination of local criminal history record information maintained by criminal justice agencies on behalf of units of local government to members of the general public requesting such information.

1624. Statute of limitations

Paragraph effective July 1, 1990.

§ 24. Statute of Limitations. Any cause of action arising under this Act shall be barred unless brought within 3 years from the date of the violation of the Act or within 3 years from the date the plaintiff should reasonably have known of its violation, whichever is later.

Chapter 127

DEPARTMENT OF LAW ENFORCEMENT AND THE DEPARTMENT OF CORRECTIONS

55a. Powers and duties of Department of State Police

Amended by Illinois Public Act 86-575 as follows:

Section 3. Section 55a of "The Civil Administrative Code of Illinois", approved March 7, 1917, as amended, is amended to read as follows:

(Ch. 127, par. 55a)

Sec. 55a. The Department of State Police shall have the following powers and duties, and those set forth in Sections 55a-1 through 55c:

1. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the State police", approved July 20, 1949, as amended;

2. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the establishment and operation of radio broadcasting stations and the acquisition and installation of radio receiving sets for police purposes," approved July 7, 1931, as amended;

3. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to criminal identification and investigation," approved July 2, 1931;

4. To (a) investigate the origins, activities, personnel and incidents of crime and the ways and means to redress the victims of crimes, and study the impact, if any, of legislation relative to the effusion of crime and growing

crime rates, and enforce the criminal laws of this State related thereto, (b) enforce all laws regulating the production, sale, prescribing, manufacturing, administering, transporting, having in possession, dispensing, delivering, distributing, or use of controlled substances and cannabis, (c) employ skilled experts, scientists, technicians, investigators or otherwise specially qualified persons to aid in preventing or detecting crime, apprehending criminals, or preparing and presenting evidence of violations of the criminal laws of the State, (d) cooperate with the police of cities, villages and incorporated towns, and with the police officers of any county, in enforcing the laws of the State and in making arrests and recovering property, (e) apprehend and deliver up any person charged in this State or any other State of the United States with treason, felony, or other crime, who has fled from justice and is found in this State, and (f) conduct such other investigations as may be provided by law. Persons exercising these powers within the Department are conservators of the peace and as such have all the powers possessed by policemen in cities and sheriffs, except that they may exercise such powers anywhere in the State in cooperation with and after contact with the local law enforcement officials. Such persons may use false or fictitious names in the performance of their duties under this paragraph, upon approval of the Director, and shall not be subject to prosecution under the criminal laws for such use.

5. To: (a) be a central repository and custodian of criminal statistics for the State, (b) <u>be a central repository for criminal history record information</u> ~~procure and file for record photographs, plates, outline pictures, measurements, descriptions of all persons who have been arrested on a charge of violation of a penal statute of this~~ State, (c) procure and file for record such information as is necessary and helpful to plan programs of crime prevention,

law enforcement and criminal justice, (d) procure and file for record such copies of fingerprints, as may be required by law, ~~of--all--persons--arrested--on-charges-of-violating-any penal-statute-of-the-State~~, (e) establish general and field crime laboratories, (f) register and file for record such information as may be required by law for the issuance of firearm owner's identification cards, (h) employ polygraph operators, laboratory technicians and other specially qualified persons to aid in the identification of criminal activity, and (i) undertake such other identification, information, laboratory, statistical or registration activities as may be required by law.

~~Photographs,---fingerprints---or---other----records----of identification-so-taken-shall,-upon--the-acquittal-of-a-person charged--with--the--crime--or-upon-his-being-released-without being-convicted,-be-returned--to--him,--except--that--nothing herein--shall--prevent--the--Department--of-State-Police-from maintaining-all-records-of-any--person--who--is--admitted--to probation--upon--terms--and-conditions-and-who-fulfills-those terms-and-conditions-pursuant-to-Section-10-of--the--Cannabis Control--Act--and--Section--410--of--the--Illinois-Controlled Substances-Act,~~

6. To (a) acquire and operate one or more radio broadcasting stations in the State to be used for police purposes, (b) operate a statewide communications network to gather and disseminate information for law enforcement agencies, (c) operate an electronic data processing and computer center for the storage and retrieval of data pertaining to criminal activity, (d) undertake such other communication activities as may be required by law.

7. To provide, as may be required by law, assistance to local law enforcement agencies through (a) training, management and consultant services for local law enforcement agencies, and (b) the pursuit of research and the publication of studies pertaining to local law enforcement activities.

8. To exercise the rights, powers and duties which have been vested in the Department of State Police and Director of the Department of State Police by "An Act in relation to control and regulation of controlled substances, and to make an appropriation therefor", approved July 5, 1957; .

9. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "The Illinois Vehicle Code", approved September 29, 1969 as amended;

10. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act relating to the acquisition, possession and transfer of firearms and firearm ammunition, to provide a penalty for the violation thereof, and to make an appropriation in connection therewith", approved August 3, 1967;

11. To enforce and administer such other laws in relation to law enforcement as may be vested in the Department;

12. To transfer jurisdiction of any realty title to which is held by the State of Illinois under the control of the Department to any other Department of the State Government or to the State Employees Housing Commission, of to acquire or accept Federal land, when such transfer, acquisition or acceptance is advantageous to the State and is approved in writing by the Governor;

13. With the written approval of the Governor, to enter into agreements with other departments created by this Act, for the furlough of inmates of the penitentiary to such other departments for their use in research programs being conducted by them.

For the purpose of participating in such research projects, the Department may extend the limits of any inmate's place of confinement, when there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions, to leave

the confines of the place unaccompanied by a custodial agent of the Department. The Department shall make rules governing the transfer of the inmate to the requesting other department having the approved research project, and the return of such inmate to the unextended confines of the penitentiary. Such transfer shall be made only with the consent of the inmate.

The willful failure of a prisoner to remain within the extended limits of his or her confinement or to return within the time or manner prescribed to the place of confinement designated by the Department in granting such extension shall be deemed an escape from custody of the Department and punishable as provided in Section 3-6-4 of the "Unified Code of Corrections", as amended.

14. To provide investigative services, with all of the powers possessed by policemen in cities and sheriffs, in and around all race tracks subject to the Horse Racing Act of 1975.

15. To expend such sums as the Director deems necessary from Contractual Services appropriations for the Division of Criminal Investigation for the purchase of evidence and for the employment of persons to obtain evidence. Such sums shall be advanced to agents authorized by the Director to expend funds, on vouchers signed by the Director.

16. To assist victims and witnesses in gang crime prosecutions through the administration of funds appropriated from the Gang Violence Victims and Witnesses Fund to the Department. Such funds shall be appropriated to the Department and shall only be used to assist victims and witnesses in gang crime prosecutions and such assistance may include any of the following:

(a) temporary living costs;

(b) moving expenses;

(c) closing costs on the sale of private residence;

(d) first month's rent;

(e) security deposits;

(f) apartment location assistance;

(g) other expenses which the Department considers appropriate; and

(h) compensation for any loss of or injury to real or personal property resulting from a gang crime to a maximum of $5,000, subject to the following provisions:

(1) in the case of loss of property, the amount of compensation shall be measured by the replacement cost of similar or like property which has been incurred by and which is substantiated by the property owner,

(2) in the case of injury to property, the amount of compensation shall be measured by the cost of repair incurred and which can be substantiated by the property owner,

(3) compensation under this provision is a secondary source of compensation and shall be reduced by any amount the property owner receives from any other source as compensation for the loss or injury, including, but not limited to, personal insurance coverage,

(4) no compensation may be awarded if the property owner was an offender or an accomplice of the offender, or if the award would unjustly benefit the offender or offenders, or an accomplice of the offender or offenders.

No victim or witness may receive such assistance if he or she is not a part of or fails to fully cooperate in the prosecution of gang crime members by law enforcement authorities.

The Department shall promulgate any rules necessary for the implementation of this amendatory Act of 1985.

17. To conduct arson investigations.

18. To develop a separate statewide statistical police contact record keeping system for the study of juvenile delinquency. The records of this police contact system shall be limited to statistical information. No individually identifiable information shall be maintained in the police contact statistical record system.

19. To develop a separate statewide central adjudicatory and dispositional records system for persons under 19 years of age who have been adjudicated delinquent minors and to make information available to local registered participating police youth officers so that police youth officers will be able to obtain rapid access to the juvenile's background from other jurisdictions to the end that the police youth officers can make appropriate dispositions which will best serve the interest of the child and the community. Information maintained in the adjudicatory and dispositional record system shall be limited to the incidents or offenses for which the minor was adjudicated delinquent by a court, and a copy of the court's dispositional order. All individually identifiable records in the adjudicatory and dispositional records system shall be destroyed when the person reaches 19 years of age.

20. To develop rules which guarantee the confidentiality of such individually identifiable adjudicatory and dispositional records except when used for the following:

(a) by authorized juvenile court personnel or the state's attorney in connection with proceedings under the Juvenile Court Act of 1987; or

(b) inquiries from registered police youth officers.

21. To develop administrative rules and administrative hearing procedures which allow a minor, his or her attorney, his or her parents or guardian access to individually identifiable adjudicatory and dispositional records for the purpose of determining or challenging the accuracy of the records. Final administrative decisions shall be subject to the provisions of the Administrative Review Law.

For the purposes of this Act "police youth officer" means a member of a duly organized State, county or municipal police force who is assigned by his or her Superintendent, Sheriff or chief of police, as the case may be, to specialize in youth problems.

22. To charge, collect and receive fees or moneys equivalent to the cost of providing Department of State Police personnel, equipment and services to other State agencies and federal agencies and equivalent to the cost of providing training to local governmental agencies on such terms and conditions as in the judgment of the Director are in the best interest of the State; and to charge, collect and receive fees or moneys equivalent to the cost of providing conviction information pursuant to Sections 3 and 3.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended, to units of local government, and local liquor control commissioners on such terms and conditions as in the judgment of the Director are in the best interest of the State. The Department may also charge, collect and receive fees or moneys equivalent to the cost of providing electronic data processing lines or related telecommunication services to local governments, but only when such services can be provided by the Department at a cost less than that experienced by said local governments through other means. All services provided by the Department shall be conducted pursuant to contracts in accordance with the "Intergovernmental Cooperation Act," and all telecommunication services shall be provided pursuant to the provisions of Section 67.18 of this Code.

All fees received by the Department of State Police under this Act or the "Illinois Uniform Conviction Information Act", certified December 1, 1987, shall be deposited in a special fund in the State Treasury to be known as the State Police Services Fund. The money deposited in the State Police Services Fund shall be appropriated to the Department of State Police for expenses of the Department of State Police.

Upon the completion of any audit of the Department of State Police as prescribed by the Illinois State Auditing Act, which audit includes an audit of the State Police

Services Fund, the Department of State Police shall make the audit open to inspection by any interested person.

23. To exercise the powers and perform the duties which have been vested in the Department of State Police by the "Intergovernmental Missing Child Recovery Act of 1984", enacted by the 83rd General Assembly and to establish reasonable rules and regulations necessitated thereby.

24. (a) To establish and maintain a statewide Law Enforcement Agencies Data System (LEADS) for the purpose of effecting an immediate law enforcement response to reports of missing persons, including lost, missing or runaway minors. The Department shall implement an automatic data exchange system to compile, to maintain and to make available to other law enforcement agencies for immediate dissemination data which can assist appropriate agencies in recovering missing persons.

(b) In exercising its duties under this subsection, the Department shall:

(1) provide a uniform reporting format for the entry of pertinent information regarding the report of a missing person into LEADS;

(2) develop and implement a policy whereby a statewide or regional alert would be used in situations relating to the disappearances of individuals, based on criteria and in a format established by the Department. Such a format shall include, but not be limited to, the age of the missing person and the suspected circumstance of the disappearance;

(3) notify all law enforcement agencies that reports of missing persons shall be entered as soon as the minimum level of data specified by the Department is available to the reporting agency, and that no waiting period for the entry of such data exists;

(4) compile and retain information regarding lost, abducted, missing or runaway minors in a separate data file, in a manner that allows such information to be used by law

enforcement and other agencies deemed appropriate by the Director, for investigative purposes. Such information shall include the disposition of all reported lost, abducted, missing or runaway minor cases;

(5) compile and maintain an historic data repository relating to lost, abducted, missing or runaway minors and other missing persons in order to develop and improve techniques utilized by law enforcement agencies when responding to reports of missing persons; and

(6) create a quality control program regarding confirmation of missing person data, timeliness of entries of missing person reports into LEADS and performance audits of all entering agencies.

25. On request of a school board or regional superintendent of schools, to conduct an inquiry pursuant to Section 10-21.9 or 34-18.5 of The School Code to ascertain if an applicant for employment in a school district has been convicted of any criminal or drug offenses enumerated in Section 10-21.9 or 34-18.5 of The School Code. The Department shall furnish such conviction information to the President of the school board of the school district which has requested the information, or if the information was requested by the regional superintendent to that regional superintendent.

26. To promulgate rules and regulations necessary for the administration and enforcement of its powers and duties, wherever granted and imposed, pursuant to The Illinois Administrative Procedure Act.

27. To (a) promulgate rules pertaining to the certification and training of law enforcement officers as electronic criminal surveillance officers, (b) provide training and technical assistance to State's Attorneys and local law enforcement agencies pertaining to the interception of private oral communications, (c) promulgate rules necessary for the administration of Article 108B of the "Code

of Criminal Procedure of 1963", and (d) charge a reasonable fee to each law enforcement agency who sends officers to receive training as electronic criminal surveillance officers.

28. Upon the request of any private organization~~, other than a school~~ which devotes a major portion of its time to the provision of recreational, social, educational or child safety services to children, to conduct, pursuant to positive identification, criminal background investigations of all of that organization's current employees, current volunteers, prospective employees or prospective volunteers charged with the care and custody of children during the provision of the organization's services, and to report to the requesting organization any record of convictions maintained in the Department's files about such persons. The Department shall charge an application fee, based on actual costs, for the dissemination of conviction information pursuant to this subsection. The Department is empowered to establish this fee and shall prescribe the form and manner for requesting and furnishing conviction information pursuant to this subsection. Information received by the organization from the Department concerning an individual shall be provided to such individual. Any such information obtained by the organization shall be confidential and may not be transmitted outside the organization and may not be transmitted to anyone within the organization except as needed for the purpose of evaluating the individual. Only information and standards which bear a reasonable and rational relation to the performance of child care shall be used by the organization. Any employee of the Department or any member, employee or volunteer of the organization receiving confidential information under this subsection who gives or causes to be given any confidential information concerning any criminal convictions of an individual shall be guilty of a Class A misdemeanor unless release of such information is authorized

by this subsection.

29. Upon the request of the Department of Children and Family Services, to investigate reports of child abuse or neglect.

30. To obtain registration of a fictitious vital record pursuant to Section 15.1 of the "Vital Records Act", as now or hereafter amended.

31. To collect and disseminate information relating to criminal offenses motivated because of race, color, religion, or national origin, contingent upon the availability of State or Federal funds to revise and upgrade the Illinois Uniform Crime Reporting System. All law enforcement agencies shall report monthly to the Department of State Police concerning such offenses in such form and in such manner as prescribed by rules and regulations adopted by the Department of State Police. Such information shall be compiled by the Department and be disseminated upon request to any local law enforcement agency, unit of local government, or state agency. Dissemination of such information shall be subject to all confidentiality requirements otherwise imposed by law. The Department of State Police shall provide training for State Police officers in identifying, responding to, and reporting all criminal offenses motivated because of race, color, religion, or national origin. The Illinois Local Governmental Law Enforcement Officer's Training Board shall develop and certify a course of such training to be made available to local law enforcement officers.

Section 4. Section 30 of "An Act providing for uniform, public access to conviction records maintained by the Illinois Department of State Police, amending certain Acts in relation thereto", Public Act 85-922, certified December 1, 1987, is amended to read as follows:

Sec. 30. This Act takes effect January ~~July~~ 1, 1991 ~~1990~~.

APPROVED

9th day of September, 1989 A.D.

Michael J. Madigan
Speaker, House of Representatives

Philip J. Rock
President of the Senate

GOVERNOR

Chapter 116

STATE RECORDS ACT

AN ACT relating to State records, providing for a State Archives division of the office of Secretary of State, creating the State Records Commission and defining its powers and duties, providing for a continuing records and paperwork management program and repealing an Act therein named. Laws 1957, p. 1687, approved and eff. July 6, 1957.

43.4. Title

§ 1. This Act shall be known as "The State Records Act."

43.5. Definitions

§ 2. For the purposes of this Act:

"Secretary" means Secretary of State.

"Record" or "records" means all books, papers, maps, photographs, or other official documentary materials, regardless of physical form or characteristics, made, produced, executed or received by any agency in the State in pursuance of state law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its successor as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the State or of the State Government, or because of the informational data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this Act.

"Agency" means all parts, boards, and commissions of the executive branch of the State government including but not limited to all departments established by the "Civil Administrative Code of Illinois," as heretofore or hereafter amended.

"Public Officer" or "public officers" means all officers of the executive branch of the State government, all officers created by the "Civil Administrative Code of Illinois," as heretofore or hereafter amended,[1] and all other officers and heads, presidents, or chairmen of boards, commissions, and agencies of the State government.

"Commission" means the State Records Commission.

"Archivist" means the Secretary of State.

43.6. Reports and records of obligation, receipt and use of public funds as public records

§ 3. Reports and records of the obligation, receipt and use of public funds of the State are public records available for inspection by the public. These records shall be kept at the official place of business of the State or at a designated place of business of the State. These records shall be available for public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records. The person in charge of such records may require a notice in writing to be submitted 24 hours prior to inspection and may require that such notice specify which records are to be inspected. Nothing in this section shall require the State to invade or assist in the invasion of any person's right to privacy. Nothing in this Section shall be construed to limit any right given by statute or rule of law with respect to the inspection of other types of records.

Warrants and vouchers in the keeping of the State Comptroller may be destroyed by him as authorized in "An Act in relation to the reproduction and destruction of records kept by the Comptroller", approved August 1, 1949, as now or hereafter amended.[1]

Amended by P.A. 79-139, § 1, eff. Oct. 1, 1975.

43.7. Right of access by public—Reproductions—Fees

§ 4. Any person shall have the right of access to any public records of the expenditure or receipt of public funds as defined in Section 3 [1] for the purpose of obtaining copies of the same or of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. The photographing shall be done under the supervision of the lawful custodian of said records, who has the right to adopt and enforce reasonable rules governing such work. The work of photographing shall, when possible, be done in the room where the records, documents or instruments are kept. However, if in the judgment of the lawful custodian of the records, documents or instruments, it would be impossible or impracticable to perform the work in the room in which the records, documents or instruments are kept, the work shall be done in some other room or place as nearly adjacent as possible to the room where kept. Where the providing of a separate room or place is necessary, the expense of providing for the same shall be borne by the person or persons desiring to photograph the records, documents or instruments. The lawful custodian of the records, documents or instruments may charge the same fee for the services rendered by him or his assistant in supervising the photographing as may be charged for furnishing a certified copy or copies of the said record, document or instrument. In the event that the lawful custodian of said records shall deem it advisable in his judgment to furnish photographs of such public records, instruments or documents in lieu of allowing the same to be photographed, then in such event he may furnish photographs of such records and charge a fee of 35¢ per page when the page to be photographed does not exceed legal size and $1.00 per page when the page to be photographed exceeds legal size and where the fees and charges therefor are not otherwise fixed by law.

43.8. State Archives Division—Creation

§ 5. The Secretary of State shall provide for a State Archives Division as a repository of State records. The State Archives may utilize space in the Archives Building or other buildings as may be necessary or appropriate for the purpose, in the opinion of the Secretary of State.

43.9. Secretary of State to be State Archivist—Assistants

§ 6. The Secretary of State shall be the State Archivist and Records Administrator and he shall appoint such assistants, who shall be technically qualified and experienced in the control and management of archival materials and in records management practices and techniques, as are necessary to carry out his duties as State Archivist.

43.10. Powers and duties of secretary—Public access to records

§ 7. The Secretary:

(1) whenever it appears to him to be in the public interest, may accept for deposit in the State Archives the records of any agency or of the Legislative or Judicial branches of the State government that are determined by him to have sufficient historical or other value to warrant the permanent preservation of such records by the State of Illinois;

(2) may accept for deposit in the State Archives official papers, drawings, maps, writings, and records of every description of counties, municipal corporations, political subdivisions and courts of this State, and records of the federal government pertaining to Illinois, when such materials are deemed by the Secretary to have sufficient historical or other value to warrant their continued preservation by the State of Illinois.

(3) whenever he deems it in the public interest, may accept for deposit in the State Archives motion picture films, still pictures, and sound recordings that are appropriate for preservation by the State government as evidence of its organization, functions and policies.

(4) shall be responsible for the custody, use, servicing and withdrawal of records transferred for deposit in the State Archives. The Secretary shall observe any rights, limitations, or restrictions imposed by law relating to the use of records, including the provisions of the Mental Health and Developmental Disabilities Confidentiality Act [1] which limit access to certain records or which permit access to certain records only after the removal of all personally identifiable data. Access to restricted records shall be at the direction of the depositing State agency or, in the case of records deposited by the legislative or judicial branches of State government at the direction of the branch which deposited them, but no limitation on access to such records shall extend more than 75 years after the creation of the records, except as provided in the Mental Health and Developmental Disabilities Confidentiality Act. The Secretary shall not impose restrictions on the use of records that are defined by law as public records or as records open to public inspection;

(5) shall make provision for the preservation, arrangement, repair, and rehabilitation, duplication and reproduction, description, and exhibition of records deposited in the State Archives as may be needed or appropriate;

(6) shall make or reproduce and furnish upon demand authenticated or unauthenticated copies of any of the documents, photographic material or other records deposited in the State Archives, the public examination of which is not prohibited by statutory limitations or restrictions or protected by copyright. The Secretary shall charge a fee therefor in accordance with the schedule of fees in Section 10 of "An Act concerning fees and salaries, and to classify the several counties of this state with reference thereto," approved March 29, 1872, as amended,[2] except that there shall be no charge for making or authentication of such copies or reproductions furnished to any department or agency of the State for official use. When any such copy or reproduction is authenticated by the Great Seal of the State of Illinois and is certified by the Secretary, or in his name by his authorized representative, such copy or reproduction shall be admitted in evidence as if it were the original.

(7) any official of the State of Illinois may turn over to the Secretary of State, with his consent, for permanent preservation in the State Archives, any official books, records, documents, original papers, or files, not in current use in his office, taking a receipt therefor.

(8) shall require of all persons, firms, corporations or other legal entities who desire access to information not defined as public records or as records open to public inspection, but open to the public, as provided in this Act, an affidavit dated and signed by the person making the request or his representative, notarized by a notary public, and containing substantially the following:

"Application and Agreement for Release of Information

"The Secretary of State, State of Illinois, agrees to release the following described information subject to the following agreement:

"It is hereby agreed by _____, known as the User, that the information, lists, names and other material provided by the Office of the Secretary of State shall not be made available to other persons, firms, corporations or other legal entities. The User agrees that it shall preserve the confidentiality of any person or persons named in these records.

"The information contained shall not be exchanged with any other person, firm or corporation for other information or lists unless the identity of any person or persons named in these records has been removed. Such an act shall constitute a material breach of this agreement and all information previously received by the User shall be returned to the Office of the Secretary of State, State of Illinois.

"The user understands that any violation of this agreement is a Class A misdemeanor, punishable by imprisonment in a penal institution other than a penitentiary for not than one year or a fine not exceeding $1,000, or both.

"Description of information: _____

Date	Date
Signature	Signature
_____	Secretary of State, State of Illinois
User or his representative	by _____
_____	Director
User's name, if not above	Archives and Records Division
_____	
User's Address"	

A violation of the provisions of an agreement under this paragraph (8) is a Class A misdemeanor.
Amended by P.A. 81-913, § 1, eff. Sept. 22, 1979.

43.11. Preservation of records

§ 8. The head of each agency shall cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.

This section shall not be construed to prevent the legal disposal of any records determined by the agency and by the Commission not to have sufficient value to warrant their continued preservation by the State or by the agency concerned.

43.12. Programs for efficient management of records

§ 9. The head of each agency shall establish, and maintain an active, continuing program for the economical and efficient management of the records of the agency.

Such program:

(1) shall provide for effective controls over the creation, maintenance, and use of records in the conduct of current business;

(2) shall provide for cooperation with the Secretary in applying standards, procedures, and techniques to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value;

(3) shall provide for compliance with the provisions of this Act and the rules and regulations issued thereunder.

43.13. Transfer of agency records

§ 10. Whenever the head of an agency determines that substantial economies or increased operating efficiency can be effected thereby, he may, subject to the approval of the Secretary, provide for the storage, care, and servicing of records that are appropriate therefor in a records center operated and maintained by the Secretary.

43.14. Records not to be damaged or destroyed

§ 11. All records made or received by or under the authority of or coming into the custody, control or possession of public officials of this State in the course of their public duties are the property of the State and shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part except as provided by law.

43.15. Surveys of management and disposal practices

§ 12. The Secretary shall make continuing surveys of State records management and disposal practices and obtain reports thereon from agencies.

43.16. Improvement of management practices and security of records

§ 13. The Secretary, with due regard to the program activities of the agencies concerned, shall make provision for the economical and efficient management of records of State agencies by analyzing, developing, promoting, coordinating, and promulgating standards, procedures, and techniques designed to improve the management of records, to insure the maintenance and security of records deemed appropriate for preservation, and to facilitate the segregation and disposal of records of temporary value. The Secretary shall aid also in promoting the efficient and economical utilization of space, equipment, and supplies needed for the purpose of creating, maintaini..g, storing, and servicing records.

43.17. Standards for retention

§ 14. The Secretary shall establish standards for the selective retention of records of continuing value and assist agencies in applying such standards to records in their custody.

43.18. Records centers

§ 15. The Secretary shall establish, maintain, and operate records centers for the storage, care, and servicing of records of State agencies pending their deposit in the State Archives or the disposition of such records in any other manner authorized by law. The Secretary may establish, maintain, and operate centralized microfilming services for agencies.

43.18a. System for protection and preservation of records—Establishment

§ 15a. The Secretary of State, and State Archivist, shall establish a system for the protection and preservation of essential State records necessary for the continuity of governmental functions in the event of an emergency arising from enemy action or natural disaster and for the reestablishment of State government thereafter.

43.18b. Records essential for emergency government operation—Determination

§ 15b. The Secretary shall:

(1) Determine what records are "essential" for emergency government operation through consultation with all branches of government, State agencies, and with the State Civil Defense Agency.

(2) Determine what records are "essential" for post-emergency government operations and provide for their protection and preservation.

(3) Establish the manner in which essential records for emergency and post-emergency government operations shall be preserved to insure emergency usability.

(4) Require every State agency to establish and maintain an essential records preservation program.

(5) Provide for security storage or relocation of essential State records in the event of an emergency arising from enemy attack or natural disaster.

Added by Laws 1961, p. 3508, eff. Aug. 18, 1961.

43.19. State Records Commission—Membership—Meetings—Duties

§ 16. There is created the State Records Commission. The Commission shall consist of the following members: The Secretary of State, or his representative, who shall act as chairman; the State Historian, who shall serve as secretary; the State Treasurer, or his authorized representative; the Director of Administrative Services, or his authorized representative; the Attorney General, or his authorized representative; and the State Comptroller, or his authorized representative. The Commission shall meet whenever called by the chairman, who shall have no vote on matters considered by the Commission. It shall be the duty of the Commission to determine what records no longer have any administrative, legal, research, or historical value and should be destroyed or disposed of otherwise.

Amended by P.A. 80-57, § 19, eff. July 1, 1977.

43.20. Disposal and reproduction of records—Regulations

§ 17. Regardless of other authorization to the contrary, no record shall be disposed of by any agency of the State, unless approval of the State Records Commission is first obtained. The Commission shall issue regulations, not inconsistent with this Act, which shall be binding on all agencies. Such regulations shall establish procedures for compiling and submitting to the Commission lists and schedules of records proposed for disposal; procedures for the physical destruction or other disposition of records proposed for disposal; and standards for the reproduction of records by photography or microphotographic processes with the view to the disposal of the original records. Such standards shall relate to the quality of film used, preparation of the records for filming, proper identification matter on the records so that an individual document or series of documents can be located on the film with reasonable facility, and that the copies contain all significant record detail, to the end that the photographic or microphotographic copies will be adequate.

Such regulations shall also provide that the State archivist may retain any records which the Commission has authorized to be destroyed, where they have a historical value, and that the State archivist may deposit them in the State Library or State historical museum or with a historical society, museum or library.

43.21. Reports and schedules to be submitted by agency heads

§ 18. The head of each agency shall submit to the Commission, in accordance with the regulations of the Commission, lists or schedules of records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal value to warrant their further preservation. The head of each agency also shall submit lists or schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.

43.22. Disposition of reports and schedules

§ 19. All lists and schedules submitted to the Commission shall be referred to the Archivist who shall ascertain whether the records proposed for disposal have value to other agencies of the State or whether such records have research or historical value. The Archivist shall submit such lists and schedules with his recommendations in writing to the Commission; and the final disposition of such records shall be according to the orders of the Commission.

43.23. Destruction of nonrecord materials

§ 20. Nonrecord materials or materials not included within the definition of records as contained in this Act may be destroyed at any time by the agency in possession of such materials without the prior approval of the Commission. The Commission may formulate advisory procedures and interpretation to guide in the disposition of nonrecord materials.

43.24. Disposal of records—Consent of agency head

§ 21. The Archivist shall submit to the Commission, with his recommendations in writing, disposal lists of records that have been deposited in the State Archives as provided in subsections (1), (2), and (3) of Section 7 of this Act,[1] after having determined that the records concerned do not have sufficient value to warrant their continued preservation by the State. However, any records deposited in the State Archives by any agency pursuant to the provisions of subsection (1) of Section 7 of this Act shall not be submitted to the Commission for disposal without the written consent of the head of such agency.

[1] Paragraph 43.10 of this chapter.

43.25. Disposition of records of terminated State agency

§ 22. Upon the termination of any State agency whose function or functions have not been transferred to another agency, the records of such terminated agency shall be deposited in the State Archives. The Commission shall determine which records are of sufficient legal, historical, administrative, or fiscal value to warrant their continued preservation by the State. Records that are determined to be of insufficient value to warrant their continued preservation shall be disposed of as provided in Section 17 of this Act.[1]

43.26. Repeal—Saving clause

§ 23. "An Act creating the State Records Commission and defining its powers and duties," approved July 23, 1943, as amended, is repealed,[1] but all orders heretofore issued by the State Records Commission created by said Act shall stand and continue to be in full force and effect.

[1] Paragraphs 39 to 43.3 (repealed) of this chapter.

43.27. Penalty for violation

§ 24. Any officer or employee who violates the provisions of Section 3 of this Act[1] is guilty of a Class B misdemeanor.

Amended by P.A. 77-2221, § 1, eff. Jan. 1, 1973.

[1] Paragraph 43.6 of this chapter.

43.28. Partial invalidity

§ 25. The invalidity of any section or part or portion of this act shall not affect the validity of the remaining sections or parts thereof.

207. Exemptions from inspection and copying

§ 7. (1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by Federal or State law or rules and regulations adopted pursuant thereto.

(b) Information which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless such disclosure is consented to in writing by the individual subjects of such information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

(i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for such positions;

(iii) files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;

(iv) information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute; and

(v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies.

(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;

(ii) interfere with pending administrative enforcement proceedings conducted by any public body;

(iii) deprive a person of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;

(vi) constitute an invasion of personal privacy under subsection (b) of this Section;

(vii) endanger the life or physical safety of law enforcement personnel or any other person; or

(viii) obstruct an ongoing criminal investigation.

(d) Criminal history record information maintained by State or local criminal justice agencies, except the following which shall be open for public inspection and copying:

(i) chronologically maintained arrest information, such as traditional arrest logs or blotters;

(ii) the name of a person in the custody of a law enforcement agency and the charges for which that person is being held;

(iii) court records which are public;

(iv) records which are otherwise available under State or local law; or

(v) records in which the requesting party is the individual identified, except as provided under Section 7(c)(vii) of this Act.

"Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising therefrom, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

Chapter 30

LEADS REGULATIONS & POLICIES

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1. INTRODUCTION

The Illinois LAW ENFORCEMENT AGENCIES DATA SYSTEM (LEADS) provided by the Department of Law Enforcement is a statewide, computerized telecommunications system designed to provide services, information, and capabilities to the law enforcement and criminal justice community in the State of Illinois. The heart of the system is the LEADS computer in Springfield operated by the Illinois Department of Law Enforcement. Terminals and computers located in authorized law enforcement and criminal justice agencies are connected by communications lines to the LEADS computer. This gives these agencies access to information stored in the LEADS files, and through LEADS, gives them access to other criminal justice information systems. The degree to which access to these and other files is granted to the various types of criminal justice agencies is described further in these Regulations. It should be noted, however, that the information, capabilities, etc. available from and through LEADS are for bonafide law enforcement and criminal justice purposes only.

The Director of the Illinois Department of Law Enforcement is responsible for establishing policy, procedures, and regulations consistent with state and federal rules, policies, and law by which LEADS operates. The Director has appointed the LEADS Advisory Policy Board (APB) to reflect the needs and desires of the law enforcement and criminal justice community and to make recommendations concerning policies and procedures consistent with existent state and federal rules. The LEADS APB Charter follows as part of Section II of these Regulations.

LEADS is a user-oriented system, and strong emphasis is placed on maintaining effective communications with field users. A statewide LEADS Conference is held during the Fall of each year. Regional mini-conferences are scheduled each year in varying locations throughout the State. The Department of Law Enforcement and LEADS attempt to be responsive to the needs of the law enforcement and criminal justice community that they serve.

A system is only as good as those who use it. It is the intent of the following LEADS Regulations and Policies to set forth the requirements, responsibilities, limitations, and restrictions to assist in making user agencies aware of what can and cannot be done. Questions or comments on any portion of these Regulations should be submitted in writing to: LEADS Administrator, 501 Armory Building, Springfield, IL 62706.

II. THE LEADS ADVISORY POLICY BOARD (APB)

A. CHARTER

1. OFFICIAL DESIGNATION

Pursuant to the authority vested in the Director of the Department of Law Enforcement, State of Illinois, an Advisory Policy Board for the data processing function of this Department is hereby established. This Board will be known as the Law Enforcement Agencies Data System (LEADS) Advisory Policy Board (APB) and shall operate under the procedures contained herein and shall hereafter be referred to as "The Board".

2. THE BOARD'S OBJECTIVES AND SCOPE OF ACTIVITY

To recommend to the Director of the Department of Law Enforcement general policy with respect to the philosophy, concept, and operational principles of LEADS, particularly the relationship with local agencies, other state departments, the FBI's National Crime Information Center (NCIC), the National Law Enforcement Telecommunications System (NLETS) and all criminal justice agencies.

To review and consider rules, regulations, and procedures for the operation of LEADS.

To consider the real-time, random-access capabilities for LEADS operational needs of the criminal justice agencies in the light of public policy, participating agencies' policies, and local, state and federal statutes.

To review and consider security and confidentiality aspects of LEADS.

To recommend standards for participation by criminal justice agencies in LEADS.

3. TENURE

The period of time necessary for the Board to carry out its purpose.

4. REPORTING

The Board shall report to the Director of the Department of Law Enforcement or his designated appointee.

5. SUPPORT SERVICES

The Department of Law Enforcement will provide the necessary support services for the Board.

II.A. LEADS APB CHARTER (Continued)

6. DUTIES

To accept for review and deliberation from Divisions of the Department of Law Enforcement, Secretary of State, the LEADS users, and the public; matters coming within the Board objectives. To report to the Director the results of all deliberations, together with its recommendations. The Chairperson of the Board shall appoint a Working Group Committee (WGC) to address work task priorities, training, education, conferences, computer interfaces, system performance and statistics, and problems of users on a continuing basis. The Chairperson of the WGC shall be appointed by the Board Chairperson. The Chairperson of the Board shall appoint a Committee on Security and Confidentiality to address the problems of security on a continuing basis.

7. DATE OF CHARTER

April 1, 1977.

B. AUTHORIZATION FOR LEADS

The authority for LEADS is derived from Chapter 127 and Chapter 38 of the Illinois Revised Statutes authorizing the Department of Law Enforcement to acquire, collect, classify and preserve identification, criminal identification, crime and other records and to operate an electronic data processing center for the storage and retrieval of data pertaining to criminal activity and exchange of these records, with and for the official use of authorized officials of criminal justice agencies at all levels of local, state and federal governmental agencies.

II. THE LEADS APB (Continued)

C. COMPOSITION OF LEADS ADVISORY POLICY BOARD

The LEADS Board shall be composed of eleven representatives of the law enforcement and criminal justice agencies throughout the State. The representatives will be appointed to the Board by the Director. Representation on the APB shall be made up of:

	Division of State Police
1 member	Field Operations
1 member	Bureau of Communications and Management Information
1 member	District Field Commander
1 member	Division of Criminal Investigation
1 member	Division of Support Services
1 member	Illinois Sheriff's Association
1 member	Illinois Association of Chiefs of Police
1 member	Chicago Police Department
1 member	Secretary of State, Data Processing Department
1 member	Illinois Circuit Clerk's Association
1 member	LEADS Administrator

The Chairperson of the Board must be one of the appointed members and selected by the Director. Each Board member shall be willing to serve and devote adequate time necessary to the business addressed by the Board.

1. FILLING OF VACANCIES OF BOARD MEMBERS

It is the responsibility of the organization represented to submit to the Director a candidate to fill a vacancy.

2. SELECTION OF CHAIRPERSON OF LEADS ADVISORY POLICY BOARD

The Director shall appoint a chairperson from the representatives appointed to serve on the Board. A Vice Chairperson shall be elected by the APB.

3. LEADS ADVISORY POLICY BOARD MEETING PROCEDURES

The Board shall meet bi-monthly on the third Thursday of each month beginning in Janaury unless an alternate date has been selected for a specific month by the Board members. The Chairperson may call special meetings if a specific need arises.

All APB meetings will be conducted in accordance with the Illinois Open Meetings Act, Chapter 102, Illinois Revised Statutes, Section 41 et seq. Persons planning to attend a specific meeting are asked to communicate with the LEADS Administrator (217/782-7677 or through terminal LYD) at least two weeks in advance of the meeting date.

II.C.3. LEADS APB MEETING PROCEDURES (Continued)

Only members of the LEADS Board or their proxies in attendance at meetings shall be allowed to vote. The member sending a proxy must notify the Chairperson of the Board in writing on a per meeting basis prior to the opening of such meeting. The proxy shall be from the organization the individual is representing.

A member personally missing three consecutive meetings shall lose his or her seat on the LEADS Board. The same representative cannot be immediately re-appointed for a period of one year. The Director shall appoint a replacement from the same agency to fill the vacant seat. No meeting of the Board shall be held and no vote taken without a quorum of said body being present, i.e. seven (7) members of the Board, including proxy representatives. All votes shall be decided by a simple majority of those members of the Board present.

The LEADS Administrator will set an agenda at least one day in advance of all meetings of the Board.

All records, transcripts, minutes and other documents relating to the Advisory functions of the LEADS Board shall be administered by the Board Chairperson.

The Director of the Department of Law Enforcement shall be the final arbiter of all matters related to the operations and policy of LEADS when recommendations of the Board are in possible conflict with Federal or State statutes and/or Department policies.

Vendors will not be permitted to promote products or make sale presentations.

All expenses required shall be paid for by the member or his agency in the conducting of business of the LEADS Advisory Policy Board.

D. LEADS ADVISORY POLICY BOARD STANDING COMMITTEES

The Chairperson of the Board shall have the authority to appoint standing committees and other committees and the chairpersons thereof.

Each committee chairperson shall be responsible to the Board and report back his findings or recommendations.

The chairpersons of the standing committees and other committees shall call the committee meetings.

There shall be two standing committees, the Working Group Committee and the Security and Confidentiality Committee. The same rules pertaining to attendance for the APB shall pertain to the standing committees.

III. ACCESSING LEADS DATA AND PARTICIPATING IN LEADS

Direct access to LEADS data and full participation in all elements of LEADS shall be restricted to those agencies that meet each of the "Criteria for Full Eligibility" listed below. Multi-jurisdictional communications centers, agencies connected to a non-criminal justice computer or data center, out-of-state agencies, non-government agencies, civil courts, and juvenile agencies are treated as SPECIAL CASES under paragraph III.B. Before a conclusion as to a particular organization's eligibility can be reached, the definitions and requirements listed in paragraph III.B must be considered. Exceptions are covered in paragraph III.C.

Direct Access Defined — As used in these Regulations, the phrase 'direct access (to LEADS)' shall refer to (1) having a terminal device or computer located on the agency's premises that is connected by a data communications link (telephone line) to the LEADS computer in Springfield, and (2) being authorized to access LEADS data and services.

LEADS Data Defined — As used in these Regulations, the term 'LEADS data' shall refer to all data available through the LEADS computer, which includes the following:

LEADS Computerized Hot Files (CHF);
National Crime Information Center (NCIC) Hot Files;
Illinois Secretary of State Drivers License, Vehicle Registration, and Title Files;
Motor Vehicle and Drivers Files of other states;
Illinois and NCIC Computerized Criminal History (CCH) Files and other forms of Criminal History Record Information (CHRI);
Firearm Owners (FOID) File;
State Alcohol Licenses (SALOON) File;
Weather and Highway Conditions Files for Illinois and other states;
Such other files or information that may become available through LEADS from time to time.

LEADS Services Defined -- 'LEADS services' as supplied by the Department of Law Enforcement shall include (1) providing access to the files listed above; (2) the handling of directed/administrative messages within Illinois and nationwide; (3) providing on-line entry of Uniform Crime Reports data; (4) providing training sessions, newsletters, bulletins, and Reference Manuals; (5) and supplying such other services as may become available.

Full Participation Defined — 'Full participation' shall mean that an agency has direct access to all LEADS data and services, and enters and maintains all of its warrants and theft reports in the LEADS and NCIC Hot Files. Hot Files data entry is covered in detail in Section VII of these Regulations.

A. CRITERIA FOR FULL ELIGIBILITY

To qualify for direct access to and full participation in LEADS, each of the following criteria must be met:

III.A. CRITERIA FOR FULL ELIGIBILITY (Continued)

1. Criminal Justice Agency — The candidate organization must be a criminal justice agency as defined in the U.S. Department of Justice Regulations on Criminal Justice Information Systems (Title 28 — Judicial Administration. Code of Federal Regulations, Part 20, Subpart A). These regulations in Section 20.3 define a 'criminal justice agency' as:

> "(c)...(1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice."

'Administration of criminal justice' is defined in Title 28 as:

> "(d)...performance of any of the following activities; detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information."

2. Powers of Peace Officers — The candidate organization must be vested with the powers of "peace officers" as defined in Chapter 38, Section 2-13, of the Illinois Revised Statutes which reads as follows:

> " 'Peace Officer' means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses."

3. Management Control — The candidate organization's communications system — all LEADS terminals, printers, and related equipment; and all personnel operating and/or having access to LEADS-related equipment — must be under the direct management control of a sheriff, chief of police, authorized law enforcement supervisor, authorized criminal justice administrator, or Department of Law Enforcement official.

   'Management control' is defined as the authority to set and enforce (1) priorities; (2) standards for the selection, supervision, and termination of personnel; and (3) policy governing the operation of all communication and LEADS-related equipment.

4. Signed Agreement — The candidate organization must complete and file with the Department of Law Enforcement, a duly executed copy of the "Criminal History Record Information Criminal Justice Agreement."

   NOTE: If access to Computerized Criminal Histories (CCH) is not authorized or desired, a duly executed copy of the "LEADS User's Agreement" must be filed instead of the "Criminal History Record Information Criminal Justice Agreement."

III. ACCESSING LEADS DATA AND PARTICIPATING IN LEADS (Continued)

B. ELIGIBILITY FOR SPECIAL CASES

The following paragraphs define the eligibility requirements for organizations which are considered to be special cases. Except where specifically stated to the contrary, 'special case' organizations must meet the criteria in paragraph III.A, pages REGS-6 and REGS-7.

1. Multi-Jurisdictional Communications Center

   a. Definition -- A 'Multi-Jurisdictional Communications Center' is any organization which is created by formal agreement entered into by political subdivisions in a particular area entirely within the State of Illinois for the purpose of at least providing police radio dispatching, LEADS services (if qualified), telephone answering, and any other communications functions for the benefit of all of those agencies who are parties to the agreement.

   b. Eligibility — The Management Control criterion (paragraph III.A.3) must be met in all respects by the Multi-Jurisdictional Communications Center organization. To satisfy this requirement, a copy of the charter, ordinance, or other legal document which establishes management control must be submitted to the LEADS Administrator for review and approval. If approved by LEADS, the same document must also be approved by the NCIC prior to granting access to NCIC files.

2. Non-Criminal Justice Computer or Data Center

   a. Definition -- The 'Non-Criminal Justice Computer or Data Center' is defined as a computer system, communications switcher or any other device through which LEADS data will pass and/or by which LEADS data can be processed that is located within the confines of a non-criminal justice agency and not within the candidate organization's communications center where the principal LEADS terminal(s) and printer(s) are located. Both locations must be within the boundaries of the State of Illinois.

   b. Eligibility Excluding CCH Access -- In addition to meeting the 'management control' requirement for the communications system (paragraph III.A.3), the candidate criminal justice agency (CJA) must exercise at least limited management control with regard to the operation of all hardware at the non-criminal justice data center including the processor, communications controller, communications switcher, and storage devices which will be used to process, store, or forward LEADS data. The minimum requirements for the criminal justice agency (CJA) to exercise such limited management control will be by having a written agreement with the non-criminal justice agency operating the computer center that gives the criminal justice agency:

      (1) a guarantee that the CJA's teleprocessing network receives the highest priority in the areas of maintenance, support, and assignment of personnel and hardware resources.

III.B.2.b. Non-Criminal Justice Computer, Excluding CCH Access (Continued)

(2) the right to final approval in selection of all software used to communicate with LEADS.

(3) the right to screen all employees who will have access and hardware which connects to LEADS.

(4) the authority to make any necessary audits to insure system security.

(5) the authority to review management output reports to ensure that the CJA's guaranteed priority agreement is being honored.

(6) the authority to recommend for separation any employee who violates the LEADS Regulations.

c. Eligibility to Include CCH Access -- If CCH data or any Criminal History Record Information is to pass through and/or be processed by equipment housed in a non-criminal justice data center, the eligibility requirements given in III.B.2.b above must be met and exceeded in that the written agreement between the CJA and the data center must give the CJA full management control as defined under III.A.3.

d. Written Agreement Filed -- A copy of the written agreement between the CJA and the data center will be filed with the LEADS Administrator who will submit it to the LEADS APB for review.

e. Permission to Audit -- The agreement with the CJA will also contain a clause that grants permission to the LEADS Administrator to inspect and audit this system.

3. Out-of-State Agency -- No organization located outside of the boundaries of Illinois will be given direct access to LEADS or be allowed to connect to LEADS unless it is deemed by the LEADS Advisory Policy Board to be in the best interest of all LEADS participants statewide to permit access by the foreign organization.

4. Non-Government Agency -- An organization which meets each of the above criteria for Peace Officers, Management Control, and Signed Agreement (paragraphs III.A.2, 3, & 4) but does not qualify as a 'government agency' is eligible for participation in LEADS, but cannot be granted access to any National Crime Information Center (NCIC) files. Under existing NCIC rules, Non-Government Agencies include, but are not limited to, railroad police and the security departments of private colleges and universities.

5. Civil Court -- Any court that hears civil cases only does not qualify for NCIC access.

III.B. ELIGIBILITY FOR SPECIAL CASES (Continued)

6. Juvenile Agency — Any correctional facility that houses only juveniles who are not involved in the criminal justice process but who are orphaned or declared incorrigible is eligible for participation in LEADS with the exception that it does not qualify for NCIC access under existing NCIC rules. Any agency that supervises only juveniles who are not involved in the criminal justice process also does not qualify for NCIC access.

C. EXCEPTIONS -- No exceptions will be made to the above requirements for agencies desiring direct access to and full participation in LEADS. An organization not qualifying as a law enforcement or criminal justice agency or not desiring full participation even if qualified may, with the approval of the Director of the Department of Law Enforcement on recommedation from the LEADS Advisory Policy Board, receive limited information from LEADS. To apply for limited capabilities, contact the LEADS Administrator, 501 Armory Building, Springfield, IL 62706; 217/782-7677.

D. CHANGE IN STATUS -- The LEADS Administrator must be notified in writing in advance of any anticipated change in the status of an agency already participating or already approved for participation in LEADS. Continued participation in LEADS will be subject to a review of the new status to determine if all eligibility requirements can be met. Change in status includes, but is not limited to:

1. A single-jurisdiction LEADS user plans to join a Multi-Jurisidctional Communications Center.

2. Changes are to occur in the management structure of an approved Multi-Jurisdictional Communications Center.

3. Changes are to occur in the management structure of a Non-Criminal Justice Computer or Data Center.

4. A Non-Criminal Justice Computer or Data Center is created or plans to become involved with LEADS services where no involvement existed before.

5. Involvement of a Non-Criminal Justice Computer or Data Center is to be discontinued or altered.

IV. EQUIPMENT OPTIONS FOR CONNECTING TO LEADS

Provided that an agency qualifies for participation in LEADS as described in Section III of these Regulations, there are three (3) options for obtaining equipment and physically connecting to the system. These options are:

-- DLE Supplies Standard Equipment -- Fully-Supported Environment

-- Agency Supplies Non-Standard Equipment -- Non-Supported Environment

-- Agency Supplies Standard Equipment -- Semi-Supported Environment

A. "SUPPORTED" DEFINED

The term "supported" refers to the assistance which will be provided by the Department of Law Enforcement (DLE) to the user agency. This could include the following:

-- Systems analysis and design

-- Computer programming

-- Equipment ordering, installation, maintenance, moving and removal

-- Training

-- Operating procedures and reference manuals

-- Statistics on each terminal's usage of LEADS

B. REQUIREMENT FOR ADVANCE WRITTEN REQUEST

An agency must make a written request 90 days in advance of the desired connection date. The request must be sent to the LEADS Administrator, 501 Armory Building, Springfield, Illinois 62706. The request must indicate when connection to LEADS is desired and which of the three options is planned.

C. DLE SUPPLIES STANDARD EQUIPMENT -- FULLY-SUPPORTED ENVIRONMENT

An agency will be fully supported when it requests that the Department of Law Enforcement (DLE) make all arrangements to provide standard equipment. In this case, DLE and the participating agency will have the following responsibilities:

1. The Department of Law Enforcement will:

   a. Place all orders for the installation, relocation, or removal of all line-related and terminal-related equipment.

   b. Make all technical services arrangements related to installation, maintenance, relocation, and removal of all necessary equipment.

   c. Perform all systems analysis, design, and programming required at both the Data Center and the terminal.

IV.C.1. FULLY SUPPORTED ENVIRONMENT -- DLE will: (Continued)

d. Absorb all costs related to the computer equipment at the Data Center.

e. Provide training for terminal operators and interested administrative personnel representing the participating agency.

f. Provide a reference manual, publications, notices, and special bulletins.

g. Provide assistance toward the solution of operational problems.

2. The Fully-Supported agency will:

a. Pay the cost of installation, monthly rental, relocation, and removal of all terminal equipment and communications facilities.

b. Procure and pay the cost of all consumable supplies (printer paper, ribbons, etc.).

c. Provide operating and administrative personnel at the terminal site.

d. Absorb the cost of travel, lodging, and meals for its own personnel attending training sessions, conferences, etc., unless otherwise stipulated by the Department of Law Enforcement.

D. AGENCY SUPPLIES NON-STANDARD EQUIPMENT — NON-SUPPORTED ENVIRONMENT

When a department elects to obtain its own terminal equipment that is not identical to equipment offered through DLE, that department is operating in a non-supported environment. This means that the agency may connect its equipment to LEADS, but will not receive the full support from DLE offered to users of standard equipment. A special example of non-standard equipment is the mobile terminal which is covered in paragraph IV.F. DLE and the user agency will meet the following responsibilities:

1. The Department of Law Enforcement will:

a. Provide technical information such as communications disciplines (electronic procedures by which computers and terminals "talk" to each other) and message structures necessary for successful connection to LEADS.
CAUTION: LEADS will only allow connection of equipment which operates at certain specific data transmission rates and which uses one of the communications disciplines which DLE supports. DLE will NOT perform special programming to support a communications discipline that is not already supported by DLE.

b. Place orders for the installation, relocation, or removal of all communications lines and related communications facilities (modems).

c. Perform all programming required at the DLE Data Center which is identical to that provided for the fully supported environment.

V.D.1. NON-SUPPORTED ENVIRONMENT — DLE will: (Continued)

d. Make all technical services arrangements related to the installation, maintenance, repair, relocation, and removal of all communications lines and related communications equipment. DLE will NOT be responsible for maintenance arrangements on any of the user agency's terminal equipment.

e. Absorb all costs related to the computer equipment at the DLE Data Center, with the exception of those costs related to the transmission control unit in such cases where a non-supported terminal requires additional equipment on that unit.

f. Provide a reference manual, publications, notices, and special bulletins in the language of the Fully-Supported Terminal Environment.

CAUTION: The user must understand that the terminology and procedures described in LEADS publications will frequently NOT correspond exactly to the terminology and procedures established in the non-supported environment. This places an additional responsibility on the user agency to insure that all LEADS-written communications are understood and adhered to.

g. Provide training for terminal operators and interested administrative personnel in the use of the LEADS Operating and Reference Manuals and the various LEADS services. DLE will NOT provide training on the operation of non-standard terminal equipment.

h. Provide assistance for identifying the source of operational problems. DLE will make arrangements for the correction of those problems determined to be related to the Data Center or the communications line. DLE accepts no responsibility for the correction of difficulties found to be associated with the user's terminal equipment.

2. The Non-Supported agency will:

a. Arrange for a conference between its own representatives, the terminal vendor, and DLE. The conference must be successfully concluded before DLE will make any preparations for connection of non-standard equipment. DLE suggests that this meeting occur prior to the signing of a contract between a participating agency and any vendor. If not prior to signing, the meeting should occur at the earliest possible time thereafter. DLE accepts no responsibility for misunderstanding of LEADS specifications and requirements which occur between the local agency and its vendor.

b. Pay the cost of supplies and the cost of installation, monthly rental, relocation and removal of all terminal and line-related equipment.

IV.D.2. The Non-Supported agency will: (Continued)

c. Pay the cost of a dedicated communications line (a line to which no other agency is connected).

CAUTION: The cost of a dedicated line is based on the distance between the local terminal and the LEADS Data Center, and on the data transmission rate desired. This cost is frequently much higher than local agencies anticipate and has resulted in significant changes to agency plans.

d. Pay the cost of connecting the communications line to the transmission control unit at the LEADS Data Center.

e. Pay the cost of all design work, programming, and maintenance associated with the terminal equipment. (Maintenance of the communications line is included in the monthly line charge.)

f. Pay all expenses resulting from problems which are caused by the terminal equipment.

g. Provide operating and administrative personnel at the terminal location.

h. Provide training of agency personnel in the use of terminal equipment.

i. Insure that an individual agency's system will provide access to ALL authorized LEADS files and services, and permit the agency's operator to perform all functions that may be performed on fully-supported equipment. The only exception is the service of on-line entry of Uniform Crime Reports (I-UCR) data which the agency may elect not to provide.

j. Absorb all costs for reprogramming and equipment modifications which become necessary to keep in step with changes made at the LEADS Data Center. (See Section XIII, paragraph B of these Regulations.)

CAUTION: LEADS is constantly being changed. New capabilities are added frequently. An agency operating in the Non-Supported Environment must be prepared to absorb the costs necessary to provide all of the same services LEADS provides to fully-supported terminals. Electing not to supply all services offered by LEADS (with the exception of on-line I-UCR data entry) is in violation of these Regulations.

k. Absorb the expense of travel, lodging, and meals incurred by agency and vendor representatives who attend training sessions, conferences, etc., unless otherwise stipulated by DLE.

E. AGENCY SUPPLIES STANDARD EQUIPMENT -- SEMI-SUPPORTED ENVIRONMENT

An agency will qualify for nearly full support when it obtains equipment from its own sources which is identical to equipment offered through DLE.

IV.E. AGENCY SUPPLIES STANDARD EQUIPMENT--SEMI-SUPPORTED (Continued)

1. The Department of Law Enforcement will:

   a. Place all orders for the installation, relocation, or removal of the communications lines and related equipment (modems).

   b. Make all technical services arrangements for installation, maintenance, relocation, and removal of the communications lines and equipment.

   c. Perform all system analysis, design, and programming required at both the Data Center and the terminal.

   d. Absorb all costs related to the computer equipment at the Data Center.

   e. Provide training for terminal operators and interested administrative personnel representing the participating agency.

   f. Provide a reference manual, publications, notices, and special bulletins.

   g. Provide assistance towards the solution of operational problems.

2. The Semi-Supported agency will:

   a. Meet with DLE if requested to do so.

   b. Make all arrangements for installation, relocation, maintenance, and removal of the terminal equipment.

   c. Assume all responsibility for contractual agreements with the terminal vendor and all related expenses.

   d. Provide operating and administrative personnel at the terminal site.

   e. Absorb the cost of travel, lodging, and meals for its own personnel attending training sessions, conferences, etc., unless other funding is provided to the agency.

   f. Notify DLE in writing and receive approval from DLE prior to any change being made to the terminal equipment.

   g. Notify DLE in writing and receive approval from DLE prior to connecting the equipment to or disconnecting it from LEADS.

   h. Bear the expense of changes to the terminal equipment made necessary by changes to LEADS.

   NOTE: All written communications necessary for the above must be addressed to LEADS Administrator, Department of Law Enforcement, 501 Armory Building, Springfield, IL 62706.

IV. EQUIPMENT OPTIONS FOR CONNECTING TO LEADS (Continued)

F. MOBILE TERMINALS

1. "Mobile Terminal" Defined -- A mobile terminal is a device installed in a vehicle which has the capability to send and/or receive digital messages. There are two basic types in use:

   a. the receive-only teleprinter which has no typewriter-like keyboard.

   b. the two-way mobile terminal which lets the officer type out and send messages from the vehicle as well as to receive messages.

2. Mobile Terminal Regulations — Both types of mobile terminal, when used to send data to and/or to receive data from LEADS, are governed by the regulations for the NON-SUPPORTED ENVIRONMENT covered in paragraph IV.D of these Regulations. In addition, the following requirements must be met by the agency participating in LEADS:

   a. Before requesting bids for any mobile terminal equipment, the LEADS Administrator must be notified in writing of:

      (1) the fact that mobile terminals are being planned,

      (2) the type of mobile terminal,

      (3) the number of mobile terminals to be installed, and

      (4) the installation date(s).

   b. If called for by the LEADS Administrator, the agency must meet with the LEADS Staff.

   c. The agency must satisfy the LEADS Administrator that safeguards will be employed to guarantee that Computerized Criminal History (CCH) data may neither be directly requested nor received at any mobile terminal.

   d. The agency must insure that all officers and other personnel who operate a mobile terminal understand and comply with Section IX of these Regulations--DISSEMINATION OF DATA OBTAINED THROUGH LEADS.

   e. The agency must insure that all mobile terminals are secure at all times from use by unauthorized personnel.

V. FINANCIAL RESPONSIBILITY

Agencies participating in LEADS shall promptly meet all monetary obligations to the vendor(s) which provides terminal equipment, maintenance, and lines.

A. FINANCIAL OBLIGATIONS

1. Normal Monthly Charges -- Normal monthly charges include the following:

   a. Charges for LEADS lines and modems (communications facilities).

   b. Charges for vendor-owned LEADS terminal/printer equipment.

   c. Charges for contract maintenance on LEADS equipment not owned by the vendor(s).

2. Other Charges -- Other charges include the following:

   a. Shipping charges on LEADS equipment shipped to participating agencies.

   b. Installation charges for LEADS communication lines and equipment installed by a vendor.

   c. Charges for relocating LEADS communications lines or equipment.

   d. Maintenance charges not covered by normal LEADS equipment leasing or contract maintenance charges. Damage caused by failing to maintain the proper terminal environment, not keeping the electrical supply within specifications, or abusing the equipment will result in additional charges on a time and materials basis.

B. USER PURCHASES SUPPLIES -- Participating agencies will purchase their own printer paper, printer ribbons, and perforator tape. Specifications for such supplies and lists of possible vendors are available from the Department of Law Enforcement on request. The listing of any vendor in no way represents an endorsement or recommendation by DLE, but is furnished to assist participating agencies in locating possible sources of supply.

VI. TERMINAL ENVIRONMENT, LOCATION AND SECURITY

The following constraints pertaining to LEADS terminal environment, location and security are binding on each participating agency:

A. ENVIRONMENT -- The terminal must be located in a safe, clean and dry environment. Each agency must provide electric service as well as controlled temperature and humidity levels specified by the terminal manufacturer.

B. LOCATION -- The principal terminal must be located within or adjacent to the communications equipment control console to insure continuous monitoring of the printer and/or CRT screen. The CRT interface device (modem) must be accessible to the terminal operator to facilitate line and/or terminal restoration procedures by the vendor.

C. SECURITY -- All terminal components (Model 35 printer or CRT display unit, keyboard, printer and modem) must be placed in a location under the direct control and supervision of authorized personnel as identified in these LEADS Regulations and Policies and be inaccessible to the public or persons not qualified to either operate, view or possess LEADS transmitted or received data. It is further recommended that land lines coming into the building housing the LEADS terminal be buried.

VII. RECORDS RESPONSIBILITY

Each agency assumes certain obligations inherent with its participation in LEADS. Each participating agency, by accepting a LEADS terminal or by connecting to LEADS with its own equipment, implicitly agrees to the following conditions concerning the entry, maintenance and removal of its records and the maintenance of associated files:

A. COMPUTERIZED HOT FILES (CHF) RECORDS

1. Record Entry -- Each agency agrees to enter all records pertaining to thefts, criminal acts and missing/runaway persons into LEADS (and NCIC, where appropriate) as soon as the occurrence is known and sufficient identifiers are available to permit the establishment of a record. Temporary records may be entered when there is a question concerning the issuance of a warrant, but a permanent record must be established upon resolution of the complaint. All CHF entries must be in accordance with current procedures and codes as published in the LEADS Operating Manual and the LEADS Reference Manual.

2. 24-Hour Terminal Manning Requirement -- Any agency which has entered records into the CHF must insure that its terminal is operated on a 24-hour-per-day basis by trained and competent operators who have access to the necessary records to respond to inquiries relative to the status of that agency's LEADS records and who have both the knowledge and skill to correctly enter, modify, remove and interpret records.

3. Record Removal -- Each agency will promptly cancel their records when notified or when they become aware that the legal intent of their entry has been satisifed; i.e., the recovery of stolen property or the apprehension or return of suspects.

4. Ouality of Records — Each agency assumes responsibility for both the accuracy and timeliness of the records entered under its authority. Each agency will cooperate with LEADS/NCIC quality control efforts by modifying or removing records that are either incorrect or invalid. In all cases, the agency must take action relative to a record in question during the shift or work period that notification is received. The Department of Law Enforcement has the right to remove any record where a substantial question exists concerning the validity or accuracy of the record. Immediately upon removal of any record, DLE will notify the entering terminal.

5. Record Status Inquiries -- Each agency will respond promptly to inquiries from other agencies relative to the validity and currency of its LEADS/NCIC records.

6. Supporting Documents -- Each LEADS/NCIC record will be supported by an investigative document, active warrant or complaint. No permanent LEADS or NCIC entry will be made based solely on a telephone report by the alleged victim or owner. Documents supporting LEADS/NCIC records must be available to terminal operators on a 24-hour-per-day basis, either by direct access or telephone inquiry.

VII.A. COMPUTERIZED HOT FILES RECORDS RESPONSIBILITY (Continued)

7. Active Messages File -- Each agency will maintain an Active Messages File by entry category (wanted or missing persons, stolen vehicles, stolen guns, etc.) that is readily accessible to the terminal operator. The hard copy of the Enter Acknowledgment Message, complete with the LEADS Message Number (LDS) and, if appropriate, the NCIC Message Number (NIC), must be retained in the file as long as the message remains active in LEADS/NCIC. An agency with a computer connected to LEADS may maintain its Active Messages File on the computer instead of in hard copy form as long as the local computer file is readily accessible to the LEADS terminal operator and the computer file record is complete.

8. Cancelled Records File — The hard copy printout of all cancelled records, complete with recovery/apprehension data and date, must be retained for at least one (1) year in a Cancelled Records File. This file must be maintained separately from the Active Messages File. An agency with computer facilities may maintain the Cancelled Records File on magnetic tape or other computer storage media as long as all data elements specified here for a hard copy file are contained in the computer record.

9. Multi-Jurisdictional Communications Center — Multi-Jurisdictional communications centers must maintain complete and separate Active Messages Files and Cancelled Records Files for each member agency served by the center and authorized to enter records into LEADS. When a member agency in a communications center has access to LEADS via another terminal located within its own department in addition to the terminal or terminals located within the communications center, the member agency must select one (1) location, either the agency location or the communications center, that will (a) enter, maintain and remove all LEADS records for that agency and (b) abide by LEADS policy relative to security and staffing constraints.

B. ILLINOIS UNIFORM CRIME REPORTING (I-UCR)

1. Record Entry — Any agency which accepts a funded, LEADS Upgrade CRT (Cathode Ray Tube) video terminal is required to enter I-UCR data by one of the following methods:

   a. Direct entry through the LEADS Upgrade CRT terminal

   b. Magnetic tape

   c. Punched cards

   This procedure should begin within thirty (30) days of the completion of training for I-UCR entry. If an agency fails to comply with this policy, the terminal may be removed.

2. I-UCR Not CRT Justification -- No funded, LEADS Upgrade CRT (Cathode Ray Tube) video terminal will be ordered if justified solely on I-UCR entry requirements.

VIII. VALIDATION OF COMPUTERIZED HOT FILES (CHF) RECORDS

A. IMMEDIATE REMOVAL -- Computerized Hot File records in both LEADS and NCIC must be immediately removed when no longer valid. Promptness in entering, modifying, voiding, and cancelling records is essential to maintaining the integrity of the LEADS/NCIC files. Each record in the files is identified with the agency originating that record, and that agency alone is responsible for the accuracy of that record.

B. MANDATORY PARTICIPATION -- It is mandatory that all agencies having records in the LEADS Computerized Hot Files (CHF) participate in the LEADS Record Validation Programs.

C. COMPARISON WITH CASE FILES -- For validation purposes, each record entered by an agency will be listed on a computer print-out titled Illinois LEADS Validation Listing. The agency should compare the data in each record with the information in its case files. Whenever possible, the original complainant should be interviewed.

D. VEHICLE RECORDS -- A stolen motor vehicle record meeting the criteria of current LEADS formatting (entry) will be maintained in the system for the current year plus four years unless through prompt record maintenance or LEADS validation research, the motor vehicle in question is determined to have been recovered or a registered owner and/or legal owner cannot be located for disposition purposes during any one of the validation searches that occur every one hundred and eighty (180) days. It is the responsibility of the originating agency to cause the necessary research to be completed to determine information identifying the registered owner and/or legal owner by name and address.

E. MARKING THE VALIDATION LISTING -- The original copy of the Illinois LEADS Validation Listing must be marked to indicate which records are active and which records have been cancelled. It is not the responsibility of the LEADS Data Center to cancel the records of any agency. When it is determined that a record is no longer valid, it is the responsibility of the entering agency to immediately cancel this record.

F. NON-TERMINAL AGENCY -- When a terminal agency is entering records for a non-terminal agency, it is the responsibility of the terminal agency to obtain confirmation from the non-terminal agency that the records are still valid.

G. AGENCY HEAD'S SIGNATURE REQUIRED -- The Agency Head (Chief of Police, Sheriff, District Commander, or Superintendent) accepts responsibility for the validity of all records entered by their agency by signing the LEADS Validation Certification Document. The signature of a lesser official will not be accepted.

H. RETURN TO LEADS -- The LEADS Validation Certification Document and the original copy of the Illinois LEADS Validation Listing must be returned to the LEADS Data Center prior to the deadline for the program.

I. FAILURE TO VALIDATE -- Failure of an agency to comply with the validation regulations will result in the voiding of all records entered into LEADS by that agency.

IX. DISSEMINATION OF DATA OBTAINED THROUGH LEADS

A. GENERAL RESTRICTIONS

1. Criminal Justice Purposes Only -- All data supplied through LEADS is to be used strictly for criminal justice purposes.

2. Personal Use Prohibited — It is strictly forbidden to obtain any data through LEADS for personal reasons.

3. Personal Messages Prohibited — It is strictly forbidden to transmit messages over LEADS or to encourage messages to be transmitted over LEADS for reasons of personal, unofficial communication. For example, LEADS may not be used for communicating personal messages from one LEADS terminal to another.

4. Selling Data Prohibited — It is permissible to prorate or share the costs of your LEADS operation among one or more other departments for which you provide all LEADS services. However, it is strictly forbidden to sell any information obtained through LEADS to any individual, group of individuals, organization, government agency, or corporation.

5. Unauthorized Dissemination Prohibited -- It is strictly forbidden to disseminate any information obtained through LEADS to any individual or organization that is not legally authorized to have access to that information.

B. SPECIFIC DATA DISSEMINATION REGULATIONS

1. Computerized Hot Files (CHF)

The information found in the CHF is generally considered to be a matter of public record. However, dissemination of such data beyond the law enforcement/criminal justice community must be approached with caution.

2. National Crime Information Center (NCIC)

a. The following statements apply to NCIC data and are taken directly from page Intro-6 dated 6-30-77 of the NCIC Operating Manual:

(1) "The data stored in the NCIC is documented criminal justice information and access to that data must be restricted to duly authorized criminal justice agencies."

(2) "The FBI uses hardware and software controls to help ensure system security. However, final responsibility for the maintenance of the security and confidentiality of criminal justice information rests with the individual agencies participating in the NCIC."

b. As an NCIC Control Terminal Agency, the Illinois Department of Law Enforcement must assume responsibility for and enforce NCIC system security with regard to all other agencies participating in NCIC through LEADS.

IX.B. SPECIFIC DATA DISSEMINATION REGULATIONS (Continued)

3. Secretary of State (SOS)

a. Any request for any SOS record via LEADS shall be for criminal justice purposes only.

b. SOS data required for non-criminal justice purposes must be obtained directly from the SOS; i.e., LEADS may not be used.

c. Although the Illinois Revised Statutes authorize the Secretary of State to charge fees for providing registration and vehicle records, there is no provision for any criminal justice agency to charge for SOS data obtained through LEADS. Any such charge or fee is prohibited under the General Restrictions (IX.A.4) of these Regulations.

4. Foreign States' Drivers Licenses and Vehicle Registrations via NLETS

a. Drivers license and vehicle registration information is provided by other states to Illinois departments via NLETS/LEADS on the same basis that the Illinois SOS provides this information — FOR CRIMINAL JUSTICE PURPOSES ONLY.

b. If out-of-state driver or vehicle data is required for non-criminal justice purposes, LEADS/NLETS may not be used. Instead, agencies participating in LEADS/NLETS must advise the requestor to deal directly with authorities in the state that houses the desired records.

5. Firearm Owner's Identification (FOID)

a. FOID data is provided by the Department of Law Enforcement to "law enforcement authorities" as stipulated in Chapter 38, paragraph 83-1 of the Illinois Revised Statutes.

b. Dissemination of FOID information obtained through LEADS is restricted to peace officers.

6. Illinois Uniform Crime Reporting (I-UCR)

a. I-UCR data which is supplied to the State may be disseminated to the public by the originating agency at any time.

b. I-UCR data compiled by the State must not be disseminated to the public, except by the originating agency, until after such time as the compiled data has been verified and made official for release by the Director of the Department of Law Enforcement.

IX.B. SPECIFIC DATA DISSEMINATION REGULATIONS (Continued)

7. State Alcohol Licensing Operational On-line Network (SALOON)
Liquor license data and data on licensed establishments and owners are available through LEADS/SALOON, only for official criminal justice purposes. LEADS/SALOON must not be used to obtain this data for non-criminal justice purposes or for non-criminal justice agencies and individuals. Instead, these requests should be referred directly to the Illinois Liquor Control Commission, 160 North LaSalle Street, Chicago, IL 60601; 312/793-2210.

8. Computerized Criminal Histories (CCH)
   a. Criminal History Record Information (CHRI) obtained from the Department of Law Enforcement over LEADS shall not be disseminated to any person or agency not authorized by law to receive such information.
   b. The Department of Law Enforcement will not respond to computerized inquiries (CCH inquiries or directed messages) for licensing or employment purposes. LEAA guidelines mandate that the Department of Law Enforcement maintain complete and accurate records. The dissemination of information meeting these standards is of utmost importance with regard to licensing and employment matters. As such, DLE shall disseminate CHRI for licensing and employment purposes, only after completing a fingerprint search of Department files.
   c. The delivery of old or outdated CHRI to another criminal justice agency is highly discouraged. In order to ensure the dissemination of the most current data available, the disseminating agency should query (inquire into) the Department of Law Enforcement whenever feasible. The Department recognizes that exceptions may exist justifying dissemination without querying in extraordinary circumstances.
   d. Each transaction which involves any extra-agency release (release to any agency other than your own) of CHRI as supplied by the Department of Law Enforcement must be logged in a Secondary Dissemination Log maintained by the agency which ran the inquiry. The content of entries required in the log is reflected in Section 4 of the referenced "Criminal Justice Agreement" and includes:

      (1) Name of requesting agency having access to Criminal History Record Information (CHRI).
      (2) Name of the requestor (i.e., the person getting CHRI on behalf of an authorized agency).
      (3) Name of the individual to whom the information relates.
      (4) BCI Number of the individual to whom the information relates.
      (5) Date of dissemination.

      Secondary Dissemination Logs shall be maintained for a period of three (3) years following the last date of dissemination contained therein. After the three-year maintenance period expires, the logs may be destroyed provided that express authorization is granted in accordance with either The State Records Act or The Local Records Act (Illinois Revised Statutes 1977, Chapter 116, Section 43), whichever is applicable.

X. OPERATING PROCEDURE REGULATIONS

LEADS is a complex system having limited resources which must be shared by many users. The use or misuse of LEADS by one agency can significantly affect all other users. Therefore, compliance with these Operating Procedure Regulations is necessary to optimally and fairly allocate LEADS resources and services.

A. HOT FILES HIT PROCESSING

1. Q or Z Hit, Subject or Property in Custody — As soon as possible after receiving a positive hit response to an inquiry, the agency receiving the hit message must contact the Originating Authority (ORA) of the record to confirm the status of the record. The inquiring agency must also insure that the record, in fact, pertains to the same subject, vehicle, property, etc., which is in custody.

2. Q Hit, Subject or Property Not in Custody — When the inquiring agency receives a hit by Q inquiry on a LEADS (not NCIC) record but does NOT have the person, vehicle, or property in custody, the inquiring agency MUST notify the Originating Authority (ORA) of that fact. (A Q-hit on a LEADS record causes the originator of the record to receive automatic notification of who hit the record. The Originating Authority will be expecting an explanation from the inquiring agency.)

3. Locating — A confirmed hit with the subject, vehicle, or property in custody requires that the agency receiving the hit immediately perform a LOCATE transaction against all record(s) that were determined to be applicable.

4. Retention of Terminal-Produced Printout — When an operational inquiry on an individual or property yields a valid positive response (hit), the original copy of the terminal-produced printout showing the record(s) on file in LEADS/NCIC should be retained for use in documenting probable cause for the detention of the missing person, arrest of the wanted person, or seizure of the property. The printout may also prove valuable in a civil suit alleging a false arrest, a false imprisonment, a civil rights violation, or an illegal seizure of property.

   When an NCIC inquiry yields a hit, the terminal employee making the inquiry should note on the original copy of the terminal-produced printout precisely how, when, and to whom the information was given; sign and date this notation; and forward the printout to the inquiring officer or agency for retention in the case file. This procedure establishes the chain of evidence for the communication should the arresting officer need to substantiate his actions in a judicial proceeding.

   The printout should be retained for as long as there remains any possibility that the defendant will challenge the arrest, search, or other law enforcement action taken because of the information contained on the printout. Retain the printout until all possible levels of appeal are exhausted or the possibility of a civil suit is no longer anticipated.

X. OPERATING PROCEDURE REGULATIONS (Continued)

B. BROADCASTING OF MESSAGES

1. Stolen or Recovered Property — Item-by-item lists of stolen or recovered property are NOT to be broadcast over LEADS either statewide, regionally, or to a district. A brief summary message in generic terms may be broadcast if it is felt such a message will aid in the recovery of stolen property or in owner identification of recovered property.

2. Range Limitations — The extent of the area over which a message is broadcast must be carefully limited to include only those agencies which can reasonably be expected to have interest in or a need to know the contents of the message. For example, a message concerning only Illinois and surrounding states should NOT be broadcast nationwide. A message of interest only to Cook and surrounding counties should not be broadcast statewide.

   NOTE: Message broadcasting is expensive in terms of the LEADS resources consumed. It must be used judiciously.

3. Holiday Greetings — On no occasion is it permissible to use LEADS for broadcasting a message of holiday greetings.

4. Political Messages — On no occasion is it permissible to use LEADS for broadcasting a message dealing with a political campaign, political rally, or candidate for political office.

5. Commercial Messages — The use of LEADS is prohibited for sending messages of a commercial nature.

C. POINT-TO-POINT ADMINISTRATIVE MESSAGES

1. Brevity and Abbreviations — All messages transmitted over LEADS must be brief and to the point. Furthermore, abbreviations should be used wherever possible. However, obscure abbreviations should be avoided to prevent confusion and misunderstanding.

2. Judicious Use of Bells — At no time shall a single message contain more than five (5) Bell characters. The Bell feature is provided as a means of calling attention to messages of particular importance or urgency. Excessive use of the Bell may annoy the recipient and could defeat the purpose for which the Bell is intended. The great majority of messages should contain no Bell character at all.

3. Improper Signature — It is strictly prohibited to ever sign a LEADS message for another department or in any way imply that a message was authorized by an authority other than that of the sending terminal unless such other authority has specifically requested that the message be sent.

X. OPERATING PROCEDURE REGULATIONS (Continued)

D. PROMPT ACKNOWLEDGEMENT OF MESSAGES RECEIVED

10-Minute Rule — Except where unusual circumstances prevent compliance, all directed or administrative messages should be acknowledged by the receiving agency within 10 minutes of receipt. If a full reply can be sent within 10 minutes, the reply itself serves as the acknowledgement of receipt. If a complete reply cannot be prepared within 10 minutes, the message should be acknowledged (within 10 minutes) along with an indication as to when a complete reply can be expected.

NOTE: The 10-Minute Rule does not apply to a message broadcasted to many agencies as members of a broadcast list unless the sender specifically asks for an acknowledgement or reply.

E. SCHEDULING NON-CRITICAL TRANSACTIONS — In the interest of preventing degraded LEADS service during LEADS' busiest periods (weekdays between 0800 and midnight), it is highly recommended that non-critical transactions be scheduled for weekends and weekdays between 0100 and 0700 hours. This will result in better service for the agency doing the scheduling and will prevent that agency from causing degraded service to other LEADS users who are running urgent transactions. Messages which should be considered for scheduling are:

— Routine I-UCR data entry.

— 10-28's for the purpose of collecting overdue parking ticket fines.

— A list of 10-28's submitted by a detective asking for checks "when time permits."

— Inquiries pertaining to routine, semi-annual validation of Hot Files records.

CAUTION: Entry, modification, cancellation, or voiding of a Hot Files record should never be scheduled for a later time.

X. OPERATING PROCEDURE REGULATIONS (Continued)

F. SERVICING NON-TERMINAL AGENCIES

The following regulations apply to any agency which routinely provides all LEADS services for one or more other criminal justice agencies which do not have their own LEADS terminals:

1. LEADS Message Service Agreement — One copy of this Agreement must be executed with each agency which is routinely serviced. The signed Agreement must be filed with the Department of Law Enforcement.

2. Responsibility for Agreement Initiation — The agency providing LEADS services (the LEADS terminal agency) is responsible for initiating the Service Agreement with the serviced, non-terminal agency.

3. Source of Forms — Copies of the "LEADS Message Service Agreement" form are available from the LEADS Administrator, 501 Armory Building, Springfield, IL 62706; 217/782-7677.

4. Termination of Service Agreement — If either party to the LEADS Message Service Agreement wishes to terminate the Agreement for any reason, the LEADS terminal agency must immediately notify the LEADS Administrator of this fact.

XI. ADMINISTRATIVE RESPONSIBILITIES

A. APPOINT A LEADS SUPERVISOR

1. Appointment Required — Every LEADS terminal agency is required to appoint one employee as its LEADS Supervisor. The name of this person must be submitted to the LEADS Administrator.

2. Supervisor Qualifications — The minimum requirements for the appointed LEADS Supervisor are:

   a. Must be an employee under the direct management control of the chief, sheriff, superintendent, district commander, or other criminal justice agency head.

   b. Must be thoroughly familiar with all LEADS Regulations and Policies.

   c. Must be familiar with the LEADS Reference and Operating Manuals and all LEADS capabilities and procedures.

3. Supervisor Duties — Some of the duties of the LEADS Supervisor will be to:

   a. Serve as liaison with Department of Law Enforcement personnel on routine, LEADS-related matters.

   b. Coordinate training of ALL agency personnel on LEADS capabilities, procedures, regulations and policies.

   c. Assist the Agency Head to insure that all LEADS Regulations and Policies are followed.

   d. Provide input to LEADS personnel of the Department of Law Enforcement regarding problems and ideas for improvement and changes to LEADS.

   e. Insure that the LEADS Reference and Operating Manuals are properly updated in accordance with paragraph XI.B which follows.

4. Termination — Immediately upon the termination or reassignment of the LEADS Supervisor, the Agency Head must appoint and notify the LEADS Administrator of the new LEADS Supervisor.

XI. ADMINISTRATIVE RESPONSIBILITIES (Continued)

B. MAINTAIN LEADS REFERENCE MANUAL

1. Must Maintain All Copies -- The LEADS terminal agency must maintain all copies of the LEADS Reference Manual that have been issued to it. This shall include:

   a. Insuring that all pages are intact and worn pages are replaced.

   b. Inserting all Modifications within five (5) working days after receiving them from the LEADS Data Center in Springfield.

   c. Properly maintaining the Modification Register found in the chapter on Changes in this Manual.

   d. Promptly returning the Receipt which accompanies each Modification.

   e. Insuring that no changes, alterations, additions or deletions are made to the Manual other than those directed by LEADS unless prior written approval is received from the LEADS Administrator.

   f. Returning any copies of the Manual which are no longer needed.

2. Copying Restricted -- Unless otherwise specified, copying any part or all of this Manual is prohibited! Individual pages may be copied to replace worn pages which are being discarded. Lost or missing pages may be replaced by notifying terminal KQC or by writing to LEADS Manual, 501 Armory Building, Springfield, IL 62706. Additional copies of the complete Manual may be obtained as explained below.

   NOTE: Creating extra copies of part or all of this Manual by copying locally is prohibited in order to avoid the problem of keeping the extra copies current. Modifications are mailed out only for serialized copies issued from Springfield.

3. Requesting Additional Copies -- Each LEADS terminal agency is issued one (1) serialized copy of the LEADS Reference Manual. Requests for additional copies must be accompanied by written justification of the need for more than one copy. Send requests with justification to: LEADS Reference Manual, 501 Armory Building, Springfield, IL 62706.

4. Non-Supported Terminal Agency MUST Maintain One Manual -- A LEADS terminal agency using its own equipment and operating in a NON-SUPPORTED ENVIRONMENT (see paragraph IV.D of these Regulations) must maintain at least one copy of the LEADS Reference Manual as provided by LEADS. This is required even if the agency has manuals of its own which pertain specifically to its own equipment, policies, and procedures.

5. Must Maintain 'Old' Manual Too -- All of the above regulations apply to the 'old' LEADS Operating Manual (white and blue covers) until such time as it has been completely superseded by the LEADS Reference Manual.

XI. ADMINISTRATIVE RESPONSIBILITIES (Continued)

C. OBTAIN LEADS TRAINING

1. It is mandatory that an agency operating a LEADS terminal have in its employment at all times at least one (1) individual who has successfully completed a LEADS training class conducted by the Illinois Department of Law Enforcement.

2. It is highly recommended that a fully trained LEADS operator be on duty at all times.

3. It is recommended that all LEADS terminal operators and dispatchers complete a LEADS training class conducted by the Illinois Department of Law Enforcement.

4. It is highly recommended that ALL sworn officers and administrative personnel receive periodic orientation on LEADS capabilities, procedures, rules, and regulations.

D. PARTICIPATE IN LEADS WORKSHOPS/CONFERENCES

1. Annual LEADS Conference — The Department of Law Enforcement (DLE) hosts a conference in Springfield every Fall for all LEADS participants. It is highly recommended that every LEADS terminal agency be represented at these conferences.

2. Regional LEADS Workshops — DLE conducts one-day workshops or mini-conferences at various locations throughout the State. Generally, one workshop per year is held in each region of the State. It is highly recommended that every LEADS terminal agency be represented at a minimum of one workshop per year.

E. KNOW DAILY BULLETIN BOARD CONTENTS

1. Every day, Monday through Friday (except holidays), the LEADS Staff puts a message into LEADS which is referred to as the "BUL" or Daily Bulletin Board message. These messages contain a wide variety of information from critically important operational bulletins to nice-to-know comments.

2. All LEADS terminal agencies will be held responsible for knowledge of and compliance with ALL information and instructions promulgated through the Daily Bulletin Board.

3. When the Daily Bulletin Board asks for voluntary response to questions on LEADS-related matters, all LEADS terminal agencies are urged to respond whenever possible. This may often represent an opportunity for your department to "vote" on the future of LEADS.

XII. AUDITS OF PARTICIPATING AGENCIES

The Department of Law Enforcement reserves the right to conduct routine audits of any agency participating in LEADS at any time. The purpose of an audit will be to determine that all of these LEADS Regulations in general or certain of these Regulations in particular are being complied with.

A. AUDIT PROCEDURES

1. The Department of Law Enforcement will:

   a. Routinely give two (2) weeks notice prior to the commencement of an audit;

   b. Provide personnel to conduct the audit;

   c. Furnish a written report of its findings to the audited agency at the conclusion of the audit.

2. The agency being audited will:

   a. Make its LEADS Supervisor available to provide assistance during the audit;

   b. Make available to the auditors the Active Messages File, the Cancelled Records File (see subparagraphs VII.A.7 and 8 on page REGS-20), logs, all copies of the LEADS Reference Manual, and non-confidential case file material supporting LEADS and NCIC Hot Files entries;

   c. Permit the auditors access to all LEADS terminal operators, clerks handling I-UC entry, and other agency personnel involved with LEADS-related activities.

B. CCH AUDITS — Federal requirements demand that the Department of Law Enforcement select a random sample of agencies for periodic auditing in order to ensure compliance with security and privacy provisions. As these relate to CCH considerations, such audits shall be limited to:

1. Evaluation of agency compliance with secondary dissemination logging provisions outlined in subparagraph IX.B.8.d of these Regulations.

2. Terminal security.

3. Distribution of CCH Output Reports and any other CHRI supplied by the Department.

XIII. PROCEDURES FOR IMPLEMENTING CHANGES

A. CHANGES TO THESE REGULATIONS — If it should become necessary for the Director of the Department of Law Enforcement to change these Regulations, the following procedures will be used:

1. Filed with the SOS — All changes to these Regulations will be filed with the Secretary of State in accordance with provisions of the Administrative Procedure Act, Illinois Revised Statutes, Chapter 127, Sections 1005 and 1006.

2. Published in the LEADS Reference Manual — Upon taking effect, changes to these Regulations will be published and distributed as part of a routine, bi-monthly Modification to the LEADS Reference Manual, Chapter 30.

B. CHANGES TO LEADS SERVICES — These Regulations require that any agency using non-standard equipment must provide access to ALL authorized LEADS files and services and permit the agency's operator to perform ALL functions that may be performed on fully-supported equipment. The one exception is on-line entry of I-UCR data. (See IV.D.2., subparagraphs i and j, page REGS-14.)

The following regulations will apply when changes are to be made to LEADS:

1. The Department of Law Enforcement will:

a. Announce Each Change — Major additions or changes to LEADS services or procedures for LEADS access will be announced by DLE at least 45 days prior to the planned implementation date. Such announcements will be made as articles in the LEADS monthly Newsletter and/or as notices in the on-line Daily Bulletin Board. (See paragraph XI.E of these Regulations, page REGS-31.)

b. Issue Technical Bulletin — When the DLE LEADS Staff believes that a change will dictate that technical modifications must be made by local LEADS users of non-standard equipment, a technical bulletin will be provided by DLE. The bulletin will be mailed to all requesting LEADS user agencies at least 30 days prior to the planned implementation date of the change or addition.

c. Provide Notice of Implementation — When a change is implemented, DLE will immediately notify all users of that fact through the Daily Bulletin Board.

d. Enter An Operational Note — When deemed necessary, DLE will enter an Operational Note into the on-line Help File to provide appropriate instructions for dealing with the change.

e. Publish Manual Modification — All changes to LEADS services will be reflected in a bi-monthly LEADS Reference Manual Modification to be published by DLE no more than 90 days after the actual implementation date.

XIII.B.1. CHANGES TO LEADS SERVICES -- DLE will: (Continued)

f. Expedite Emergency and Minor Changes -- DLE reserves the right to make emergency and minor changes and additions to LEADS without prior notice or with less notice than called for in subparagraph 'a' above. Whenever this becomes necessary, DLE will still provide notice of implementation, enter an Operational Note, and publish a Manual Modification. If deemed necessary, a technical bulletin will be issued at the earliest possible time.

2. All LEADS User Agencies will:

a. Stay Abreast of Changes -- All users must be aware of all changes and additions to LEADS that are announced in the Daily Bulletin Board. All LEADS operators and other appropriate personnel should be informed at the earliest possible time.

b. Update Manuals -- The Reference Manual Modifications must be applied to all copies as stipulated elsewhere in these Regulations. (See paragraph XI.B.1 on page REGS-30.)

3. Agencies Operating Non-Standard Equipment will:

a. Request Technical Bulletins -- It shall be each individual agency's responsibility to request that it be placed on the mailing list to receive technical bulletins. The request may be made by directed message to terminal KQC, or by letter to the LEADS ADMINISTRATOR, 501 Armory Building, Springfield, IL 62706.

b. Promptly Implement Technical Changes -- To remain in compliance with the provisons of paragraph IV.D.2, subparagraph j (page REGS-14), the agency must implement any necessary technical changes within 60 days after the actual DLE implementation date or within 60 days after the technical bulletin is received, whichever occurs first.

c. Request An Extension -- In any case where the agency believes it cannot comply with b, above, within the specified time frame, it must submit a written request for an extension. The request must state the circumstances necessitating the extension and give the agency's plan and target date for getting into compliance. Requests must be sent to the LEADS Administrator, 501 Armory Building, Springfield, IL 62706.

The Director of the Department of Law Enforcement will grant extensions on an individual basis depending on the circumstances involved. Either the Director or the agency may also request a hearing as provided for in Section XIV of these Regulations.

XIV. NON-COMPLIANCE

Violation of these Regulations will be dealt with on an individual basis and could result in suspension of part or all LEADS capabilities, either temporarily or completely and permanently.

The Department of Law Enforcement reserves the right to suspend all or any portion of LEADS service without prior notification.

A. MINOR VIOLATIONS — When a violation of these Regulations occurs that does not threaten the integrity of LEADS, the LEADS Administrator will give written notice to the guilty agency explaining the violation. Such minor violations will not justify suspension of any LEADS access or service.

B. REPEATED, CONTINUOUS, OR MULTIPLE VIOLATIONS — When an agency is believed to be repeatedly or continuously in violation of these Regulations or has violated multiple Regulations, the Director of the Department of Law Enforcement shall set a hearing, providing the agency with at least 20 days advance written notice of the hearing date. See Hearing Procedures below.

C. MAJOR VIOLATIONS — When a violation of these Regulations or related law occurs that could seriously affect the integrity of LEADS or could threaten the safety of officers or the public, the Director of the Department of Law Enforcement reserves the right to immediately suspend all or part of LEADS access or services without prior notice. When this becomes necessary, the Director will immediately notify the suspended agency by the quickest means possible with a followup letter giving the following:

1. A list of the services which have been suspended;

2. Reasons for suspension;

3. A hearing date which shall be within 10 days of the date of suspension.

If circumstances warrant, the Director may lift the suspension prior to the hearing. Normally, however, the suspension would remain in effect at least until the hearing has been concluded.

XIV. NON-COMPLIANCE (Continued)

D. HEARING PROCEDURES -- When a hearing has been set by the Director or his designee, the following procedures will be followed:

1. The agency believed to be in non-compliance will appear at the hearing.

2. Representatives of the LEADS Advisory Policy Board will present evidence that a violation has occurred or is occurring.

3. The agency shall be given an opportunity to explain the reasons for non-compliance or explain why the agency believes that it has not committed a violation.

4. If a violation has occurred, the agency will explain the steps taken to prevent a future violation or to eliminate non-compliance.

E. DIRECTOR'S DECISION — At the conclusion of the hearing, the Director may:

1. Suspend service;

2. Find compliance;

3. Lift a suspension already imposed;

4. Grant a period of time to comply with the Regulations.

If the Director grants additional time to comply, the Director shall set a date for a subsequent hearing to review compliance with the terms of the Director's order. At the second hearing, the Director may exercise any option he could have exercised at the original hearing.

INDIANA

Indiana Statutes Annotated

CHAPTER 4—CRIMINAL INTELLIGENCE INFORMATION

SECTION.		SECTION.	
5-2-4-1.	Definitions.	5-2-4-5.	Political, religious or social information prohibited.
5-2-4-2.	Reference to intelligence file prohibited.	5-2-4-6.	Information confidential — Need to know.
5-2-4-3.	Grounds required for collecting and keeping information.	5-2-4-7.	Unauthorized release of information — Penalty.
5-2-4-4.	Review of retention of file.		

5-2-4-1. Definitions [effective October 1, 1977]. — As used in this chapter [5-2-4-1 — 5-2-4-7], unless the context otherwise requires:

(a) "Criminal history information" means information collected by criminal justice agencies or individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

(b) "Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity. "Criminal intelligence information" does not include criminal investigative information which is information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

(c) "Criminal justice agency" means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders. [IC 5-2-4-1, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-2. Reference to intelligence file prohibited [effective October 1, 1977]. — Criminal intelligence information shall not be placed in a criminal history file, nor shall a criminal history file indicate or suggest that a criminal intelligence file exists on the individual to whom the information relates. Criminal history information may, however, be included in criminal intelligence files. [IC 5-2-4-2, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-3. Grounds required for collecting and keeping information [effective October 1, 1977]. — Criminal intelligence information concerning a particular individual shall be collected and maintained by a state or local criminal justice agency only if grounds exist connecting the individual with known or suspected criminal activity and if the information is relevant to that activity. [IC 5-2-4-3, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-4. Review of retention of file [effective October 1, 1977]. — Criminal intelligence information shall be reviewed by the chief executive officer of the criminal justice agency at regular intervals to determine whether the grounds for retaining the information still exist and if not, it shall be destroyed. [IC 5-2-4-4, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-5. Political, religious or social information prohibited [effective October 1, 1977]. — No criminal justice agency shall collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, corporation, business or partnership unless such information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities. [IC 5-2-4-5, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-6. Information confidential — Need to know [effective October 1, 1977]. — Criminal intelligence information is hereby declared confidential and may be disseminated only to another criminal justice agency, and only if the agency making the dissemination is satisfied that the need to know and intended uses of information are reasonable and that the confidentiality of the information will be maintained. [IC 5-2-4-6, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-7. Unauthorized release of information — Penalty [effective October 1, 1977]. — Any person who knowingly and intentionally releases criminal intelligence information to an agency or person other than a criminal justice agency commits a class A misdemeanor. [IC 5-2-4-7, as added by Acts 1977, P.L. 50, § 1, p. —.]

CHAPTER 5

CRIMINAL HISTORY INFORMATION

SECTION.
5-2-5-1. Definitions.
5-2-5-2. Official state central repository — Reports of arrests for reportable offenses.
5-2-5-3. Disposition reports.
5-2-5-4. Provision of data to and from criminal justice agencies.
5-2-5-5. Information to noncriminal justice organizations or individuals — Limitation.
5-2-5-6. Information to noncriminal justice organizations or individuals — Prohibited uses.
5-2-5-7. Procedure on request for limited criminal history — Editing of information.
5-2-5-8. Copy to person about whom data maintained — Challenge of information.
5-2-5-9. Applicability of chapter.
5-2-5-10. Rules — Procedure upon challenge — Inspection.
5-2-5-11. Security and privacy council.

5-2-5-1. Definitions. — As used in this chapter:

"Limited criminal history" means information with respect to any arrest, indictment, information, or other formal criminal charge, which must include a disposition. However, information about any arrest, indictment, information, or other formal criminal charge which occurred less than one year before the date of a request shall be considered a limited criminal history even if no disposition has been entered.

"Council" means the security and privacy council created under section 11 [5-2-5-11] of this chapter.

"Criminal history data" means information collected by criminal justice agencies or individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition, including sentencing, and correctional system intake, transfer, and release. It includes information obtained from a federal department of justice information system.

"Criminal justice agency" means any agency or department of any level of government, whose principal function is the apprehension, prosecution, adjudication, incarceration, rehabilitation, or postconviction representation of criminal offenders.

"Department" means the Indiana state police department.

"Disposition" means information disclosing that criminal proceedings have been concluded or indefinitely postponed.

"Inspection" means visual perusal and includes the right to make memoranda abstracts of the information.

"Law enforcement agency" means an agency or department of any level of government whose principal function is the apprehension of criminal offenders.

"Release" means the furnishing of a copy, or edited copy, of criminal history data.

"Reportable offenses" means all felonies and those class A misdemeanors which the superintendent may designate.

"Request" means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:

(1) Reasonably insures the identification of the subject of the inquiry; and

(2) Contains a statement of the purpose for which the information is requested: [IC 5-2-5-1, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-2. Official state central repository — Reports of arrests for reportable offenses. — The department shall act as the official state central repository for criminal history data. Any sheriff, police department, or criminal justice agency within the state of Indiana shall report to the department, on forms provided by the department, all arrests for reportable offenses. [IC 5-2-5-2, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-3. Disposition reports. — (a) Whenever a person whose arrest has been reported as required by section 2 [5-2-5-2] of this chapter is:

(1) Transferred to the custody of another criminal justice agency; or

(2) Released without having an indictment or information filed with any court;

a disposition report shall be furnished to the department by the agency from whose custody he has been transferred or released. Disposition reports shall be made on forms provided by the department.

(b) Whenever an indictment or information is filed in any court, the clerk of the court shall furnish to the department, on forms provided by the department, a report of the disposition of the case.

(c) A disposition report, whether by a criminal justice agency or a court clerk, shall be sent to the department within thirty [30] days after the disposition. [IC 5-2-5-3, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-4. Provision of data to and from criminal justice agencies. — Any criminal justice agency may provide criminal history data to, or receive criminal history data from, any other criminal justice agency. The department shall provide criminal history data to any criminal justice agency making a request if the council determines that the agency has complied with this chapter. [IC 5-2-5-4, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-5. Information to noncriminal justice organizations or individuals — Limitation. — On request, law enforcement agencies shall release, or allow inspection of, a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

(1) Has applied for employment with a noncriminal justice organization or individual;

(2) Has applied for a license and criminal history data [as] is required by law to be provided in connection with the license;

(3) Is a candidate for public office or a public official;

(4) Is in the process of being apprehended by a law enforcement agency;

(5) Is placed under arrest for the alleged commission of a crime;

(6) Has charged that his rights have been abused repeatedly by criminal justice agencies; or

(7) Is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) Any person who uses limited criminal history for any purpose not specified under this section commits a class A misdemeanor. [IC 5-2-5-5, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-6. Information to noncriminal justice organizations or individuals — Prohibited uses. — A noncriminal justice organization or individual which receives a limited criminal history may not utilize it for purposes:

(1) Other than those stated in the request; or

(2) Which deny the subject any civil right to which the subject is entitled. [IC 5-2-5-6, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-7. Procedure on request for limited criminal history — Editing of information. — (a) On request for release or inspection of a limited criminal history, law enforcement agencies may and the department shall do the following:

(1) Require a form, provided by them, to be completed. This form shall be maintained for a period of two (2) years and shall be available to the record subject upon request.

(2) Collect a three-dollar ($3) fee to defray the cost of processing a request for inspection.

(3) Collect a seven-dollar ($7) fee to defray the cost of processing a request for release. However, law enforcement agencies and the department may not charge the fee for requests received from the parent locator service of the child support division of the state department of public welfare.

(b) Law enforcement agencies and the department shall edit information so that the only information released or inspected is information which:

(1) Has been requested; and

(2) Is limited criminal history information. [IC 5-2-5-7, as added by Acts 1981, P.L. 23, § 2; P.L.50-1987, § 1.]

5-2-5-8. Copy to person about whom data maintained — Challenge of information. — (a) Unless otherwise prohibited by law, any criminal justice agency that maintains criminal history data shall, upon request and proper identification of the person about whom criminal history data is maintained, provide that person with a copy of his criminal history data for a reasonable fee.

(b) Any person may challenge the information contained in his criminal history data file. [IC 5-2-5-8, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-9. Applicability of chapter. — This chapter is not applicable to and does not prevent the release or inspection of information contained in:

(1) Wanted person posters or announcements;

(2) An original record of entry, such as a police blotter, maintained by a criminal justice agency;

(3) Published court or administrative opinions, or records of public judicial, administrative, or legislative proceedings;

(4) Records of traffic offenses maintained by the bureau of motor vehicles; or

(5) Announcements of pardon or executive clemency. [IC 5-2-5-9, as added by Acts 1981, P.L. 23, § 2.]

5-2-5-10. Rules — Procedure upon challenge — Inspection. — (a) The council shall adopt rules under IC 4-22-2 designed to:

(1) Assure the completeness and accuracy of criminal history data;

(2) Protect information from loss, alteration, destruction, or improper direct access to the information files;

(3) Prevent unreasonable interference with the regular discharge of the duties of employees of law enforcement agencies; and

(4) Carry out the provisions of this chapter.

(b) If a person makes a challenge under section 8(b) [IC 5-2-5-8(b)] of this chapter, the department shall:

(1) Make the changes requested, if it determines the data is in error; or

(2) Conduct a hearing under IC 4-21.5-3, if requested by the person making the challenge.

(c) The rules adopted under this chapter shall provide for inspection in a reasonable and timely manner. [IC 5-2-5-10, as added by Acts 1981, P.L. 23, § 2; P.L.7-1987, § 6.]

5-2-5-11. Security and privacy council. — (a) There is created a security and privacy council to consist of nine [9] members selected under subsections (b) and (c).

(b) The following six [6] members shall be appointed by and shall serve at the pleasure of the governor:

(1) A prosecuting attorney;

(2) The police chief of a city;

(3) The sheriff of a county;

(4) A criminal court judge; and

(5) Two [2] citizens who are not law enforcement officers.

5-2-5-12. Daily IDACS computer entries. — On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

(1) All information concerning stolen or recovered property, including:
  (A) Motor vehicles;
  (B) Firearms;
  (C) Securities;
  (D) Boats;
  (E) License plates; and
  (F) Other stolen or recovered property.

(2) All information concerning fugitives charged with a crime, including information concerning extradition.

(3) All information concerning runaways, missing persons, and missing children (as defined in IC 10-1-7-2), including information concerning the release of such persons to the custody of a parent or guardian.

[P.L.35-1984, § 2; P.L.49-1989, § 1.]

5-2-5-13. Exceptions to charging fees. — (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a not-for-profit organization that:

(1) Has been in existence for at least ten (10) years; and

(2) Either:
  (A) Has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization; or
  (B) Is a home health agency licensed under IC 16-10.

(b) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the state welfare department or a county welfare department if the request is made as part of a background investigation of the following:

(1) An applicant for licensing as a day care home under IC 12-3-2-3.1.
(2) A day care home licensee under IC 12-3-2-3.1.
(3) An applicant for licensing as a foster home under IC 12-3-2-3.6.
(4) A foster home licensee under IC 12-3-2-3.6.

[P.L.50-1989, § 1.]

(c) The following persons, or their designees, shall also be members of the council:

(1) The superintendent of the state police;

(2) The attorney general; and

(3) The commissioner of the department of correction.

(d) Members of the council are not entitled to receive compensation, but are entitled to receive a per diem and mileage on those days in which they are engaged in the business of the council. Per diem and mileage paid shall be that amount paid to state employees. [IC 5-2-5-11, as added by Acts 1981, P.L. 23, § 2.]

CHAPTER 3

ACCESS TO PUBLIC RECORDS

SECTION.	
5-14-3-1.	Public policy — Construction of chapter.
5-14-3-2.	Definitions.
5-14-3-3.	Right of inspection of public records.
5-14-3-4.	Exceptions to IC 5-14-3-3 — Time limitation on confidentiality of records — Destruction of public records.
5-14-3-5.	Availability of information where person is arrested or jailed, or agency maintains daily record listing suspected crimes, accidents or complaints.
5-14-3-6.	Records containing disclosable and nondisclosable information.
5-14-3-7.	Protection of records — Regulation of interference with regular discharge of agency functions.
5-14-3-8.	Copying fee.
5-14-3-9.	Denial of disclosure — Action to compel inspection or copying of record.

5-14-3-1. Public policy — Construction of chapter. — A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record. [IC 5-14-3-1, as added by P.L.19-1983, § 6.]

5-14-3-2. Definitions. — As used in this chapter:

"Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, and reproducing by any other means.

"Inspect" includes the right to manually transcribe and make notes, abstracts, or memoranda.

"Investigatory record" means information compiled in the course of the investigation of a crime.

"Patient" has the meaning set out in IC 16-4-8-1.

"Person" means an individual, corporation, partnership, unincorporated association, or governmental entity.

"Provider" has the meaning set out in IC 16-4-8-1.

"Public agency" means:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, or legislative power of the state;

(2) Any political subdivision as defined by IC 36-1-2-13 or other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power;

(3) Any entity or office that is subject to:

(A) Budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or

(B) A general audit by the state board of accounts;

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities;

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff; and

(6) Any law enforcement agency, which means an agency or department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcoholic beverage commission, and conservation officers of the department of natural resources.

However, "public agency" does not include a branch office operated by a manager appointed under IC 9-1-1-6.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, or any other material, regardless of form or characteristics.

"Standard-sized documents" include all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half inches [8 1/2"] by eleven inches [11"] or eight and one-half inches [8 1/2"] by fourteen inches [14"].

"Trade secret" has the meaning set forth in IC 24-2-3-2. [IC 5-14-3-2, as added by P.L.19-1983, § 6.]

5-14-3-3. Right of inspection of public records. — (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the public agency, except as provided in section 4 [5-14-3-4] of this chapter. A request for inspection or copying must identify with reasonable particularity the record being requested.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). [IC 5-14-3-3, as added by P.L.19-1983, § 6.]

5-14-3-4. Exceptions to IC 5-14-3-3 — Time limitation on confidentiality of records — Destruction of public records [effective January 1, 1984]. — (a) The following public records are excepted from section 3 [5-14-3-3] of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.
(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
(6) Information concerning research (including actual research documents) conducted under the auspices of an institution of higher education, including information:

(A) Concerning any negotiations made with respect to the research; and
(B) Received from another party involved in the research.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:
(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 [5-14-3-5] of this chapter.
(2) The work product of an attorney representing (pursuant to state employment or an appointment by a public agency):
(A) A public agency;
(B) The state; or
(C) An individual.
(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.
(4) Scores of tests or license examinations if the person is identified by name and has not consented to the release of his scores.
(5) Records relating to negotiations between the department of commerce, the employment development commission, the film commission, the corporation for science and technology, or economic development commissions with industrial, research, or commercial prospects while negotiations are in progress.
(6) Records that contain intraagency or interagency advisory or deliberative material that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decisionmaking.
(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.
(8) Personnel files of public employees, except for:
(A) The name, compensation, application for employment or appointment, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
(B) Information relating to the status of any formal charges against the employee; and
(C) Information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.
However, all personnel file information shall be made available to the affected employee or his representative.
(9) Patient medical records and charts created by a provider, if the patient gives his written consent, and minutes or records of hospital medical staff meetings.
(10) Administrative or technical information that would jeopardize a recordkeeping or security system.
(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it.

(12) Records specifically prepared for discussion, or developed during discussion in an executive session under IC 5-14-1.5-6.
(13) The work product of the legislative services agency under personnel rules approved by the legislative council.
(14) The work product of individual members and the partisan staffs of the general assembly.
(15) The identity of a donor of a gift made to a public agency if the donor requires nondisclosure of his identity as a condition of making the gift.
(16) Library records which can be used to identify any library patron.
(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law.
(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.
(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five [75] years after the creation of that record.
(f) Notwithstanding subsection (e) of this section and section 7 [5-14-3-7] of this chapter, public records may be destroyed:
(1) In accordance with record retention schedules under IC 5-15; or
(2) In the ordinary course of business if not contained in a record retention schedule under IC 5-15. [IC 5-14-3-4, as added by P.L.19-1983, § 6; P.L.57-1983, § 1.]

5-14-3-5. Availability of information where person is arrested or jailed, or agency maintains daily record listing suspected crimes, accidents or complaints. — (a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:
(1) Information that identifies the person including his name, age, and address.
(2) Information concerning any charges on which the arrest or summons is based.
(3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
(A) Time and location of the arrest or the issuance of the summons;
(B) Investigating or arresting officer (other than an undercover officer or agent); and
(C) Investigating or arresting law enforcement agency.
(b) If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying:
(1) Information that identifies the person including his name, age, and address.

(2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.

(3) The time and date that the person was received and the time and date of his discharge or transfer.

(4) The amount of the person's bail or bond, if it has been fixed.

(c) If an agency maintains a daily log or record that lists suspected crimes, accidents, or complaints, the following information shall be made available for inspection and copying:

(1) The time, substance, and location of all complaints or requests for assistance received by the agency.

(2) The time and nature of the agency's response to all complaints or requests for assistance.

(3) If the incident involves an alleged crime or infraction:

(A) The time, date, and location of occurrence;

(B) The name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;

(C) The factual circumstances surrounding the incident; and

(D) A general description of any injuries, property, or weapons involved.

(d) This chapter does not affect IC 5-2-4, IC 5-2-5, or IC 5-11-1-9. [IC 5-14-3-5, as added by P.L.19-1983, § 6.]

5-14-3-6. Records containing disclosable and nondisclosable information. — If a public record contains disclosable and nondisclosable information, the public agency shall separate the material that may be disclosed and make it available for inspection and copying. [IC 5-14-3-6, as added by P.L.19-1983, § 6.]

5-14-3-7. Protection of records — Regulation of interference with regular discharge of agency functions. — A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. However, this section does not operate to deny to any person the rights secured by section 3 [5-14-3-3] of this chapter. [IC 5-14-3-7, as added by P.L.19-1983, § 6.]

5-14-3-8. Copying fee. — (a) For the purposes of this section, "state agency" has the meaning set forth in IC 4-13-1-1.

(b) A public agency may not charge any fee under this chapter:

(1) To inspect a public record; or

(2) To search for, examine, or review a record to determine whether the record may be disclosed.

(c) The department of administration shall establish a uniform copying fee for the copying of one [1] page of a standard-sized document by state agencies. The fee may not exceed the average cost of copying records by state agencies or ten cents [10¢] per page, whichever is greater. A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents.

(d) A public agency that is not a state agency may establish a copying fee schedule. The fee may not exceed the actual cost of copying the record by the agency.

(e) If:

(1) A person is entitled to a copy of a public record under this chapter; and
(2) The public agency which is in possession of the record has reasonable access to a machine capable of mechanically reproducing the public record; the public agency must provide at least one [1] copy of the public record to the person. However, if a public agency does not have reasonable access to such a machine, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance.
(f) Notwithstanding subsections (b), (c), and (d), a public agency shall collect any copying or search fee that is specified by statute or is ordered by a court. [IC 5-14-3-8, as added by P.L.19-1983, § 6.]

5-14-3-9. Denial of disclosure — Action to compel inspection or copying of record. — (a) A denial of disclosure by a public agency occurs when:
(1) The person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or
(2) Twenty-four [24] hours after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;
whichever occurs first.
(b) A person who has been denied his right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit him to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue that a request for release of the public record has been denied. Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied his right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.
(c) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) [5-14-3-4(b)] of this chapter, the public agency meets its burden of proof under this subsection by proving that the record falls within one [1] of the categories of exempted records under section 4(b) of this chapter. The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.
(d) In any action filed under this section, a court may award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if:
(1) The plaintiff substantially prevails and the court finds the defendant's violation was knowing or intentional; or
(2) The defendant substantially prevails and the court finds the action was frivolous or vexatious. [IC 5-14-3-9, as added by P.L.19-1983, § 6.]

Bureau of Criminal Identification and Investigation

Chapter 1

10-1-1-12 [47-857]. Bureau of criminal identification and investigation — Duties — Records. — The bureau of criminal identification and investigation shall maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The bureau shall obtain from whatever source procurable, and shall file and preserve for record, plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements, and other information about all persons who commit:

(1) Felonies under the Indiana Code; or

(2) Class A misdemeanors under IC 35 [35-1-4-1 — 35-50-6-6].

The bureau may also obtain like information about persons who violate the military or criminal laws of the United States, or who commit a crime in any other state, country, district, or province which, if committed within this state, would be a felony. The bureau shall make a complete and systematic record and index of all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison. [Acts 1945, ch. 344, § 12, p. 1622; 1978, P.L. 2, § 1004.]

10-1-1-13 [47-858]. Cooperation with sheriffs. — The bureau shall assist the respective county sheriffs of the state in the establishment of a system for making identification of criminals in each county, and shall give the respective sheriffs such assistance and instruction in the operation and use of such system as may be requested or as may be deemed necessary. The bureau may likewise give such instruction, advice and assistance to chiefs of police and other peace officers as may be deemed wise for the purpose of

securing the establishment and operation of local identification systems. It shall be the duty of the respective county sheriffs, chiefs of police and other peace officers to cooperate with the bureau in establishing and maintaining an efficient and coordinating system of identification. [Acts 1945, ch. 344, § 13, p. 1622.]

10-1-1-14 [47-859]. Cooperation with other forces. — The bureau of criminal identification and investigation shall cooperate with similar bureaus or agencies of the other states, and with the national bureau in the department of justice in Washington, District of Columbia, for the purpose of developing and carrying on a complete interstate, national and international system of criminal identification and investigation. [Acts 1945, ch. 344, § 14, p. 1622.]

10-1-1-15 [47-860]. Duty of penal institutions to furnish information. — It shall be the duty of the wardens of the state prison and the state reformatory, superintendent of the Indiana woman's prison and superintendent of the Indiana state farm, and of the chief administrative officer of every penal institution of the state, to make and furnish to the bureau, in such manner and according to such methods as the bureau may prescribe, photographs, fingerprints, modus operandi statements and other required identification of all prisoners who are confined in the respective institutions, at the time of the taking effect of this act [10-1-1-1 — 10-1-1-24], or who are hereafter confined therein. [Acts 1945, ch. 344, § 15, p. 1622.]

10-1-1-16 [47-861]. Cooperation with forces of police. — The bureau shall cooperate with the respective sheriffs, constables, marshals, police and other peace officers of the state in the detection of crime and the apprehension of criminals throughout the state and shall, on the direction of the governor, conduct such investigations as may be deemed necessary to secure the evidence which may be essential to the conviction of alleged violators of the criminal laws of the state. [Acts 1945, ch. 344, § 16, p. 1622.]

10-1-1-17 [47-862]. Assistance to prosecuting attorney. — The director is hereby authorized to assist any prosecuting attorney in the prosecution of any criminal case which may, in his judgment, require such cooperation. [Acts 1945, ch. 344, § 17, p. 1622.]

10-1-1-18 [47-863]. Duty of local officers to furnish information. — Every law enforcement officer shall furnish to the bureau, upon request, fingerprints, photographs, comprehensive descriptions, and such other data as to identification as the bureau may require of all persons who are arrested and who, in the judgment of the director of the bureau or the officer making the arrest, are persons wanted for commission of a felony. [Acts 1945, ch. 344, § 18, p. 1622; 1978, P.L. 2, § 1005.]

10-1-1-19 [47-864]. Rules and regulations. — The director of the bureau, with the approval of the superintendent and the board, shall make and promulgate such rules and regulations from time to time as may be found necessary and proper for the efficient operation of the bureau and the successful administration of the provisions of this act [10-1-1-1 — 10-1-1-24]. [Acts 1945, ch. 344, § 19, p. 1622.]

10-1-1-20 [47-865]. Fingerprints and identification marks — Authority to take. — The members of the department shall take fingerprints, and such other identification data as shall be prescribed by the superintendent, of persons taken into custody for felonies, but the members may, if they deem it advisable, take the fingerprints and other data of persons taken into custody for other offenses. They shall promptly transmit and file the fingerprints and other data. [Acts 1945, ch. 344, § 320, p. 1622; 1978, P.L. 2, § 1006.]

10-1-1-21 [47-866]. Exchange of information. — The employees of the department shall cooperate and exchange information with any other department or authority of the state or with other police forces, both within this state and outside it, with federal police forces, toward the end of achieving greater success in preventing and detecting crimes and apprehending criminals. [Acts 1945, ch. 344, § 21, p. 1622.]

Chapter 2.5

CRIMINAL JUSTICE DATA DIVISION

SECTION.	
10-1-2.5-1.	Criminal justice data division—Creation.
10-1-2.5-2.	Purposes of division.
10-1-2.5-3.	Duties — Reports — Nature of data to be collected.
10-1-2.5-4.	Duties of agencies required to report to division — Relief from liability.
10-1-2.5-5.	Division's equipment to be compatible with similar agencies.
10-1-2.5-6.	Administrative advice from other agencies.
10-1-2.5-7.	Rules and regulations — Criminal justice advisory committee — Composition of committee — Appointment of members.
10-1-2.5-8.	Annual report — Periodic report.
10-1-2.5-9.	Neglect or refusal to comply with requests for data —Denial of benefits of system — Penalties for fraudulent return.

10-1-2.5-1 [47-880]. Criminal justice data division—Creation.— A criminal justice data division is hereby established within the Indiana state police department. Such division shall be under the administrative control and jurisdiction of the superintendent of state police who is hereby empowered to staff it with such personnel as may be necessary for its efficient operation, and who shall also be empowered to adopt and promulgate administrative rules and regulations to carry out the purposes of this chapter [10-1-2.5-1—10-1-2.5-9]. [IC 1971, 10-1-2.5-1, as added by Acts 1971, P. L. 146, § 1, p. 612.]

Title of Act. The title of Acts 1971, P. L. 146, reads: "An act to amend IC 1971, 10-1, by adding a new chapter creating a criminal justice data division and providing for its control, administration and operation." In force September 2, 1971.

10-1-2.5-2 [47-881]. Purposes of division.—It shall be the purpose of the criminal justice data division to utilize the most current equipment, methods and systems for the rapid storage and retrieval of criminal justice data necessary for an effective criminal justice system within the state of Indiana. The superintendent shall be authorized to hire consultants to advise him in the most efficient means of establishing, funding and maintaining said criminal justice data system with the ultimate purpose in mind of extending the services and benefits of such a system to all governmental agencies of the state and its political subdivisions having a need for such data. In addition, the criminal justice data division shall be organized and administered to fulfill the following specific purposes:

(1) To inform the public and responsible governmental officials as to the nature of the crime problem, its magnitude and its trend over time;

(2) To measure the effects of prevention and deterrence programs, ranging from community action to police patrol;

(3) To find out who commits crimes by age, sex, family status, income, ethnic and residential background, and other social attributes, in order to find the proper focus of crime prevention programs;

(4) To measure the workload and effectiveness of all agencies of the criminal justice system, both individually and as an integrated system;

(5) To analyze the factors contributing to success and failure of probation, parole and other correctional alternatives for various kinds of offenders;

(6) To provide criminal justice agencies with comparative norms of performance;

(7) To furnish baseline data for research;

(8) To compute the costs of crime in terms of economic injury inflicted upon communities and individuals, as well as assess the direct public expenditures by criminal justice agencies;

(9) To project expected crime rates and their consequences into the future for more enlightened government planning. [IC 1971, 10-1-2.5-2, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-3 [47-882]. Duties—Reports—Nature of data to be collected.—The criminal justice data division, under the supervision and direction of the superintendent, and in accordance with the rules and regulations promulgated pursuant to this chapter [10-1-2.5-1—10-1-2.5-9] shall: (1) collect data necessary for the accomplishment of the purposes of this chapter from all persons and agencies mentioned in section 4 [10-1-2.5-4]; (2) prepare and distribute to all such persons and agencies, forms to be used in reporting data to the division, these forms also to provide for items of information needed by federal bureaus or departments engaged in the development of national criminal statistics; (3) prescribe the form and content of records to be kept by such persons and agencies to insure the correct reporting of data to the division; (4) instruct such persons and agencies in the installation, maintenance and use of records and equipment and in the manner of reporting to the division; (5) tabulate, analyze and interpret the data collected; (6) supply data, upon request, to federal bureaus of departments engaged in collecting and analyzing national criminal statistics; and (7) annually present to the governor, on or before July 1, a printed report containing the criminal statistics of the preceding calendar year; and present such other times as the superintendent may deem necessary or the governor may request, reports on public aspects of criminal statistics in a sufficiently general distribution for public enlightenment.

No data may be obtained by the division under the provisions of this chapter except that which is a public record and all laws regulating privacy and/or restricting use of such data shall be applicable to any data collected.

The criminal justice data division may accept data and reports from agencies other than those required to report herein when such data and reports are consistent with the purpose of this chapter. [IC 1971, 10-1-2.5-3, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-4 [47-883]. Duties of agencies required to report to division—Relief from liability.—When requested by the division, any public official or public agency dealing with crime or criminals or with delinquency or delinquents shall: (1) install and maintain records

needed for reporting data required by the division; (2) report to the division, as and when prescribed, all data requested; (3) give the accredited agents of the division access to such records for the purpose of inspection; and (4) cooperate with the division to the end that its duties may be properly performed.

No official required under this chapter [10-1-2.5-1—10-1-2.5-9] to furnish reports, information or statistics to the criminal justice data division and no person employed by such official, shall be subject to liability in any action arising out of his having furnished such information in a manner as may be required by this chapter or the rules and regulations promulgated pursuant thereto. [IC 1971, 10-1-2.5-4, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-5 [47-884]. Division's equipment to be compatible with similar agencies.—Insofar as is practicable the equipment methods and systems used by the criminal justice data division shall be compatible with those used by similar agencies in other states and the federal government so that data necessary for interstate, national and international criminal justice may be readily available. [IC 1971, 10-1-2.5-5, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-6 [47-885]. Administrative advice from other agencies.—In the administration of the criminal justice data division created by this chapter [10-1-2.5-1—10-1-2.5-9], the superintendent shall have the advice and assistance of the criminal justice commission and advisory council and the criminal justice planning agency, as created by law. [IC 1971, 10-1-2.5-6, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-7 [47-886]. Rules and regulations—Criminal justice advisory committee—Composition of committee—Appointment of members.—The superintendent shall promulgate rules and regulations necessary to accomplish the purposes of this chapter [10-1-2.5-1—10-1-2.5-9] and in the formulation of such rules and regulations, he shall have the advice and assistance of a criminal justice advisory committee which shall consist of the following persons or their designated representatives: the superintendent of state police who shall act as chairman; the attorney-general; the executive director of the criminal justice planning agency; the commissioner of corrections; one [1] county sheriff serving in his second or subsequent term of office; one [1] chief of police with two [2] or more years experience as chief; one [1] prosecuting attorney in his second or subsequent term of office; one [1] judge of a court of general criminal jurisdiction; the executive director of the law enforcement training academy; and a criminologist or forensic scientist. All members of said advisory council shall be appointed by the governor on a nonpartisan basis and shall serve at the pleasure of the governor. Such service shall be without compensation except per diem as provided by law. It shall be the duty of said committee to meet as often as is deemed necessary by the superintendent, for the purpose of formulating or revising rules and regulations for the statewide operation of the criminal justice data division. [IC 1971, 10-1-2.5-7, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-8 [47-887]. Annual report—Periodic report.—The annual report of the division shall be organized, insofar as is practicable, so as

to reflect the purposes enumerated in sec. 2 [10-1-2.5-2]. The superintendent shall so interpret such statistics and so present the annual report that it may be of value in guiding the legislature and those in charge of the apprehension, prosecuting and treatment of criminals and delinquents, or those concerned with the prevention of crime and delinquency. In addition to the annual report required herein, the division shall, within the limits of time and manpower, comply with all reasonable requests for periodic reports and analysis of data as shall be made by any officer or agency required to report data, and which is necessary for the proper performance of the duties of such office or agency. [IC 1971, 10-1-2.5-8, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-9 [47-888]. Neglect or refusal to comply with requests for data—Denial of benefits of system—Penalties for fraudulent return.— It is the intent of this chapter [10-1-2.5-1—10-1-2.5-9] to provide information and data with reference to the total criminal justice system that will be equally beneficial to all officers, agencies and components of said system so that each may better perform his or its respective duties for the over-all improvement of criminal justice. Rules and regulations adopted pursuant to this chapter shall be drafted so as to express this intent. Any public official required by said rules and regulations to report to the division, who neglects or wilfully refuses to comply with the requests of the superintendent for such information or data, or with the governing records and systems and equipment and their maintenance shall, at the discretion of the director of the criminal justice planning agency, be denied the benefits of the system until meeting minimum compliance with said regulations. Any official who knowingly makes, or causes to be made, a fraudulent return of information to the division, shall be subject to the penalties for the crime of official misconduct or perjury, as applicable to the act committed. [IC 1971, 10-1-2.5-9, as added by Acts 1971, P. L. 146, § 1, p. 612.]

CHAPTER 6

FAIR INFORMATION PRACTICES

SECTION.
4-1-6-1. Definitions.
4-1-6-7. Annual report of state agency.
4-1-6-8. Public access to information — Confidential files — Restrictions upon public access as condition of gift.
4-1-6-8.5. Confidential classification to be designated on document — Interagency treatment of confidential information.
4-1-6-8.6. Conditions for access to certain confidential records — Improper disclosure prohibited.

4-1-6-1. Definitions [effective January 1, 1984]. — As used in this chapter, the term:

(a) "Personal information system" means any recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

(b) "Personal information" means any information that describes, locates, or indexes anything about an individual or that affords a basis for inferring personal characteristics about an individual including, but not limited to, his education, financial transactions, medical history, criminal or employment records, finger and voice prints, photographs, or his presence, registration, or membership in an organization or activity or admission to an institution.

(c) "Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in a personal information system.

(d) "State agency" means every agency, board, commission, department, bureau, or other entity of the administrative branch of Indiana state government, except those which are the responsibility of the auditor of state, treasurer of state, secretary of state, attorney general, superintendent of public instruction, and excepting the department of state police and the state-supported institutions of higher education.

(e) "Confidential" means information which has been so designated by statute or by promulgated rule or regulation based on statutory authority. [IC 4-1-6-1, as added by Acts 1977, P.L. 21, § 1; 1978, P.L. 10, § 1; P.L. 19-1983, § 1.]

4-1-6-2. Collection of personal information by state agencies — Records required. — On or before July 1, 1978, any state agency maintaining a personal information system shall:

(a) Collect, maintain, and use only that personal information as is relevant and necessary to accomplish a statutory purpose of the agency;

(b) Collect information to the greatest extent practicable from the data subject directly when the information may result in adverse determinations about an individual's rights, benefits and privileges under federal or state programs;

(c) Collect no personal information concerning in any way the political or religious beliefs, affiliations and activities of an individual unless expressly authorized by law;

(d) Assure that personal information maintained or disseminated from the system is, to the maximum extent possible, accurate, complete, timely, and relevant to the needs of the state agency;

(e) Inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what statutory authority it is solicited, what uses the agency will make of it, what penalties and specific consequences for the individual, which are known to the agency, are likely to result from nondisclosure, whether the information will be treated as a matter of public record or as confidential information, and what rules of confidentiality will govern the information;

(f) Insofar as possible segregate information of a confidential nature from that which is a matter of public record; and, pursuant to statutory authority, establish confidentiality requirements and appropriate access controls for all categories of personal information contained in the system;

(g) Maintain a list of all persons or organizations having regular access to personal information which is not a matter of public record in the information system;

(h) Maintain a complete and accurate record of every access to personal information in a system which is not a matter of public record by any person or organization not having regular access authority;

(i) Refrain from preparing lists of the names and addresses of individuals for commercial or charitable solicitation purposes except as expressly authorized by law;

(j) Make reasonable efforts to furnish prior notice to an individual before any personal information on such individual is made available to any person under compulsory legal process;

(k) Establish rules and procedures to assure compliance with this chapter [4-1-6-1 — 4-1-6-9] and instruct each of its employees having any responsibility or function in the design, development, operation or maintenance of such system or use of any personal information contained therein of each requirement of this chapter and of each rule and procedure adopted by the agency to assure compliance with this chapter;

(*l*) Establish appropriate administrative, technical and physical safeguards to insure the security of the information system and to protect against any anticipated threats or hazards to their security or integrity. [IC 4-1-6-2, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-3. Disclosure of information — Procedure. — Unless otherwise prohibited by law, any state agency that maintains a personal information system shall, upon request and proper identification of any data subject, or his authorized agent, grant such subject or agent the right to inspect and to receive at reasonable, standard charges for document search and duplication, in a form comprehensible to such individual or agent:

(a) All personal information about the data subject, unless otherwise provided by statute, whether such information is a matter of public record or maintained on a confidential basis, except in the case of medical and psychological records, where such records shall, upon written authorization of the data subject, be given to a physician or psychologist designated by the data subject;

(b) The nature and sources of the personal information, except where the confidentiality of such sources is required by statute; and

(c) The names and addresses of any recipients, other than those with regular access authority, of personal information of a confidential nature about the data subject, and the date, nature and purpose of such disclosure. [IC 4-1-6-3, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-4. Disclosure of information — Business hours — Fees for copies. — An agency shall make the disclosures to data subjects required under this chapter [4-1-6-1 — 4-1-6-9] during regular business hours. Copies of the documents containing the personal information sought by the data subject shall be furnished to him or his representative at reasonable, standard charges for document search and duplication. [IC 4-1-6-4, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-5. Correction of file — Notice to past recipients of information. — If the data subject gives notice that he wishes to challenge, correct or explain information about him in the personal information system, the following minimum procedures shall be followed:

(a) The agency maintaining the information system shall investigate and record the current status of that personal information;

(b) If, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained, it shall be promptly corrected or deleted;

(c) If the investigation does not resolve the dispute, the data subject may file a statement of not more than two hundred [200] words setting forth his position;

(d) Whenever a statement of dispute is filed, the agency maintaining the data system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly mark that it is disputed and supply the statement of the data subject along with the information;

(e) The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request;

(f) Following any correction or deletion of personal information the agency shall, at the request of the data subject, furnish to past recipients notification delivered to their last known address that the item has been deleted or corrected and shall require said recipients to acknowledge receipt of such notification and furnish the data subject the names and last known addresses of all past recipients of the uncorrected or undeleted information. [IC 4-1-6-5, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-6. Rights, benefits or privileges preserved. — The securing by any individual of any confidential information which such individuals may obtain through the exercise of any right secured under the provisions of this chapter [4-1-6-1 — 4-1-6-9] shall not condition the granting or withholding of any right, privilege, or benefit, or be made a condition of employment. [IC 4-1-6-6, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-7. Annual report of state agency [effective January 1, 1984]. — (a) Any state agency maintaining one or more personal information systems shall file an annual report on the existence and character of each system added or eliminated since the last report with the governor on or before December 31.

(b) The agency shall include in such report at least the following information:

(1) The name or descriptive title of the personal information system and its location.

(2) The nature and purpose of the system and the statutory or administrative authority for its establishment.

(3) The categories of individuals on whom personal information is maintained including the approximate number of all individuals on whom information is maintained and the categories of personal information generally maintained in the system including identification of those which are stored in computer accessible records and those which are maintained manually.

(4) All confidentiality requirements, specifically:

(A) Those personal information systems or parts thereof which are maintained on a confidential basis pursuant to a statute, contractual obligation, or rule; and

(B) Those personal information systems maintained on an unrestricted basis.

(5) In the case of subdivision (4)(A) of this subsection, the agency shall include detailed justification of the need for statutory or regulatory authority to maintain such personal information systems or parts thereof on a confidential basis and, in making such justification, the agency shall make reference to section 8 [4-1-6-8] of this chapter.

(6) The categories of sources of such personal information.

(7) The agency's policies and practices regarding the implementation of section 2 [4-1-6-2] of this chapter relating to information storage, duration of retention of information, and elimination of information from the system.

(8) The uses made by the agency of personal information contained in the system.

(9) The identity of agency personnel, other agencies, and persons or categories of persons to whom disclosures of personal information are made or to whom access to the system may be granted, together with the purposes therefor and the restriction, if any, on such disclosures and access, including any restrictions on redisclosure.

(10) A listing identifying all forms used in the collection of personal information.

(11) The name, title, business address, and telephone number of the person immediately responsible for bringing and keeping the system in compliance with the provisions of this chapter. [IC 4-1-6-7, as added by Acts 1977, P.L. 21, § 1; 1978, P.L. 10, § 3; P.L.19-1983, § 2.]

4-1-6-8. Public access to information — Confidential files — Restrictions upon public access as condition of gift [effective January 1, 1984]. — (a) All state agencies subject to the provisions of this chapter shall adhere to the policy that all persons are entitled to access to information regarding the affairs of government and the official acts of those who represent them as public servants, such access being required to enable the people to freely and fully discuss all matters necessary for the making of political judgments. To that end, the provisions of this chapter shall be construed to provide access to public records to the extent consistent with the due protection of individual privacy.

(b) Where such assurance is needed to obtain valuable considerations or gifts (which may include information) for the state, any agency, with the prior written approval of the oversight committee on public records, may allow restrictions upon public access to be imposed upon it as a specific condition of a contract, with a time limit not to exceed fifty [50] years or the lifetime of the individual, whichever is less. In order to promote the preservation of historical, cultural, natural, and other irreplaceable resources, the department of natural resources or the Indiana state library may extend,

beyond the lifetime of the individual, restrictions upon disclosure of information received, providing that such restrictions do not exceed fifty [50] years from the date of the donation in the case of the Indiana state library. [IC 4-1-6-8, as added by Acts 1977, P.L. 21, § 1; 1978, P.L. 10, § 4; 1979, P.L. 40, § 4; P.L.19-1983, § 3.]

4-1-6-8.5. Confidential classification to be designated on document — Interagency treatment of confidential information [effective January 1, 1984]. — In order to establish consistent handling of the same or similar personal information within and among agencies, each state agency collecting, maintaining, or transmitting such information shall apply the following principles and procedures:

(1) Information collected after December 31, 1978, which is classified as confidential must be clearly and uniformly designated as confidential in any form or other document in which it appears.

(2) When an agency which holds information classified as confidential disseminates that information to another agency, the receiving agency shall treat it in the same manner as the originating agency. [IC 4-1-6-8.5, as added by Acts 1978, P.L. 10, § 5; P.L.19-1983, § 4.]

4-1-6-8.6. Conditions for access to certain confidential records — Improper disclosure prohibited. — (a) In cases where access to confidential records containing personal information is desired for research purposes, the agency shall grant access if:

(1) The requestor states in writing to the agency the purpose, including any intent to publish findings, the nature of the data sought, what personal information will be required, and what safeguards will be taken to protect the identity of the data subjects;

(2) The proposed safeguards are adequate to prevent the identity of an individual data subject from being known;

(3) The researcher executes an agreement on a form, approved by the oversight committee on public records, with the agency, which incorporates such safeguards for protection of individual data subjects, defines the scope of the research project, and informs the researcher that failure to abide by conditions of the approved agreement constitutes a breach of contract and could result in civil litigation by the data subject or subjects;

(4) The researcher agrees to pay all direct or indirect costs of the research; and

(5) The agency maintains a copy of the agreement or contract for a period equivalent to the life of the record.

(b) Improper disclosure of confidential information by a state employee is cause for action to dismiss the employee. [IC 4-1-6-8.6, as added by Acts 1978, P.L. 10, § 6; 1979, P.L. 40, § 5; P.L.19-1983, § 5.]

4-1-6-9. Report of governor to general assembly. — (a) Under the authority of the governor, a report shall be prepared, on or before December 1, 1977, and annually thereafter, advising the general assembly of the personal information systems, or parts thereof, of agencies subject to this chapter [4-1-6-1 — 4-1-6-9], which are recommended to be maintained on a confidential basis by specific statutory authorization because their disclosure would constitute an invasion of personal privacy and there is no compelling, demonstrable and overriding public interest in disclosure. Such recommendations may include, but not be limited to, specific personal information systems or parts thereof which can be categorized as follows:

(1) Personal information maintained with respect to students and clients, patients or other individuals receiving social, medical, vocational, supervisory or custodial care or services directly or indirectly from public bodies;

(2) Personal information, excepting salary information, maintained with respect to employees, appointees or elected officials of any public body or applicants for such positions;

(3) Information required of any taxpayer in connection with the assessment or collection of any income tax; and

(4) Information revealing the identity of persons who file complaints with administrative, investigative, law-enforcement or penology agencies.

(b) In addition, such report may list records or categories of records, which are recommended to be exempted from public disclosure by specific statutory authorization for reasons other than that their disclosure would constitute an unwarranted invasion of personal privacy, along with justification therefor. [IC 4-1-6-9, as added by Acts 1977, P. L. 21, § 1, p. ___.]

CHAPTER 5

EXPUNGEMENT OF ARREST RECORDS

SECTION.
35-38-5-1. Petition for expungement of records — Procedure upon receipt of petition — Notice of opposition.

35-38-5-1. Petition for expungement of records — Procedure upon receipt of petition — Notice of opposition. — (a) Whenever:

(1) An individual is arrested but no criminal charges are filed against the individual; or

(2) All criminal charges filed against an individual are dropped because:

(A) Of a mistaken identity;
(B) No offense was in fact committed; or
(C) There was an absence of probable cause;
the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest ocurred. The petition must set forth:
(1) The date of the arrest;
(2) The charge;
(3) The law enforcement agency employing the arresting officer;
(4) Any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
(5) The date of the petitioner's birth; and
(6) The petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall either summarily grant the petition or set the matter for hearing.

(e) If a notice of opposition is filed, the court shall set the matter for a hearing.

(f) The petition shall be granted unless the court finds:
(1) The conditions in subsection (a) have not been met;
(2) The individual has a record of arrests other than minor traffic offenses; or
(3) Additional criminal charges are pending against the individual.
[IC 35-38-5-1, as added by P.L.311-1983, § 3; P.L.295-1989, § 1.]

35-38-5-2. Disposition upon grant of petition. — If the petition for expungement is granted, the law enforcement agency shall within thirty [30] days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or arrest records in their possession. [IC 35-38-5-2, as added by P.L.311-1983, § 3.]

35-38-5-3. Retention of information in any criminal information repository prohibited — Changes in records not to be made. — Whenever the petition of an individual under section 1 [35-38-5-1] of this chapter is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in any record (such as a police blotter entry) made at the time of the arrest or in the record of any court in which the criminal charges were filed. [IC 35-38-5-3, as added by P.L.311-1983, § 3.]

35-38-5-4. Action by person whose records are expunged which is defensible with contents of records — Presumption. — If a person whose records are expunged brings an action that might be defended with the contents of such records, the defendant is presumed to have a complete defense to such an action. In order for the plaintiff to recover, he must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether he had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence. [IC 35-38-5-4, as added by P.L.311-1983, § 3.]

35-38-5-5. Petition to limit access to limited criminal history. — (a) A person may petition the state police department to limit access to his limited criminal history to criminal justice agencies if more than fifteen [15] years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.

(b) When a petition is filed under subsection (a), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 5-2-5-5. [IC 35-38-5-5, as added by P.L.311-1983, § 3.]

35-38-5-6. Violation — Penalty. — A law enforcement officer who violates this chapter commits a class B misdemeanor. [IC 35-38-5-6, as added by P.L.311-1983, § 3.]

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS

Transferred in Code 1985 from ch 68A

22.1 Definitions.
22.2 Right to examine public records.
22.3 Supervision.
22.4 Hours when available.
22.5 Enforcement of rights.
22.6 Penalty.
22.7 Confidential records.
22.8 Injunction to restrain examination.
22.9 Denial of federal funds — rules.
22.10 Civil enforcement.
22.11 Fair information practices.
22.12 Political subdivisions.

22.1 Definitions.

Wherever used in this chapter, "public records" includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

The term "government body" means this state, or any county, city, township, school corporation, political subdivision, tax supported district or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official or officer, of any of the foregoing or any employee delegated the responsibility for implementing the requirements of this chapter.

The term "lawful custodian" means the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. "Lawful custodian" does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.

[C71, 73, 75, 77, 79, 81, §68A.1]
84 Acts, ch 1145, §1; 84 Acts, ch 1185, §1
Transferred in Code 1985 from §68A.1

22.2 Right to examine public records.

1. Every person shall have the right to examine and copy public records and to publish or otherwise disseminate public records or the information contained therein. The right to copy public records shall include the right to make photographs or photographic copies while the records are in the possession of the custodian of the records. All rights under this section are in addition to the right to obtain certified copies of records under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

[C71, 73, 75, 77, 79, 81, §68A.2]
84 Acts, ch 1185, §2
Transferred in Code 1985 from §68A.2

22.3 Supervision.

Such examination and copying shall be done under the supervision of the lawful custodian of the records or the custodian's authorized deputy. The lawful custodian may adopt and enforce reasonable rules regarding such work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for such work, but if it is impracticable to do such work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for such work. All expenses of such work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized deputy in supervising the records during such work. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.

[C71, 73, 75, 77, 79, 81, §68A.3]
Transferred in Code 1985 from §68A.3

22.4 Hours when available.

The rights of persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the

person exercising such right and the lawful custodian agree on a different time.

[C71, 73, 75, 77, 79, 81, §68A.4]
84 Acts, ch 1185, §3
Transferred in Code 1985 from §68A.4

22.5 Enforcement of rights.

The provisions of this chapter and all rights of persons under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the records involved are records of an "agency" as defined in that Act.

[C71, 73, 75, 77, 79, 81, §68A.5]
84 Acts, ch 1185, §4
Transferred in Code 1985 from §68A.5

22.6 Penalty.

It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §68A.6]
Transferred in Code 1985 from §68A.6

22.7 Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a victim of sexual assault or domestic violence and the victim's sexual assault or domestic violence counselor are not subject to disclosure except as provided in section 236A.1.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests shall be public records.

10. Personal information in confidential personnel records of the military department of the state.

11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 542 or chapter 543, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item from the library. The records shall be released to a criminal justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

15. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot.

16. Information in a report to the Iowa department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

17. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

18. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of

the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered.

20. Memoranda, work products and case files of a mediator and all other confidential communications in the possession of an approved dispute resolution center, as provided in chapter 679. Information in these confidential communications is subject to disclosure only as provided in section 679.12, notwithstanding this chapter.

21. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historical preservation officer pertaining to access, disclosure, and use of archaeological site records.

22. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

23. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph "a", subparagraph (2).

[C71, 73, 75, 77, 79, 81, §68A.7; 81 Acts, ch 36, §1, ch 37, §1, ch 38, §1, ch 62, §4]

83 Acts, ch 90, §9; 84 Acts, ch 1014, §1; 84 Acts, ch 1185, §5, 6; 85 Acts, ch 134, §16; 85 Acts, ch 175, §1; 85 Acts, ch 208, §1; 86 Acts, ch 1184, §1; 86 Acts, ch 1228, §1

Transferred in Code 1985 from §68A.7

22.8 Injunction to restrain examination.

1. The district court may grant an injunction restraining the examination, including copying, of a specific public record or a narrowly drawn class of public records. A hearing shall be held on a request for injunction upon reasonable notice as determined by the court to persons requesting access to the record which is the subject of the request for injunction. It shall be the duty of the lawful custodian and any other person seeking an injunction to ensure compliance with the notice requirement. Such an injunction may be issued only if the petition supported by affidavit shows and if the court finds both of the following:

a. That the examination would clearly not be in the public interest.

b. That the examination would substantially and irreparably injure any person or persons.

2. An injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond.

3. In actions brought under this section the district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others. A court may issue an injunction restraining examination of a public record or a narrowly drawn class of such records, only if the person seeking the injunction demonstrates by clear and convincing evidence that this section authorizes its issuance. An injunction restraining the examination of a narrowly drawn class of public records may be issued only if such an injunction would be justified under this section for every member within the class of records involved if each of those members were considered separately.

4. Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purpose of the delay is any of the following:

a. To seek an injunction under this section.

b. To determine whether the lawful custodian is entitled to seek such an injunction or should seek such an injunction.

c. To determine whether the government record in question is a public record, or confidential record.

d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.

e. Actions for injunctions under this section may be brought by the lawful custodian of a government record, or by another government body or person who would be aggrieved or adversely affected by the examination or copying of such a record.

f. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19.

[C71, 73, 75, 77, 79, 81, §68A.8]

84 Acts, ch 1185, §7

Transferred in Code 1985 from §68A.8

22.9 Denial of federal funds — rules.

If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended

as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

An agency within the meaning of section 17A.2, subsection 1 shall adopt as a rule, in each situation where this section is believed applicable, its determination identifying those particular provisions of this chapter that must be waived in the circumstances to prevent the denial of federal funds, services, or information.

[C71, 73, 75, 77, 79, 81, §68A.9]
84 Acts, ch 1185, §8
Transferred in Code 1985 from §68A.9

22.10 Civil enforcement.

1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.

b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person either voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter; had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter; or reasonably relied upon a decision of a court or an opinion of the attorney general or the attorney for the government body.

c. Shall order the payment of all costs and reasonable attorneys fees, including appellate attorneys fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph "*b*" of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

d. Shall issue an order removing a person from office if that person has engaged in two prior violations of this chapter for which damages were assessed against the person during the person's term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian's principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

5. Judicial enforcement under this section does not preclude a criminal prosecution under section 22.6 or any other applicable criminal provision.

84 Acts, ch 1185, §9

22.11 Fair information practices.

This section may be cited as the "*Iowa fair information practices Act.*" It is the intent of this section to require that the information policies of state agencies are clearly defined and subject to public review and comment.

1. Each state agency as defined in chapter 17A shall adopt rules which provide the following:

a. The nature and extent of the personally identifiable information collected by the agency, the legal authority for the collection of that information and a description of the means of storage.

b. A description of which of its records are public records, which are confidential records and which are partially public and partially confidential records and the legal authority for the confidentiality of the records. The description shall indicate whether the records contain personally identifiable information.

c. The procedure for providing the public with access to public records.

d. The procedures for allowing a person to review a government record about that person and have additions, dissents or objections entered in that record unless the review is prohibited by statute.

e. The procedures by which the subject of a confidential record may have a copy of that record released to a named third party.

f. The procedures by which the agency shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside of the agency might routinely be provided this information, which parts of the information requested are required and which are optional and the consequences of failing to provide the information requested.

g. Whether a data processing system matches, collates or permits the comparison of personally identifi-

able information in one record system with personally identifiable information in another record system.

2. A state agency shall not use any personally identifiable information after July 1, 1988 unless it is in a record system described by the rules required by this section.

84 Acts, ch 1185, §10

22.12 Political subdivisions.

A political subdivision or public body which is not a state agency as defined in chapter 17A is not required to adopt policies to implement section 22.11. However, if a public body chooses to adopt policies to implement section 22.11 the policies must be adopted by the elected governing body of the political subdivision of which the public body is a part. The elected governing body must give reasonable notice, make the proposed policy available for public inspection and allow full opportunity for the public to comment before adopting the policy. If the public body is established pursuant to an agreement under chapter 28E, the policy must be adopted by a majority of the public agencies party to the agreement. These policies shall be kept in the office of the county auditor if adopted by the board of supervisors, the city clerk if adopted by a city, and the chief administrative officer of the public body if adopted by some other elected governing body.

84 Acts, ch 1185, §11

CHAPTER 690

BUREAU OF CRIMINAL IDENTIFICATION

Chapter 690, Code 1977, repealed by 66GA, ch 1245(4), §526; see ch 707
This chapter was not enacted as a part of the criminal code but was transferred here from chapter 749, Code 1977

690.1 Criminal identification.
690.2 Finger and palm prints — duty of sheriff and chief of police.
690.3 Equipment.
690.4 Fingerprints and photographs at institutions.

690.1 Criminal identification.

The director of public safety may provide in the department a bureau of criminal identification. The director may adopt rules for the same. The sheriff of each county and the chief of police of each city shall furnish to the department criminal identification records and other information as directed by the director of public safety.

[C24, 27, 31, 35, 39, §13416; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.1; C79, 81, §690.1]

690.2 Finger and palm prints — duty of sheriff and chief of police.

It shall be the duty of the sheriff of every county, and

the chief of police of each city regardless of the form of government thereof and having a population of ten thousand or over, to take the fingerprints of all persons held either for investigation, for the commission of a felony, as a fugitive from justice, or for bootlegging, the maintenance of an intoxicating liquor nuisance, manufacturing intoxicating liquor, operating a motor vehicle while under the influence of an alcoholic beverage or for illegal transportation of intoxicating liquor, and to take the fingerprints of all unidentified dead bodies in their respective jurisdictions, and to forward such fingerprint records on such forms and in such manner as may be prescribed by the director of public safety, within forty-eight hours after the same are taken, to the bureau of criminal investigation. If the fingerprints of any person are taken under the provisions hereof whose fingerprints are not already on file, and said person is not convicted of any offense, then said fingerprint records shall be destroyed by any officer having them. In addition to the fingerprints as herein provided any such officer may also take the palm prints of any such person.

[C27, 31, 35, §13417-b1; C39, §13417.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.2; C79, 81, §690.2]

690.3 Equipment.

The board of supervisors of each county and the council of each city affected by the provisions of section 690.2 shall furnish all necessary equipment and materials for the carrying out of the provisions of said section.

[C27, 31, 35, §13417-b2; C39, §13417.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.3; C79, 81, §690.3]

690.4 Fingerprints and photographs at institutions.

It shall be the duty of the wardens of the penitentiary and men's reformatory, and superintendents of the Iowa correctional institution for women, and the state training school to take or procure the taking of the fingerprints, and, in the case of the penitentiary, men's reformatory, and Iowa correctional institution for women only, Bertillon photographs of any person received on commitment to their respective institutions, and to forward such fingerprint records and photographs within ten days after the same are taken to the division of criminal investigation and bureau of identification, Iowa department of public safety, and to the federal bureau of investigation.

The wardens and superintendents shall procure the taking of a photograph showing a full length view of each inmate of a state correctional institution in the inmate's release clothing immediately prior to the inmate's discharge from the institution either upon expiration of sentence or commitment or on parole, and shall forward the photograph within two days after it is taken to the division of criminal investigation and bureau of identification, Iowa department of public safety.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §749.4; C79, 81, §690.4; 82 Acts, ch 1260, §37]

83 Acts, ch 96, §116, 159; 84 Acts, ch 1184, §18; 86 Acts, ch 1075, §4

CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

This chapter was not enacted as a part of the criminal code but was transferred here from chapter 749B, Code 1977

692.1 Definitions of words and phrases.
692.2 Dissemination of criminal history data — fees.
692.3 Redissemination.
692.4 Statistics.
692.5 Right of notice, access and challenge.
692.6 Civil remedy.
692.7 Criminal penalties.
692.8 Intelligence data.
692.9 Surveillance data prohibited.
692.10 Rules.
692.11 Education program.
692.12 Data processing.
692.13 Review.
692.14 Systems for the exchange of criminal history data.
692.15 Reports to department.
692.16 Review and removal.
692.17 Exclusions.
692.18 Public records.
692.19 Confidential records — oversight by director.
692.20 Motor vehicle operator's record exempt.
692.21 Data to arresting agency.

692.1 Definitions of words and phrases.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of public safety.

2. *"Bureau"* means the department of public safety, division of criminal investigation and bureau of identification.

3. *"Criminal history data"* means any or all of the following information maintained by the department or bureau in a manual or automated data storage system and individually identified:

a. Arrest data.

b. Conviction data.

c. Disposition data.

d. Correctional data.

4. *"Arrest data"* means information pertaining to an arrest for a public offense and includes the charge, date, time and place. Arrest data includes arrest warrants for all public offenses outstanding and not served and includes the filing of charges, by preliminary information when filed by a peace officer or law enforcement officer or indictment, the date and place of alleged commission and county of jurisdiction.

5. *"Conviction data"* means information that a person was convicted of or entered a plea of guilty to a public offense and includes the date and location of commission and place and court of conviction.

6. *"Disposition data"* means information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and includes dismissal of the charge, suspension or deferral of sentence.

7. "Correctional data" means information pertaining to the status, location, and activities of persons under the supervision of the county sheriff, the Iowa department of corrections, the board of parole, or any other state or local agency performing the same or similar function, but does not include investigative, sociological, psychological, economic, or other subjective information maintained by the Iowa department of corrections or board of parole.

8. *"Public offense"* as used in subsections 4, 5 and 6 does not include nonindictable offenses under either chapter 321 or local traffic ordinances.

9. *"Individually identified"* means criminal history data which relates to a specific person by one or more of the following means of identification:

a. Name and alias, if any.

b. Social security number.

c. Fingerprints.

d. Other index cross-referenced to paragraph "*a*", "*b*", or "*c*."

e. Other individually identifying characteristics.

10. "Criminal justice agency" means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders.

11. "Intelligence data" means information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity.

12. *"Surveillance data"* means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person.

13. "Criminal investigative data" means information collected in the course of an investigation where there are reasonable grounds to suspect that specific criminal acts have been committed by a person.

Amended by Acts 1981 (69 G.A.) ch. 38, §§ 2, 3, eff. May 10, 1981; Acts 1983 (70 G.A.) ch. 96, § 117, eff. Oct. 1, 1983; Acts 1983 (70 G.A.) ch. 113, § 1.

692.2. Dissemination of criminal history data—fees

1. Except in cases in which members of the department are participating in an investigation or arrest, the department and bureau may provide copies or communicate information from criminal history data only to the following:

a. Criminal justice agencies.

b. Other public agencies as authorized by the commissioner of public safety.

c. The department of human services for the purposes of section 232.71, subsection 16, section 237.8, subsection 2, section 237A.5, and section 600.8, subsections 1 and 2.

d. The state racing commission for the purposes of section 99D.8A.

e. The state lottery division for purposes of section 99E.9, subsection 2.

f. The Iowa department of public health for the purposes of screening employees and applicants for employment in substance abuse treatment programs which admit juveniles and are licensed under chapter 125.

g. Licensed private child-caring and child-placing agencies and certified adoption investigators for the purpose of section 237.8, subsection 2, and section 600.8, subsections 1 and 2.

h. A psychiatric medical institution for children licensed under chapter 135H for the purposes of section 237.8, subsection 2 and section 600.8, subsections 1 and 2.

2. The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination.

3. Persons authorized to receive information under subsection 1 shall request and may receive criminal history data only when both of the following apply:

a. The data is for official purposes in connection with prescribed duties or required pursuant to section 237.8, subsection 2 or section 237A.5.

b. The request for data is based upon name, fingerprints, or other individual identifying characteristics.

4. The provisions of this section and section 692.3 which relate to the requiring of an individually identified request prior to the dissemination or redissemination of criminal history data do not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including but not limited to, the offense and the date and place of alleged commission, individually identifying characteristics of the person to be arrested, and the court or jurisdiction issuing the warrant.

5. Notwithstanding other provisions of this section, the department and bureau may provide copies or communicate information from criminal history data to any youth service agency approved by the commissioner of public safety. The department shall adopt rules to provide for the qualification and approval of youth service agencies to receive criminal history data.

The criminal history data to be provided by the department and bureau to authorized youth service agencies shall be limited to information on applicants for paid or voluntary positions, where those positions would place the applicant in direct contact with children.

6. The department may charge a fee to any nonlaw-enforcement agency to conduct criminal history record checks and otherwise administer this section and other sections of the Code providing access to criminal history records. The fee shall be set by the commissioner of public safety equal to the cost incurred not to exceed twenty dollars for each individual check requested.

In cases in which members of the department are participating in the investigation or arrest, or where officers of other criminal justice agencies participating in the investigation or arrest consent, the department may disseminate criminal history data and intelligence data when the dissemination complies with section 692.3.

Amended by Acts 1982 (69 G.A.) ch. 1120, § 1; Acts 1983 (70 G.A.) ch. 96, § 157, eff. July 1, 1983; Acts 1983 (70 G.A.) ch. 113, §§ 2, 3; Acts 1984 (70 G.A.) ch. 1061, § 1; Acts 1984 (70 G.A.) ch. 1265, § 6; Acts 1985 (71 G.A.) ch. 33, § 124, eff. May 3, 1985; Acts 1986 (71 G.A.) ch. 1245, §§ 1605, 1606; Acts 1987 (72 G.A.) ch. 59, § 1; Acts 1988 (72 G.A.) ch. 1249, § 19; Acts 1988 (72 G.A.) ch. 1252, § 3.

692.3. Redissemination

1. A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate criminal history data outside the agency, received from the department or bureau, unless all of the following apply:

a. The data is for official purposes in connection with prescribed duties of a criminal justice agency.

b. The agency maintains a list of the persons receiving the data and the date and purpose of the dissemination.

c. The request for data is based upon name, fingerprints, or other individual identification characteristics.

2. Notwithstanding subsection 1, paragraph "a", the department of human services may redisseminate criminal history data obtained pursuant to section 692.2, subsection 1, paragraph "c", to persons licensed, registered, or certified under chapters 237, 237A, 238 and 600 for the purposes of section 237.8, subsection 2 and section 237A.5. A person who receives information pursuant to this subsection shall not use the information other than for purposes of section 237.8, subsection 2, section 237A.5, or section 600.8, subsections 1 and 2. A person who receives criminal history data pursuant to this subsection who uses the information for purposes other than those permitted by this subsection or who communicates the information to another person except for the purposes permitted by this subsection is guilty of an aggravated misdemeanor.

3. A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate intelligence data outside the agency, received from the department or bureau or from any other source, except as provided in subsection 1.

4. Notwithstanding subsection 1, paragraph "a", the Iowa department of public health may redisseminate criminal history data obtained pursuant to section 692.2, subsection 1, paragraph "f", to administrators of facilities licensed under chapter 125 which admit juveniles. Persons who receive criminal history data pursuant to this subsection shall not use this information other than for the purpose of screening employees and applicants for employment in substance abuse programs which admit juveniles and are licensed under chapter 125. A person who receives criminal history data pursuant to this subsection and who uses it for any other purpose or who communicates the information to any other person other than for the purposes permitted by this subsection is guilty of an aggravated misdemeanor.

Amended by Acts 1981 (69 G.A.) ch. 38, § 4, eff. May 10, 1981; Acts 1982 (69 G.A.) ch. 1120, § 2; Acts 1983 (70 G.A.) ch. 96, § 157, eff. July 1, 1983; Acts 1983 (70 G.A.) ch. 153, § 22; Acts 1987 (72 G.A.) ch. 59, § 2; Acts 1988 (72 G.A.) ch. 1249, § 20.

692.4 Statistics.

The department, bureau, or a criminal justice agency may compile and disseminate criminal history data in the form of statistical reports derived from such information or as the basis of further study provided individual identities are not ascertainable.

The bureau may with the approval of the director of public safety disseminate criminal history data to persons conducting bona fide research, provided the data is not individually identified.

[C75, 77, §749B.4; C79, 81, §692.4]

692.5 Right of notice, access and challenge.

Any person or the person's attorney with written authorization and fingerprint identification shall have the right to examine criminal history data filed with the bureau that refers to the person. The bureau may prescribe reasonable hours and places of examination.

Any person who files with the bureau a written statement to the effect that a statement contained in the criminal history data that refers to the person is nonfactual, or information not authorized by law to be kept, and requests a correction or elimination of that information that refers to that person shall be notified within twenty days by the bureau, in writing, of the bureau's decision or order regarding the correction or elimination. Judicial review of the actions of the bureau may be sought in accordance with the terms of the Iowa administrative procedure Act. Immediately upon the filing of the petition for judicial review the court shall order the bureau to file with the court a certified copy of the criminal history data and in no other situation shall the bureau furnish an individual or the individual's attorney with a certified copy, except as provided by this chapter.

Upon the request of the petitioner, the record and evidence in a judicial review proceeding shall be closed to all but the court and its officers, and access thereto shall be refused unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person, other than the petitioner shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this section shall be a public offense, punishable under section 692.7.

Whenever the bureau corrects or eliminates data as requested or as ordered by the court, the bureau shall advise all agencies or individuals who have received the incorrect information to correct their files. Upon application to the district court and service of notice on the director of public safety, any individual may request and obtain a list of all persons and agencies who received criminal history data referring to the individual, unless good cause be shown why the individual should not receive said list.

[C75, 77, §749B.5; C79, 81, §692.5]

692.6 Civil remedy.

Any person may institute a civil action for damages under chapter 25A or 613A or to restrain the dissemination of the person's criminal history data or intelligence data in violation of this chapter, and any person, agency or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses and reasonable attorneys' fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

[C75, 77, §749B.6; C79, 81, §692.6]

692.7 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain criminal history data under false pretenses, or who willfully communicates or seeks to communicate criminal history data to any agency or person except in accordance with this chapter, or any person connected with any research program authorized pursuant to this chapter who willfully falsifies criminal history data or any records relating thereto, shall, upon conviction, for each such offense be guilty of an aggravated misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate criminal history data except in accordance with this chapter shall be guilty of a simple misdemeanor.

2. Any person who willfully requests, obtains, or seeks to obtain intelligence data under false pretenses, or who willfully communicates or seeks to communicate intelligence data to any agency or person except in accordance with this chapter, shall for each such offense be guilty of a class "D" felony. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate intelligence data except in accordance with this chapter shall for each such offense be guilty of a serious misdemeanor.

3. If a person convicted under this section is a peace officer, the conviction shall be grounds for discharge or suspension from duty without pay and if the person convicted is a public official or public employee, the conviction shall be grounds for removal from office.

4. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to criminal history data and intelligence data.

[C75, 77, §749B.7; C79, 81, §692.7]

692.8. Intelligence data

Intelligence data contained in the files of the department of public safety or a criminal justice agency may be placed within a computer data storage system, provided that access to the computer data storage system is restricted to authorized employees of the department or criminal justice agency and the computer data storage system is not interconnected with any other computer, computer system, or communication facility outside of the department or agency and cannot be accessed by persons outside of the department or agency.

Intelligence data in the files of the department may be disseminated only to a peace officer, criminal justice agency, or state or federal regulatory agency, and only if the department is satisfied that the need to know and the intended use are reasonable. Whenever intelligence data relating to a defendant for the purpose of sentencing has been provided a court, the court shall inform the defendant or the defendant's attorney that it is in possession of such data and shall, upon request of the defendant or the defendant's attorney, permit examination of such data.

If the defendant disputes the accuracy of the intelligence data, the defendant shall do so by filing an affidavit stating the substance of the disputed data and wherein it is inaccurate. If the court finds reasonable doubt as to the accuracy of such information, it may require a hearing and the examination of witnesses relating thereto on or before the time set for sentencing.

Amended by Acts 1984 (70 G.A.) ch. 1145, § 2.

692.9 Surveillance data prohibited.

No surveillance data shall be placed in files or manual or automated data storage systems by the department or bureau or by any peace officer or criminal justice agency. Violation of the provisions of this section shall be a public offense punishable under section 692.7.

[C75, 77, §749B.9; C79, 81, §692.9]

692.10. Rules

The department shall adopt rules designed to assure the security and confidentiality of all systems established for the exchange of criminal history data and intelligence data between criminal justice agencies and for the authorization of officers or employees to access a department or agency computer data storage system in which criminal intelligence data is stored.

Amended by Acts 1981 (69 G.A.) ch. 38, § 5, eff. May 10, 1981; Acts 1984 (70 G.A.) ch. 1145, § 3.

692.11 Education program.

The department shall require an educational program for its employees and the employees of criminal justice agencies on the proper use and control of criminal history data and intelligence data.

[C75, 77, §749B.11; C79, 81, §692.11]

692.12 Data processing.

Nothing in this chapter shall preclude the use of the equipment and hardware of the data processing service center for the storage and retrieval of criminal history data. Files shall be stored on the computer in such a manner as the files cannot be modified, destroyed, accessed, changed or overlaid in any fashion by noncriminal justice agency terminals or personnel. That portion of any computer, electronic switch or manual terminal having access to criminal history data stored in the state computer must be under the management control of a criminal justice agency.

[C75, 77, §749B.12; C79, 81, §692.12]

692.13 Review.

The department shall initiate periodic review procedures designed to determine compliance with the provisions of this chapter within the department and by criminal justice agencies and to determine that data furnished to them is factual and accurate.

[C75, 77, §749B.13; C79, 81, §692.13]

692.14 Systems for the exchange of criminal history data.

The department shall regulate the participation by all state and local agencies in any system for the exchange of criminal history data, and shall be responsible for assuring the consistency of such participation with the terms and purposes of this chapter.

Direct access to such systems shall be limited to such criminal justice agencies as are expressly designated for that purpose by the department. The department shall, with respect to telecommunications terminals employed in the dissemination of criminal history data, insure that security is provided over an entire terminal or that portion actually authorized access to criminal history data.

[C75, 77, §749B.14; C79, 81, §692.14]

692.15. Reports to department

When it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense has been committed in its jurisdiction, it shall be the duty of the law enforcement agency to report information concerning such crimes to the bureau on a form to be furnished by the bureau not more than thirty-five days from the time the crime first comes to the attention of such law enforcement agency. These reports shall be used to generate crime statistics. The bureau shall submit statistics to the governor, legislature and criminal and juvenile justice planning agency on a quarterly and yearly basis.

When a sheriff, police department or other law enforcement agency makes an arrest which is reported to the bureau, the arresting law enforcement agency and any other law enforcement agency which obtains custody of the arrested person shall furnish a disposition report to the bureau whenever the arrested person is transferred to the custody of another law enforcement agency or is released without having a complaint or information filed with any court.

Whenever a criminal complaint or information is filed in any court, the clerk shall furnish a disposition report of such case.

The disposition report, whether by a law enforcement agency or court, shall be sent to the bureau within thirty days after disposition on a form provided by the bureau.

Amended by Acts 1986 (71 G.A.) ch. 1237, § 42.

692.16 Review and removal.

At least every year the bureau shall review and determine current status of all Iowa arrests reported, which are at least one year old with no disposition data. Any Iowa arrest recorded within a computer data storage system which has no disposition data after five years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

[C75, 77, §749B.16; C79, 81, §692.16]

692.17. Exclusions

Criminal history data in a computer data storage system shall not include arrest or disposition data after the person has been acquitted or the charges dismissed.

For the purposes of this section, "criminal history data" includes information maintained by any criminal justice agency if the information otherwise meets the definition of criminal history data set forth in section 692.1.

692.18 Public records.

Nothing in this chapter shall prohibit the public from examining and copying the public records of any public body or agency as authorized by chapter 22.

Criminal history data and intelligence data in the possession of the department or bureau, or disseminated by the department or bureau, are not public records within the provisions of chapter 22.

[C75, 77, §749B.18; C79, 81, §692.18]

692.19. Confidential records—commissioner's responsibility

The director of public safety shall have the following responsibilities and duties:

1. Shall periodically monitor the operation of governmental information systems which deal with the collection, storage, use and dissemination of criminal history or intelligence data.

2. Shall review the implementation and effectiveness of legislation and administrative rules concerning such systems.

3. May recommend changes in said rules and legislation to the legislature and the appropriate administrative officials.

4. May require such reports from state agencies as may be necessary to perform its duties.

5. May receive and review complaints from the public concerning the operation of such systems.

6. May conduct inquiries and investigations the commissioner finds appropriate to achieve the purposes of this chapter. Each criminal justice agency in this state and each state and local agency otherwise authorized access to criminal history data is authorized and directed to furnish to the commissioner of public safety, upon the commissioner's request, statistical data, reports, and other information in its possession as the commissioner deems necessary to implement this chapter.

7. Shall annually approve rules adopted in accordance with section 692.10 and rules to assure the accuracy, completeness and proper purging of criminal history data.

8. Shall approve all agreements, arrangements and systems for the interstate transmission and exchange of criminal history data.

Amended by Acts 1986 (71 G.A.) ch. 1245, § 1607; Acts 1988 (72 G.A.) ch. 1134, § 113.

692.20 Motor vehicle operator's record exempt.
The provisions of sections 692.2 and 692.3 shall not apply to the certifying of an individual's operating record pursuant to section 321A.3.
[C75, 77, §749B.20; C79, 81, §692.20]

692.21. Data to arresting agency

The clerk of the district court shall forward conviction and disposition data to the criminal justice agency making the arrest with thirty days of final court disposition of the case.

Added by Acts 1980 (68 G.A.) ch. 1180, § 2.

CHAPTER 907

DEFERRED JUDGMENT, DEFERRED SENTENCE, SUSPENDED SENTENCE AND PROBATION

907.1 Definition of probation.
907.2 Probation service — probation officers.
907.3 Deferred judgment, deferred sentence or suspended sentence.
907.4 Deferred judgment docket.
907.5 Standards for release on probation — written reasons.
907.6 Conditions of probation — regulations.
907.7 Length of probation.
907.8 Supervision during probationary period.
907.9 Discharge from probation.
907.10 Release on probation after completing program.
907.11 Maximum period of confinement.
907.12 Repealed, effective for persons sentenced after July 1, 1982, by 82 Acts, ch 1162, §13.
907.13 Community service sentencing — liability — workers' compensation.

907.9. Discharge from probation.

At any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of any person from probation. At the expiration of the period of probation, in cases where the court fixes the term of probation, the court shall order the discharge of such person from probation, and the court shall forward to the governor a recommendation for or against restoration of citizenship rights to such person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the supreme court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

[S13, §5447-a; C24, 27, 31, 35, 39, §3800; C46, 50, 54, 58, 62, 66, 71, 73, §247.20; C75, 77, §789A.6; C79, 81, §907.9]

Chapter 68A

EXAMINATION OF PUBLIC RECORDS

Sec.

68A.1 Public records defined.
68A.2 Citizen's right to examine.
68A.3 Supervision.
68A.4 Hours when available.
68A.5 Enforcement of rights.
68A.6 Penalty.
68A.7 Confidential records.
68A.8 Injunction to restrain examination.
68A.9 Denial of federal funds.

Provisions constituting chapter 68A, Examination of Public Records, consisting of sections 68A.1 to 68A.9, were enacted by Acts 1967 (62 G.A.) ch. 106, effective August 9, 1967.

68A.1 Public records defined

Wherever used in this chapter, "public records" includes all records and documents of or belonging to this state or any county, city, town, township, school corporation, political subdivision, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

Acts 1967 (62 G.A.) ch. 106, § 1, eff. Aug. 9, 1967.

68A.2 Citizen's right to examine

Every citizen of Iowa shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential. The right to copy records shall include the right to make photographs or photographic copies while the records are in the possession of the lawful custodian of the records. All rights under this section are in addition to the right to obtain certified copies of records under section 622.46.

Acts 1967 (62 G.A.) ch. 106, § 2, eff. Aug. 9, 1967.

68A.3. Supervision

Such examination and copying shall be done under the supervision of the lawful custodian of the records or his authorized deputy. The lawful custodian may adopt and enforce reasonable rules regarding such work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for such work, but if it is impracticable to do such work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for such work. All expenses of such work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or his authorized deputy in supervising the records during such work. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.

68A.4 Hours when available

The rights of citizens under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a. m. to noon and from one o'clock p. m. to four o'clock p. m. Monday through Friday, excluding legal holidays, unless the citizen exercising such right and the lawful custodian agree on a different time.

Acts 1967 (62 G.A.) ch. 106, § 4, eff. Aug. 9, 1967.

68A.5. Enforcement of rights

The provisions of this chapter and all rights of citizens under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the records involved are records of an "agency" as defined in that Act.

68A.6. Penalty

It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor.

Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 28, eff. Jan. 1, 1978.

68A.7 Confidential records

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release information:

1. Personal information in records regarding a student, prospective student, or former student of the school corporation or educational institution maintaining such records.

2. Hospital records and medical records of the condition, diagnosis, care, or treatment of a patient or former patient, including outpatient.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Iowa development commission information on an industrial prospect with which the commission is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests shall be public records.

10. Personal information in confidential personnel records of the military department of the state.

11. Personal information in confidential personnel records of public bodies including but not limited to cities, towns, boards of supervisors and school districts.

12. Financial statements submitted to the Iowa state commerce commission pursuant to chapter 542 or chapter 543, by or on behalf of a licensed grain dealer or warehouseman or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item from the library.

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

15. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot.

16. Information in a report to the state department of health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

Amended by Acts 1974 (65 G.A.) ch. 1087, § 32; Acts 1978 (67 G.A.) ch. 1044, § 1; Acts 1980 (68 G.A.) ch. 1024, § 1, eff. March 27, 1980; Acts 1981 (69 G.A.) ch. 36, § 1; Acts 1981 (69 G.A) ch. 37, § 1; Acts 1981 (69 G.A.) ch. 38, § 1, eff. May 10, 1981; Acts 1981 (69 G.A.) ch. 62, § 4.

68A.8 Injunction to restrain examination

In accordance with the rules of civil procedure the district court may grant an injunction restraining the examination (including copying) of a specific public record, if the petition supported by affidavit shows and if the court finds that such examination would clearly not be in the public interest and would substantially and irreparably injure any person or persons. The district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Such injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond. Reasonable delay by any person in permitting the examination of a record in order to seek an injunction under this section is not a violation of this chapter, if such person believes in good faith that he is entitled to an injunction restraining the examination of such record.

Acts 1967 (62 G.A.) ch. 106, § 8, eff. Aug. 9, 1967.

680—11.3(17A,690,692) **Release of information.** Information contained in the identification section of the bureau is not a public record and is released only to criminal justice agencies or public agencies authorized and approved by the confidential records council.

680—11.4(17A,690,692) **Right of notice, access and challenge.** Any individual, or that person's attorney with written authorization and fingerprint identification, who has a criminal history record on file with this division has the right to review said record. This right may be exercised only at division headquarters where the individual's identity can be positively established through fingerprint identification.

680—11.5(17A,690,692) **Review of record.** Persons wishing to review their record may do so during normal business hours by completing Form 680—4.3-B provided for that purpose. The individual may make notes concerning the record on file, but cannot obtain a copy.

680—11.6(17A,690,692) **Inaccuracies in criminal history.** If the individual believes inaccuracies exist in his or her criminal history, notice may be filed with the division outlining the alleged inaccuracies accompanied by any available supporting data. In all instances where a notice is so filed, the division contacts the arresting agencies, court of record and institutions to verify record accuracy. Any necessary changes shall be made to the individual's record. Any agency previously receiving a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who has so filed a notice of correction within twenty days of said filing. If, after notice is filed and the division makes its final report, the individual is still of the opinion that inaccuracies exist within the records, an appeal of the final decision of the division to the Polk county district court may be made.

680—11.7(17A,690,692) **Fingerprint files and crime reports.** This section also maintains all fingerprint files and has personnel for the entry of crime reports to the criminal system.

680—11.8(17A,690,692) **Taking of fingerprints.** The taking of fingerprints shall be in compliance with section 690.2 Code of Iowa, and in addition the sheriff of each county and the chief of police of each city, of 10,000 or more population shall take the fingerprints of all persons held for the commission of an aggravated misdemeanor or serious misdemeanor and forward such fingerprint records, within forty-eight hours after they are taken, to the bureau of criminal investigation.

680—11.9(17A,690,692) **Arresting agency portion of final disposition form.** The sheriff of each county and the chief of police of each city shall complete the arresting agency portion of the final disposition form with the arrest information on all persons whose fingerprints are taken in accordance with the rules or section 690.2 of the Code, and thereafter forward the form to the appropriate county attorney.

680—11.10(17A,690,692) **Final disposition of form.** The county attorney of each county shall complete the final disposition report and submit it to the bureau of criminal investigation within thirty days when a preliminary information or citation is dismissed without new charges being filed, or when the case is ignored by a grand jury. When an indictment is returned or a county attorney's information filed, the final disposition form shall be forwarded to the court having jurisdiction.

680—11.11(17A,690,692) **Destruction of fingerprints.** If the fingerprints of any person, whose fingerprints are not already on file, are taken and the person is not convicted of any offense, then his or her fingerprint records shall be destroyed by any officer having them.

These rules are intended to implement sections 690.1 and 692.10 of the Code.

[Filed 6/30/75]

[Filed 6/7/79, Notice 5/2/79—published 6/27/79, effective 8/2/79]

Regulations

CHAPTER 11
IDENTIFICATION SECTION OF THE DIVISION OF CRIMINAL INVESTIGATION

[Rules 11.1 to 11.7 appeared as 4.1 prior to 6.5.79]

680—11.1(17A,690,692) **Identification section.** The identification section maintains information necessary to identify persons with criminal histories. It collects, files and disseminates criminal history data to authorized criminal justice agencies upon request and updates criminal history records as a continual process.

680—11.2(17A,690,692) Definitions.

"Criminal identification records" shall mean either of the following records, the forms for which are provided by the department to law enforcement agencies:

1. Department of public safety arrest fingerprint cards
2. State of Iowa final disposition reports

"Confidential records council" means the confidential records council established by Iowa Code section 692.19.

"Felony" and *"misdemeanor"* shall have the same meaning and classifications as described in Iowa Code section 701.7 and 701.8.

"Nonlaw enforcement agency" means an agency authorized by law to receive criminal history data from the department which is not a "criminal justice agency" as defined in Iowa Code section 692.1, subsection 10, or which is not an institution which trains law enforcement officers for certification under Iowa Code chapter 80B.

The *"taking of fingerprints"* shall mean the obtaining of a fully rolled set of inked fingerprint impressions having suitable quality for fingerprint classification and identification.

"Youth service agency" means a public or private agency, corporation or association dedicated by law, articles, charter, or bylaws to promoting the intellectual, moral and social development of children or the physical development, health and well being of children, and which in fact provides a substantial level of services to promote such interest.

This rule implements Iowa Code chapters 690 and 692 and 1984 Iowa Acts, H.F. 2380.

680—11.3(17A,690,692) **Release of information.** Information contained in the identification section of the bureau is not a public record and is released only to criminal justice agencies or public agencies authorized and approved by the confidential records council.

680—11.4(17A,690,692) **Right of notice, access and challenge.** Any individual, or that person's attorney with written authorization and fingerprint identification, who has a criminal history record on file with this division has the right to review said record. This right may be exercised only at division headquarters where the individual's identity can be positively established through fingerprint identification.

680—11.5(17A,690,692) **Review of record.** Persons wishing to review their record may do so during normal business hours by completing Form 680—4.3-B provided for that purpose. The individual may make notes concerning the record on file, but cannot obtain a copy.

680—11.6(17A,690,692) **Inaccuracies in criminal history.** If the individual believes inaccuracies exist in his or her criminal history, notice may be filed with the division outlining the alleged inaccuracies accompanied by any available supporting data. In all instances where a notice is so filed, the division contacts the arresting agencies, court of record and institutions to verify record accuracy. Any necessary changes shall be made to the individual's record. Any agency previously receiving a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who has so filed a notice of correction within twenty days of said filing. If, after notice is filed and the division makes its final report, the individual is still of the opinion that inaccuracies exist within the records, an appeal of the final decision of the division to the Polk county district court may be made.

680—11.7(17A,690,692) **Fingerprint files and crime reports.** This section also maintains all fingerprint files and has personnel for the entry of crime reports to the criminal system.

680—11.8(17A,690,692) **Taking of fingerprints.** The taking of fingerprints shall be in compliance with section 690.2 Code of Iowa, and in addition the sheriff of each county and the chief of police of each city, of 10,000 or more population shall take the fingerprints of all persons held for the commission of an aggravated misdemeanor or serious misdemeanor and forward such fingerprint records, within forty-eight hours after they are taken, to the bureau of criminal investigation.

680—11.9(17A,690,692) **Arresting agency portion of final disposition form.** The sheriff of each county and the chief of police of each city shall complete the arresting agency portion of the final disposition form with the arrest information on all persons whose fingerprints are taken in accordance with the rules or section 690.2 of the Code, and thereafter forward the form to the appropriate county attorney.

680—11.10(17A,690,692) **Final disposition of form.** The county attorney of each county shall complete the final disposition report and submit it to the bureau of criminal investigation within thirty days when a preliminary information or citation is dismissed without new charges being filed, or when the case is ignored by a grand jury. When an indictment is returned or a county attorney's information filed, the final disposition form shall be forwarded to the court having jurisdiction.

680—11.11(17A,690,692) **Destruction of fingerprints.** If the fingerprints of any person, whose fingerprints are not already on file, are taken and the person is not convicted of any offense, then his or her fingerprint records shall be destroyed by any officer having them.

Rules 11.1 to 11.11 are intended to implement Iowa Code sections 690.1 and 692.10.

680—11.12(692) **Release of information to youth service agencies.** The department may release criminal history information to a youth service agency which complies with this rule.

11.12(1) Any youth service agency applying for release of criminal history information from the department must have prior approval from the confidential records council to receive such information. The release of information pursuant to this rule shall be subject to any terms, conditions or restrictions set by the confidential records council.

11.12(2) All applications by youth service agencies for criminal history information shall be made on a form approved by the department.

11.12(3) Each application for criminal history information under this rule shall be signed by an official of the applicant youth service agency and by each individual who is the subject of application.

11.12(4) No person may be the subject of an application from a youth service agency for criminal history information unless that person is the holder of, or applicant for, a paid or voluntary position which involves direct contact with children under the auspices of a youth service agency.

11.12(5) All applications under this rule shall be accompanied by a self-addressed envelope bearing sufficient postage affixed for delivery of the requested information.

680—11.13(692) **Redissemination of criminal history information by youth service agencies.** No youth service agency shall redisseminate criminal history information received from the department outside the agency. Access to such information within the agency shall be limited to those individuals who need access to the information to perform their functions within the agency related to service on the behalf of children. The department may request that the confidential records council withdraw its approval to have access to criminal history information granted any youth service agency which the department believes to be in violation of this rule.

680—11.14(692) **Scope of record checks for youth service agencies.** Record checks made for youth service agencies pursuant to these rules will be based upon name, including maiden name and aliases, if any, birth date and social security number. This information is not sufficient to effect a precise identification of a subject. Persons may have the same name and birth date. Persons may use several names. The records of the department are based upon reports from other agencies. The department, therefore, cannot warrant the completeness or accuracy of the information provided. Applicant youth service agencies are therefore advised to verify all information received from the department to the extent possible. (e.g. by contacting the reported arresting agency or court.)

680—11.15(692) **Fees.** All nonlaw enforcement agencies applying for receipt of criminal history information from the department shall accompany the application with a check or money order payable to the Division of Criminal Investigation in the amount required by this rule. The fee for receipt of criminal history information from the department shall be $5.20 for each name about which such information is requested. Each alias or maiden name submitted shall be considered a separate name for purposes of computing this fee.

680—11.16(692) **Subpoenas and civil process.** Any agency or individual in possession of criminal identification information received from the department that is served with a subpoena, court order, request for production or other legal process in a civil case demanding the production of the criminal identification information, shall notify the department in writing so that the department has an opportunity to make a timely resistance if a resistance is deemed to be in the best interest of the department.

Rules 11.12 to 11.16 are intended to implement Iowa Code sections 692.2 and 692.10.

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KANSAS

Kansas Administrative Regulations

10-12.2. Dissemination of non-=conviction criminal history record information.

Criminal justice agencies may provide non-conviction criminal history record information to the following: (a) other criminal justice agencies; (b) those authorized by court order or subpoena; and (c) federal agencies for such investigative purposes as authorized by law or presidential executive order.

Article 12

Municipal Courts; Trials and Proceedings

12-4516. Expungement of certain convictions. (a) Except as provided in subsection (b), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, parole or a suspended sentence.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute: (1) Vehicular homicide, as defined by K.S.A. 21-3405;

(2) driving while under the influence of intoxicating liquor or drugs, as prohibited by K.S.A. 8-1567;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been cancelled, suspended or revoked, as prohibited by K.S.A. 8-262;

(4) perjury resulting from a violation of K.S.A. 8-261a;

(5) a violation of the provisions of the fifth clause of K.S.A. 8-142, relating to fraudulent applications;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604;

(8) violating the provisions of K.S.A. 40-3104, relating to motor vehicle liability insurance coverage.

(c) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race, and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

(d) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds:

(1) That the petitioner has not been convicted of a felony in the past two years and

no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) that the circumstances and behavior of the petitioner warrant the expungement; and

(3) that the expungement is consistent with the public welfare.

(e) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 1982 Supp. 75-7b01; as security personnel with a private patrol operator, as defined by K.S.A. 1982 Supp. 75-7b01; with a criminal justice agency, as defined by K.S.A. 22-4701; or with an institution as defined in K.S.A. 1982 Supp. 76-12a01 of the department of social and rehabilitation services; or (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed; and

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

(f) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation or is placed on parole or probation or is given a suspended sentence for such a violation, the person shall be informed of the ability to expunge the conviction.

(g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of an offense has been expunged under this statute may state that such person has never been convicted of such offense.

(h) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 1982 Supp. 76-12a01, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense; or

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged.

Article 47.—CRIMINAL HISTORY RECORD INFORMATION

22-4701. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) "Central repository" means the criminal justice information system central repository created by this act and the juvenile offender information system created pursuant to K.S.A. 38-1618, and amendments thereto.

(b) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) juvenile offender information other than data pertaining to a person following waiver of jurisdiction pursuant to the Kansas juvenile code or an authorization for prosecution as an adult pursuant to the Kansas juvenile offenders code;

(3) wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions;

(4) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide; or

(5) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and countywide law enforcement agencies, correctional facilities, jails and detention centers;

(2) the offices of the attorney general, county or district attorneys and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts;

(4) the Kansas sentencing commission; and

(5) the Kansas parole board.

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) "Director" means the director of the Kansas bureau of investigation.

(f) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(g) "Juvenile offender information" has the meaning provided by K.S.A. 38-1617, and amendments thereto.

(h) "Reportable event" means an event specified or provided for in K.S.A. 22-4705, and amendments thereto.

22-4704. Rules and regulations. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and amendments thereto, the director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal jus-

tice agencies other than those that are part of the judicial branch of government to implement the provisions of this act.

(b) The director shall develop procedures to permit and encourage the transfer of criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

(c) The rules and regulations adopted by the director shall include those: (1) Governing the collection, reporting, and dissemination of criminal history record information by criminal justice agencies;

(2) necessary to insure the security of all criminal history record information reported, collected and disseminated by and through the criminal justice information system;

(3) necessary for the coordination of all criminal justice data and information processing activities as they relate to criminal history record information;

(4) governing the dissemination of criminal history record information;

(5) governing the procedures for inspection and challenging of criminal history record information;

(6) governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with this act;

(7) governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(8) governing the exercise of the rights of inspection and challenge provided in this act.

(d) Rules and regulations adopted by the director may not be inconsistent with the provisions of this act.

History: L. 1978, ch. 118, § 4; L. 1979, ch. 102, § 1; July 1.

CASE ANNOTATIONS

1. Mentioned in holding 22-4712 inapplicable to district court records of criminal proceedings. Stephens v. Van Arsdale, 227 K. 676, 685, 608 P.2d 972.

22-4705. Reportable events; establishment of criminal justice information system central repository; reports; method of reporting. (a) The following events are reportable events under this act:

(1) Issuance of an arrest warrant;

(2) an arrest;

(3) release of a person after arrest without the filing of a charge;

(4) dismissal or quashing of an indictment or criminal information;

(5) an acquittal, conviction or other disposition at or following trial, including a finding of probation before judgment;

(6) imposition of a sentence;

(7) commitment to a correctional facility, whether state or locally operated;

(8) release from detention or confinement;

(9) an escape from confinement;

(10) a pardon, reprieve, commutation of sentence or other change in a sentence, including a change ordered by a court;

(11) judgment of an appellate court that modifies or reverses the lower court decision;

(12) order of a court in a collateral proceeding that affects a person's conviction, sentence or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and

(13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.

(b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director.

(c) Except as otherwise provided by this subsection, every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act. A criminal justice agency shall report to the central repository those reportable events involving a violation of a county resolution

or city ordinance only when required by rules and regulations adopted by the director.

(d) Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by the agencies.

(e) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of that criminal history record information is governed by the provisions of this act.

(f) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.

22-4706. Agreements between central repository and criminal justice agencies. The director, pursuant to the rules and regulations adopted, shall develop agreements between the central repository and criminal justice agencies pertaining to:

(a) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(b) the services to be provided to the agency by the central repository;

(c) the conditions and limitations upon the dissemination of criminal history record information by the agency;

(d) the maintenance of security in all transactions between the central repository and the agency;

(e) the method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(f) audit requirements to ensure the accuracy of all information reported or disseminated;

(g) the timetable for the implementation of the agreement;

(h) sanctions for failure of the agency to comply with any of the provisions of this act, including the revocation of any agreement between the agency and the central repository and appropriate judicial or administrative proceedings to enforce compliance; and

(i) other provisions that the director may deem necessary.

22-4707. Restrictions on dissemination of criminal history record information; penalties.

(a) A criminal justice agency and the central repository may not disseminate criminal history record information except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act. A criminal justice agency may not request such information from the central repository or another criminal justice agency unless it has a legitimate need for the information.

(b) Noncriminal justice persons and agencies may receive criminal history record information for such purposes and under such conditions as may be authorized by law, including rules and regulations adopted pursuant to this act.

(c) The central repository or a criminal justice agency may not subvert the requirements of this section by merely confirming or denying the existence or nonexistence of criminal history record information relating to a person.

(d) In addition to any other remedy or penalty authorized by law, any individual violating or causing a violation of the provisions of this section shall be deemed guilty of a class A misdemeanor. If the person is employed or licensed by a state or local government agency, a conviction shall constitute good cause to terminate employment or to revoke or suspend a license.

22-4708. Disclosure of status of pending investigations and proceedings. Notwithstanding the provisions of the preceding section, a criminal justice agency may disclose the status of a pending investigation of a named person, or the status of a pending proceeding in the criminal justice system, if the request for information is reasonably contemporaneous with the event to which the information relates and the disclosure is otherwise appropriate.

22-4709. Inspection of record information on individuals. (a) Subject to the provisions of this act and rules and regulations adopted pursuant thereto, any person may inspect and challenge criminal history record information maintained by a criminal justice agency concerning themselves. A person's attorney may inspect such information if such attorney satisfactorily establishes his or her identity and presents a written authorization from his or her client.

(b) Nothing in this section requires a criminal justice agency to make a copy of any information or allows a person to remove any document for the purpose of making a copy of it. A person having the right of inspection may make notes of the information.

22-4710. Unlawful for employers to require certain acts; penalties. (a) It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment.

(b) Any person violating the provisions of this section shall be deemed guilty of a class A misdemeanor.

22-4711. Prior record information; rights and duties. Criminal history record information which was recorded prior to the effective date of this act is subject to the right of access and challenge in accordance with this act. However, the duty of a criminal justice agency is to make a reasonable search for such information. There is no duty to provide access to criminal history record information that cannot be located after a reasonable search.

Article 25.—IDENTIFICATION AND DETECTION OF CRIMES AND CRIMINALS

CRIMINAL IDENTIFICATION

21-2501. Fingerprinting of suspects; disposition of fingerprints. (a) It is hereby made the duty of every sheriff, police department or countywide law enforcement agency in the state, immediately to cause two sets of fingerprint impressions to be made of a person who is arrested if the person:

(1) Is wanted for the commission of a felony or believed to be a fugitive from justice;

(2) may be in the possession at the time of arrest of any goods or property reasonably believed to have been stolen by the person;

(3) is in possession of firearms or other concealed weapons, burglary tools, high explosives or other appliances believed to be used solely for criminal purposes;

(4) is wanted for any offense which involves sexual conduct prohibited by law or for violation of the uniform controlled substances act; or

(5) is suspected of being or known to be a habitual criminal or violator of the intoxicating liquor law.

(b) Fingerprint impressions taken pursuant to this section shall be made on the forms provided by the department of justice of the United States or the Kansas bureau of investigation. The sheriff, police department or countywide law enforcement agency shall cause the impressions to be forwarded to the Kansas bureau of investigation at Topeka, Kansas, which shall forward one set of the impressions to the federal bureau of investigation, department of justice, at Washington, D.C. A comprehensive description of the person arrested and such other data and information as to the identification of such person as the department of justice and bureau of investigation require shall accompany the impressions.

(c) A sheriff, police department or countywide law enforcement agency may take and retain for its own use copies of fingerprint impressions of a person specified in subsection (a), together with a comprehensive description and such other data and information as necessary to properly identify such person.

(d) This section shall not be construed to include violators of any county resolution or municipal ordinance.

21-2501a. Maintenance of records of felony offenses and certain misdemeanors by law enforcement agencies; reports to bureau of investigation; form. (a) All law enforcement agencies having responsibility for law enforcement in any political subdivision of this state shall maintain, on forms approved by the attorney general, a permanent record of all felony offenses reported or known to have been committed within their respective jurisdictions, and of all misdemeanors or other offenses which involve the violation of the uniform controlled substances act.

(b) All law enforcement agencies having the responsibility of maintaining a permanent record of offenses shall file with the bureau of investigation, on a form approved by the attorney general, a report on each offense for which a permanent record is required within seventy-two (72) hours after such offense is reported or known to have been committed.

21-2502. University of Kansas and state departments to assist law enforcement officers and coroners. It shall be the duty of the university of Kansas, the secretary of health and environment, and all other state departments and institutions, free of charge or reward, to cooperate with the law-enforcement officers of the state, and with the coroners, and to render to them such service and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and all other sciences and matters relating to or that would aid in controlling crime, disease and the detection, apprehension, identification and prosecution of criminals.

21-2503. Fingerprint records admissible in evidence. A photostatic copy of the fingerprint impression of any person convicted of a felony or misdemeanor that has been filed and kept according to law, and duly certified as a true and correct copy by the director or other person having charge of such records, shall be admissible in evidence and received in evidence in any subsequent prosecution of that person for the purpose of identification where otherwise competent.

21-2504. Attorney general may call upon designated officers for information; forms. (a) For the purpose of controlling crime and obtaining reliable statistics about crime and criminals, the attorney general may call upon and obtain from the clerks of district courts, sheriffs, police departments and county attorneys all information that said attorney general may deem necessary in ascertaining the true condition of the crime situation; and it shall be the duty of the above-mentioned officers to furnish the information so requested by the attorney general.

(b) The attorney general shall provide, upon request, forms for fingerprint impressions, for the permanent record of offenses, and for the reports of offenses required by K.S.A. 21-2501 and 21-2501a.

21-2505. Same; nonperformance of duties; penalty. Neglect or refusal of the officers herein mentioned to furnish the information herein required or to do or perform any other act or duty on his part to be done or performed shall constitute a misdemeanor, and such officer shall, upon conviction thereof, be punished by a fine of not less than five dollars ($5) nor more than twenty-five dollars ($25), or by imprisonment in the county jail for a period not exceeding thirty (30) days, or by both such fine and imprisonment, at the discretion of the court. Such neglect or refusal shall also constitute nonfeasance in office and subject the officer to removal from office.

21-2506. Same; construction of act. It is hereby declared that this act is for the public safety, peace and welfare of the state, is remedial in nature, shall be construed liberally, and in case any part thereof shall be declared unconstitutional it shall not in any way affect any other part hereof.

45-215. Title of act. K.S.A. 45-215 through 45-223 shall be known and may be cited as the open records act.

45-216. Public policy that records be open. (a) It is declared to be the public policy of this state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

(b) Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

45-217. Definitions. As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405 and amendments thereto.

(c) "Custodian" means the official custodian or any person designated by the official custodian to carry out the duties of custodian under this act.

(d) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(e) (1) "Public agency" means the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or (C) any officer or employee of the state or a political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

(f) (1) "Public record" means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency.

(2) "Public record" shall not include records which are owned by a private person or entity and are not related to functions, activities, programs or operations

funded by public funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state.

(g) "Undercover agent" means an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violations of criminal law in a capacity where such employee's identity or employment by the public agency is secret.

45-218. Inspection of records; request; response; refusal, when; fees. (a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall removal original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220.

(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.

45-219. Abstracts or copies of records; fees. (a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

(b) Copies of public records shall be made while the records are in the possession, custody and control of the custodian or a person designated by the custodian and shall be made under the supervision of such custodian or person. When practical, copies shall be made in the place where the rec-

ords are kept. If it is impractical to do so, the custodian shall allow arrangements to be made for use of other facilities. If it is necessary to use other facilities for copying, the cost thereof shall be paid by the person desiring a copy of the records. In addition, the public agency may charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection (c) and may establish a reasonable schedule of times for making copies at other facilities.

(e) Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:

(1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.

(2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

(3) Fees for access to or copies of public records of public agencies within the legislative branch of the state government shall be established in accordance with K.S.A. 46-1207a and amendments thereto.

(4) Fees for access to or copies of public records of public agencies within the judicial branch of the state government shall be established in accordance with rules of the supreme court.

(5) Fees for access to or copies of public records of a public agency within the executive branch of the state government shall be subject to approval by the director of accounts and reports.

(d) Except as otherwise authorized pursuant to K.S.A. 75-4215 and amendments thereto, each public agency within the executive branch of the state government shall remit all moneys received by or for it from fees charged pursuant to this section to the state treasurer in accordance with K.S.A. 75-4215 and amendments thereto. Unless otherwise specifically provided by law, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund, except that the cost of charges for the services of the division of computer services may be credited to the fee fund of the agency to defray such cost.

(e) Each public agency of a political or taxing subdivision shall remit all moneys received by or for it from fees charged pursuant to this act to the treasurer of such political or taxing subdivision at least monthly. Upon receipt of any such moneys, such treasurer shall deposit the entire amount thereof in the treasury of the political or taxing subdivision and credit the same to the general fund thereof, unless otherwise specifically provided by law.

(f) Any person who is a certified shorthand reporter may charge fees for transcripts of such person's notes of judicial or administrative proceedings in accordance with rates established pursuant to rules of the Kansas supreme court.

45-220. Procedures for obtaining access to or copies of records; request; office hours; provision of information on procedures. (a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 21-3914 or 45-221, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require that any person desiring to inspect or obtain copies of the agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the

extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public; and

(E) would not endanger the life or physical safety of any person.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319 and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate, except that:

(A) The name, sentence data, parole eligibility date, disciplinary record, custody level and location of an inmate shall be subject to disclosure to any person other than another inmate; and

(B) the ombudsman of corrections, the corrections ombudsman board, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

(35) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711 and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a

request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214 and amendments thereto.

45-222. Civil remedies to enforce act. (a) The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus or other appropriate order, on application of any person.

(b) In any action hereunder, the court shall determine the matter *de novo*. The court on its own motion, or on motion of either party, may view the records in controversy *in camera* before reaching a decision.

(c) In any action hereunder, the court may award attorney fees to the person seeking access to a public record if the court finds that the agency's denial of such person's access was not in good faith and without a reasonable basis in fact or law. The award shall be assessed against the public agency that the court determines to be responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant attorney fees if the court finds that the plaintiff maintained the action not in good faith and without a reasonable basis in fact or law.

(e) Except as otherwise provided by law, proceedings arising under this section shall be assigned for hearing and trial at the earliest practicable date.

45-223. No liability for damages for violation of act. No public agency nor any officer or employee of a public agency shall be liable for damages resulting from the failure to provide access to a public record in violation of this act.

History: L. 1984, ch. 187, § 9; Feb. 9.

45-224. Continuation of fees and procedures adopted under prior act. All fees, schedules of times for making of copies, hours during which public records may be inspected or copies obtained, procedures for requesting access to or obtaining copies of public records or other policies or procedures which were prescribed or adopted by any public agency pursuant to chapter 171 of the session laws of 1983, insofar as the same are authorized or in accordance with the provisions of this act, shall constitute the fees, schedules, hours and policies or procedures of such public agency for the purposes of this act until changed, modified or revoked by the public agency in accordance with the provisions of this act.

45-225. Severability of provisions. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

Sentencing

21-4619. Expungement of certain convictions. [See Revisor's Note] (a) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, misdemeanor or a class D or E felony may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, parole, conditional release or a suspended sentence.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) a violation of K.S.A. 8-1567 and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been cancelled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes; or

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage.

(c) There shall be no expungement of convictions for the following offenses: (1) Indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (4) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (5) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (8) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; (9) endangering a child as defined in K.S.A. 21-3608 and amendments thereto; or (10) abuse of a child as defined in K.S.A. 21-3609 and amendments thereto.

(d) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

(e) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; with a criminal justice agency, as defined by K.S.A. 22-4701 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services; or (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime or is placed on parole or probation or is given a suspended sentence or conditional release, the person shall be informed of the ability to expunge the conviction.

(h) Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(i) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense; or

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged.

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery; or

(9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission.

21-4619a. Expungement of certain convictions. [See Revisor's Note] (a) Except as provided in subsection (b), any person convicted in this state of a traffic infraction, misdemeanor or a class D or E felony may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, a community correctional services program, parole, conditional release or a suspended sentence.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) a violation of K.S.A. 8-1567 and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes; or

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage.

(c) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(d) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(e) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; with a criminal justice agency, as defined by K.S.A. 22-4701 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services; or (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(f) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole or probation, is assigned to a community correctional services program, is granted a suspended sen-

tence or is released on conditional release, the person shall be informed of the ability to expunge the conviction.

(g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(h) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense; or

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged.

Parole

22-3722. Discharge; restoration of civil rights. The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in section 23 [75-5217] of this act relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence.

When an inmate on parole or conditional release has performed the obligations of his release for such time as shall satisfy the authority that his final release is not incompatible with the best interest of society and the welfare of the individual, the authority may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of an inmate who has served his term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case. [L. 1970, ch. 129, § 22-3722; L. 1972, ch. 317, § 95; L. 1973, ch. 339, § 68; July 1, 1974.]

law of another state which is in substantial conformity with said statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, or required by a law of another state which is in substantial conformity of said statutes;

(8) violating the provisions of K.S.A. 40-3104, relating to motor vehicle liability insurance coverage.

(c) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

(d) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds:

(1) That the petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) that the circumstances and behavior of the petitioner warrant the expungement; and

(3) that the expungement is consistent with the public welfare.

(e) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 1982 Supp. 75-7b01; as security personnel with a private patrol operator, as defined by K.S.A. 1982 Supp. 75-7b01; with a criminal justice agency, as defined by K.S.A. 22-4701 or with an institution as defined in K.S.A. 1982 Supp. 76-12a01 of the department of social and rehabilitation services; or (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(f) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime or is placed on parole or probation or is given a suspended sentence or conditional release, the person shall be informed of the ability to expunge the conviction.

(g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute

ARTICLE 11 - SECURITY

10-11-1. Personnel security: direct access. Direct access to criminal history record information is prohibited except by employees of a criminal justice agency. Physical security of criminal history record information shall be maintained by a criminal justice agency by storing such information in a way as to prevent direct access by anyone not authorized in this section. In addition, reasonable steps shall be taken by a criminal justice agency to insure that criminal history record information will be secure from theft, sabotage, fire, wind, and other natural or man-made disasters. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4706; effective _____, 1981).

10-11-2. Transmission of non-conviction criminal history record information. Except when necessary to protect human life, non-conviction criminal history record information shall not be transmitted by any means which may be lawfully intercepted by a person not authorized to have direct access to such information. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4707; effective _____, 1981).

ARTICLE 12 - DISSEMINATION

10-12-1. Dissemination of conviction records. Upon a written request by an individual, a criminal justice agency may provide any conviction information in its possession. All such requests for conviction records shall include as part of the written request the full legal name, sex, race and date of birth of the individual in question. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4707; effective _____, 1981).

10-12-2. Dissemination of criminal history record information. Criminal justice agencies may provide criminal history record information to the following:

(a) Other criminal justice agencies;

(b) Those authorized by court order or subpoena;

(Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective _____, 1981).

10-12-3. Dissemination by Criminal Justice Information System employees. Persons employed as part of a criminal justice information system, which is not operated by a criminal justice agency, shall disseminate criminal history record information only to a criminal justice agency as defined in K.S.A. 1980 Supp. 22-4701. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4707; effective _____, 1980).

ARTICLE 13 - INSPECTION AND CHALLENGE

10-13-1. Right to review and challenge decisions. At the time of inspection, an individual shall be notified in writing of the right to challenge those decisions concerning the accuracy of the content of his or her record. Upon completion of any review at the local level, a review shall be granted, upon written request by the involved individual, before the director of the KBI or his or her authorized designee. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp.22-4709; effective _____, 1981).

10-13-2 Inspection and challenge. The inability of a criminal justice agency to locate a disposition shall not be reason for denying an individual's right of inspection and challenge on grounds that the record is incomplete. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4709; effective _____, 1981).

ARTICLE 14 - AUDITING CRIMINAL JUSTICE AGENCIES

10-14-1. Logging of disseminations. All disseminations shall be logged, including disseminations made by radio transmission pursuant to K.A.R. 10-3-2 except that, radio transmissions of conviction data are not subject to this requirement. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4706; effective , 1981).

10-14-2. Disclosure of dissemination log. Dissemination logs shall be confidential and released only to a criminal justice agency. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective _____, 1981).

ARTICLE 15 - REPORTABLE EVENTS: DUPLICATION

10-15-1. Reportable events, duplication. No criminal justice agency shall knowingly provide a duplicate report of an event required by K.S.A. 1980 Supp. 22-4705. A criminal justice agency may fulfill its reporting responsibility by agreements with other criminal justice agencies. (Authorized by K.S.A. 1980 Supp. 22-4704; 22-4705; implementing K.S.A. 1980 Supp. 22-4706; effective _____, 1981).

Kentucky Revised Statutes (Baldwin)

Chapter 17
Public Safety

CRIMINAL STATISTICS

17.110 Report of offense under penal code to department
17.115 Criminal identification activities; state institutions and peace officers to cooperate with department
17.120 Forwarding reports to federal government
17.140 Centralized criminal history record information system
17.142 Segregation of criminal records
17.143 Qualified person to administer system; personnel
17.147 Duties of bureau of state police
17.150 Reports by law enforcement officers and criminal justice agencies; public inspection exemptions; regulations; information from the Court of Justice
17.153 Annual report
17.157 Funds withheld for failure to comply

17.110 Report of offense under penal code to department

(1) All city and county law enforcement agencies shall cause a photograph, a set of fingerprints and a general description report of all persons arrested on a felony charge to be made and two (2) copies of each item forwarded within thirty (30) days after the arrest to the bureau of state police of the department of justice, in accordance with regulations of the department of justice. Such agencies shall furnish any other information involving offenses under the penal code or in their possession relative to law enforcement upon request by the department of justice.

(2) Each city and county law enforcement agency shall advise the bureau of state police of the disposition made of all cases wherein a person has been charged with an offense under the penal code.

Penalty, 17.990(2)

OAG 67-427. Defendant who posts bail directly with circuit clerk without arrest may be fingerprinted by peace officer: (1) at the time he posts bail or, (2) at a later time agreed on between the Commonwealth and the defendant with consent of his counsel, or (3) failing either of the two preceding alternatives the attorney for the Commonwealth may apply to the court for, and court should enter, an order for fingerprinting the defendant.

OAG 66-253. Law enforcement officers have no authority to fingerprint, photograph or maintain a record of the criminal offenses of a juvenile taken into custody for any public offense with the exception of juveniles 16 years of age or older involved in a "moving motor vehicle offense", or until after conviction in circuit court; however, a juvenile court judge may authorize the taking of elimination fingerprints or photographs of the juvenile but they must be afforded the same confidential character as other juvenile court records.

OAG 64-469. Persons arrested on charges of misdemeanor can be fingerprinted by law enforcement officers, as can felons, without violation of constitutional rights or unlawful invasion of privacy.

17.115 Criminal identification activities; state institutions and peace officers to cooperate with department

(1) The department of justice shall:

(a) Receive and file fingerprints, photographs and other records pertaining to the investigation of crime and the apprehension of criminals; and

(b) Cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification.

(2) Persons in charge of any penal or correctional institution in the state, and all state law enforcement and peace officers operating identification facilities shall cooperate in providing the department with fingerprints and descriptions of all persons lawfully committed to their custody or detained by them in cases where fingerprints and descriptions are taken, together with a report of the disposition of all cases of such persons.

Penalty, 17.990(2)

17.120 Forwarding reports to federal government

The department of justice shall forward one copy of each photograph, set of fingerprints and general description report received by it to the federal bureau of investigation.

17.130 Repealed

17.140 Centralized criminal history record information system

(1) A centralized criminal history record information system shall be established in the department of justice under the direction, control and supervision of the commissioner of the bureau of state police.

(2) A centralized criminal history records information system means the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation or dissemination of criminal history records maintained by the department of justice.

17.142 Segregation of criminal records

(1) Each law enforcement or other public agency in possession of arrest records, fingerprints, photographs, or other data whether in documentary or electronic form shall upon written request of the arrestee as provided herein segregate all records relating to the arrestee in its files in a file separate and apart from those of convicted persons, if the person who is the subject of the records:

(a) Is found innocent of the offense for which the records were made; or

(b) Has had all charges relating to the offense dismissed; or

(c) Has had all charges relating to the offense withdrawn.

(2) A person who has been arrested and then has come within the purview of subsection (1) of this section may apply to the court in which the case was tried, or in which it would have been tried in the event of a dismissal or withdrawal of charges, for segregation of the records in the case. Upon receipt of such application the court shall forthwith issue an order to all law enforcement agencies in possession of such records to segregate the records in accordance with the provisions of this section.

(3) Each law enforcement agency receiving an order to segregate records shall forthwith:

(a) Segregate the records in its possession in a file separate and apart from records of convicted persons;

(b) Notify all agencies with which it has shared the records or to which it has provided copies of the records to segregate records; and

(c) All records segregated pursuant to this section shall show disposition of the case.

17.143 Qualified person to administer system; personnel

The commissioner shall appoint a qualified person to administer the centralized criminal history record information system. He shall have statistical training and experience and possess a knowledge of criminal law enforcement and administration and of penal and correctional institutions and methods. He shall be furnished with the necessary facilities and equipment and shall appoint clerical and other assistants necessary for the operation of the centralized criminal history record information system.

17.147 Duties of bureau of state police

The bureau of state police shall:

(1) Collect data necessary for the operation of the centralized criminal history record information system from all persons and agencies mentioned in KRS 17.150.

(2) Prepare and distribute to all such persons and agencies forms to be used in reporting data to the centralized criminal history record information system. The forms shall provide for items of information needed by federal bureaus or departments engaged in the administration of criminal justice programs.

(3) Prescribe the forms and content of records to be kept by such persons and agencies to insure reporting of data to the centralized criminal history record information system.

(4) Instruct such persons and agencies in the installation, maintenance and use of such records and in the manner of reporting to the centralized criminal history record information system.

(5) Tabulate, analyze and interpret the data collected.

(6) Supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs.

(7) Annually present to the governor, on or before July 1, concerning the criminal statistics of the preceding calendar year, and present at such other times as the commissioner may deem wise, or the governor may request, reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed for general distribution in the interest of public enlightenment.

17.150. Reports by law enforcement officers and criminal justice agencies — Public inspection exemptions — Regulations — Information from the Court of Justice. — (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; state police, state fire marshal, board of alcoholic beverage control; cabinet for human resources; transportation cabinet; corrections cabinet; and every other person or criminal justice agency, except the Court of Justice, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:

(a) Install and maintain records needed for reporting data required by the cabinet;

(b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that such reports concerning a juvenile delinquent shall not reveal his or his parents' identity;

(c) Give the cabinet or its accredited agent access for purpose of inspection; and

(d) Cooperate with the cabinet to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection providing prosecution is completed or a determination not to prosecute has been made. However, portions of such records may be withheld from inspection if such inspection would disclose:

(a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law enforcement personnel; or

(d) Information contained in such records to be used in a prospective law enforcement action.

(3) When a demand for the inspection of such records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the justice cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. Such information is restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the justice cabinet. Criminal justice agencies shall retain such documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice shall adopt such regulations as are necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of such information based upon recommendations submitted by the commissioner, department of state police.

(7) The administrative office of the courts may, upon suitable agreement between the chief justice and the secretary of justice, supply criminal justice information and data to the cabinet. No information other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the court of justice unless such solicitation or request for information is made pursuant to an agreement which may have been reached between the chief justice and the secretary of justice. (Enact. Acts 1968, ch. 128, § 4; 1974, ch. 74, Art. VI, § 31; 1976, ch. 191, § 5; 1976 (Ex. Sess.), ch. 14, § 5, effective January 2, 1978; 1978, ch. 61, § 1, effective June 17, 1978; 1986, ch. 331, § 11, effective July 15, 1986; 1986, ch. 389, § 27, effective July 15, 1986.)

17.151. Centralized criminal history record information system to be developed by state police, in cooperation with administrative office of the courts and corrections cabinet — Contents — Access — Identification numbers. — The Kentucky state police shall, in cooperation with the administrative office of the courts and the corrections cabinet, be responsible for the recording of those data elements that are needed for development of the centralized criminal history record information system:

(1) The data base shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Kentucky state police shall provide access to the administrative office of the courts and the corrections cabinet to its data base; and

(3) The Kentucky state police and the corrections cabinet shall assign the same identification number or other variable to each person whose name appears in the data base. (Enact. Acts 1986, ch. 389, § 1, effective July 15, 1986.)

17.152. Citation and personal identification numbers to be supplied by state police. — All data supplied to the centralized criminal history record information system by the Kentucky state police, administrative office of the courts, and the corrections cabinet shall be compatible with the system and shall contain both citation and personal identification numbers. (Enact. Acts 1986, ch. 389, § 5, effective July 15, 1986.)

17.1521. Uniform citation number to be supplied by administrative office of courts. — All data supplied to the centralized criminal history record information system by the administrative office of the courts shall include the uniform citation number applicable to the information reported. (Enact. Acts 1986, ch. 389, § 6, effective July 15, 1986.)

17.1522. State police to update data base within thirty days of receipt of information from certain levels. — The Kentucky state police shall update the centralized criminal history record information system within thirty (30) days of receipt of information. The update shall include information from the:

(1) Offender level;

(2) Arrest level; and

(3) Informational and evaluational level. (Enact. Acts 1986, ch. 389, § 25, effective July 15, 1986.)

17.153 Annual report

(1) The annual report of the bureau shall contain statistics showing:

(a) the number and type of offenses known to public authorities;

(b) the personal and social characteristics of criminals and delinquents; and

(c) the administrative action taken by law enforcement, judicial, penal and correctional agencies in dealing with criminals and delinquents.

(2) The bureau shall also interpret such statistics and so present the information that it may be of value in guiding the legislature and those in charge of the apprehension, prosecution and treatment of criminals and delinquents, or those concerned with the prevention of crime and delinquency. The report shall include statistics that are comparable with national criminal statistics published by federal agencies heretofore mentioned.

17.157 Funds withheld for failure to comply

If any public official or employe, except justices, judges, circuit clerks, and employes of the Court of Justice, required to report to the bureau neglects or refuses to comply with the requests of the bureau, or its rules governing record systems and their maintenance, the bureau chief shall give written notice thereof to the person or persons authorized by law to disburse funds of the governmental agency to the public official or employe involved. No funds of the governmental agency shall thereafter be paid to the public official or employe, whether in the form of salary, fees, expenses, compensation, or otherwise, until the bureau chief notifies the disbursing authority that performance of the required duty has been completed.

17.160 Furnishing of person's record of convictions involving sex crimes to potential employer

(1) Notwithstanding any other provision of law, an employer may request from the justice cabinet records of all available convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The cabinet shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(2) Any request for records under subsection (1) of this section shall be on a form approved by the cabinet, and the cabinet may charge a fee to be paid by the employer for the actual cost of processing the request.

(3) The cabinet shall adopt regulations to implement the provisions of this section.

(4) As used in this section "employer" means any organization specified by the attorney general which employs or uses the services of volunteers or paid employes in positions in which the volunteer or employe has supervisory or disciplinary power over a child or children.

(5) As used in this section "sex crime" means a conviction for a violation or attempted violation of KRS 510.040 to 510.150, 529.020 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.340 to 531.370, and the criminal offense of unlawful transaction with a minor. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

17.165. Definitions — Criminal record check for job applicants at child-care centers — Restrictions on employing violent offenders or persons convicted of sex crimes. — (1) As used in this section, "sex crime" means a conviction or a plea of guilty for a violation or attempted violation of KRS 510.040 to 510.140, 529.020 to 529.050, 530.020, 530.065, 531.310, 531.320, and 531.340 to 531.370. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

(2) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(4) No child-care center as defined in KRS 199.894 shall employ, in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime classified as a felony. Operators of child-care centers may employ persons convicted of sex crimes classified as a misdemeanor at their discretion. Each child-care center shall request all conviction information for any applicant for employment from the justice cabinet prior to employing the applicant.

(5) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(6) Any request for records under subsection (4) of this section shall be on a form approved by the justice cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. (Repealed, reenact. and amend. Acts 1988, ch. 345, § 1, effective July 15, 1988.)

OPEN RECORDS

CROSS REFERENCES

Access to public records, 200 KAR 1:020

P.L. 93-579, The Privacy Act of 1974, Sec. 7, reads as follows:

"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

OAG 79-413. A notation of "Do Not Publish" on a public record has no effect on the right to inspect, copy and publish the information in the record.

OAG 76-443. Under the open records act public records are subject to public inspection without the showing of a legitimate private interest or a wholesome public interest. The open records act applies to police courts and to all other courts trying penal cases. Unless a particular record is covered by a particular exception set forth in the statutes, the record is subject to public inspection without the necessity of showing a reason for the inspection.

OAG 76-424. Records kept by local police departments are subject to public inspection unless they come under one of the exceptions stated in KRS 17.150(2).

OAG 76-423. Records of county and circuit court clerks are subject to the open records act, KRS 61.870 to 61.884, and are open to public inspection unless a particular record is expressly made confidential by state statute or court order.

OAG 76-420. Regional comprehensive care centers are "public agencies" under the definition in the open records act, KRS 61.870(1), and such records are therefore public unless the nature of the record makes them confidential. However, personal mental health records of comprehensive care centers which directly or indirectly identify a patient are exempt from public inspection.

OAG 76-419. It is legally permissible for the oral history commission of the department of library and archives to make and keep an agreement with interviewees that tapes will be handled in a certain manner including refusing access to the public for a certain number of years. The tape record is preliminary in nature and will not be a final public record until such time as is provided in the agreement. The agreement comes under exception (g) of KRS 61.878(1).

OAG 76-384. The Kentucky board of ophthalmic dispensers is required under the open records law to furnish a list of all persons licensed by said board upon the request of the president of the Kentucky board of optometric examiners. An agency is not required under the open records act to compile and deliver a list it does not already have prepared but any person may inspect public records and make his own list from said records. In the spirit of cooperation and the statutory policy of comity one state agency should furnish the requested list to another state agency.

OAG 76-375. The open records act does not charge state agencies with the duty to provide records upon a request made by mail.

OAG 76-375. Blanket requests for information on a particular subject without specifying certain documents need not be honored. State employes may not be requested to make compilations of records, but the public has the right to inspect compilations which have been made in the course of business unless the subject matter is confidential by law.

OAG 76-375. The right to have copies of records is ancillary to the right of inspection and does not stand by itself. If a person has not inspected the records he desires to copy and cannot describe them with specificity, there is no requirement that copies of any records must be delivered to him. A citizen may make a fishing expedition through public records on his own time and under the restrictions and safeguards of the public agency, but a willingness to pay for copies of records is not sufficient to put the state agency under obligation to furnish broad categories of records.

OAG 76-375. A person does not have a right to require a list to be made from public records if the list described does not already exist. If the list exists and is not otherwise confidential by law, a person may inspect the list and obtain a copy of it.

OAG 76-366. The Kentucky heritage commission is legally authorized to adopt regulations which will prevent public inspection of specific portions of its files. The open records act provides that each public agency shall adopt rules and regulations in conformity with the provisions of the act.

Public Records

Chapter 61

61.870 Definitions

As used in KRS 61.872 to 61.884:

(1) "Public agency" means every state or local officer, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer; every county and city governing body, council, school district board, special district board, municipal corporation, court or judicial agency, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and any other body which is created by state or local authority in any branch of government or which derives at least twenty-five percent (25%) of its funds fr[illegible]state or local authority.

(2) "Public records" means all books, papers, maps, photographs, cards, tapes, discs, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned by a private person or corporation that are not related to functions, activities, programs or operations funded by state or local authority.

(3) "Official custodian" means the chief administrative officer or any other officer or employe of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(4) "Custodian" means the official custodian or any authorized person having personal custody and control of public records.

CROSS REFERENCES

Property tax roll as open public record in office of property valuation for five years, 133.047

Documents of Kentucky Center for the Arts Corporation as public records, 153.430

Turnpike authority, audit as public record, 175.580

Bureau of highways, audit as public record, 177.530

Health and geriatric authority, audit as public record, 216.847

Access to public records of office of lieutenant governor, 5 KAR 1:010

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7 Nor Ky L Rev 7 (1980). The Kentucky Open Records Act: A Preliminary Analysis, Edward H. Ziegler, Jr.

OAG 81-2. Records in the custody of the University of Louisville pertaining to the University of Louisville foundation, a private corporation, are subject to inspection under the open records law.

OAG 80-462. Records should be requested of the official custodian instead of a casual possessor of the records in another agency.

OAG 80-353. Public access to depositions in a civil case is governed by the Rules of Civil Procedure, not by the open records law, and a reporter does not have a right to attend a deposition hearing held in a private office. A reporter can publish information received from any source. A deposition may be ordered sealed for good cause by a court.

OAG 79-575. The business records of a jail are open to public inspection.

OAG 79-496. An alderman's correspondence is not a "public record."

OAG 78-473. The tax records in the custody of the property valuation administrator are subject to public inspection.

OAG 78-262. Records generated by staff attorneys of appellate courts are preliminary in nature and are exempt from the open records law. The chief justice is empowered by statute to control access of the records of the court.

OAG 78-133. The matter of disciplining a state employe does not come within the exception of personal privacy. The admission of the truthfulness of the charges does not make the charges forever confidential. When final action is taken on the charges, the charges should be made available for public inspection.

OAG 78-11. Transcript of hearing properly held under open meetings law in closed session is exempt from the requirements of open records statutes.

OAG 77-587. Records of health inspections made by local health departments are public records and subject to the provisions of Kentucky's open records law.

OAG 77-585. Restaurant inspection records made by county health departments are public records and hence subject to the provisions of the open records law.

OAG 77-464. A public agency speaks through its minutes and such minutes are public records under the open records law.

OAG 77-291. A water district is a public agency subject to the Open Records Law.

OAG 77-102. "Police blotter" and "incident reports" are open to public inspection.

OAG 77-75. Actions taken in violation of the open meetings law will stand as valid unless voided by a court.

OAG 77-55. Records of disciplinary actions of the state board of medical licensure are open to public inspection. However, preliminary records such as complaints, charges and personal correspondence would be exempt under KRS 61.878(1)(g).

OAG 76-655. The naming of persons to the honorary post of deputy sheriff is not an official function of the sheriff's office but is a personal activity and therefore is not subject to the strictures of the open records act.

OAG 76-633. Information which if prematurely released would impede effective law enforcement is exempted from public inspection as an exception under the open records law. An auditor's report which reveals possible violations of statutes or regulations by a city employe which may lead to criminal prosecution is exempt until prosecution is completed or a decision is made not to prosecute.

OAG 76-573. There is no legal prohibition against releasing the scores on examinations administered by the Kentucky board of pharmacy to applicants for a pharmacist license under KRS 315.050.

OAG 76-568. An ambulance service is not required to release the names of patients under the open records act, but neither is there any law against releasing the names.

OAG 76-479. Information about an account of a member of the Kentucky retirement system is confidential and not open to public inspection.

OAG 76-469. Kentucky law does not require the registering of hotel guests; so if a guest register is kept by a state resort park, it is exempt from the public records act because the information is of a private nature.

OAG 76-424. Police records are open to public inspection as prosecution is completed or a decision has been made not to prosecute; exceptions are: information which will reveal a confidential informant; information of a personal nature; information which may endanger the life of a police officer; or information which may be used in prospective law enforcement action.

OAG 76-420. The records of comprehensive care centers are public records under the open records law; but the records which identify a patient and describe his medical condition are confidential under the law.

OAG 76-204. Under the open records law, work papers of public accounts auditors are public records.

61.872 Right to inspection; limitation

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records during the regular office hours of the public agency. The official custodian may require written application describing the records to be inspected.

(3) If the person to whom the application is directed does not have custody or control of the public record requested, such person shall so notify the applicant and shall furnish the name and location of the custodian of the public record, if such facts are known to him.

(4) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately so notify the applicant and shall designate a place, time and date, for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time and earliest date on which the public record will be available for inspection.

(5) If the application places an unreasonable burden in producing voluminous public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records. However, refusal under this section must be sustained by clear and convincing evidence.

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7 Nor Ky L Rev 7 (1980). The Kentucky Open Records Act: A Preliminary Analysis, Edward H. Ziegler, Jr.

OAG 81-2. Records in the custody of the University of Louisville pertaining to the University of Louisville foundation, a private corporation, are subject to inspection under the open records law.

OAG 80-633. A volunteer fire department which contracts with cities for fire fighting services and which receives at least twenty-five per cent of its funds from such contracts is a public agency under the open records law (KRS 61.870 to 61.884).

OAG 80-207. A public agency cannot deny inspection of a record in the possession of its accountant on the basis of an accountant-client privilege.

OAG 76-375. Under the open records law, blanket requests for information need not be honored; an agency does not have to copy records and deliver them to a person who has not inspected the records; a person does not have a right to require a list to be made which does not already exist.

12.140 RECORDS ARE PUBLIC; INSPECTION; CERTIFIED COPIES

1957 OAG 40,361. A certified copy of regulations by the legislative research commission or any regulations legally filed with the said commission under KRS 13.080 to 13.125 must be judicially noticed by a trial court.

171.650 PUBLIC NATURE OF AGENCY RECORDS

519 SW(2d) 811 (Ky 1974), St Matthews v Voice of St Matthews, Inc. See as to what public records are open for public inspection.

OAG 74-882. The escheat records of the department of revenue are public records and a person desiring to check such records for the purpose of learning the owners of abandoned property so he can possibly represent them in reclaiming such property from the department may do so, subject to the applicable provisos established by the Court of Appeals under its new rule of inspection of public records; the department's tax records are exempt from inspection except where the searcher is the designated agent of the affected taxpayer.

OAG 73-819. A reporter has only those rights to view public records which the general public has, and if there is not a specific statute, he must show a probable interest which a person would have to bring a suit involving such records; probable interest is discussed.

OAG 64-202. Milk producer's price schedules are public records and the milk marketing and antimonopoly commission may supply copies when requested to do so; only information furnished the commission in connection with assessment fees must be kept confidential.

1958 OAG 42,340. Copies of payrolls and other fiscal papers are public records, and are to be disposed of in accordance with KRS 171.670.

61.874 Abstracts, memoranda, copies; agency may prescribe fee

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all written public records. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee. If the applicant desires copies of public records other than written records, the custodian of such records shall permit the applicant to duplicate such records, however, the custodian may ensure that such duplication will not damage or alter the records.

(2) The public agency may prescribe a reasonable fee for making copies of public records which shall not exceed the actual cost thereof not including the cost of staff required.

7 Nor Ky L Rev 7 (1980). The Kentucky Open Records Act: A Preliminary Analysis, Edward H. Ziegler, Jr.

OAG 80-209. The clerk's fee for a copy of a deed is $3.50, regardless of the number of pages. Where there is no other applicable fee statute, KRS 61.874(2) provides for a reasonable fee for a copy of a public record. In setting a reasonable fee for a copy, the custodian of the public records should consult the manufacturer of the copying machine to determine the actual cost of copies.

OAG 79-265. A library district petition becomes a public record once it is properly filed and prior to that time a person signing his name to the petition can withdraw it. Opponents of the petition may procure copies of it after the fiscal court has verified the petition, and the fiscal court has a reasonable time within which to make such verification.

OAG 76-754. A marriage certificate and a will are public records and a person may obtain a copy by paying a reasonable fee.

61.876 Agency to adopt rules and regulations

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;

(b) The title and address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

(3) The department of finance may promulgate uniform rules and regulations for all state administrative agencies.

61.878 Right of inspection only on order of court

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research, in conjunction with an application for a loan, the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential, or for the grant or review of a license to do business and if openly disclosed would permit an unfair advantage to competitors of the subject enterprise. This exemption shall not, however, apply to records the disclosure or publication of which is directed by other statute.

(c) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. Provided, however, that this exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (b) above.

(d) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired; provided, however, the law of eminent domain shall not be affected by this provision.

(e) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again.

(f) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action. Provided, however that the exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884.

(g) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(h) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(i) All public records or information the disclosure of which is prohibited by federal law or regulation;

(j) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the general assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the non-excepted material available for examination.

(4) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Penalty, 61.991(2)(a)(b)

7 Nor Ky L Rev 7 (1980). The Kentucky Open Records Act: A Preliminary Analysis, Edward H. Ziegler, Jr.

OAG 80-310. The identity of recipients of loans or grants from a community development agency is not confidential.

OAG 80-289. Records which are exempt as preliminary records continue to be exempt from public inspection even after final action has been taken in regard to the policies recommended.

OAG 80-54. A police department cannot have a policy of withholding the name of a rape victim.

OAG 79-546. Policy-procedure manuals of a jail are not open to public inspection.

OAG 79-469. Intra-office memoranda are exempt from public inspection. The salary of a public employe is not protected information under the privacy exemption.

OAG 79-387. Police incident reports are open to public inspection, but case files may be closed while a case is pending.

OAG 79-326. Proposals and counterproposals submitted in the negotiating process by a school board and an organization representing teacher employes are not required to be open to public inspection.

OAG 79-275. The public is entitled to inspect records pertaining to licensing of occupations and professions, but a licensing board can exercise its discretion as to whether to release all of the information in its files or to withhold some of the information under one of the exemptions in KRS 61.878.

OAG 79-193. A state agency is entitled to have access to the social security numbers of city employes for a governmental purpose.

OAG 79-69. Response to a voluntary survey is private correspondence and is exempt from public inspection under the open records law.

OAG 78-468. Examination papers and test scores are exempt from public inspection under the Kentucky open records law.

OAG 78-400. The records of cases before the KOSH review commission are generally open to public inspection.

OAG 77-586. Records of motels concerning occupancy and gross revenues are made confidential by statute and are therefore exempt under the open records law.

OAG 77-394. Personnel files contain material of a personal nature where the public disclosure thereof would constitute an invasion of personal privacy; thus the evaluation of a teacher's performance is a matter of opinion and a teacher is entitled to have this information withheld from the public, therefore a teacher has no more right than the public to inspect an evaluation under the Open Records Law.

OAG 77-291. A water district is a public agency subject to the Open Records Law.

OAG 77-99. Records of Property Valuation Administrator's office not open for general inspection; each request to inspect must be separately considered.

OAG 76-756. A person does not have to request one public record at a time, but should be specific as to the documents he wants to see.

OAG 76-717. The home address of a state employe is a private matter and should not be released to the public by the department of personnel; other various examples of private information exempted from the open records law are discussed.

OAG 76-692. A report of an investigation of the metropolitan department of corrections made by one man is a preliminary report and is exempted under the open records act.

OAG 76-656. Real estate appraisals on a public project need not be disclosed until all of the property for the project has been acquired.

OAG 76-650. The file on a complaint of a housing violation is a public record and should be open to inspection.

OAG 76-551. The detailed line-item budget of a school district is a public record and is not exempt from the open records law.

OAG 76-419. Taped interviews of the oral history commission made with the understanding that they will not be made public for a period of time are not open records subject to public inspection.

61.880 Denial of inspection; role of attorney general

(1) Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. Any agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) A copy of the written response denying inspection of a public record shall be forwarded immediately by the agency to the attorney general of the Commonwealth of Kentucky. If requested by the person seeking inspection, the attorney general shall review the denial and issue within ten (10) days (excepting Saturdays, Sundays and legal holidays) a written opinion to the agency concerned, stating whether the agency acted consistent with provisions of KRS 61.870 to 61.884. A copy of the opinion shall also be sent by the attorney general to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency and the attorney general may request additional documentation from the agency for substantiation. The attorney general may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the attorney general of any actions filed against that agency in circuit court regarding the enforcement of KRS 61.870 to 61.884.

(4) In the event a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the attorney general and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) If the attorney general upholds, in whole or in part, the request for inspection, the public agency involved may institute proceedings within thirty (30) days for injunctive or declaratory relief in the circuit court of the district where the public record is maintained. If the attorney general disallows the request or if the public agency continues to withhold the record notwithstanding the opinion of the attorney general, the person seeking disclosure may institute such proceedings.

7 Nor Ky L Rev 7 (1980). The Kentucky Open Records Act: A Preliminary Analysis, Edward H. Ziegler, Jr.

OAG 81-4. Inspection of records of a housing agency cannot be denied or delayed pending clearance by HUD.

OAG 81-2. Records in the custody of the University of Louisville pertaining to the University of Louisville foundation, a private corporation, are subject to inspection under the open records law.

OAG 80-633. A volunteer fire department which contracts with cities for fire fighting services and which receives at least twenty-five per cent of its funds from such contracts is a public agency under the open records law (KRS 61.870 to 61.884).

OAG 78-133. Charges for which a state trooper is punished are subject to public inspection after the action has been taken.

OAG 77-394. Personnel files contain material of a personal nature where the public disclosure thereof would constitute an invasion of personal privacy; thus the evaluation of a teacher's performance is a matter of opinion and a teacher is entitled to have this information withheld from the public, therefore a teacher has no more right than the public to inspect an evaluation under the Open Records Law.

OAG 77-69. School board meetings considering the appointment of a new superintendent should be open to the public.

61.882 Jurisdiction of circuit court in action seeking right of inspection; burden of proof; costs; attorney fees

(1) The circuit courts of this state shall have jurisdiction to enforce the purposes of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any citizen of this state.

(2) In order for the circuit courts of this state to exercise their jurisdiction to enforce the purposes of KRS 61.870 to 61.884, it shall not be necessary to have forwarded any request for the documents to the attorney general pursuant to KRS 61.880, or for the attorney general to have acted in any manner upon a request for his opinion.

(3) In any such action, the court shall determine the matter de novo and the burden of proof shall be on the public agency to sustain its action. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Courts shall take into consideration the basic policy of KRS 61.870 to 61.884 that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.870 to 61.884 or otherwise provided for by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others. Except as otherwise provided by law or rule of court, proceedings arising under this section take precedent on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against an agency in any action in the courts seeking the right to inspect and copy any public record may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars ($25) for each day that he was denied the right to inspect or copy said public record. The costs or award shall be paid by such person or agency as the court shall determine is responsible for the violation.

61.884 Person's access to record relating to him

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

OAG 77-291. A water district is a public agency subject to the Open Records Law.

JUSTICE CABINET
Department of State Police
Records and Communications Division
Information Systems Section

Criminal History Record Information System

502 KAR 30:010
RELATES TO: KRS 17.140
PURSUANT TO: KRS 13.082, 15A.160, 17.080
NECESSITY AND FUNCTION: KRS 15A.160 and KRS 17.080 provide that the Secretary of Justice may adopt such regulations as are necessary to properly administer the Cabinet. KRS 17.140 establishes the Centralized Criminal History Record Information System. This regulation establishes the definitions to be used in the administration of the Centralized Criminal History Record Information Systems.

Section 1. As employed in 502 KAR 30:010 - 502 KAR 30:070, unless the context requires otherwise:

(1) "Criminal history record information system" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(2) "Criminal history record information", hereinafter referred to as CHRI, means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including, but not limited to, sentencing, correctional supervision and release. CHRI shall not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system, or the evaluative information, such as statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. CHRI shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses of acts of delinquency committed by any person before that person has attained the age of 18; provided, however, that if a person under the age of 18 is adjudicated as an adult and found guilty in a circuit court, and information relating to such criminal offense shall be deemed CHRI. CHRI shall not include any information concerning any offense which is not punishable by incarceration.

(3) "Criminal justice agency" means: (1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. The term criminal justice agency shall be inclusive of but not limited to; the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner,

jailer, prosecuting attorney, probation officer, parole officer, warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution of the retarded; state police, state fire marshall, board of alcoholi beverage control; department for human resources; department of transportation; department of corrections; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents.

(4) "Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of CHRI.

(5) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination of proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to: aquittal, aquittal by reason of insanity, aquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled or released from correctional supervision, or any other disposition deemed appropriate by the Court.

(6) "Non-conviction data" means arrest information without disposition if an interval of one (1) year has elapsed from the date of arrest and no active prosecution of the charges is pending; all information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(7) "Uniform offense report, hereinafter "UOR-1", means the report form developed pursuant to KRS 15A.190 and KRS 17.150 on which every felony case, every misdemeanor case of theft by unlawful taking or disposition, every case of unauthorized use of a motor vehicle, and every other instance where there is an allegation that a criminal offense has been committed against a victim's person or property and a uniform citation will not suffice, shall be recorded and reported by forwarding a completed UOR-1 form to the Kentucky State Police, Information Systems Section, hereinafter KSP, ISS.

(8) "Court disposition uniform offense report, hereinafter "UOR-3", means that report form developed pursuant to KRS 15A.190 and KRS 17.150 on which either preliminary or final court dispositions on all criminal offenses involving arrest(s) other than those reported on a uniform citation shall be recorded with final dispositions on all cases reported by forwarding a completed UOR-3 to the KSP, ISS.

(9) "NLETS" means The National Law Enforcement Telecommunication System.

502 KAR 30:020. Arrest and Disposition Reporting Procedure.

RELATES TO: KRS 17.110; 17.115
PURSUANT TO: KRS 13.082, 15A.160, 17.080, 17.150
NECESSITY AND FUNCTION: KRS 17.110 mandates that all city and county law enforcement agencies shall submit to the Department of State Police, Justice Cabinet, photographs, and a description report of the offense on all persons arrested on a felony charge. KRS 17.115(2) requires persons in charge of any penal or correctional institution to provide the Cabinet with fingerprints and descriptions on all persons commited to their custody or detained by them on cases where fingerprints and descriptions are taken, together with a report of the disposition. KRS 17.150(6) authorizes the Secretary of Justice to adopt regulations that are necessary to insure the accuracy of said criminal history record information. This regulation establishes arrest and disposition reporting procedures.

Section 1. Offense Reporting Procedure. Within thirty (30) days of the arrest for an offense covered by KRS 17.110, two (2) sets of fingerprint cards, a mug shot or the negative of the mug shot, and a general description report (UOR-1) of the offense shall be submitted to KSP, ISS. Further, law enforcement and criminal justice agencies shall cooperate with KSP, ISS by complying with a "unique numbering system" to allow court disposition tracing. The "unique numbering system" shall be accomplished by the issuance of a Uniform Citation with every felony arrest as relates to 502 KAR 30:020.

Section 2. Disposition Reporting Procedure. (1) Dispositions, as defined in 502 KAR 30:010, dispositions shall be submitted from each city and county law enforcement agency to KSP, ISS within ten (10) days after adjudication has been completed, or the law enforcement agency, or prosecutor's office have collectively or individually elected against processing the charge through the criminal justice system. Said dispositions shall be provided to KSP, ISS in the form of the Uniform Offense Report (UOR-3), or any subsequent disposition reporting instrument required by the KSP.

(2) Upon suitable written agreement with the Chief Justice of the Kentucky Supreme Court and the Secretary of the Justice Cabinet, a unique tracking number will be assigned to each offender at the time of arrest. This unique number will be utilized throughout the movement of the offender through the criminal justice system, thereby enabling the Administrative Office of the Courts to provide a system compatible computer tape to the ISS for automatic update of court dispositions in the CHRI files.

502 KAR 30:030. Audit of Criminal History Record Information Systems.

RELATES TO: KRS 17.150
PURSUANT TO: KRS 13.082, 15A.160, 17.080, 17.150
NECESSITY AND FUNCTION: KRS 17.140 establishes a centralized criminal history record information system in the Justice Cabinet under the direction of the Commissioner of the Department of State Police. KRS 17.150(6) provides that the Secretary of Justice shall adopt regulations that are necessary to insure the accuracy of criminal history record information being reported to the centralized criminal history record information system. This regulation establishes the requirements for audits of the centralized criminal history record information system and law enforcement and criminal justice agencies which submit or receive criminal history record information to or from the centralized criminal history record information system.

Section 1. The Information Systems Section shall conduct annually an in-house audit of a random representative sample of hard copy data contained in the centralized criminal history record information system. The scope of the audit shall include but is not limited to: (1) adherence to federal and state regulations; (2) completeness and accuracy of CHRI; (3) CHRI dissemination procedures; (4) security; (5) compliance with mandated access and review procedures. Said audit shall be conducted in accordance with guidelines set out in 28 C.F.R.; 20.21(e), utilizing the standard audit instrument as prescribed by KSP, ISS. A report of the audit findings shall be submitted by the administrative head of ISS to the Commissioner, Department of State Police and the Secretary of the Justice Cabinet on or before January 10th of each year.

Section 2. KSP, ISS shall conduct, on an annual basis, audits of at least four (4) law enforcement or criminal justice agencies, submitting or receiving data from or to the centralized criminal history record information system. Said agencies shall be picked at random. Such audits shall be conducted in accordance with guidelines set out in 28 C.F.R.; 20.21(e), utilizing the standard audit instrument. A report of the audit findings shall be submitted to the administrative head of the respective law enforcement or criminal justice agency within thirty (30) working days after the audit has been completed. The scope of the audit shall include but not be limited to: (1) adherence to federal and state regulations; (2) completeness and accuracy of CHRI; (3) CHRI dissemination procedures; (4) security; (5) compliance with mandated access and review procedures.

502 KAR 30:040. Criminal History Record Information User Agreement.

RELATES TO: KRS 17.140, 17.147, 17.150
PURSUANT TO: KRS 13.082, 15A.160, 17.080, 17.150
NECESSITY AND FUNCTION: KRS 17.147 assigns the Department of State Police the responsibility of instruction of persons and agencies using the centralized criminal history record information system in the use of criminal history record information. KRS 17.150(6) mandates that the Secretary of the Justice Cabinet shall adopt such rules and regulations as are necessary to carry out the provisions of the criminal history record information system. To insure compliance with KRS Chapter 17 and 28 C.F.R.; 20.21(b), both statutes dealing with criminal history record information, this regulation establishes criteria for participation in the centralized criminal history record information system by means of a criminal history record information user agreement contract.

Section 1. All criminal justice agencies shall enter into a User Agreement with the Department of State Police as prescribed by the Secretary of Justice.

502 KAR 30:050. Security of Centralized Criminal History Record Information.

RELATES TO: KRS 17.140
PURSUANT TO: KRS 13.082, 15A.060, 17.080, 17.140
NECESSITY AND FUNCTION: KRS 17.080 authorizes the Secretary of Justice to institute rules and regulations and direct proceedings and actions for administratio of laws and functions that are invested in the Justice Cabinet. KRS 17.140 establishes, in the Justice Cabinet under the direction, control, and supervision of the Commissioner of the Department of State Police, a centralized criminal history record information system. KRS 17.140 defines a centralized criminal history record information system as the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation, or dissemination of criminal history records maintained by the Justice Cabinet. This regulation sets specific security standards to preserve the CHRI in an acceptable state.

Section 1. Procedures shall be implemented in the centralized criminal history record information system to insure that access to criminal history record informati is restricted to authorized persons. The ability to access, modify, change, update, purge, or destroy such information shall be limited to authorized criminal justice personnel, or other authorized persons who provide operational support, such as programming or maintenance. Technologically advanced software and/or hardware designs shall be implemented to prevent unauthorized access to criminal history record information.

Section 2. Procedures shall be implemented in the centralized criminal history information system to determine what persons have authority to enter in areas where criminal history information is stored and implement access control measures to insure entry is limited to specific areas where authorization is valid. Further, access control measures shall be implemented to insure unauthorized persons are totally denied access to areas where criminal history record information is stored. Said access constraints shall include, but not be limited to, the system facilities, systems operating environments, data file contents, whether while in use or when stored in media library, and system documentation.

Section 3. Procedures shall be implemented in the centralized criminal history information system to insure that computer operations which support the ISS data base, whether dedicated or shared, operate in accordance with procedures developed or approved by the Justice Cabinet, and further insure that:

(a) CHRI is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by unauthorized persons.
(b) Operational programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than designated terminals within the KSP, ISS.
(c) The destruction, partial deletion, total deletion, or record correction is limited to designated terminals under the direct control of KSP, ISS.
(d) Operational programs are used to detect and store for the output of designatec criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program or file.

(e) The programs specified in paragraphs (b) and (d) of this section are known only to criminal justice agency employees responsible for criminal history record information system control or individuals in agencies pursuant to a specific agreement with the Justice Cabinet to provide such programs and the program(s) are kept continuously under maximum security conditions.

(f) Procedures are instituted to assure that any individual or agency authorized direct access is responsible for: (1) the physical security of criminal history record information under its control or in its custody, and (2) the protections of such information from unauthorized access, disclosure or dissemination.

Section 4. Procedures shall be implemented in the centralized criminal history record information system to protect CHRI from unauthorized access, theft, sabatoge, fire, flood, wind, or other natural or manmade disasters.

Section 5. Emergency Plans Required. Written plans and instructions dealing with emergencies described in Section (4), shall be developed in manual form and cover all forseeable incidents ranging from minor accidents to major disasters causing the destruction of computer facilities, entire data bases, and/or CHRI contained in manual files. Employees of the centralized criminal history record information system shall be trained in procedures and specifically assigned responsibilities in case of an emergency. Plans and instructions should be inclusive of, but not limited to, emergency shutdown and evacuation procedures, disaster recovery plan to restart critical system functions, procedures for backup files for critical data such as fingerprint cards, and duplicate system designs. The Commissioner of the Department of State Police shall make available needed personnel to reinstitute the centralized criminal history record information system as soon as feasible after accident or disaster.

Section 6. The Commander of the ISS shall institute procedures for the screening, supervising, and disciplining of agency personnel in order to minimize the risk of compromising internal security. A background investigation of all prospective employees for the ISS shall be conducted. The scope of the background investigation shall be inclusive of, but not limited to:

(1) Verification of all items as listed on the employment application;
(2) Moral character;
(3) Financial history;
(4) Individual as well as spouse arrest history inclusive of juvenile files;
(5) Agency personnel records.

All KSP, ISS employees will agree to and sign non-disclosure statements and notice of security breach forms. The Commander of ISS shall so notify the Commissioner of the State Police as to any violation of security policy within the KSP, ISS. A violation of said security policy shall include, but not be limited to; the intentional violation or wanton disregard of any or all security policies with regard to criminal history record information as set forth by section policy; the compromising of an employee's security by committing, facilitating, or being a party to a crime. Upon notification by the Commander of KSP, ISS of a security compromise, the Commissioner shall take immediate appropriate administrative action.

502 KAR 30:060. Dissemination of Criminal History Record Information.

RELATES TO: KRS 17.115, 17.140, 17.147, 17.150
PURSUANT TO: KRS 13.082, 15A.150, 17.080
NECESSITY AND FUNCTION: KRS 17.115 provides that the Justice Cabinet shall cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification. KRS 17.147(6) provides that the Department of State Police shall supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs. Further, KRS 17.150(6) authorizes the Secretary of Justice to adopt regulations to carry out the provisions of the criminal history record information system.

Section 1. Dissemination of Criminal History Record Information. -- Use of CHRI disseminated to non-criminal justice agencies shall be limited to the purpose for which it was given. No agency or individual shall confirm the existance or non-existance of CHRI to any person or agency that would not be eligible to receive the information itself. Policies on dissemination of CHRI shall be regulated by the specific category of criminal history record information. Those categories shall be inclusive of, but not limited to:

(1) "Non-conviction Data", as defined by 502 KAR 30:010(6) shall with the exceptic of the computerized Kentucky State Police files, accessed by an open record request directly to the Department of State Police, be limited, whether directly or through an intermediary, only to:
(a) Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment;
(b) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court order, as determined by the General Counsel, Justice Cabinet.
(c) Individuals and agencies pursuant to a specific agreement as outlined in 502 KAR 30:040 with the Department of State Police, to provide services required for the administration of criminal justice pursuant to that agreement.
(d) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with the ISS. Said agreement shall limit the use of data to research, evaluative or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and provide sanctions for violations of the agreement. This dissemination limitation does not apply to conviction data.
(2) "Non-conviction Data", from the computerized Kentucky State Police files shall be disseminated, by the Department of State Police only, pursuant to Chapter 61.
(3) Juvenile Records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall be conducted pursuant to KRS 208A.080. In essence, juvenile records meeting criteria set forth in KRS 208A.020, (38)(39) and 502 KAR 03:010(2) shall be made available only to the family, guardian, or legal respresentative of the child involved. Further juvenile records shall be made available to the court, probation officers, representatives of the Department

for Human Resources, or to a respresentative in a public or private social agency, institution, hospital or church having a direct interest in the record or social history of the child. CHRI on an individual under the age of eighteen (18) years of age meeting circuit court conviction criteria as set forth in KAR 30:010(2) shall be treated as standard CHRI; therefore, dissemination policies as outlined in this section shall apply.

Section 2. As outlined in 502 KAR 30:040(e), the computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRI from the computerized criminal history record information system shall log all disseminations of CHRI. Said log shall contain at least the following information. The name of the agency and individual receiving CHRI, the date of release, the individual to whom the CHRI relates, the items of CHRI released, and, in the case of secondary dissemination, the agency which provided the CHRI. Transaction logs shall be maintained in a record subject accessible state for at least twelve (12) months from the date of CHRI dissemination.

502 KAR 30:070. Inspection of Criminal History Record Information by Record Subject.

RELATES TO: KRS 17.140, 17.150, 61.872, 61.878, 61.884
PURSUANT TO: KRS 13.082, 15A.150, 17.080, 17.150
NECESSITY AND FUNCTION: KRS 17.150(5) makes that portion of KRS Chapter 61 which deals with administrative and judicial remedies for the inspection of public records and penalties appealable to KRS 17.150. KRS 61.884 allows the individual record subject to access CHRI relating to him or other data in which the record subject is mentioned by name. This regulation establishes guidelines by which CHRI may be accessed by the individual record subject.

Section 1. These regulations shall provide for the initiation of access/review procedures at each of the Kentucky State Police Posts throughout the Commonwealth (with the exception of Frankfort, Post 12). The Information Systems Section shall serve as the location for record access/review for individuals near Frankfort. Access/review procedure shall be uniform throughout the various designated sites.

Section 2. Access/review procedure. The record subject shall complete the "Request for Review" form provided at the respective access/review site. A duplicate copy of said form shall be provided to the requestor, or requestor's legal counsel. One set of rolled fingerprints from the requestor on a completed KSP Form 22, will be forwarded to the KSP, ISS where submitted fingerprints will be used to verify the record subject's identity. Staff of the ISS shall note the date of the request as indicated on the "Request for Review" form and shall schedule the record review within three (3) working days of the receipt of the request, unless a detailed explanation of the cause is given for further delay along with the place, time and earliest date on which the public record will be available for inspection. The requestor shall be notified forthwith by the KSP, ISS of the scheduled date of review. All record reviews will be conducted from 8:00 a.m. through 4:00 p.m., Monday through Friday with the exception of legal holidays, at the designated State Police Post or the ISS. The ISS shall return to the Post of the respective access/review request, the "Request for Review" form, the fingerprints taken from the individual for identity verification, a copy of the letter to the record subject scheduling the review date, and a certified copy of the individual's criminal history record.

Section 3. Record Reviewing Procedures. In order to insure that the subject appearing at the Post for the scheduled review of the CHRI supplied from the ISS is in fact the same person the submitted set of fingerprints were obtained from, visual recognition is required by Post personnel before allowing the individual to actually access the CHRI. The individual, and his attorney (if written approval is submitted by the record subject) shall be allowed to inspect the copy of the CHRI furnished by the ISS. Reasonable assistance shall be provided by Post personnel to insure understanding of the CHRI. After the record subject has inspected the CHRI, Post personnel should ascertain if a challenge of the content of the records will be initiated. Basis for challenge must stem from erroneous information, misinformation, or fictitious information. The individual shall be informed that a challenge must be initiated within thirty (30) working days of the actual review. If a challenge is not initiated at the time of review, a copy of the individual's record will be retained at the Post and will be filed

with the individual's "Request for Review" form in a manner convenient to the Post. Information regarding the "Request for Review" shall remain at the Post not less than thirty (30) working days from the actual date of review to allow the individual ample time to challenge the record content. If, after thirty (30) working days a challenge has not been initiated, all material regarding the review shall be returned to the ISS where a permanent record of the review shall be maintained.

Section 4. Challenge of Record Contents. If the record subject desires to challenge the contents of the record, the individual shall complete the "Challenge of Record" form (bottom portion of the original form). A duplicate copy should be provided to the individual. It should be noted on the form if the individual requests a copy of the record for puposes of challenge. A copy of the individual's record furnished through the Post by the ISS shall be given to the individual if a challenge is initiated and the individual states a need for a copy of the record for purposes of pursuing a challenge. The copy provided by the ISS shall be permanently marked or stamped to indicate that the copy is for the purpose of challenge and that any other use thereof would be in violation of federal and state law. The Post shall forward to the ISS a "Challenge of Record" form and any documents submitted by the individual in support of the challenge.

Section 5. Processing of challenge by ISS. The ISS shall conduct a comparison of the information under challenge with the original input forms and information contained in the repository files. Any errors or omissions discovered in the repository files shall be corrected. If no error is found, the ISS shall forward a copy of the original challenge form, a copy of the record as contained in the files of the ISS, and any other relevant information to the agency or agencies which the ISS records indicate as contributing the information under challenge and shall request them to examine in an expeditious manner all relevant files to determine the validity of the challenge. The ISS shall notify the individual or his legal counsel in writing of the status of said challenge within thirty (30) working days of the challenge date. Status of challenge includes, but is not limited to, notice of clarification of record, expungement of erroneous data, substantiating record or ongoing research process.

Section 6. Administrative Reveiw. If the record subject is dissatisfied with the action taken by the ISS, the individual may request an Administrative Review. This request will be submitted in writing and directed to the attention of the Commander of the ISS. Said request for Administrative Review must be made not later than fifteen (15) working days following the date of notification to the individual of the decision of the initial challenge. The Commander of the ISS shall notify, in written form the Administrative Review Officer of the request for Administrative Review upon receipt of such request. An individual within the Department of State Police and designated by the Commissioner as the Administrative Review Officer shall review the individual's record in the same manner as performed by the ISS. The Administrative Review Officer shall notify the individual, in writing, of the decision of the Administrative Review. This notification shall be within thirty (30) working days of submission of

the written request for the Administrative Review. Any further appeal by the individual will be directed to the court for judicial review.

Section 7. Action Taken if Error or Omission Found within Record. The ISS will correct necessary documents maintained in custody. Notification of all known criminal justice recipients of the erroneous information within the past year and corrections shall be effected in written form. The ISS will furnish the individual, upon request, a written list of known non-criminal justice recipients within the past year and of corrections to be made. The ISS will require that the agency originating the erroneous information notify all known criminal justice recipients within the past year and of corrections to

Title 15

Criminal Procedure

CHAPTER 6. LOUISIANA BUREAU OF CRIMINAL IDENTIFICATION AND INFORMATION

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575.	Legislative findings and objectives.	586.	Authority to purge records of the central repository.
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577.	Bureau of criminal identification and information; creation and organization.	588.	Right of individual access.
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1972 through 1981 Reenactments

Acts 1972, No. 449, § 1 amended and reenacted Part I of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950. The subject matter of the former sections of the 1972 reenactment of Part I were found under the same section numbers in the reenactment of Part I by Acts 1976, No. 302, § 1. Acts 1979, No. 722 effective July 1, 1980, amended and reenacted Part I to consist of R.S. 15:575 to 15:581 and repealed Part II of this Chapter, R.S. 15:581.1 to 15:581.22. H.C.R. No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722, until September 1, 1981. Acts 1981, No. 449, § 1, eff. July 1, 1981, amended and reenacted Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950 to consist of R.S. 15:575 to 15:596.

TABLE I

Showing where the subject matter of the former sections of Part I of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950 could be found in the reenactment of Part I by Acts 1972, No. 449, § 1.

A table showing where the subject matter of the former sections contained in the 1972 reenactment of Part I and in Part II of Chapter 6 may be found in the 1981 reenactment of Chapter 6 follows as Table II.

Former Sections	1972 Reenactment	Former Sections	1972 Reenactment
R.S. 15:575	R.S. 15:578	R.S. 15:579	R.S. 15:579
R.S. 15:576	R.S. 15:578.1	R.S. 15:580	R.S. 15:578.1
R.S. 15:577	R.S. 15:577	R.S. 15:581	R.S. 15:581
R.S. 15:578	R.S. 15:577, R.S. 15:577.1		

TABLE II

Showing where the subject matter of the former sections of the 1972 and 1976 reenactments of Part I, and of the former sections of Part II, of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950 can be found in the 1981 reenactment of that Chapter by Acts 1981, No. 449, § 1.

Part I

Former Sections of 1972 and 1976 Reenactments	1981 Reenactment
R.S. 15:575	R.S. 15:575
R.S. 15:576	R.S. 15:576
R.S. 15:577	R.S. 15:577
	R.S. 15:578
	R.S. 15:580
R.S. 15:577.1	None
R.S. 15:578	R.S. 15:591
R.S. 15:578.1	R.S. 15:591
R.S. 15:578.2	R.S. 15:590
	R.S. 15:591
	R.S. 15:592
R.S. 15:579	R.S. 15:590
R.S. 15:580	None
R.S. 15:581	R.S. 15:596

Part II

Former Sections	1981 Reenactment
R.S. 15:581.1	R.S. 15:577
R.S. 15:581.2	R.S. 15:591
R.S. 15:581.3	R.S. 15:591
R.S. 15:581.4	R.S. 15:591

Part II

Former Sections	1981 Reenactment
R.S. 15:591.5	R.S. 15:591
	R.S. 15:592
R.S. 15:581.6	R.S. 15:580
R.S. 15:581.7	R.S. 15:581
	R.S. 15:594
R.S. 15:581.8	R.S. 15:586
	R.S. 15:593
R.S. 15:581.9	R.S. 15:582
R.S. 15:581.10	R.S. 15:587
R.S. 15:581.11	R.S. 15:586
R.S. 15:581.12	R.S. 15:583
R.S. 15:581.13	R.S. 15:584
R.S. 15:581.14	R.S. 15:577
R.S. 15:581.15	R.S. 15:577
R.S. 15:581.16	R.S. 15:585
R.S. 15:581.17	R.S. 15:594
R.S. 15:581.18	None
R.S. 15:581.19	R.S. 15:591
	R.S. 15:592
R.S. 15:581.20	R.S. 15:596
R.S. 15:581.21	R.S. 15:596
R.S. 15:581.22	None

Former R.S. 15:575 to 15:581.22, now under this Chapter heading, were, as the sections existed before 1966, under the heading of former Part XXXI of former Chapter 1. Former Part XXXI was redesignated as this Chapter 6 by Acts 1966, No. 311, § 3 and on Authority of R.S. 24:253, effective Jan. 1, 1967.

The section numbers and sections were not changed.

Effective January 1, 1967, R.S. 15:582 in Part XXXII, Application of Code, in Chapter 1 of Title 15, was repealed by Acts 1966, No. 310, § 5, and the designation of said Part was deleted on authority of Acts 1966, No. 311, § 3, and R.S. 24:253. The repealed section was derived from Acts 1928, No. 2, § 1, art. 582.

1979 Reenactment

Acts 1979, No. 722, effective July 1, 1980, amending and reenacting Part I of this Chapter to consist of R.S. 15:575 to 15:581, and repealing Part II of this Chapter, consisting of R.S. 15:581.1 to 15:581.22, was suspended by H.C.R. No. 111 of the 1980 Regular Session until September 1, 1981, Acts 1979, No. 722 did not become effective because Acts 1981, No. 449 amended and reenacted this Chapter, effective July 1, 1981.

§ 575. Legislative findings and objectives

The legislature hereby finds and declares that:

(1) The improvement of public safety and sound law enforcement and administration of criminal justice requires the complete and timely collection, processing, and dissemination of available information on crime, offenders, and the operations of the criminal justice system through a centralized system.

(2) It is in the public interest that to the greatest extent possible, government agencies at all levels concerned with the detection, apprehension, prosecution, sentencing, confinement, and rehabilitation of criminal offenders share among themselves available information relating to such offenders.

(3) Available computer and communications technology now enables the coordination, collection, storage, and dissemination of relevant information heretofore dispersed in separate files throughout the state.

(4) The reduction of crime, the protection of citizens and enforcement officers, and the need to improve the efficiency of the criminal justice system mandates the development and operation of a computer-based criminal justice information system in Louisiana.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

Section 5 of Acts 1981, No. 449 (§ 1 of which amended and reenacted this chapter) provided: "The effective date of this Act shall be July 1, 1981."

Title of Act:

An Act to amend and reenact Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950, to consist of R.S. 15:575 through R.S. 15:596, and Subsection B of Section 408 of Title 36 of said Statutes, relative to the field of criminal statistics and information, to provide with respect to the Louisiana Bureau of Criminal Identification and Information, and to provide with respect to related matters. Acts 1981, No. 449.

§ 576. Definitions

As used in this Chapter:

(1) The term "bureau" means the Louisiana Bureau of Criminal Identification and Information.

(2) The terms "criminal history record" or "criminal history record information" mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision, and release. The terms do not include intelligence or investigatory purposes, nor does it include any identification information which does not indicate involvement of the individual in the criminal justice system.

(3) The term "criminal justice agency" means any government agency or subunit thereof, or private agency which, through statutory authorization or a legal formal agreement with a governmental unit or agency has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation or release of persons suspected, charged, or convicted of a crime; or which collects, stores, processes, transmits, or disseminates criminal history record or crime information.

(4) The term "criminal justice system" means that body of agencies at the federal, state, or local level, which may legally arrest, detain, prosecute, adjudicate, treat, supervise, rehabilitate or release, or collect, store, process, transmit, or disseminate criminal history record or crime information.

(5) The term "criminal justice information system" means all agencies, procedures, mechanisms, media, and forms as well as the information itself which are or become involved in the origination, collection, transmittal, storage, retrieval, and dissemination of information related to offenses or offenders in Louisiana.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 577. Bureau of criminal identification and information; creation and organization

A. There is hereby created within the Department of Public Safety as a part of the office of state police, the Louisiana Bureau of Criminal Identification and Information. The bureau shall be administered by the deputy secretary who shall employ qualified commissioned officers of the state police to supervise the activities of the bureau under such terms and conditions as he may direct. The deputy secretary may appoint such other employees and employ such consultants as he deems necessary for the efficient operation of the bureau. The Louisiana Bureau of Criminal Identification and Information shall assume the functions, powers, and duties of the Bureau of Identification which prior to July 1, 1981 operated as a part of the office of state police.

B. Within the bureau, the following sections are hereby established:

(1) Criminal Records and Identification Section.

(2) Field Services and Quality Assurance Section.

(3) Latent Fingerprint Section.

The bureau may establish such units within each section as are necessary to carry out the provisions of this Chapter.

C. All data processing and related communications needs of the bureau shall be provided by the Data Processing Center and other facilities of the Department of Public Safety unless otherwise agreed by the deputy secretary.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 578. Functions, powers, and duties of the bureau, crime laboratory

A. The bureau shall perform the following functions:

(1) To establish and maintain a central repository of criminal history record information and to adopt regulations and procedures to prescribe the terms and conditions under which eligible individuals or agencies may gain access to such information.

(2) To establish and implement a uniform system for reporting criminal history record information from any state or local criminal justice agency.

(3) To adopt and promulgate regulations to protect the privacy and security of criminal history record information exchanged with the bureau by any state or local criminal justice agency.

(4) To establish, maintain, and regulate a modern system of telecommunication and data processing for the efficient collection, storage, and rapid transmission of criminal history record information and relevant statistics maintained by the bureau. To serve qualified agencies concerned with the administration of criminal justice throughout the state.

(5) To establish a system of fingerprint identification and analysis for use in the maintenance of criminal history record information; to aid in official investigations by eligible agencies; and to establish identification where authorized by law.

(6) To establish a system of identification and analysis of genetic markers of the blood and secretor status of the saliva for use in the maintenance of criminal history record information of sexual offenders; to aid in official investigations by eligible agencies; and to establish identification where authorized by law.

B. Upon request the bureau shall assist any sheriff, chief police officer, or any governmental unit to do the following:

(1) Establish local identification and records systems.

(2) Investigate the circumstances of any crime and the identification, apprehension, and conviction of the perpetrator or perpetrators of any crime, and for this purpose may detail any employee or employees of the bureau for any length of time the deputy secretary may deem fit.

(3) Without request the deputy secretary shall, at the direction of the governor, detail any employee or employees, for any length of time which the governor may deem fit, to investigate any crime within the state for the purpose of identifying, apprehending, and convicting the perpetrator or perpetrators.

C. For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the bureau may operate and coordinate all communication systems which may be required in the normal conduct of its duties.

D. Upon request of the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice, the secretary of the Department of Public Safety and Corrections may assign on behalf of the bureau any of its functions, powers, and duties

related to the gathering and dissemination of data concerning parish prison population statistics, uniform crime reports, and other related criminal justice system statistics to the commission, its staff, or its assigns. Any assignment shall relieve the bureau of responsibility for such responsibilities and duties.

E. Upon written request, the bureau shall provide specified criminal history information to the Department of Health and Human Resources to provide for the well-being of children, as provided in R.S. 15:587.1.

Acts 1981, No. 449, § 1, eff. July 1, 1981. Amended by Acts 1984, No. 772, § 1; Acts 1986, No. 760, § 1, eff. Jan. 1, 1987; Acts 1987, No. 735, § 1.

§ 579. Rules and regulations

The bureau shall issue rules and regulations, consistent with United States Department of Justice requirements, governing the maintenance of privacy and security of criminal history records; governing access to and use of records maintained by the central repository; governing restrictions to access and use by authorized agencies or individuals of any state owned or operated system of communications utilized for transmitting criminal history record information to or from the bureau; and governing the purging of any information maintained by the bureau as permitted by law.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 580. Forms; procedures; training; assistance

The bureau shall develop, print, and distribute forms and/or related procedures and regulations for the collection of any information or statistics which it is empowered to obtain to insure the correct reporting of data to the bureau. The bureau shall provide necessary technical assistance and training to all eligible reporting agencies in the appropriate procedures for completion of all forms and for submission of all information or statistics which the bureau may require. Upon request, the deputy secretary may direct employees or agents of the bureau to assist any criminal justice agency to establish a local system of identification and record management.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 581. Authorized audits and investigations

With the written authorization of the deputy secretary, any employee or agent of the bureau, for purpose of audit or investigation of violations of any provisions herein, or any official rule or regulation of the bureau, shall be granted access by any public or private criminal justice agency collecting, processing, storing, or maintaining any documents, or automated, microfilmed, or manual records containing, or which may reasonably be expected to be used to substantiate and verify, any information or statistics the bureau is empowered to require from such public or private criminal justice agency. Upon written authorization of the deputy secretary, any employee or agent of the bureau may enter any institution to which persons have been committed, who have been convicted of crime, or declared to be criminally insane or to be feeble-minded delinquents, to take or cause to be taken fingerprints or photographs or to make investigations relative to any person confined therein, for the purpose of obtaining information which will lead to the identification of criminals.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 582. Civil identification files

The bureau may accept and file the names, fingerprints, photographs, and other personal identification data submitted to local criminal justice agencies by the individuals or submitted by parents on behalf of their children for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or change in appearance. Upon the application of a person identified under the provisions of this Section to the local criminal justice agency, all data received under this Section with relation to him shall be surrendered to the requesting criminal justice agency.

Acts 1981, No. 449, § 1, eff. July, 1, 1981.

§ 583. Transmission of information

The bureau may transmit any information in its possession which the deputy secretary shall designate, to any person or agency eligible to receive it under any provision of this Chapter. For this purpose the bureau shall operate and coordinate a modern system of communications which may be required in the normal conduct of its duties.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 584. Cooperation with federal and other state agencies

The bureau shall cooperate with the United States Department of Justice and other federal criminal justice agencies and with similar agencies in other states and cities toward developing a comprehensive state, interstate, national, and international system of criminal information, identification, investigation, records, and statistics.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 585. Admissibility of bureau records in evidence

Any original record including fingerprints, pictures, photographs, other documents or data, or any copy thereof, when certified by the deputy secretary or his authorized representative, shall be admissible as evidence in all criminal cases in courts of this state. Any certified record, or copy thereof, received by the court shall be received as prima facie proof of its contents and proper and accurate collection and custody; provided, when the record is presented for admission into evidence it is accompanied by a statement signed by the deputy secretary or his authorized representative which specifies:

(1) The date on which the record was received by the bureau.

(2) The agency of origin of each record.

(3) The nature or type of record received and by what method or transfer.

(4) The date the bureau compiles the record for the purpose of evidence.

(5) The name of the bureau employee who prepares the record for admission as evidence.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 586. Authority to purge records of the central repository

Except for the provisions of R.S. 44:9, no records of the bureau may be permanently destroyed until five years after the person identified is known or reasonably believed to be dead. Upon the official issuance of appropriate rules and regulations, the bureau may retire or remove from active dissemination to eligible agencies records of any individual beyond the age of sixty, who has had no reported criminal arrest for a period of fifteen years from the last reported official release from the criminal justice system.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 587. Duty to provide information; processing fees; Louisiana Bureau of Criminal Identification and Information Fund

A.(1) The bureau shall make available upon request, or at such other times as the deputy secretary shall designate, to any eligible criminal justice agency and the Department of Health and Hospitals, the Department of Insurance, the Louisiana State Racing Commission, the Senate and Governmental Affairs Committee of the state of Louisiana, the office of employment security of the Department of Employment and Training, the Board of River Port Pilot Commissioners, and the office of financial institutions of the Department of Economic Development, any information contained in the criminal history record and identification files of the bureau.

(2) The bureau, in accordance with its powers to regulate and to enforce provisions herein, may further restrict those agencies eligible to receive information. For the purposes in this Section, the bureau shall employ such methods and procedures and shall observe such duty hours as to provide information upon request within forty-eight hours from its receipt.

B. Pursuant to the Administrative Procedure Act [1] the bureau may charge a reasonable processing fee for information provided to any eligible criminal justice agency pursuant to a request to assist the agency in performing a screening function as part of any regulatory or licensing scheme. Payment of the processing fee shall accompany the request for such information and shall be deposited by the bureau immediately upon receipt into the state treasury.

C. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Subsection B shall be credited to a special fund hereby created in the state treasury designated as the Louisiana Bureau of Criminal Identification and Information Fund. The monies in this fund shall be used solely as provided by Subsection D and only in the amounts appropriated by the legislature. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund.

D. The monies in the Louisiana Bureau Criminal Identification and Information Fund shall be used solely by the bureau to supplement normal operating and processing expenses and to expand the services which the bureau is required to furnish under provisions of this Chapter.

Acts 1981, No. 449, § 1, eff. July, 1, 1981. Amended by Acts 1985, No. 941, § 1, eff. July 23, 1985; Acts 1986, No. 651, § 1; Acts 1987, No. 312, § 1; Acts 1987, No. 810, § 1.

[1] R.S. 49:950 et seq.

. . . .

§ 587.1. Provision of information to protect children

A. As provided in R.S. 15:825.3, R.S. 17:15, and R.S. 46:51.2, any employer or others responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children shall request in writing that the bureau supply information to ascertain whether that person or persons has been convicted of, or pled nolo contendere to, any one or more of the crimes listed in Subsection C. The request must be on a form prepared by the bureau and signed by a responsible officer or official of the organization making the request. It must include a statement signed by the person about whom the request is made which gives his permission for such information to be released.

B. Upon receiving a request meeting the requirements of Subsection A, the bureau shall survey its criminal history records and identification files and shall make a simultaneous request of the Federal Bureau of Investigation requesting like information from other jurisdictions. The bureau shall provide a report promptly and in writing, but provide only such information as is necessary to specify whether or not that person has been convicted of or pled nolo contendere to any such crime or crimes, the crime or crimes of which he has been convicted or to which he has pled nolo contendere, and the date or dates on which they occurred.

C. The crimes to be reported under this Section are those defined in:

(1) R.S. 14:30, R.S. 14:30.1, R.S. 14:31, R.S. 14:41 through R.S. 14:45, R.S. 14:74, R.S. 14:78, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S. 14:89.1, R.S. 14:93, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or convictions for attempt or conspiracy to commit any of those offenses;

(2) Those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and

(3) Those under the Federal Criminal Code having analogous elements of criminal and moral turpitude.

D. The costs of providing the information required under this Section shall be charged by the bureau to the private employer or to the department, office, or other agency of government which has given, or is considering giving, a person supervisory or disciplinary authority over children. The individual applicant shall not bear such costs.

E. This Section may be cited as the "Louisiana Child Protection Act."

§ 588. Right of individual access

The bureau shall adopt rules and regulations which provide a means for any individual, or his authorized representative if he is physically incapable of appearing at the bureau, to view, make notes, and administratively challenge the accuracy and contents of his personal criminal history information record and to seek corrections. The bureau may levy a reasonable fee of not less than ten dollars for this purpose, which fees shall be collected by the bureau, paid into the state treasury, credited to the special fund, and appropriated to the bureau all in accordance with the provisions of R.S. 15:584[1] and shall be used by the bureau to supplement normal operating expenses and to expand the services which the bureau is required to furnish under the provisions of this Chapter. Any increase in such fee shall be adopted pursuant to R.S. 49:951 et seq.[2]

§ 589. Duty to maintain security

The bureau shall adopt rules and regulations which shall establish necessary control over any data processing or telecommunication system, facilities and personnel recruitment and such processing or communication related assignment policies of the department as become necessary to ensure compliance with all applicable security standards at the state and national level for storage and transmission of criminal history record information. To the maximum extent feasible, the bureau shall regulate through the design, implementation, and operation of the criminal justice information system the privacy and security of information contained herein.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 590. Obtaining and filing fingerprint and identification data

The bureau shall obtain and file the name, fingerprints, description, photographs, and any other pertinent identifying data as the deputy secretary deems necessary, of any person who:

(1) Has been or is hereafter arrested, formally indicted, or taken into custody in this state;

(a) For any offense which is a felony and for certain misdemeanor offenses designated by the deputy secretary;

(b) For any violation of any ordinance which the bureau shall determine to be substantially related to or the equivalent of any offense described under state law as a felony offense; or

(c) For any other offense which the deputy secretary may designate.

(2) Is or becomes confined to any prison, penal institution, correctional facility, or institution for the criminally insane.

(3) After death, has become a human corpse which is unidentified or involved in any autopsy or inquest by a coroner.

(4) Is a fugitive from justice.

(5) Is or has been a habitual offender.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 591. Submission of information; statistics; data

It shall be the obligation of every criminal justice agency to collect and submit the name, fingerprints, description, photographs, and other identifying data on persons lawfully arrested, indicted, or taken into custody in this state as required by the bureau with respect to all offenses described in R.S. 15:590. Upon notification, every criminal justice agency, coroner, correctional facility, prison, penal institution, institution for the criminally insane, or private criminal justice agency lawfully empowered to perform any arrest, detention, treatment, supervision, or any official function on behalf of the criminal justice system shall collect and report to the bureau in such manner as prescribed, any statistics, reports, lists of stolen property or fugitives, criminal history records, or any other information the deputy secretary may require under authority of any provision of this Chapter, rule, or regulation issued pursuant thereto. In addition, each coroner shall transmit to the bureau all statistics and information as prescribed regarding autopsies performed, inquests held, and verdicts rendered.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 592. Submission of fingerprints and identification data

Each law enforcement agency empowered to arrest or take into custody any individual described in R.S. 15:590 shall obtain and forward to the bureau two sets of fingerprints and other identification data as required by the bureau within seventy-two hours after arrest and booking. However, this period may be extended to cover any intervening official holiday or weekend.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 593. Prohibition against destruction of records

Notwithstanding the provisions of Articles 893 and 894 of the Code of Criminal Procedure and R.S. 40:983 and except in accordance with the provisions set forth in R.S. 44:9, no judge or other official shall order the expungement, alteration, or destruction of any record of the bureau or of any agency subject to reporting requirements of the bureau.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 594. Access to records

Each criminal justice agency subject to reporting requirements of the bureau shall, upon request by any authorized agent of the bureau, provide reasonable access to any record of such agency for the purpose of audit or to substantiate the accuracy of any record or statistics which the bureau is empowered to collect.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 595. Duty to abide by regulations

Each agency subject to reporting requirements of the bureau shall abide by all rules and regulations adopted by the bureau pursuant to its authority.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 596. Penalties

A. Any head of an agency subject to the provisions of this Chapter who, after written notification by an authorized representative of the bureau, shall neglect or refuse to make any report or to do any act required by any provision of this Chapter shall be deemed guilty of nonfeasance in office and shall be subject to removal or a fine of not less than two thousand dollars nor more than five thousand dollars for each offense, or both.

B. Any individual who shall acquire or distribute any criminal history record, except as authorized by law and in accordance with applicable rules and regulations of the bureau, shall be fined not less than five hundred nor more than one thousand dollars, and may be imprisoned for not more than one year with or without hard labor for each offense, or both.

C. Any individual who transmits false information, withholds information, or prevents the transmission of information shall be fined not less than five hundred nor more than one thousand dollars, and may be imprisoned for not more than five years with or without hard labor for each offense, or both.

D. In addition to any criminal penalties, the deputy secretary is empowered to make reasonable administrative sanctions as he deems appropriate against those agencies who fail to comply with the provisions of this Chapter. Such sanctions may include, but are not limited to, loss of access to equipment and files maintained by the bureau.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

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* * * * *

TITLE 44

PUBLIC RECORDS AND RECORDERS

Chap. Sec.
5. State Archives and Records Commission [New] 401

CHAPTER 1. PUBLIC RECORDS

PART I. SCOPE

Sec.
8. Louisiana office building corporation, special provisions [New].
9. Records of violations of municipal ordinances and of state statutes classified as misdemeanors [New].
10. Confidential nature of documents and proceedings of judiciary commission [New].

PART II. GENERAL PROVISIONS

Sec.
40. Additional copies of records by microphotographic process; purchase of equipment; funds available for payment; copies of suit records [New].
41. Receiving and filing map, plat, etc. for record [New].
42. Microfilm records; sheriffs office [New].

§ 1. General definitions

A. (1) As used in this Chapter, the phrase "public body" means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function.

(2) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records," except as otherwise provided in this Chapter or as otherwise specifically provided by law.

(3) As used in this Chapter, the word "custodian" means the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records.

B. Electrical well surveys produced from wells drilled in search of oil and gas located in established units and which are filed with the assistant secretary of the office of conservation shall be placed in the open files of the office of conservation. Any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said survey, by photos-

raphy or other means not injurious to said records. All other electric logs and other electronic surveys, other than seismic data, produced from wells drilled in search of oil and gas which are filed with the assistant secretary of the office [1] of conservation shall remain confidential upon the request of the owner so filing for periods as follows:

For wells shallower than fifteen thousand feet a period of one year, plus one additional year when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has a leasehold interest in the general area in which the well was drilled and the log produced; for wells fifteen thousand feet deep or deeper, a period of two years, plus two additional years when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced; and for wells drilled in the offshore area, subsequent to July 1, 1977, regardless of depth, a period of two years from the filing of the log with the office of conservation, plus two additional years where evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced and has immediate plans to develop the said general area, unless a shorter period of confidentiality is specifically provided in the existing lease.

At the expiration of time in which any log or electronic surveys, other than seismic data, shall be held as confidential by the assistant secretary of the office of conservation as provided for above, said log or logs shall be placed in the open files of the office of conservation and any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said log or electronic survey, other than seismic data, by photography or other means not injurious to said records.

Amended by Acts 1973, No. 135, § 1; Acts 1973, Ex.Sess., No. 4, § 1; Acts 1978, No. 686, § 1; Acts 1979, No. 691, § 1; Acts 1980, No. 248, § 1.

[1] In subsec. B, "office" was substituted for "department" on authority of R.S. 24:253.

22. Privacy of individuals

Neither the city nor its employees had reasonable expectation of privacy against disclosure of public record containing names and addresses of city employees to person entitled to invoke Louisiana public records law (R.S. 44:1 et seq.), such as newspaper reporter. Aswell v. Lunt, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

The fact that a municipality or its employee labels the name or address of an employee as having been furnished to become a part of a confidential personnel record does not elevate the name or address to status of being a constitutionally protected private thing; the Public Records Law is not limited to records affecting only the public fisc but covers all records unless specifically excepted by statute, or unless the disclosure of information contained in the public record is information to which the employee has reasonable expectation of privacy such as personnel evaluation reports, disclosure of which might affect the employee's future employment or cause him embarrassment or humiliation. Webb v. City of Shreveport, App.1979, 371 So.2d 316, writ denied 374 So.2d 657.

City could be compelled under Public Records Law to reveal names and addresses of city's employees, except employees of police and fire departments, to a person who declared he was also acting on behalf of a labor union seeking to organize municipal employees since neither city nor its employees, excluding fire and police personnel, had reasonable expectation of privacy against disclosure of the names and addresses as contained on a computer tape. Id.

21. Actions, in general

In proceeding concerning whether either city or its employees had reasonable expectation of privacy against disclosure of public record containing names and addresses of city employees to person entitled to invoke Louisiana public records law (R.S. 44:1 et seq.), such as newspaper reporter, trial court did not abuse its discretion in refusing to stay proceedings below until judgment in controlling case became final and definitive, despite city's contention that judicial economy was not served by allowing litigation of same issues at different appellate levels. Aswell v. Lunt, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

22. Attorney fees

Where, in proceeding concerning whether city had reasonable expectation of privacy against disclosure of certain public record to newspaper reporter, city did not complain that error occurred in awarding attorney fees of $500 to reporter, and reporter contended that award should be increased because of time and efforts of his attorneys below and on appeal, but reporter testified that he had not discussed question of fees with his counsel or his employer and that he did not know whether he was expected to pay attorney fees, only amount of award was before Court of Appeal and there was no need to increase award for services rendered below and on appeal. Aswell v. Lunt, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

§ 2. Records involved in legislative investigations

1. Inspection

Trial court properly denied defense counsel's request for log of parish sheriff's office, where counsel was not entitled to the log at time it was requested. State v. Edgecombe, Sup.1978, 275 So.2d 740, certiorari denied 94 S.Ct. 591, 414 U.S. 1075, 38 L.Ed.2d 482.

§ 3. Records of prosecutive, investigative, and law enforcement agencies

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, public health inspectors, or public health agencies, correctional agencies, or intelligence agencies of the state, which records are:

Amended by Acts 1983, No. 247, § 1; Acts 1984, No. 945, § 1; Acts 1986, No. 785, § 1; Acts 1988, No. 438, § 1.

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled; or

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, or internal security information; or

(4)(a) The records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. However, the initial report of the officer or officers investigating a complaint, but not to apply to any followup or subsequent report or investigation, records of the booking of a person as provided in Louisiana Code of Criminal Procedure Article 228, records of the issuance of a summons or citation, and records of the filing of a bill of information shall be a public record.

(b) The initial report shall set forth:

(i) A narrative description of the alleged offense.

(ii) The name and identification of each person charged with or arrested for the alleged offense.

(iii) The time and date of the alleged offense.

(iv) The location of the alleged offense.

(v) The property involved.

(vi) The vehicles involved.

(vii) The names of investigating officers.

(c) Nothing herein shall be construed to require the disclosure of information which would reveal undercover or intelligence operations.

Amended by Acts 1984, No. 945, § 1; Acts 1988, No. 438, § 1.

(5) Records containing the identity of an undercover police officer or records which would tend to reveal the identity of an undercover police officer; or

(6) Records concerning status offenders as defined in the Code of Juvenile Procedure; or

Amended by Acts 1983, No. 247, § 1.

(7) Records containing the identity of a subject of a public health disease investigation or study or records which would tend to reveal the identity of such a subject.

Added by Acts 1983, No. 247, § 1.

B. All records, files, documents, and communications, and information contained therein, pertaining to or tending to impart the identity of any confidential source of information of any of the state officers, agencies, or departments mentioned in Paragraph A above, shall be privileged, and no court shall order the disclosure of same except on grounds of due process or constitutional law. No officer or employee of any of the officers, agencies, or departments mentioned in Paragraph A above shall disclose said privileged information or produce said privileged records, files, documents, or communications, except on a court order as provided above or with the written consent of the chief officer of the agency or department where he is employed or in which he holds office, and to this end said officer or employee shall be immune from contempt of court and from any and all other criminal penalties for compliance with this paragraph.

C. Whenever the same is necessary, judicial determination pertaining to compliance with this section or with constitutional law shall be made after a contradictory hearing as provided by law. An appeal by the state or an officer, agency, or department thereof shall be suspensive.

D. Nothing in this section shall be construed to prevent any and all prosecutive, investigative, and law enforcement agencies from having among themselves a free flow of information for the purpose of achieving coordinated and effective criminal justice.

Amended by Acts 1972, No. 448, § 1; Acts 1973, No. 313, § 1; Acts 1978, No. 686, § 1; Acts 1979, No. 336, § 1.

§ 9. Records of violations of municipal ordinances and of state statutes classified as a misdemeanor or felony

A. Any person who has been arrested for the violation of a municipal or parish ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record, if:

(1) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

(2) If prosecution has been instituted, and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal. If the court finds that the mover is entitled to the relief sought, for either of the above reasons, it shall order all agencies and law enforcement offices having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic or mechanical method of storing data, to destroy any record of arrest, photograph, fingerprint or any other information of any and all kinds or descriptions. The court shall order such custodians of records to file a sworn affidavit to the effect that the records have been destroyed and that no notations or references have been retained in the agency's central repository which will or might lead to the inference that any record ever was on file with any agency or law enforcement office. The original of this affidavit shall be kept by the court so ordering same and a copy shall be retained by the affiant agency which said copy shall not be a public record and shall not be open for public inspection but rather shall be kept under lock and key and maintained only for internal record keeping purposes to preserve the integrity of said agency's files and shall not be used for any investigative purpose. This Subsection does not apply to arrests for a first or second violation of any ordinance or statute making criminal the driving of a motor vehicle while under the influence of alcoholic beverages or narcotic drugs, as denounced by R.S. 14:98.

B. Any criminal court of record in which there was a nolle prosequi, an acquittal, or dismissal of a crime set forth above shall at the time of discharge of a person from its control, enter an order annulling, cancelling, or rescinding the record of arrest, and disposition, and further ordering the destruction of the arrest record and order of disposition. Upon the entry of such an order the person against whom the arrest has been entered shall be restored to all civil rights lost or suspended by virtue of the arrest, unless otherwise provided in this section, and shall be treated in all respects as not having been arrested.

C. (1) Any person who has been arrested for the violation of a state statute which is classified as a felony may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record if:

(a) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

(b) Prosecution has been instituted, and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal; or

(c) The district attorney declines to prosecute; and

(d) In cases involving the arrest for possession, manufacture, or distribution of a controlled dangerous substance, the district attorney joins the arrested person in the motion.

(2) If, after a contradictory hearing with the arresting agency, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same [1] in accordance herewith. However, the arresting agency may preserve the name and address of the person arrested and the facts of the case for investigative purposes only.

D. Whoever violates any provisions of this section shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment of not more than ninety days, or both, if the conviction is for a first violation; second and subsequent violations shall be punished by a fine of not more than five hundred dollars or imprisonment of six months, or both.

E. No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure.

F. For investigative purposes only, the Department of Public Safety may maintain a confidential, nonpublic record of the arrest and disposition. The information contained in this record may be released, upon specific request therefor and on a confidential basis, to any law enforcement agency. The receiving law enforcement agency shall maintain the confidentiality of such record.

LOUISIANA

Regulations

Louisiana Privacy and Security

Regulations

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LOUISIANA COMMISSION ON LAW ENFORCEMENT

AND

ADMINISTRATION OF CRIMINAL JUSTICE

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:1

Purpose and Scope

IN KEEPING with Congressional findings that the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information:

RECOGNIZING that to the extent that the maintenance of personal information is necessary for the efficient functioning of the Government, it is the moral and legal obligation of the Government to assure that the personal information maintained is, to the maximum extent feasible, complete and accurate;

BEING CONVINCED that it is of utmost importance that the integrity of personal information records be zealously protected;

RECOGNIZING that the increasing use of computers and sophisticated information technology, while essential to the operations of Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

REALIZING that opportunities for an individual to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

ACKNOWLEDGING that the right to privacy is a personal and fundamental right protected by the Constitution of the United States;

RESPONDING to the authority granted in 42 United States Code 3701, et. seq.; 28 United States Code 534; 28 Code of Federal Regulations, Chapter I, Section 20; Louisiana Revised Statutes 15: 575 et. seq.; Louisiana Revised Statutes 49:951 et. seq.; and Executive Designation dated November 14, 1975; and

ACTING with the intent of protecting and furthering the interests of the citizens of the State of Louisiana, the Privacy and Security Committee of the Criminal Justice Information System Division of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice does hereby issue these PRIVACY AND SECURITY REGULATIONS for the following purposes, and with the following scope and limitations:

PURPOSE

It is the purpose of these regulations to provide safeguards for an individual against an invasion of his personal privacy, and to promote, to the maximum extent feasible, the adoption of procedures to ensure the completeness, accuracy, and integrity of criminal history record information collected, maintained and disseminated by criminal justice agencies. This will be accomplished by requiring those agencies affected to: permit an individual to determine what criminal history record information pertaining to him is collected, maintained, used, or disseminated by such agencies; permit an individual to gain access to criminal history record information pertaining to him in the records of affected agencies, to have a copy made of all or any portion thereof, and to correct or amend such records; and collect, maintain, use, or disseminate any record of criminal history information in a manner that assures that such action is for a lawful purpose, that the informatin is current and accurate for its intended use and that adequate safeguards are provided to prevent the misuse or unauthorized alteration or destruction of such information.

AGENCIES COVERED BY REGULATION

1. These regulations apply to all criminal justice agencies orgainzed under the Constitution or laws of the State of Louisiana which were awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information. The regulations do not directly apply to agencies which have received LEAA funds for general purposes other than the collection, storage or dissemination of criminal history record information. For example: an agency receiving funds to implement and operate automated non-criminal history record information systems (e.g., personnel, resource allocation, performance evaluation) would not by such funding be included under these regulations.

2. All criminal justice agencies organized under the Constitution or laws of the State of Louisiana which are or become signatories to a user's agreement. In such instances, the user's agreement shall control the extent to which these regulations are applicable.

3. Nothing contained in any of these Privacy and Security Regulations shall be construed to reduce, eliminate, or otherwise adversely affect any rights which individuals may have under any existing Louisiana law, court decision, or administrative rule.

RECORDS COVERED BY THESE REGULATIONS

4. These regulations apply to criminal history record information, as defined in LCLE-PS Regulation LAC 1-18:1.10. The following types of record information that might contain or otherwise be included within the definition of "criminal history record information" are specifically excluded:

   A. Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

B. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are accessed solely on a chronological basis.

C. Court records of public judicial proceedings.

D. Published court or administrative opinions.

E. Public judicial, administrative or legislative proceedings.

F. Records of traffic offenses maintained by state departments of transportation, motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operator's licenses.

G. Announcements of executive clemency.

H. Juvenile records.

I. Any other specific exemptions as may from time to time be provided by Federal Regulations, State Statute or which may be particularly specified in any of these Regulations.

EFFECTIVE DATE OF REGULATIONS

5. These Regulations shall be effective after November 30, 1977.

PENALTIES FOR VIOLATING THESE REGULATIONS

6. Under Federal law, an affected agency which willfully and knowingly violates these Regulations may be subject to termination of funds made available by the Law Enforcement Assistance Administration, and a $10,000 fine. Additionally, future eligibility for receipt of Law Enforcement Assistance Administration funds may be suspended until the violating agency furnishes proof of compliance with these Regulations.

7. Under Louisiana law (L. R. S. 15:575? et. seq.), an officer or official of a criminal justice agency may be subject to a fine between $50 and $500 for violating any rules or regulations issued by the Louisiana Criminal Justice Information System.

8. A violating agency may be barred from receiving information form the Central State Repository until such agency furnishes proof of compliance with these Regulations.

DEFINITIONS

9. "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal

history record information.

10. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

11. "Criminal justice agency" means only those public agencies at all levels of government which perform as their primary function activities relating to:

    A. The apprehension, prosecution, adjudication, or rehabilitation of criminal offenders;

    B. The collection and analysis of crime statistics pursuant to statutory authority, or

    C. The collection, storage, processing dissemination, or usage of information originating from agencies described in LAC 1-18:1 of this regulation.

12. The "administration of criminal justice" means performance of any of the following activities: detention, detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

13. "Affected agency" means:

    A. Any criminal justice agency which was awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information, or

    B. Any criminal justice agency which is or becomes a signatory to a user's agreement, or

    C. Any non-criminal justice agency which is or becomes a signatory to a user's agreement.

14. "Primarily affected agency" means any criminal justice agency organized under the Constitution or Laws of the State of Louisiana which was awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store or disseminate criminal history record information.

15. "Secondarily affected agency" means:

    A. Any criminal justice agency organized under the Constitution or Laws of the State of Louisiana which is or becomes a signatory to a user's agreement, or

    B. Any non-criminal justice agency which is or becomes a signatory to a user's agreement.

16. "User's agreement" means a written agreement entered into by a certified criminal justice agency and/or a requesting non-criminal justice agency and/or a criminal justice agency that has not received LEAA funds for system support since July 1, 1973. The agreement shall specify the basis of eligibility for receipt of criminal history records, and an acknowledgement by the recipient agency that it is subject to the terms and conditions of the Louisiana Commission on Law Enforcement Privacy and Security Regulations.

17. "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed. Dispositions shall include, but not be limited to: acquittal, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequir, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed - civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial - defendant discharged, placed on probation, paroled, or released from correctional supervision.

18. "Statute" means an Act of Congress or State Legislature or a provision of the Constitution of the United States or of a state.

19. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

20. An "executive order" means an order of the President of the United States or the Chief Executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

21. "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

22. "Dissemination" means the release or transmission of criminal history record information by an agency to another agency or individual by oral, written or electronic methods.

23. "Dissemination Log" means an automated or manual record of information relating to the individual or agency to which criminal history record information has been disseminated. This record should contain the following data elements: a tracking, serial, or identification number, the agency or individual to whom CHRI is released, the address of the agency or individual, the date of release or notification, the individual to whom the information relates, the items of information released and how furnished, the original entry or correction, and the name of the releasing official.

24. "Central State Repository" means that collection of criminal history record information within the Louisiana Department of Public Safety, which is jointly collected, stored, and managed pursuant to mutual agreement between the Division of State Police, Bureau of Criminal Identification and the Louisiana Commission on Law Enforcement, Criminal Justice Information System Division.

25. "Direct Access" means individual access to personal criminal history record information contained in the manual or automated files of an affected criminal justice agency, excepting the Central State Repository, when such access is sought under the provisions of LAC 1-18:3.3, and the individual requesting access or his personal representative is physically present at the place where the records are kept or at the office of the custodian of the record sought.

26. "Eligible Non-Criminal Justice Agency" means a non-criminal justice agency, individual, or individuals having:

    A. Official authority, pursuant to a statute, executive order, administrative rule, or court order; or

    B. Formal authority, pursuant to a written agreement with a criminal justice agency, to perform a service or function within the scope of the legitimate activities of a criminal justice agency.

27. "Personal Representative" means any person, including, but not limited to legal counsel, who possesses a sworn authorization empowering him to represent an individual in the viewing or challenging of the authorizing individual's criminal history record information.

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:2

User's Agreement

1. It is the purpose of this regulation to insure state-wide compliance with Privacy and Security Regulations by requiring all recipients of Criminal History Record Informaiton from primarily affected agencies to sign User's Agreements, and to provide for the minimum terms and conditions of such User's Agreements.

DUTY OF PRIMARILY AFFECTED AGENCIES TO REQUIRE USER'S AGREEMENT

2. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to any criminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a User's Agreement, provided that upon presentation of proof that it is already a signatory to a valid User's Agreement, the information requesting agency may not be required to sign an additional User's Agreement.

3. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to an eligible non-criminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a User's Agreement.

4. An eligible non-criminal justice agency, for purposes of this part, shall constitute every non-criminal justice agency receiving access to criminal history records on a regular and recurring basis or on any basis other than the established procedures under the Louisiana Public Records Law.

5. Whenever a primarily affected agency, excluding official custodians of court records, signs a User's Agreement with an otherwise non-affected agency, the primarily affected agency shall immediately forward a copy of the signed User's Agreement to the Privacy and Security Committee. Copies of all User's Agreements shall be kept on file by the signatory agencies, and shall be made available for public inspection upon demand.

MANDATORY FORM OF USER'S AGREEMENTS

6. Every primarily affected agency or secondarily affected agency, excluding courts, which enters into an agreement permitting an eligible agency access to criminal history record information shall employ LCLE - Privacy and Security Form No. 7 for the purpose of fulfilling the obligation imposed by this regulation.

LOUISIANA PRIVACY AND SECURITY REGULATIONS
LAC 1-18:3

Individual Rights of Access to Automated and Manual Criminal History Record Information

1. It is the purpose of this regulation to extend individual rights of access to personal criminal history records beyond the rights currently provided by the Louisiana Public Record Act, as required by Federal Regulations, and to provide a mechanism for the implementation of those rights.

INDIVIDUAL RIGHT OF ACCESS TO CRIMINAL HISTORY RECORD INFORMATION

GENERAL RIGHT OF ACCESS

2. Each individual shall have the right to view the automated or manual criminal history record information which specifically relates to him, provided that only individual criminal history record information contained in the records of affected criminal justice agencies organized under the Constitutiton or laws of the State of Louisiana shall be accessible under this regulation.

INDIVIDUAL RIGHT TO DIRECT ACCESS

3. Any individual electing to seek direct access to his automated or manual personal criminal history record under this sub-part shall be granted such access upon fulfillment of the following conditions:

   A. The request for access must be in writing, and must be presented to an affected criminal justice agency.

   B. The request for access must be presented to the official having custody or control of the record sought, or a designated representative of such an official.

   C. The request for access must be presented during the regular office or working hours of the agency which has custody or control of the record.

   D. The request for access must be specific enough to enable the person charged with the care or custody of the record to reasonably ascertain the identity of the precise record sought. Specificity requirements may include fingerprints and such personal identifiers as may be essential to the location and retrieval of the record sought.

4. Individuals or their personal representatives seeking access under this sub-part shall be allowed to view the desired individual criminal history record within a reasonable time, not to exceed three (3) days, provided that where fingerprint classification is an essential prerequisite to the location and retrieval of the record sought, the time period within which viewing must be made possible may be extended by an additional thrity (30) days.

RIGHT TO QUERY CENTRAL STATE REPOSITORY

5. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the records of the Central State Repository shall be granted the right to view such records upon:

A. Submitting a written and signed request for viewing to an affected criminal justice agency, other than the Central State Repository, as outlined in LAC 1-18:3.8.

B. Submitting to fingerprinting for the purpose of positively establishing the identity of the requesting individual; and

C. Paying a ten ($10) dollar fee.

RIGHT TO QUERY OTHER AFFECTED AGENCIES

6. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the file of any affected criminal justice agency, other than the Central State Repository or the agency to which the request is submitted, may gain access to such information by:

A. Presenting a written and signed request for viewing to any affected agency, other than the Central State Repository, as outlined in LAC 1-18:3.8. Such request shall describe with reasonable particularity the records of which viewing is sought, and shall at a minimum state the places where it is believed such records may be kept, and the approximate date of occurrence of the incidents which form the subject of the records requested. Individuals or personal representatives seeking to query criminal justice agencies which maintain criminal history files accessible solely by fingerprint classification numbers must provide the querying agency with a set of fingerprints of the individual seeking access. LCLE-Privacy and Security Form No. 1 shall be used for this purpose;

B. Submitting any required positive identifiers, including fingerprints, for the purposes of establishing both the identity of the requesting individual and correctly locating the records sought;

C. Paying a five ($5) dollar fee for each affected criminal justice agency to be queried. An additional five ($5) dollar fee may be levied by the querying agency for each query forwarded.

RIGHT EXERCISED BY PERSONAL REPRESENTATIVE

7. When criminal history record information is requested by a personal representative under LAC 1-18:3.3 through LAC 1-18:3.6, the representative must present positive proof of the identity of the individual actually involved as well as a sworn authorization from the involved individual. Positive proof of identity in this sub-section shall be understood to mean fingerprints. Upon presentation of the authorization and positive identifier, the representative shall be permitted to request, examine, and/or challenge the criminal history record information specifically relating to the involved individual.

WHERE TO INITIATE QUERY

8. Queries directed to any criminal justice agency shall be launched from any affected sheriff's office or police department. In the parish of Orleans, individuals shall initiate queries through the New Orleans Police Department.

CENTRAL STATE REPOSITORY-TIME FOR VIEWING, COPIES OF RECORD

9. If the information requested by the individual must be obtained from the Central State Repository, the CSR shall forward the information to the requesting agency within forty-five (45) days of receipt of the request, and the requesting agency shall permit the viewing of the information within a reasonable time after receipt. The viewing individual may make a written summary of the information viewed, and may take with him such a summary. A copy of the record obtained from the Central State Repository shall be furnished to the individual upon request. Such copy should be prominently marked or stamped to indicate that the copy is for review and challenge only and that any other use thereof would be a violation of 42 United States Code Section 3771.

DUTIES OF AFFECTED CRIMINAL JUSTICE AGENCIES

10. Every affected criminal justice agency shall post a public notice informing individuals of their right to access and to administratively challenge the completeness or accuracy of their individual criminal history records. Additionally, every individual seeking to avail himself of the querying procedures set forth in this regulation shall be provided with a list of all affected agencies, and informed of the significance of querying a non-affected agency.

11. Every affected criminal justice agency which has custody of, control over, or access to automated or manual individual criminal history record information shall make available facilities and personnel necessary for such viewing, and shall in all respects maintain a cooperative attitude toward individuals requesting viewing. Viewing shall occur only within the facilities of a criminal justice agency, and only under the supervision and in the presence of a designated employee or agent of a criminal justice agency.

12. Every affected criminal justice agency shall, in every instance, diligently seek to provide the information requested. Every out-of-parish criminal justice agency listed on the request for viewing shall be contacted by mail, communication device, or personally within seven (7) days of receipt of the request for viewing. Five dollars ($5) shall be assessed for each agency queried by the agency to which the individual submits his request, and shall be forwarded to each queried agency along with the request for viewing. An additional five dollar ($5) fee may be levied by the querying agency for every query forwarded. Querying agencies shall provide positive identifiers in accordance with LAC 1-18:3.6.

13. Every affected criminal justice agency which receives a request for information must make every effort to locate the information requested, and shall in any event forward a reply to the requesting agency within seven (7) normal working days of receipt of the request, except as provided for requests to the Central State Repository. In such instances where the responding agency maintains criminal history record files accessible solely by fingerprint classification numbers, the response time may be extended up to a maximum of thirty (30) days to allow for the classification of the fingerprints accompanying the query. Such classification may be performed by the responding agency or by the Central State Repository.

DUTY TO FINGERPRINT, CENTRAL STATE REPOSITORY FEE

14. Every affected sheriff's office or police department shall fingerprint individuals requesting that the Central State Repository be queried. In

such instances where an authorized representative is presenting a query to the Central State Repository on behalf of an individual, the representative shall supply at least two (2) sets of the represented individual's fingerprints on standard fingerprint cards. The fee charged for querying the Central State Repository and supplying a copy of the results of such query shall be ten ($10) dollars. Five ($5) dollars of this amount shall be forwarded to the Central State Repository along with the query, and the remaining five ($5) dollars shall be placed in the treasury of the criminal justice agency to which the individual submits the request for viewing.

TIME OF VIEWING

15. Individual viewing may, at the discretion of each criminal justice agency, be limited to ordinary daylight business hours.

RECORDS, CERTIFICATION STATEMENT

16. A record of each individual viewing shall be maintained by each affected criminal justice agency by the completion and preservation of LCLE - Privacy and Security Form No. 2. Each such form shall be completed and signed by the supervisory employee or agent present at the review. The reviewing individual shall be required to certify by his signature that he has viewed the criminal history record information requested.

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:4

Individual Right to Administrative Review of the Content, Completeness or Accuracy of Individual Criminal History Record Information

1. It is the purpose of this regulation to provide a means for adminstrative challenge, and ultimate correction of incomplete or inaccurate individual criminal history records.

INDIVIDUAL RIGHT TO ADMINSTRATIVE REVIEW

INDIVIDUAL RIGHT TO CHALLENGE

2. Each viewing individual shall have the right to challenge and request correction of the content, completeness, or accuracy of his individual criminal history record. Each individual shall be informed at the time of viewing of his rights of challenge under this regulation. Individuals shall have a right of adminstrative appeal under this regulation to seek redress for the denial of rights granted by any of these Regulations.

EXCLUSIVE MEANS OF CHALLENGE, COURT RECORDS EXCEPTED

3. This regulation provides the exclusive means for initial challenge of the content, completeness, or accuracy of individual criminal history record information, provided that where the individual criminal history record information under challenge originated from any file, automated or manual, maintained by the judiciary for the purpose of recording process and results of public court proceedings, this regulation shall not be applicable. In the instance last provided for, the sole formal means of challenge or correction shall be a civil suit filed in a state or federal district court.

INITIATING THE CHALLENGE

4. If after viewing his individual criminal history record, the individual wishes to challenge or request correction of such record, he may do so by submitting to the criminal justice agency which originated the challenged entries LCLE-Privacy and Security Form No. 3, a complaint which shall contain particularlized written exceptions to the criminal history record's contents, completeness, or accuracy. The complaint shall include an affirmance, signed by the individual or his legal representative, that the exceptions are made in good faith and are true to the best of the affiant's knowledge, information and belief. A copy of the complaint shall be forwarded to the LCLE Privacy and Security Committee. If, subsequent to viewing, an individual who was not previously fingerprinted wishes to challenge or correct his record, he must submit to fingerprinting so that it can be absolutely assured that the challenging individual is the subject of the record which he seeks to challenge or correct.

LOCAL REVIEW OFFICERS, NOTICE OF AUDIT RESULTS

5. Within each affected criminal justice agency, a Review Officer shall be designated as the person responsible for receiving and processing complaints

received under LAC 1-18:4.4 above. Upon receipt of such complaints, each Review Officer shall, within 45 days, conduct an audit of the individual's criminal history record to determine the validity of the exceptions. The Privacy and Secuirty Committee and the challenging individual or his legal representative shall be informed in writing of the results of the audit within 15 days after such results are final. LCLE-Privacy and Security Form No. 4 shall be used for this purpose.

NOTICE OF ALTERATIONS OR ADDITIONS TO RECORDS

6. Should the audit referred to in sub-section LAC 1-18:4.5 disclose inaccuracies or omissions in the information, the criminal justice agency shall cause appropriate alterations or additions to be made to the information and shall cause notice of such alterations or additions to be given to LCLE, the individual involved, and to other criminal justice agencies or private organizations to which that individual's criminal history record information has been disseminated within the previous 90 days, and in every instance the Central State Repository shall be notified of the substance of the alteration or addition.

RIGHT TO APPEAL FROM DECISION OF LOCAL REVIEW OFFICER

7. If the criminal justice agency declines to modify or supplement the individual's criminal history record in whole or in part, the individual or his legal representative may require review of the criminal justice agency's decision by perfecting, within 30 days of the mailing of the audit results, an appeal to the LCLE Privacy and Security Committee. The Privacy and Security Committee shall appoint Hearing Officers to hear such appeals. Failure to timely perfect an appeal shall bar subsequent challenges of that portion of the individual criminal history record in controversy.

PERFECTING THE APPEAL

8. Appeals shall be perfected upon actual delivery to the Privacy and Security Committee of a petition for review. The petition for review shall be signed and in writing and shall include a concise statement of the alleged deficiencies or inaccuracies of the individual's criminal history record, shall state the date and result of any review by the criminal justice agency, and shall be accompanied by a sworn verification of the facts alleged in the petition for review. LCLE-Privacy and Security Form No. 5 may be used for perfecting the appeal.

NOTICE OF THE APPEAL, CONDUCT OF HEARING

9. Upon receipt of the petition for review, the Hearing Officer shall docket the case and notify the criminal justice agency and the individual or his legal representative of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the particular statutes, rules, and regulations involved; the nature of the matters asserted in the petition for appeal. Both the individual and the criminal justice agency shall have adequate opportunity to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

RULES OF PROCEDURE

10. Rules of evidence, oaths and affirmations, subpoenas, depositions and discovery, confidential priviledged information, examination of evidence by agency, decisions and order, re-hearings, ex parte consultations and recusations, judicial review and other such matters shall be governed by the provisions of the Louisiana Adminstrative Procedure Act, L. R. S. 49:951 et. seq.

RECORD OF THE PROCEEDINGS

11. A record of all proceedings shall be preserved and provided as required by L. R. S. 49:955(E) and (F).

NOTICE OF DECISIONS

12. Parties shall be entitled to notice of the final decision of the Hearing Officer. LCLE-Privacy and Security Form No. 6 may be used by the Hearing Officer to direct such notice to the parties.

PETITION FOR REVIEW OF DECISION OF HEARING OFFICER

13. If, after receiving notice of the decision or order of the Hearing Officer, the individual or the involved criminal justice agency is reasonably convinced that grounds exist in the record for reversal or modification of the Hearing Officer's decision or order, a petition for reveiw accompanined by a bond (set by the Hearing Officer) sufficient to pay the cost of transcribing the record, may be submitted within 30 days to the Privacy and Security Committee. Failure to so petition shall bar subsequent challenges of that portion of the individual criminal history record contested.

REVIEW BY PRIVACY AND SECURITY COMMITTEE

14. If the petition for review, accompanied by adequate bond for transcription costs, is timely submitted to the Privacy and Security Committee, copies of the petition for review shall be sent to three members of the Privacy and Security Committee, such members being selected on a rotating basis. Within 14 days of submission of the petition for review, the same three members shall decide by personal or telephonic vote whether full review by the Privacy and Security Committee will be granted. If full review is denied, the petitioning party may pursue rights of judicial review granted under L. R. S. 49:964. If full review is granted, the record shall be transcribed and circulated among at least seven (7) members of the Privacy and Security Committee. A time and a date, within 30 days of transcription of the record, shall be set for the presentation of written or oral argument to a quorum of at least five (5) of the seven (7) Privacy and Security members who have read the transcribed record.

RULES OF PROCEDURE, NOTICE OF DECISIONS

15. Decisions, orders, rehearings, and appeals from decisions or orders of the Privacy and Security Committee shall be in accordance with subsections LAC 1-18:4.10 and LAC 1-18:4.12.

WRITS OF MANDAMUS AND INJUNCTION AUTHORIZED

16. The Privacy and Security Committee is hereby authorized to seek writs of mandamus or injunction to enforce final, non-appealable orders and decisions of the Committee and the Hearing Officers.

BURDEN OF PROOF

17. Individual criminal history records challenged under the provisions of this regulation shall be deemed to be accurate, complete, and valid until otherwise ordered.

DUTY TO INFORM INDIVIDUAL OF DISSEMINATION OF INCORRECT DATA

18. Upon final determination that the content of an individual criminal history record is inaccurate or incomplete, the affected agency which originated the inaccurate or incomplete entry shall provide the individual or his legal representative with a list of the non-criminal justice agencies to which the inaccurate or incomplete criminal history record information has been disseminated within a ninety (90) day period immediately preceding the final disposition of the challenge.

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:5

Completeness and Accuracy

1. It is the purpose of this regulation to establish minimum standards for reporting criminal dispositions and updating criminal history records to include such dispositions. It is intended that this regulation supplement and reinforce the LCJIS Complete Disposition Reporting System. Because inaccurate or incomplete criminal history record information presents a serious danger to individual rights of privacy and due process, every criminal justice agency should strive to maintain accurate, up-to-date criminal history records.

REPORTING DISPOSITION DATA

2. Every affected agency shall report dispositions (as defined in LAC 1-18:1.17) which occur as a result of a transaction initiated by such agency within ninety (90) days of the occurrence of the disposition. Dispositions shall be reported as required by the Louisiana Criminal Justice Information System.

CRIMINAL HISTORY RECORD INFORMATION

3. Every affected agency shall establish procedures for updating criminal history records using disposition data which shall be distributed by the Louisiana Criminal Justice Information System.

4. Every affected agency shall establish procedures providing for a minimal external search for a disposition prior to disseminating criminal history record information relative to a specific arrest or charge when it appears from the nature of the arrest or charge that a disposition should have occurred, and none is noted in the record.

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:6
Dissemination and Corrections Records and the Maintenance of Logs

1. It is the purpose of this regulation to provide direction and guidance concerning the control of dissemination and correction of criminal history record information (CHRI) to individuals or agencies as required by the Federal Regulations (Title 28), through the maintenance of certain logs, and to provide a vehicle for correcting erroneous information. Since dissemination records are viewed by the regulations as a key restraint on erroneous dissemination, a deterrent to the illegal use of information disseminated and a supporting document to quality assurance audit trails (LAC 1-18:7), the maintenance of logs is mandatory.

DISSEMINATION CONTROLS AND RESTRICTIONS

2. These regulations impose no restrictions on the dissemination of CHRI where the court transactions or dispositions have included a conviction or convictions. However, where CHRI contains non-conviction data, i.e. where records contain arrest data, citation, summons or bill(s) of information which have not resulted in a conviction or guilty plea, and acquittals; dismissals; information that a matter was not referred for prosecution, that the prosecutor has not commenced criminal proceedings, that proceedings have been indefinitely postponed; and records of arrest unaccompanied by disposition that are more than one year old and in which no prosecution is actively pending, these regulations now impose restrictions against dissemination of that portion of CHRI containing non-conviction data to non-criminal justice agencies not otherwise permitted access to such information by state statute (3B) and (5).

3. Non-conviction data may only be disseminated to:

   A. Criminal justice agencies for criminal justice activity and employment.
   B. Public and private agencies authorized by state and federal statute, executive order, local ordinance or court decision. (See paragraph 5)
   C. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide criminal justice services. (e.g. Consultants)
   D. Individuals and agencies engaged in research, evaluative or statistical activities.

4. Nothing in this Regulation abrogates the right of individuals (or their authorized representatives) to access, review, challenge or appeal criminal history information about themselves as provided for in LAC 1-18:3 and LAC 1-18:4.

5. Upon application, the Central State Repository (Bureau of Criminal Identification) may furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the Bureau has a record or any other necessary information to any federal, state, or local government regulatory, investigative, licensing or bonding agencies which may require fingerprinting, in connection with their authorized duties, functions and powers.

DISSEMINATION AND CORRECTIONS RECORDS REQUIREMENTS

DISSEMINATION LOGS

6. In order to maintain accountability over the full scale of collection, storage and dissemination of CHRI, dissemination transactions records in the form of a log shall be kept by each criminal justice agency. The logging is required both to support the audit process and as a means of correcting erroneous dissemination. Logs may be kept as shown on LCLE Privacy and Security Form No. 8 but must, as a minimum, contain the following data elements:

   A. A tracking, serial, or identification number in order to provide positive identification linkage between CHRI disseminated and the record from which extracted.
   B. Agency or individual to which or whom CHRI released.
   C. Address of agency or individual.
   D. Date of release or notification.
   E. Individual to whom information relates.
   F. Items of information released and how furnished (i.e., copy provided, written out by hand, mailed, teletype or computer terminal printout).
   G. Original entry or correction (indicate "O" or "C" as appropriate).
   H. Releasing official.

CORRECTION RECORDS

7. Since identification of agencies or individiuals receiving erroneous CHRI is possible from the dissemination log and since Federal Regulations require notification of each recipient of inaccurate or erroneous CHRI (unless it falls outside of the 90 day limit specified in LAC 1-18:4.6) a corrections record will also be kept using the dissemination log. The minimum data elements for a correction entry are essentially similar to those specified for a dissemination entry. The tracking or serial number will be identical to the identification number provided for the original information on the dissemination log. The log page number of the original entry will be placed next to the "C" in the "Original or Correction" column of the log in order to maintain audit trail continuity.

8. All logs are to be preserved for a period of not less than one year from the earliest date of release of information or notification of correction. Logs will be made available for audit and verification of compliance with the Regulations by the Commission, the Privacy and Security Committee or their designated staff members at such time as they may require.

NO RECORD RESPONSE

9. When a response to an inquiry is "No Record" or essentially negative, no logging of the response is required.

CORRECTIONS DATA TRANSMITTAL

10. Corrections to records shall be forwarded in hardcopy form such as letter, teletype, or computer terminal printout within 14 days after determining erroneous information has been disseminated. If the original dissemination is older than 90 days and the 90 day record maintenance notification has been imposed, and a correction is indicated, the correction should be made but need not be transmitted, except to the Central State Repository.

6. The annual audit will be performed on a random sample of all affected agencies in the State. All affected agencies must fully cooperate in the conduct of the annual audit.

7. LCJIS shall audit, on a periodic basis, a random sampling of agencies to provide statistically significant examinations of the accuracy and completeness of data maintained and to verify adherence to the Regulations.

   Sampling and detailed audit procedures will be as indicated in LCJIS furnished guidelines and implementing directives.

AGENCY RESPONSIBILITIES

8. The annual audit will be performed by members of the LCJIS staff who are familiar with the agencies and the requirements of the Regulations. Agencies to be audited will be given a minimum of 30 days written notice prior to an annual audit being conducted. On conclusion of the annual audit, the staff will give the agency an oral debriefing and subsequently, within 30 days, a written, formal critique highlighting deficiencies and recommending corrective action. Field agents making regular, subsequent visits will verify corrective action taken.

9. At the time of the audit, the audited agency will have ready to present to the audit team such documentation as may be required by LCJIS, including but not limited to:

   A. Evidence of procedural compliance including security,

   B. Copies of systematic audits performed,

   C. Source records as may be requested,

   D. Dissemination logs, and

   E. Right of access, appeals, and certification forms.

10. Audited agencies with serious deficiencies as indicated in the formal critique must correct these deficiencies and will render written, corrective action reports to LCJIS monthly until the deficiency is eliminated.

Louisiana Privacy and Security Regulation
LAC 1-18:7

Audits and Quality Control

1. It is the purpose of this regulation to interpret the requirements of the Federal Regulations as they pertain to: (a) the quality of the information the criminal justice agencies collect, store and disseminate; and, (b) the systematic and annual audits to be performed in order to verify adherence to the Privacy and Security Regulations.

QUALITY CONTROL

PRIVACY CONSIDERATIONS

2. The quality of information which the criminal justice agencies collect and use is an important privacy consideration. Quality information issues usually fall into one or both of two categories; namely, completeness and/or accuracy. Achieving high quality record information is largely a matter of good procedures; it requires a rigorous, systematic approach to record-keeping and a high degree of cooperation among the participating agencies. Agencies shall therefore, institute procedures which implement these requirements.

COMPLETENESS AND ACCURACY

3. Agencies shall likewise develop written procedures which comply with the basic provisions of LAC 1-18:5.

AUDITS

4. There are basically two types of quality assurance audits required periodically. The systematic audit is required of an agency which collects, maintains and disseminates CHRI as a means of minimizing errors or omissions in the completeness and accuracy of the records. This audit is actually a quality control mechanism and will usually be performed on a periodic and regular basis by the agency itself. In contrast, the annual audit is an examination by an outside agency of the extent to which an agency is complying with the Regulations.

5. The systematic audit refers to a combination of systems and procedures employed both to ensure, to the extent possible, completeness and to verify accuracy. The systematic audit is also an internal procedure which basically provides for a comparison between CHRI and source documents or reporting forms, as appropriate, in order to check accuracy and completeness. In addition, this audit provides for an inspection of an agency's systematic audit procedure in accordance with the guidelines furnished by the Louisiana Criminal Justice Information System (LCJIS) staff and utilizing LCLE-Privacy and Security Form No. 9 (Agency Systematic Audit Checkoff List).

Louisiana Privacy and Security Regulation
LAC 1-18:8

Security of Criminal History Information

1. It is the purpose of this regulation to establish minimum standards governing the achievement and maintenance of physical security, personnel security and programming security within agencies maintaining criminal history records.

PHYSICAL SECURITY

2. Affected agencies shall institute procedures for the protection of criminal history records from environmental hazards including fire, flood, and power failure. Appropriate measures may include: adequate fire detection and quenching systems, protection against water and smoke damage, fire resistant materials on walls and floors, air conditioning systems, emergency power sources and backup files.

3. Affected agencies shall adopt security procedures which limit access to criminal history files. These procedures may include use of guards, badges, keys, passwords, sign-in logs or similar controls. Facilities housing criminal history records shall be so designed and constructed as to reduce the possibility of physical damage to the records. Appropriate measures may include physical limitations on access, security storage for information media, adequate lighting, detection and warning devices, perimeter barriers, heavy-duty, non-exposed walls and closed circuit television.

PERSONNEL SECURITY

4. Applicants for employment and those presently employed in the maintenance of criminal history records shall consent to an investigation of their character, habits, previous employment, and other matters necessary to establish their good moral character, reputation and honesty. Giving false information shall disqualify an applicant from employment and subject a present employee to dismissal.

5. Investigations should be conducted in such a manner as to provide sufficient information to enable the appropriate officials to determine employability and fitness of persons entering sensitive positions. Investigations of applicants should be conducted on a pre-employment basis and the resulting reports used as a personnel selection device.

6. Systems personnel including terminal operators in remote locations, as well as programmers, computer operators, and others working at or near the central processor, shall be assigned appropriate security clearances and should have those clearances renewed periodically after investigation and review.

7. Each affected agency should prepare a security manual which delineates procedures for granting clearances for access to criminal history information as well as areas where criminal history data is maintained. Each person working with or having access to this information should know the contents of the manual.

8. The management of each affected agency should establish sanctions for accidental or intentional violation of system security standards. Supervisory personnel should be delegated adequate authority and responsibility to enforce these standards.

9. Any violation of the provisions of these standards by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, shall be punished by the imposition of appropriate disciplinary measures.

10. Where any affected agency is found by the Louisiana Privacy and Security Committee to have willfully or repeatedly violated the requirements of this standard, the Committee may prohibit the dissemination of criminal history record information to that agency, for such periods and such conditions as the Committee deems appropriate.

PROGRAMMING SECURITY

11. There shall be a terminal identification code number for each remote terminal as a pre-condition for entering the files. Within each agency, terminal use shall be assigned to a limited and identified group of individuals. Each individual terminal user shall identify himself by a personal identification number or authorization code. The computer shall be programmed to log the identity of all users, the files accessed, and the date of access. This information shall be maintained for twelve (12) months. (See LAC 1-18:6.) Each remote terminal user shall establish a computerized or written log of terminal use, which shall be audited periodically.

12. Where a computer file may be accessed by more than one agency, system software shall ensure that each agency shall obtain only the data to which it is entitled. System hardware and software shall contain controls to ensure that each user with on-line direct terminal access can obtain only reports authorized for its use. System software shall be implemented to erase and clear core, buffers, mass storage, and peripheral equipment of data automatically whenever purging is required by these regulations. Duplicate computer files shall be created as a counter-measure for destruction of original files and all computer tapes or discs shall be locked in a safe storage area under the control of senior personnel. Secondary storage should be used for back-up.

13. Where criminal justice data is transmitted to a data center on reporting forms, the center shall establish procedures for destroying these forms after the data is entered in the computer. System software shall contain controls to ensure that each terminal is limited to the information it can input, modify, or cancel.

14. A monitor program shall be developed to report attempts to violate the system security software or files. Edit programs shall be created to periodically audit record alteration transactions.

Louisiana Privacy and Security Regulation
LAC 1-18:9

Segretation of Computerized Files and their Linkage to Intelligence Files

1. It is the purpose of this regulation to establish minimum standards governing the maintenance of the security and integrity of computerized criminal history record information.

SEGREGATION OF COMPUTERIZED FILES

2. Data files and programs used by the criminal justice system for the collecton, maintenance, or dissemination of criminal history record information shall be under the management control of a criminal justice agency and shall be supervised and maintained in the following manner.

   A. Files shall be stored on the computer in such a manner that they cannot be modified, destroyed, accessed, changed, or overlaid in any fashion by non-criminal justice terminals.

   B. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a program that will prohibit inquiry, file updates or destruction from any terminal other than criminal justice system terminals which are so designated. The destruction of files shall be limited to specifically designated terminals under the management control of the criminal justice agency responsible for maintaining the files.

   C. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a classified program to detect and store for classified output all accesses and all attempts to penetrate and all accesses of any criminal offender record information system, program or file. This program shall be available only to the agency control employee and his immediate assistant and the records of such program shall be kept continuously under maximum security conditions. No other persons, including staff and repair personnel, shall be permitted to know this program.

   D. Non-terminal access to criminal offender record information such as requests for tapes, file dumps, printouts, etc., shall be permitted only with approval of the criminal justice agency having management control of the data. The employee in charge of computer operations shall forward all such requests to the criminal justice agency employee responsible for maintaining systems and data security.

LINKAGE TO INTELLIGENCE FILES

3. Criminal history record files may be linked to intelligence files in such a manner that an intelligence inquiry from a criminal justice terminal can trigger a printout of the subject's criminal offender record information.

4. A criminal history record inquiry response shall not include information which indicates that an intelligence file exists.

Louisiana Privacy and Security Regulation
LAC 1-18:10

Training of System Personnel

1. It is the purpose of this regulation to establish a training program whereby all personnel working with or having access to criminal history record information are made familiar with the substance and intent of the Louisiana Privacy and Security Regulations.

RESPONSIBILITY FOR STATE-WIDE IMPLEMENTATION

2. The Louisiana Commission on Law Enforcement shall be primarily responsible for planning, coordinating, presenting, and approving the Privacy and Security Training Programs. The objective of the training program shall be to instruct key employees of affected agencies as to the substance and intent of the Louisiana Privacy and Security Regulations. Every affected agency shall, to the maximum extent possible, avail itself of such training as may be provided by LCLE.

AGENCY RESPONSIBILITY FOR INTERNAL TRAINING PROGRAM

3. Every affected agency shall institute an internal training program to familiarize personnel with the proper use and control of criminal history record information. Each such program must contain provisions for specific instructional sessions on Louisiana Privacy and Security Regulation LAC 1-18:8 which establishes minimum security standards for criminal history record information. This training program would be primarily directed to employees who work with or have access to criminal history record information.

4. Each affected agency shall maintain a written record describing the training procedures employed by the agency and indicating the number of training meetings per year. This record shall be made available to LCLE staff audit personnel during schedules annual audits.

WILLIAM J GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
CRIMINAL DIVISION
Baton Rouge
70804

1885 WOODDALE BLVD.
SUITE 1010

OPINION NO. 87-736

January 12, 1988

Released 1-19-88

PUBLIC RECORDS.....90-C

Under R.S. 44:9 arrest records of misdemeanor violations should be removed from a person's record if the charges are dismissed, but arrest records of felony violations should not be removed from a person record simply because the charges are dismissed.

Mr. Norman R. Diaz
Chief Criminal Deputy
Lafourche Parish
Post Office Box 5608
Thibodaux, Louisiana 70302

Dear Mr. Diaz:

Your request for an opinion from this office has been forwarded to the undersigned for research and reply. As I understand your question, it asks:

1. May the record of an arrest for a criminal offense (either felony or misdemeanor) be removed from a person's arrest record if the District Attorney declines to prosecute?

It is necessary to look at the statute dealing with records of violations of municipal ordinances and state statutes in answering this question.

R.S. 44:9

A. Any person who has been arrested for the violation of a municipal or parish ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record, if:

(1) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

* * *

B. Any criminal court of record in which there was a nolle prosequi, an acquittal, or dismissal of a crime set forth above shall at the time of discharge of a person from its control enter an order annulling, cancelling, or rescinding the record of arrest, and disposition, and further ordering the destruction of the arrest record and order of disposition.

C. (1) Any person who has been arrested for the violation of a state statute which is classified as a felony may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record if:

* * *

(c) The district attorney declines to prosecute; and

* * *

(2) If, after a contradictory hearing with the arresting agency, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same in accordance herewith.

E. No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of Code of Criminal Procedure. (emphasis added)."

R.S. 44:9 grants a person the opportunity to motion the court in the parish where he was arrested to have an arrest expunged from his record, whether the arrest was for a misdemeanor or felony violation.

LOUISIANA

R.S. 44:9 A(1) and (2) allows a person to make a written motion to the court in which he was prosecuted or arrested to have his arrest record expunged if the time limitation for institution of prosecution on the offense has expired without a prosecution having been instituted, or if a prosecution has been finally disposed of by dismissal, sustaining a motion to quash, or acquittal for misdemeanor violations or violations of municipal or parish ordinances.

Section B of R.S. 44:9 also requires that the court of record in which there was a nolle prosequi, an acquittal or a dismissal of a crime set forth in Section A (a misdemeanor or municipal or parish ordinance) expunge the person's record of arrest at the time of discharge of the person from the its control.

When a misdemeanor arrest or an arrest for a parish or municipal ordinance occurs, and the charges are dismissed, then R.S. 44:9 B requires the court to render an order annulling, cancelling, or rescinding the person's arrest record.

R.S. 44:9 does not have a provision requiring that a person's arrest record regarding felony violations be expunged automatically just because the charges have been dismissed. The statute allows a person arrested for a felony violation to motion the court to have his arrest record expunged if certain conditions are met; however, the statute does not provide for the automatic expungement of a felony arrest record simply because the charges are declined by the prosecutor.

Since a provision is made for allowing misdemeanor arrest records to be expunged by the court upon a dismissal of the charges, yet no similar provision exists for arrest records of felony violations, it can be concluded that records of misdemeanor arrests should be removed from a person's arrest record if the charges are dismissed, but records of felony arrests should not be removed simply because the charges are dismissed or declined by the prosecutor.

Accordingly, it is the opinion of this office that under R.S. 44.9, arrest records of misdemeanor violations or violations of municipal or parish ordinances should be removed from a person's record if the charge is dismissed, but arrest records of felony violations should not be removed from a person's record simply because the charges are dismissed or declined.

LOUISIANA

I hope the foregoing has adequately answered your question. If you need further assistance on this or any other matter, please do not hesitate to contact this office again.

With kind regards, I am

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney GeneraL

By: Rene' Salomon
RENE' SALOMON
Assistant Attorney General

RS/ad/lm

16-A. .Criminal Procedure
22-A. .Education
94. . .Schools and School Districts - Administration, Government and Officers
La. R.S. 15:587.1
La. R.S. 15:825.3
La. R.S. 17:15
La. R.S. 46:51.2
La. R.S. 46:1403

LOUISIANA

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804

WILLIAM J GUSTE, JR
ATTORNEY GENERAL

Telephone:
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AUGUST 25 1988

OPINION NUMBER 88-374

La. R.S. 15:871.1 providing for crimir history information on those peor employed in a supervisory or disciplin capacity over children is limited to t referred to therein, namely, R.S. 17:1 R.S. 15:825.3, R.S. 46:51.2 and reference, R.S. 46:1403 and therefc does not cover Scouting Organizatior Parent-Teacher Organizations and oth groups not specifically listed there unless expanded by Rule of Department Health and Human Resources.

Honorable Allen Bradley
Post Office Box 1055
DeRidder, Louisiana 70634

Dear Representative Bradley:

In your opinion request of August 11, 1988 you inquired as to the applicability and scope of La. R.S. 15:587.1. That statute deals with providing criminal history information on those who have supervisory or disciplinary authority over children. Your request asked whether volunteer groups would be covered by this statute and specifically referred to the Girl Scouts, Boy Scouts, and Parent/Teacher Organizations.

La. R.S. 15: 587.1, entitled provision of information to protect children reads in pertinent part as follows:

> A. As provided in R.S. 15:825.3, R.S. 17:15, and R.S. 46:51.2 any employee or others responsible for the actions of one or more persons who have been given or have applied to be considered for positions of supervisory or disciplinary authority over children shall request in writing, through the Department of Health and Human Resources, that the Bureau supply information to ascertain whether that person or persons has been convicted of, or plead nolo contendere to, anyone or more of the crimes listed in Subsection C. ...it must include a statement signed by the person about whom the request is made which gives his permission for such information to be released.

This statute, though broadly worded, is in our opinion limited by the first sentence thereof. We believe that it's application is limited to the statutes cited in the first sentence with the addition of La. R.S. 46:1403 which is referred to in La. R.S. 46:51.2. Those statutes will be

reviewed below in an effort to set out those agencies and positions which we believe are covered by La. R.S. 15:587.1.

La. R.S. 15:825.3 is contained in that section of the revised statutes dealing with the State Department of Corrections. La. R.S. 825.3 states as follows,

> §825.3 Criminal History Review
>
> A. No operator, staff person, or employee of a juvenile detention, correction, or treatment facility shall be hired by the Department until it is determined whether or not such person has been convicted of or has plead nolo contendere to a crime listed in R.S. 15:587.1(C).

Therefore one of the areas covered by La. R.S. 15:587.1 is the State Department of Corrections in it's dealing with juveniles.

La. R.S. 17:15 is located in that section of the revised statutes dealing with education. R.S. 17:15 states as follows,

> §17:15 Criminal History Review
>
> A. No person who is convicted of or has plead nolo contendere to a crime listed in R.S. 15:587.1(C) shall be hired by public or private, elementary or secondary school system as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or a school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over children unless approved in writing by the District Judge of the parish and the District Attorney. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

> B. The Board shall establish regulations consistent with the provisions of R.S. 15:587.1.

It is therefore clear that R.S. 15:587.1 applies to those individuals associated with the public and private school systems in this state who have supervisory or disciplinary authority over children.

The next statute listed in the statute in question is La. R.S. 46:51.2. This statute is located in that section of the revised statutes dealing with the State Department of Health and Human Resources. R.S. 46:51.2, also entitled Criminal History Information, sets forth in pertinent part as follows:

> "A. No person shall be hired by the Department whose duties include the investigation of child abuse until it is determined whether or not or if is determined that, such person has been convicted of a crime listed in R.S. 15:587.1(C).
>
> B. No operator, staff person, or employee of the juvenile detention, correction, or treatment facility shall be hired by the department until it is determined whether or not such person has been convicted of or plead nolo contendere to a crime listed in R.S. 15:587.1(C).
>
> C. No child shall be newly placed in a foster home for temporary care, except for emergency placement, or for adoption, until it is determined whether or not any adult living in such home has been convicted of or plead nolo contendere to a crime listed in R.S. 15:587.1(C).
>
> D. Omitted.
>
> E. The department shall establish by regulation requirements and procedures consistent with the provisions of R.S. 15:587.1 under which the organizations

listed in Subsection F may request information concerning whether or not a person in one of the following categories has been convicted of or plead nolo contendere to a crime listed in R.S. 15:587.1(C).

(1) Employees;
(2) Candidates for employment; and
(3) Volunteer workers

This information may be requested only by a person who has, or has applied or volunteered for a position in the organization which includes supervisory or disciplinary authority over children.

F. Any responsible officer or official as the department may determine, of the following organizations may request criminal history information:

(1) a child caring institution, child placing agency, maternity home, group home, or day care center all as defined in R.S. 46:1403; and

(2) any other organization that the department determines, upon request of the organization, to have supervisory or disciplinary authority over children outside of the home to such extent that the department determines that the well-being and safety of children justifies giving the organization access to the specified criminal history information of those who work or volunteer to work with the organization."

Therefore, R.S. 46:51.2 sets out another group of individuals about which this information may be received, including without limitation those investigating child abuse, those working for juvenile centers, those operating foster

homes, day care centers and other entities or persons set out in Part F(1) of R.S. 46:51.2.

La. R.S. 46:1403 also located in that section of the revised statutes dealing with the Department of Health and Human Resources contains the definitions for those terms set forth in F(1) of La. R.S. 46:51.2.

It is our opinion that R.S. 15:587.1 though broadly worded, is limited by the specific statutes incorporated therein, and the definitions provided in La. R.S. 46:1403 and therefore applies only to the organizations and endeavors set forth above. No scouting organizations, the Boy Scouts, the Girl Scouts, and no Parent/Teacher organizations are set out in the statutes. We believe that La. R.S. 15:587.1 is limited to the statutes and situations incorporated therein and therefore does not cover scouting organizations, Parent/Teacher organizations and other similar organizations unless specifically provided for by statute or by rule of the State Department of Health and Human Resources. The Department has, as of this date, no rule expanding the coverage of R.S. 46:51.2.

We hope the above has been helpful to your inquiry and if you have any additional questions or request additional explanation of the above, please do not hesitate to contact this office.

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

BY: James M. Ross
JAMES M. ROSS
Assistant Attorney General

JMR:rmh

KCD

CHAPTER 193

STATE BUREAU OF IDENTIFICATION

§ 1541. Commanding officer

1. **Appointment.** The Chief of the State Police shall appoint a person who has knowledge of the various standard identification systems and Maine court procedure to be commanding officer of the State Bureau of Identification, heretofore established within the Bureau of State Police.

2. **Personnel.** The Chief of the State Police may delegate members of the State Police to serve in the bureau upon request of the commanding officer. The commanding officer shall have the authority to hire such civilian personnel, subject to the Civil Service Law [1] and the approval of the Chief of the State Police, as he may deem necessary.

3. **Cooperation with other bureaus.** The commanding officer shall cooperate with similar bureaus in other states and with the national bureau in the Department of Justice in Washington, D.C. and he shall develop and carry on an interstate, national and international system of identification.

4. **Rules and regulations.** The commanding officer shall make and forward to all persons charged with any duty or responsibility under this section and sections 1542, 1544, 1547 and 1549; rules, regulations and forms for the taking, filing, preserving and distributing of fingerprints and other criminal history record information as provided in this chapter. Before becoming effective, such rules, regulations and forms are to be approved by the Attorney General.

4-A. **Responsibility.** The commanding officer shall collect and maintain fingerprints and other criminal history record information pertinent to the identification of individuals who have been arrested as fugitives from justice or who have been arrested or charged with any criminal offense under the laws of this State, except a violation of Title 12 or 29. The commanding officer may collect and maintain fingerprints and other criminal history record information that may be related to other offenses or to the performance of his obligations under state laws and under agreements with agencies of the United States or any other jurisdiction.

5. **Apparatus and materials.** The Chief of the State Police shall supply such bureau with the necessary apparatus and materials for collecting, filing, preserving and distributing criminal history record information.

6. **Establishment of fees.** The State Bureau of Identification may charge nongovernmental organizations for services provided pursuant to this chapter. The commissioner shall establish a schedule of fees which shall cover the cost of providing these services, 100% of which shall be credited to the General Fund. R.S.1954, c. 15, § 14; 1971, c. 592, § 37; 1975, c. 763, § 4; 1985, c. 785, § B, 110, eff. July 1, 1986; 1987, c. 421; 1987, c. 512, § 1.

[1] See § 7039 of title 5.

§ 1542. Repealed. Laws 1987, c. 512, § 2

§ 1542-A. Appointment

1. **Duty to take fingerprints.** The law enforcement agency designated in subsection 3 shall take the fingerprints of any person:

A. Charged with the commission of a criminal offense other than a crime found in Title 12 or 29;

B. Arrested as a fugitive from justice;

C. Named on a search warrant which directs that such person's fingerprints be taken;

D. Named in a Maine Rules of Criminal Procedure 16A order which directs that such person's fingerprints be taken;

E. Who dies under circumstances of death constituting a medical examiner case under Title 22, section 3025, if sought pursuant to Title 22, section 3025, subsection 3, or at the request of the Chief Medical Examiner or the Attorney General; or

F. Whose fingerprints have been ordered by a court.

2. **Palm prints, footprints and photographs.** Whenever fingerprints are to be taken pursuant to subsection 1, paragraph A or B, palm prints, footprints and photographs may also be taken. Whenever palm prints, footprints or photographs are ordered to be obtained pursuant to subsection 1, paragraph C, D or F, or are sought pursuant to paragraph E, the palm prints, footprints or photographs shall be taken.

3. **Duty to take fingerprints.** The duty to take fingerprints is imposed as follows.

A. The law enforcement agency having primary responsibility for the criminal investigation and prosecution shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph A. If the offender is subjected to a custodial arrest, fingerprints shall be taken prior to that person being released from custody. If the offender is summonsed to appear or, relative to a Class D or Class E crime, released at the scene by a law enforcement officer after taking the personal recognizance of any such person for his appearance, fingerprints shall be taken within 5 days at a time and place specified by the responsible agency. The offender shall appear at the specified time and place and shall submit to the process. To the extent possible, the fingerprinting shall occur prior to arraignment. At the time of arraignment, the court shall inquire as to whether fingerprints have been taken or as to whether arrangements have been made for fingerprinting. If this has not occurred, the court shall instruct both the responsible law enforcement agency and the person charged as to their respective obligations in this regard.

B. The law enforcement agency which arrests a fugitive from justice shall take or cause to be taken the fingerprints of that person.

C. The law enforcement agency having primary responsibility for the criminal investigation and prosecution shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph D.

D. The law enforcement agency or individual identified in the warrant or order shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph C or F.

E. The law enforcement agency of which the request is made shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph E.

4. **Duty to submit to State Bureau of Identification.** It is the duty of the law enforcement agency taking the fingerprints as required by subsection 3, paragraphs A and B, to transmit forthwith to the State Bureau of Identification the criminal fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F, or pursuant to subsection 5, shall not be submitted to the State Bureau of Identification unless an express request is made by the commanding officer of the State Bureau of Identification.

5. **Right to take fingerprints.** A law enforcement officer designated in subsection 7 may take the fingerprints of any person:

A. Charged with the commission of a juvenile offense;

B. Charged with the commission of a criminal offense found in Title 12 or 29;

C. Who is in a state correctional facility or county institution or facility in execution of a sentence for a crime or in execution of an order involving an institutional disposition for a juvenile crime; or

D. Who voluntarily submits to fingerprinting for any law enforcement purpose.

6. **Palm prints, footprints and photographs.** Whenever fingerprints are taken pursuant to subsection 5, paragraph A, B or C, palm prints, footprints and photographs may also be taken. In addition, palm prints, footprints or photographs may also be taken for any law enforcement purpose when a person voluntarily submits to them.

7. **Upon whom the right to take fingerprints is given.** Any law enforcement officer may take or cause to be taken the fingerprints of any person named in subsection 5. Any corrections officer or the person in charge of a state correctional facility or county institution or facility may take or cause to be taken the fingerprints of any person named in subsection 5, paragraph C or D.

8. **Fingerprint record forms.** Fingerprints taken pursuant to subsection 1, paragraphs A, B and D, and subsection 5, paragraphs B, C and D, shall be taken on a form furnished by the State Bureau of Identification, such form to be known as the Criminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph E, shall be taken on a form furnished by the bureau, such form to be known as the Noncriminal Fingerprint Record. Fingerprints taken pursuant to subsection 5, paragraph A, shall be taken on a form furnished by the State Bureau of Identification, such form to be known as the Juvenile Crime Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraphs C or F, shall be taken upon the form appropriate for that purpose. 1987, c. 512, § 3.

§ 1543. Repealed. Laws 1975, c. 763, § 6

§ 1544. Uniform crime reporting

It shall be the duty of all state, county and municipal law enforcement agencies, including those employees of the University of Maine System appointed to act as policemen, to submit to the State Bureau of Identification uniform crime reports, to include such information as is necessary to establish a Criminal Justice Information System and to enable the commanding officer to comply with section 1541, subsection 3. It shall be the duty of the bureau to prescribe the form, general content, time and manner of submission of such uniform crime reports. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and Legislature annual reports based on such reports. A copy of such annual reports shall be furnished to all law enforcement agencies.

The bureau shall establish a category for abuse by adults of family or household members and a category for harassment, which shall be supplementary to its other reported information. The bureau shall prescribe the information to be submitted in the same manner as for all other categories of the uniform crime reports.

§§ 1545, 1546. Repealed. Laws 1975, c. 763, § 8

§ 1547. Courts to submit criminal records to the State Bureau of Identification

At the conclusion of any prosecution for any criminal offense, except a violation of Title 12 or Title 29, the clerk of the court shall transmit to the State Bureau of Identification an abstract duly certified on the form provided by the bureau.

1955, c. 120; 1963, c. 402, § 8; 1987, c. 281, § 3.

§ 1548. Repealed. Laws 1973, c. 5

§ 1549. Request for fingerprints; fee

The State Police, the sheriffs and the chiefs of police in each of the cities and towns shall have the authority to take or cause to be taken, and upon payment of a $1 fee, shall take or cause to be taken, the fingerprints or palm prints, or fingerprints and palm prints, of any person who shall request that his fingerprints or palm prints, or fingerprints and palm prints, be taken.

Such fingerprints and palm prints shall be taken on a form provided by the requesting person, or if the person does not provide a form, upon the Noncriminal Fingerprint Record. Fingerprints or palm prints taken pursuant to this section, or copies thereof, shall not be retained by the taker or forwarded to the State Bureau of Identification.

R.S.1954, c. 15, § 21; 1973, c. 788, § 109, eff. April 1, 1974; 1975, c. 763, § 9; 1975, c. 771, § 264, eff. Jan. 4, 1977; 1977, c. 78, § 159, eff. April 14, 1977.

§ 1550. Violations

Any person who fails to comply with the provisions of section 1542, subsections 1 or 3, or with the provisions of section 1542, subsection 4, imposing a duty to transmit criminal fingerprint records to the State Bureau of Identification, or with the provisions of sections 1544, 1547 or 1549 commits a civil violation for which a forfeiture of not more than $100 may be adjudged.

1975, c. 763, § 10.

SUBCHAPTER VIII

CRIMINAL HISTORY RECORD INFORMATION ACT

New Sections
611. Definitions.
612. Applications.
613. Limitations on dissemination of nonconviction data.
614. Limitation on dissemination of intelligence and investigative information.
615. Dissemination of conviction data.
616. Inquiries required.
617. Dissemination to noncriminal justice agencies.
618. Confirming existence or nonexistence of criminal history record information.
619. Unlawful dissemination.
620. Right to access and review.
621. Information and records of the Attorney General, State Police and Bureau of Identification.
622. Application.

Subchapter VIII, Criminal History Record Information Act, was enacted by 1979, c. 433, § 2.

§ 611. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Administration of criminal justice.** "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. **Conviction data.** "Conviction data" means criminal history record information other than nonconviction data.

3. **Criminal history record information.** "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. **Criminal justice agency.** "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof which performs the administration of criminal justice under a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Courts shall be deemed to be criminal justice agencies.

5. **Disposition.** "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompetency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. **Dissemination.** "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

7. **Executive order.** "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

8. **Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes. It does not include information that is criminal history record information.

[See main volume for text of 9 to 12]

1983, c. 787, § 1, eff. April 18, 1984.

9. **Nonconviction data.** "Nonconviction data" means criminal history record information of the following types:

A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e. g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. A dismissal;

F. An acquittal, excepting an acquittal by reason of mental disease or defect; and

G. Information disclosing that a person has been granted a full and free pardon or amnesty.

10. **Person.** "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. **State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

12. **Statute.** "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

1979, c. 433, § 2.

§ 612. Application

1. **Criminal justice agencies.** This subchapter shall apply only to criminal justice agencies.

2. **Exceptions.** This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic offenses, retained at and by the Secretary of State; and

G. Petitions for and warrants of pardons, communications, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

1979, c. 433, § 2.

§612-A. Record of persons detained

1. Requirement of record. Every criminal justice agency that maintains a facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

A. Identity of the arrested person, including name, age, residence and occupation, if any;

B. Offenses charged, including the time, place and nature of the offense;

C. Time and place of arrest; and

D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any.

2. Time and method of recording. The record required by this section shall be made immediately upon delivery of the person concerned to the agency for detention. It shall be made upon serially numbered cards or sheets or on the pages of a permanently bound volume, made and maintained in chronological order, and shall be part of the permanent records of the agency making it. The record required by this section may be combined with the record required by Title 34, section 958.

3. Records public. The record required by this section shall be a public record, except for records of the detention of juveniles, as defined in Title 15, section 3003, subsection 14.

Approved June 3, 1983.

§ 613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

1. **Criminal justice agencies.** Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

2. **Under express authorization.** Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

3. **Under specific agreements.** Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and

4. **Research activities.** Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

1979, c. 433, § 2.

§ 614. Limitation on dissemination of intelligence and investigative information

1. **Limitation on dissemination of intelligence and investigative information.** Reports or records in the custody of a local, county or district criminal justice agency, in the custody of the office of State Fire Marshal or in the custody of the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife containing intelligence and investigative information shall be confidential and shall not be disseminated, if public release or inspection of the report or record may:

A. Interfere with law enforcement proceedings;

B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;

C. Result in public dissemination of information about the private life of an individual in which there is no legitimate public interest and which would be offensive to a reasonable person;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public; or

G. Endanger the life or physical safety of law enforcement personnel.

[See main volume for text of 2]

§ 615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.
1979, c. 433, § 2.

§ 616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition is being used.
1979, c. 433, § 2.

§ 617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.
1979, c. 433, § 2.

§ 618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.
1979, c. 433, § 2.

§ 619. Unlawful dissemination

1. **Offense.** A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. **Classification.** Unlawful dissemination is a Class E crime.
1979, c. 433, § 2.

§ 620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that informa-

tion within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

6. **Right of release.** The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

1979, c. 233, § 2.

§ 621. Information and records of the Attorney General, State Police and Bureau of Identification

Nothing in this subchapter shall require dissemination of information or records of the Attorney General, State Police or Bureau of Identification that are declared to be confidential under Title 5, section 200-D or Title 25, section 1631.

1979, c. 433, § 2.

§ 622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

1979, c. 433, § 2.

Title 25

Records

§ 1631. Records confidential

All criminal and administrative records of the State Police and the Bureau of Identification are declared to be confidential, except:

1. **Operational reports.** Operational reports by the bureau;

2. **Activity reports.** Activity reports by the bureau;

3. **Names.** Names of State Police applicants;

4. **Promotions.** Promotions;

5. **Resignations.** Resignations;

6. **Discharges.** Discharges;

7. **Retirements.** Retirements;

8. **Statistical reports.** Statistical reports by Bureau of Identification;

9. Accident reports. Accident reports;

10. Further statistical reports. Statistical reports by Division of Traffic Records;

11. Accident information. Accident information on pending cases which would not jeopardize the investigation or prosecution of such cases;

12. Further statistical reports. Statistical reports by Division of Criminal Investigation;

13. Open court information. Information made available in open court;

14. Pending case information. Information on pending cases which would not jeopardize the investigation or prosecu-

15. Further statistical reports. Statistical reports by Division of Special Services on truck weights, public utility enforcement and beano;

16. Audits. Annual audits.

Such records other than the exceptions listed may be subpoenaed by a court of record.

1959, c. 223, § 1. 1971, c. 592, § 37.

Title 25

Internal Security and Safety

§ 2904. Bureau of Capital Security

1. Commissioner of Public Safety. Except as provided in subsection 2, the Commissioner of Public Safety is authorized and empowered to promulgate rules, subject to the approval of the Governor, governing the security regarding use and occupancy of all parks, grounds, buildings and appurtenances maintained by the State at the seat of government. These rules shall become effective upon deposit of a copy with the Secretary of State, who shall forward a copy attested under the Great Seal of the State to the District Court for Southern Kennebec.

§ 408. Public records available for public inspection

Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record: provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy.

1975, c. 758.

§ 409. Appeals

1. **Records.** If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 10 days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 10 days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

2. **Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

3. **Proceedings not exclusive.** The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law.

1975, c. 758.

§ 410. Violations

A willful violation of any requirement of this subchapter is a Class E crime.

1975, c. 758.

CHAPTER 13

PUBLIC RECORDS AND PROCEEDINGS

§ 401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

1975, c. 758.

§ 402. Definitions

3. **Public records.** The term "public records" shall mean any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute;

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;

C. Records, working papers and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the biennium in which the proposal or report is prepared; and

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives.

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy and the University of Maine. The provisions of this paragraph do not apply to the boards of trustees, the committees and subcommittees of those boards, and the administrative council of the University of Maine, which are referred to in section 402, subsection 2, paragraph B.

1975, c. 758; 1977, c. 164, §§ 1, 2.

§ 5-560. Definitions.

(a) *In general.* — In this Part VI of this subtitle, the following words have the meanings indicated.

(b) *Conviction.* — "Conviction" means a plea or verdict of guilty or a plea of nolo contendere.

(c) *Department.* — "Department" means the Department of Public Safety and Correctional Services.

(d) *Employee.* — "Employee" means a person that for compensation is employed to work in a facility identified in § 5-561 of this subtitle and who:

(1) cares for or supervises children in the facility; or

(2) has access to children who are cared for or supervised in the facility.

(e) *Employer.* — (1) "Employer" means an owner, operator, proprietor, or manager of a facility identified in § 5-561 of this subtitle who has frequent contact with children who are cared for or supervised in the facility.

(2) "Employer" does not include a State or local agency responsible for the temporary or permanent placement of children in a facility identified in § 5-561 of this subtitle.

(f) *Secretary.* — "Secretary" means the Secretary of Public Safety and Correctional Services. (1986, ch. 110; 1989, ch. 5, § 1.)

§ 5-561. Required; facilities requiring investigations.

(a) *Investigations required.* — Notwithstanding any provision of law to the contrary, an employee and employer in a facility identified in subsection (b) of this section and persons identified in subsection (c) of this section shall apply for a federal and State criminal background investigation at any designated law enforcement office in this State.

(b) *Facilities requiring investigations.* — The following facilities shall require employees and employers to obtain a criminal background investigation under this Part VI of this subtitle:

(1) a child care center required to be licensed under Part VII of this subtitle;

(2) a family day care home required to be registered under Part [illegible] this subtitle;

(3) a child care home required to be licensed under this subtitle o[illegible]nder Article 83C of the Code;

(4) a child care institution required to be licensed under this subtitle or under Article 83C of the Code;

(5) a juvenile detention, correction, or treatment facility provided for in Article 83C of the Code;

(6) a public school as defined in Title 1 of the Education Article;

(7) a private or nonpublic school required to report annually to the State Board of Education under Title 2 of the Education Article;

(8) a foster care family home or group facility as defined under this subtitle;

(9) a recreation center or recreation program operated by State or local government primarily serving minors; or

(10) a day or overnight camp, as defined in Title 10, Subtitle 16 of the Code of Maryland Regulations, primarily serving minors.

(c) *Individuals requiring investigations.* — The following individuals shall obtain a criminal background investigation under this Part VI of this subtitle:

(1) an individual who is seeking to adopt a child through a local department of social services or licensed child placement agency;

(2) an adult relative with whom a child, committed to a local department of social services, is placed by the local department of social services; and

(3) any adult known by a local department of social services to be residing in a:

(i) family day care home required to be registered under Title 5 of this article; or

(ii) home of an adult relative of a child with whom the child, committed to a local department of social services, is placed by the local department of social services.

(d) *Volunteers at facilities.* — An employer at a facility under subsection (b) of this section may require a volunteer at the facility to obtain a criminal background investigation under this Part VI of this subtitle.

(e) *Facilities not identified in subsection (b).* — An employer at a facility not identified in subsection (b) of this section who employs individuals to work with children may require employees, including volunteers, to obtain a criminal background investigation under this Part VI of this subtitle.

(f) *Fees.* — A person who is required to have a criminal background investigation under this Part VI of this subtitle shall pay for:

(1) the mandatory processing fee required by the Federal Bureau of Investigation for conducting the criminal background investigation; and

(2) reasonable administrative costs to the Department, not to exceed 10% of the processing fee.

(g) *Payment by employer or other party.* — An employer or other party may pay for the costs borne by the employee or other individual under subsection (e) of this section. (1986, ch. 110; 1987, ch. 290, § 9; 1988, ch. 6, §§ 8, 10; ch. 247, § 6; 1989, ch. 5, § 1; ch. 324; 1990, ch. 6, § 2.)

§ 5-562. Printed statement.

(a) *Application.* — (1) On or before the 1st day of actual employment, an employee shall apply to the Department for a printed statement.

(2) On or before the 1st day of actual operation of a facility identified in § 5-561 of this subtitle, an employer shall apply to the Department for a printed statement.

(3) Within 5 days after a child who is committed to a local department of social services is placed by the local department of social services with an adult relative, an individual identified in § 5-561 (c) of this subtitle shall apply to the Department for a printed statement.

(b) *Information accompanying application.* — As part of the application for a criminal background investigation, the employee, employer, and individual identified in § 5-561 (c) of this subtitle shall submit:

(1) a complete set of legible fingerprints taken on standard fingerprint cards at any designated State or local law enforcement office in the State or other location approved by the Department;

(2) the disclosure statement required under § 5-563 of this subtitle; and

(3) payment for the costs of the criminal background investigation. (1986, ch. 110; 1989, ch. 5, § 1; ch. 324; 1990, ch. 6, § 2.)

§ 5-563. Prior criminal offenses.

(a) *Offenses requiring disclosure.* — As part of the application process for a criminal background investigation, the employee, employer, and individual identified in § 5-561 (c) of this subtitle shall complete and sign a sworn statement or affirmation disclosing the existence of a conviction or pending charges without a final disposition for the commission of, attempt to commit, or assault with intent to commit any of the following criminal offenses or a criminal offense which is equivalent to any of the following:

(1) murder;
(2) child abuse;
(3) rape;
(4) a sexual offense involving a minor, nonconsenting adult, or a person who is mentally defective, mentally incapacitated, or physically helpless;
(5) child pornography;
(6) kidnapping of a child; or
(7) child abduction.

(b) *Disclosure statement mailed to employer.* — (1) The Department or its designee shall mail a copy of an employee's disclosure statement to the employer within 3 days of the application.

(2) The Department or its designee shall mail a copy of an employer's disclosure statement to the appropriate State or local licensing, registering, approving, or certifying agency, within 3 days of the application.

(3) The Department or its designee shall mail a copy of a disclosure form of an individual identified in § 5-561 (c) of this subtitle to the appropriate local department of social services, registering agency, or licensed child placement agency. (1986, ch. 110; 1989, ch. 324; 1990, ch. 6, § 2.)

§ 5-564. Duties of Department.

(a) *In general.* — The Department shall conduct the criminal background investigation and issue the printed statement provided for under this Part VI of this subtitle. It shall update an initial investigation and issue a revised printed statement, listing any of the convictions, pending charges, or offenses described in subsection (b) of this section occurring after the date of the initial criminal background investigation statement.

(b) *Convictions or pending charges for certain crimes, attempted crimes, etc.* — Subject to the provisions of subsection (c) of this section, the Department shall record on the printed statement the existence of a conviction or pending charges for any of the following crimes, attempted crimes, or a criminal offense that is equivalent to any of the following:

(1) murder;
(2) child abuse;
(3) rape;
(4) a sexual offense, as defined under Article 27, §§ 464, 464A, 464B, and 464C of the Code;
(5) child pornography;
(6) kidnapping of a child; or
(7) child abduction.

(c) *Information contained in printed statement.* — (1) Except for any necessary administrative or personal identification information or the date on

which the criminal background investigation was conducted or completed, the printed statement shall contain the following information only, stated in the affirmative or negative:

(i) that the Department has or has not conducted the criminal background investigation as required under this Part VI of this subtitle; and

(ii) that the employee, employer, or individual identified in § 5-561 (c) of this subtitle is or is not the subject of any pending charges without a final disposition, or has or has not been convicted of a crime or attempted crime identified in subsection (b) of this section.

(2) The printed statement may not identify or disclose the specific crime or attempted crime that is the subject of the employee's, employer's, or individual's identified in § 5-561 of this subtitle criminal background investigation.

(d) *Submission of printed statement.* — (1) Upon completion of the criminal background investigation of an employee, the Department shall submit the printed statement to:

(i) the employee's current or prospective employer at the facility or program; and

(ii) the employee.

(2) Upon completion of the criminal background investigation of an employer, the Department shall submit the printed statement to:

(i) the appropriate State or local agency responsible for the licensure, registration, approval, or certification of the employer's facility; and

(ii) the employer.

(3) Upon completion of the criminal background investigation of an individual identified in § 5-561 (c) of this subtitle, the Department shall submit the printed statement to the appropriate local department of social services.

(e) *Confidentiality of information.* — (1) Except in the case where a person who is the subject of an outstanding arrest warrant or criminal summons has been identified, all information obtained by the Department regarding any criminal charges and their disposition may not be transmitted outside the Department, except as expressly authorized under this Part VI of this subtitle.

(2) Information obtained by the employer from the Department under this Part VI of this subtitle shall be confidential. (1986, ch. 110; 1987, ch. 329; 1989, ch. 5, § 1; ch. 324; 1990, ch. 6, § 2.)

§ 5-565. Contesting findings.

(a) *Authorized.* — In conformity with the following procedures, an individual may contest the finding of a criminal conviction or pending charge reported in a printed statement.

(b) *Procedure.* — In contesting the finding of a conviction or a pending charge, the individual shall contact the office of the Secretary, or a designee of the Secretary, and a hearing shall be convened within 20 workdays, unless subsequently waived by the individual. The Secretary, or a designee of the Secretary, shall render a decision regarding the appeal within 5 workdays of the hearing.

(c) *Evidence of conviction of crime.* — For purposes of this Part VI of this subtitle, the record of a conviction for a crime identified in § 5-564 of this subtitle, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. In a case where a pending charge is recorded, documentation provided by a court to the Secretary, or a designee of the Secretary, that a pending charge for a crime identified in § 5-564 of this subtitle which has not been finally adjudicated shall be conclusive evidence of the pending charge.

(d) *Failure to appear.* — Failure of the individual to appear at the scheduled hearing shall be considered grounds for dismissal of the appeal. (1986, ch. 110; 1989, ch. 5, § 1.)

§ 5-566. Failure to disclose prior conviction or existence of pending charge.

An individual who fails to disclose a conviction or the existence of pending charges for a criminal offense or attempted criminal offense as required under § 5-563 of this subtitle shall be guilty of perjury and upon conviction is subject to the penalty provided by law. (1986, ch. 110; 1989, ch. 5, § 1.)

Effect of amendment. — The 1989 amendment, approved Mar. 9, 1989, and effective from date of passage, substituted "subtitle" for "Part VI" and deleted the comma immediately following that language.

§ 5-567. Immunity from civil or criminal liability.

The following persons or agencies shall have the immunity from civil or criminal liability described under § 5-361 of the Courts and Judicial Proceedings Article in connection with a criminal background investigation under this Part VI of this subtitle:

(1) an employer;

(2) a State or local agency;

(3) a local department of social services; and

(4) a State or local agency. (1986, ch. 110; 1989, ch. 5, § 1; ch. 324; 1990, ch. 546, § 3.)

§ 5-568. Duties of Secretary.

On or before August 15, 1986, the Secretary shall:

(1) provide for the adoption of a specified form or forms to be used in applying for the criminal background investigation to be issued by the Department, including an appropriate disclosure statement;

(2) designate the appropriate State or local law-enforcement offices in the State, or other approved locations, where fingerprints may be obtained and application for a criminal background investigation may be made; and

(3) adopt rules and regulations necessary and reasonable to administer this Part VI of this subtitle. (1986, ch. 110.)

§ 735. Definitions.

(a) In this subtitle, the following words have the meanings indicated.

(b) *"Court records"* means all official records maintained by the clerk of a court or other court personnel pertaining to a criminal proceeding. It includes indices, docket entries, charging documents, pleadings, memoranda, transcriptions of proceedings, electronic recordings, orders, judgments, and decrees. It does not include:

(1) Records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation;

(2) Written opinions of a court that have been published;

(3) Cash receipt and disbursement records necessary for audit purposes; or

(4) A court reporter's transcript of proceedings in multiple defendant cases.

(c) *"Expungement,"* with respect to court records or police records, means the effective removal of these records from public inspection,

(1) By obliteration; or

(2) By removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or

(3) If effective access to a record can be obtained only by reference to other records, by the expungement of the other records, or the part of them providing the access.

(d) *"Law-enforcement agency"* includes any state, county, and municipal police department or agency, sheriff's offices, the State's attorney's offices, and the Attorney General's office.

(e) *"Police records"* means all official records maintained by a law-enforcement agency pertaining to the arrest and detention of or further proceeding against a person on a criminal charge or for a suspected violation of a criminal law. It does not include investigatory files, police work-product records used solely for police investigation purposes, or records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation. (1975, ch. 260; 1976, ch. 525.)

(f) "Crime of violence" has the meaning stated in § 643B (a) of this article.

(g) "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services. (1975, ch. 260; 1976, ch. 525; 1982, ch. 872; 1983, ch. 8; 1990, ch. 84.)

§ 736. Expungement of police records; release without charge.

(a) *Notice and request for expungement.* — If a person is arrested, detained, or confined by a law-enforcement agency for a suspected violation of a criminal law other than a violation of the vehicle laws of the State or any other traffic law, ordinance, or regulation, and is released without being charged with the commission of a crime, he may give written notice of these facts to any law-enforcement agency which he believes may have police records concerning that arrest, detention, or confinement, and request the expungement of those police records.

(b) *General waiver and release.* — This notice may not be given prior to the expiration of the statute of limitations for tort actions arising from the incident unless the person attaches to the notice a written general waiver and release, in proper legal form, of all claim he may have against any person for tortious conduct arising from the incident. The notice and waiver are not subject to expungement, but shall be maintained by the law-enforcement agency at least until the expiration of any applicable statute of limitations. The notice must be given within eight years after the date of the incident.

(c) *Investigation.* — The law-enforcement agency shall, upon receipt of a timely filed notice, promptly investigate and attempt to verify the facts stated in the notice. If it finds the facts to be verified, it shall,

(1) Make a diligent search for any police records concerning that arrest, detention, or confinement of the person;

(2) Within 60 days after receipt of the notice, expunge the police records it has concerning that arrest, detention, or confinement; and

(3) Notify any other law enforcement agency and the Central Repository it believes may have police records concerning that arrest, detention, or confinement of the notice and its verification of the facts contained in it. A copy of this notice shall be sent to the person requesting expungement.

(d) *Duties of other agencies.* — The other law-enforcement agency shall, within 30 days after receipt of the notice provided for in subsection (c) (3),

(1) Make a diligent search for any police records concerning the arrest, detention, or confinement; and

(2) Expunge the police records it has concerning that arrest, detention, or confinement.

(e) *Denial of request.* — If the law-enforcement agency to which the person has addressed his notice finds that the person is not entitled to an expungement of the police records, it shall, within 60 days after receipt of the notice, advise the person in writing of its denial of the request for expungement and of the reasons for its denial.

(f) *Court order.* — A person whose request for expungement is denied in accordance with subsection (e) may, within 30 days after written notice of the denial is mailed or otherwise delivered to him, file an application in the District Court having proper venue against the law-enforcement agency for an order of expungement. If the court finds, after a hearing held upon proper notice to the agency, that the person is entitled to expungement, it shall enter

an order requiring the agency to comply with subsection (c). Otherwise, it shall deny the application. The agency is deemed to be a party to the proceeding. All parties to the proceeding have the right of appellate review on the record provided for in the Courts and Judicial Proceedings Article with respect to appeals in civil cases from the District Court. (1975, ch. 260.)

§ 737. Expungement of police and court records.

(a) *Petition for expungement.* — A person charged with the commission of a crime may file a petition setting forth the relevant facts and requesting expungement of the police records, court records, and other records maintained by the State of Maryland and its subdivisions, pertaining to the charge if:

(1) The person is acquitted,

(2) The charge is otherwise dismissed or quashed,

(3) A judgment of probation without finding a verdict or probation on stay of entry of judgment is entered,

(4) A nolle prosequi is entered,

(5) The proceeding is placed on the stet docket,

(6) The case is compromised pursuant to Article 10, § 37 of this Code,

(7) The person is convicted of only one criminal act, which is not a crime of violence, and is subsequently granted a full and unconditional pardon by the Governor, or

(8) The charge was transferred to Juvenile Court jurisdiction under Article 27, § 594A.

(b) *Juvenile charges.* — (1) A court shall grant a petition under subsection (a) (8) of this section if:

(i) The charge transferred under Article 27, § 594A of the Code did not result in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article; or

(ii) The charge did result in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article but the decision on the petition was a finding of facts-not-sustained.

(2) If a charge transferred under Article 27, § 594A of the Code resulted in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article and the adjudication of the child as delinquent, the court may grant a petition of expungement under subsection (a) (8) of of this section on or after the 18th birthday of the petitioner.

(c) *Where petition filed.* — The petition shall be filed in the court in which the proceeding was commenced. If the proceeding was commenced in one court and transferred to another court, the petition shall be filed in the court to which the proceeding was transferred. If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the petition shall be filed in the appellate court. However, the appellate court may remand the matter to the court of original jurisdiction.

(d) *Time of filing.* — (1) With the exception of a petition based on subsection (a) (3), (4), (7), or (8) of this section or a petition filed under paragraph (2) of this subsection, the petition may not be filed earlier than 3 years after the date the judgment or order was entered or the action was taken which terminated the proceeding. However, except for an acquittal on grounds of insanity, the three-year waiting period does not apply to a circumstance specified in subsection (a) (1) or subsection (a) (2) if a person files, with the petition, a written general waiver and release, in proper legal form, of all claims he may have against any person for tortious conduct arising from the charge. With respect to subsection (a) (3) of this section, the petition may not be filed earlier than the later of: (1) 3 years after the date of the judgment or order of probation; or (2) the date of the person's discharge from probation. With respect to subsection (a) (4), the petition may be filed immediately after the nolle prosequi is entered. With respect to subsection (a) (7) of this section, the petition may not be filed earlier than 5 years nor later than 10 years after the pardon was signed by the Governor.

(2) The court may grant a petition for expungement at any time upon a showing of good cause by the petitioner.

(e) *Objection to petition.* — A copy of the petition shall be served on the State's Attorney. Unless the State's Attorney files an objection to the petition within 30 days after it is served on him, the court shall enter an order requiring the expungement of police records and court records pertaining to the charge.

(f) *Hearing by court; granting or denial of expungement.* — If the State's Attorney files a timely objection to the petition, the court shall conduct a hearing. If the court finds that the person is entitled to expungement, it shall enter an order requiring the expungement of police records and all court records pertaining to the charge. Otherwise, it shall deny the petition. If the petition is based upon the entry of a judgment of probation without finding a verdict, probation on stay of entry of judgment, a nolle prosequi, placement on the stet docket, or a full and unconditional pardon by the Governor, the person is not entitled to expungement if:

(1) He has since been convicted of any crime, other than violations of the State vehicle laws or other traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment, or

(2) He is then a defendant in a pending criminal proceeding.

(g) *Appellate reviews.* — The State's Attorney is a party to the proceeding. Any party aggrieved by the decision of the court has the right of appellate review provided in the Courts and Judicial Proceedings Article.

(h) *Notice of compliance.* — Every custodian of the police records and court records subject to the order shall, within 60 days after entry of the order unless it is stayed pending an appeal, advise the court and the person in writing of compliance with the order. (1975, ch. 260; 1976, chs. 842, 863; 1981, ch. 288; 1982, ch. 872; 1984, ch. 139; 1985, ch. 10, § 1; 1988, chs. 592, 628, 723; 1989, ch. 668.)

§ 738. Consolidated charges.

For purposes of this subtitle, two or more charges arising from the same incident, transaction, or set of facts, shall be considered as a unit. If a person is not entitled to an expungement of any one charge of a unit, he is not entitled to expungement of the other charges in the unit. (1975, ch. 260.)

§ 739. Disclosure of expunged records.

(a) *Disclosure unlawful.* — It is unlawful for any person having or acquiring access to an expunged record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged, or, in the case of police records expunged pursuant to § 736, the District Court having venue.

(b) *Hearing and notice required.* — Except as provided in subsection (c), a court shall not enter an order authorizing the opening or review of an expunged record or the disclosure of information from it except after a hearing held upon notice to the person to whom the record pertains and upon good cause shown.

(c) *Ex parte order.* — Upon a verified petition filed by the State's attorney alleging that the record is needed by a law-enforcement agency for purposes of a pending criminal investigation and that the investigation will be jeopardized

or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made of it.

(d) *Penalties.* — A person who violates this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both. If the person is an official or employee of the State or of any subdivision of the State, he shall, in addition to these penalties, be subject to removal or dismissal from public service on grounds of misconduct in office. (1975, ch. 260.)

§ 740. Prohibited practices by employers and educational institutions.

(a) *Applicants for employment or admission.* — An employer or educational institution may not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning criminal charges against him that have been expunged. An applicant need not, in answer to any question concerning criminal charges that have not resulted in a conviction, include a reference to or information concerning charges that have been expunged. An employer may not discharge or refuse to hire a person solely because of his refusal to disclose information concerning criminal charges against him that have been expunged.

(b) *Applicants for licenses, etc.* — Agencies, officials, and employees of the State and local governments may not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning criminal charges against him that have been expunged. An applicant need not, in answer to any question concerning criminal charges that have not resulted in a conviction, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning criminal charges against him that have been expunged.

(c) *Penalties.* — A person who violates this section is guilty of a misdemeanor, and upon conviction, is subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both, for each violation. If the person is an official or employee of the State or any subdivision of the State, he shall, in addition to these penalties, be subject to removal or dismissal from public service on grounds of misconduct in office. (1975, ch. 260.)

§ 741. Retroactivity.

(a) Police records and court records which were made prior to July 1, 1975, and are presently maintained are subject to expungement in accordance with this subtitle.

(b) A person who, on or after July 1, 1975, becomes entitled to the expungement of police records or court records made prior to that date may utilize the procedures set forth in this subtitle for expungement. The limitation periods provided in §§ 736 and 737 shall, in that case, be deemed to date from the first day the person becomes entitled to expungement.

(c) With respect to police records or court records made prior to July 1, 1975, subject to expungement under this subtitle, the duty of the custodian is to make a reasonable search. There is no duty to expunge records that cannot be located after a reasonable search. (1975, ch. 260.)

Article 27

CRIMINAL JUSTICE INFORMATION SYSTEM

§ 742. Purpose of subtitle; legislative findings.

(a) The purpose of this subtitle is to create and maintain an accurate and efficient criminal justice information system in Maryland consistent with applicable federal law and regulations, the need of criminal justice agencies in the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(b) In order to achieve this result, the General Assembly finds that there is a need:

(1) To create a central repository for criminal history record information;

(2) To require the reporting of accurate, relevant, and current information to the central repository by all criminal justice agencies;

(3) To ensure that criminal history record information is kept accurate and current; and

(4) To prohibit the improper dissemination of such information.

(c) This subtitle is intended to provide a basic statutory framework within which these objectives can be attained. (1976, ch. 239.)

§ 743. Definitions.

(a) As used in this subtitle, the following words have the meanings indicated.

(b) "Advisory Board" means the Criminal Justice Information Advisory Board.

(c) "Central repository" means the criminal justice information system central repository created by § 747 (b) of this article.

(d) "County" includes Baltimore City.

(e) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event and includes data from an agency that is required to report to the central repository under Title 12 of the Health-General Article. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) Data pertaining to a proceeding under Subtitle 8 of Title 3 of the Courts Article (Juvenile Causes), but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court;

(3) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of any local ordinances, or any State or local regulations, or violations of the Natural Resources Article or public local laws;

(5) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16 of the Transportation Article; or

(6) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi.

Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi.

(f) "Criminal justice agency" means any government agency or subunit of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, custodial treatment or confinement under Title 12 of the Health-General Article, rehabilitation, or release of persons suspected, charged, or convicted of a crime or relieved of criminal punishment by a verdict of not criminally responsible, or is responsible for criminal identification activities and the collection, storage, and dissemination of criminal history record information, and which allocates a substantial portion of its annual budget to any of these functions. The term does not include the Department of Juvenile Services or a juvenile court, but it does include the following agencies, when exercising jurisdiction over criminal matters or alternative dispositions of criminal matters, or criminal history record information:

(1) State, county, and municipal police departments and agencies, sheriffs' offices, correctional facilities, jails, and detention centers;

(2) Any agency required to report to the central repository under § 12-107 or § 12-112 of the Health-General Article;

(3) The offices of the Attorney General, the State's Attorneys, and any other person authorized by law to prosecute persons accused of criminal offenses; or

(4) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, the District Court of Maryland, and the offices of the clerks of these courts.

(g) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of criminal history record information.

(h) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) The reporting of such information as required by § 747 of this article; or

(3) The transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(i) "Reportable event" means an event specified or provided for in § 747.

(j) "Secretary" means the Secretary of Public Safety and Correctional Services. (1976, ch. 239; 1977, ch. 765, § 8; 1978, ch. 329; 1979, ch. 633; 1982, ch. 820, § 1; 1984, ch. 501, § 2; 1987, ch. 290, § 1; 1988, ch. 122; 1989, ch. 539, § 7.)

§ 744. Criminal Justice Information Advisory Board created; composition; appointment and terms of members; chairman; vacancy; compensation and expenses; staff.

(a) *Created; term; composition; designation of representative.* — There is a Criminal Justice Information Advisory Board which, for administrative and budgetary purposes only, is within the Department of Public Safety and Cor-

rectional Services. Subject to the provisions of subsection (b) of this section, the members shall be appointed for a term of three years. One member shall be designated by the Governor as chairman. Each member, other than the member from the general public, may designate a person to represent him in any Advisory Board activity or meeting. A designee may vote. A majority of members or designees constitutes a quorum for the transaction of business. The Advisory Board consists of the following members:

(1) One member of the Maryland Senate appointed by the President of the Senate;

(2) One member of the House of Delegates appointed by the Speaker of the House of Delegates;

(3) The executive director of the Governor's Office of Justice Assistance;

(4) Three persons from the judicial branch of State government appointed by the Chief Judge of the Court of Appeals;

(5) Three persons recommended by the Secretary of Public Safety and Correctional Services;

(6) Two executive officials from State, county, or municipal police agencies;

(7) The Director of the Maryland Justice Analysis Center of the Institute of Criminal Justice and Criminology of the University of Maryland;

(8) Two elected county officials;

(9) The Attorney General of Maryland;

(10) One elected municipal official;

(11) One State's Attorney; and

(12) One person from the general public.

(b) *Appointment of members.* — Except for those members appointed by the President of the Senate, the Speaker of the House, and the Chief Judge of the Court of Appeals, all members are appointed by the Governor. The executive director of the Governor's Office of Justice Assistance, 2 of the members recommended by the Secretary of Public Safety and Correctional Services, and the Attorney General shall serve ex officio. The Secretary shall designate which 1 of the 3 members recommended by the Secretary may vote.

(c) *Vacancy.* — A vacancy occurring before the expiration of a term shall be filled by the appointing authority for the remainder of the term. A member serves until his successor is appointed and qualifies.

(d) *Compensation and expenses.* — A member of the Advisory Board may not receive compensation, but is entitled to reimbursement for expenses under the State Standard Travel Regulations, as provided in the State budget.

(e) *Use of staff and facilities of other agencies.* — In the performance of its functions, the Advisory Board may use the services of the staff and the facilities of the Department of Public Safety and Correctional Services, the Administrative Office of the Courts, and the Governor's Office of Justice Assistance subject to the approval of the head of the respective department or agency. (1976, ch. 239; 1988, ch. 122; 1989, ch. 5, § 1.)

§ 745. Duties of Advisory Board.

(a) *Generally.* — The Advisory Board shall perform the duties set forth in this section and those of an advisory nature that may otherwise be delegated to it in accordance with law.

(b) *Information to Secretary and Court of Appeals.* — It shall advise the Secretary and the Court of Appeals and its Chief Judge on matters pertaining to the development, operation, and maintenance of the criminal justice information system, and shall monitor the operation of the system.

(c) *Rules and regulations.* — It shall propose and recommend to the Secretary, and, in conjunction with the Standing Committee on Rules of the Court of Appeals, to the Court and its Chief Judge, rules and regulations necessary to the development, operation, and maintenance of the criminal justice information system.

(d) *Recommendations and reports.* — It shall:

(1) Recommend procedures and methods for the use of criminal history record information for the purpose of research, evaluation, and statistical analysis of criminal activity;

(2) Recommend any legislation necessary for the implementation, operation, and maintenance of the criminal justice information system; and

(3) Report annually to the Governor and, subject to Article 40, § 51 of the Code, to the General Assembly on the development and operation of the criminal justice information system.

(1982, ch. 911, § 1.)

§ 746. Adoption of rules.

(a) *Duty of Secretary and Court of Appeals.* — The Secretary shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this subtitle and to establish, operate, and maintain the criminal justice information system. The Court of Appeals and its Chief Judge, acting pursuant to §§ 18 and 18A of Article IV of the Constitution of Maryland, shall adopt appropriate rules and regulations for the same purposes for the judicial branch of government.

(b) *Scope of rules.* — Subject to the provisions of Article 15A, § 23B, the rules and regulations adopted by the Secretary, the Court, and the Chief Judge shall include those:

(1) Governing the collection, reporting, and dissemination of criminal history record information by the courts and all other criminal justice agencies;

(2) Necessary to insure the security of the criminal justice information system and all criminal history record information reported and collected from it;

(3) Governing the dissemination of criminal history record information in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(4) Governing the procedures for inspection and challenging of criminal history record information;

(5) Governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(6) Governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(7) Governing the exercise of the rights of inspection and challenge provided for in §§ 751 through 755.

(c) *Consistent with subtitle.* — Rules and regulations adopted by the Secretary or the Court or its Chief Judge may not be inconsistent with the provisions of this subtitle. (1976, ch. 239.)

§ 747. Reporting criminal history record information; central repository.

(a) *Reportable events.* — The following events are reportable events under this subtitle:

(1) Issuance or withdrawal of an arrest warrant;

(2) An arrest;

(3) Release of a person after arrest without the filing of a charge;

(4) Presentment of an indictment, filing of a criminal information, or filing of a statement of charges after arrest;

(5) A release pending trial or appeal;

(6) Commitment to a place of pretrial detention;

(7) Dismissal or quashing of an indictment or criminal information;

(8) A nolle prosequi;

(9) Placement of a charge on the stet docket;

(10) An acquittal, conviction, verdict of not criminally responsible, or other disposition at or following trial, including a finding of probation before judgment;

(11) Imposition of a sentence;

(12) Commitment to a correctional facility, whether State or locally operated;

(13) Commitment to the Department of Health and Mental Hygiene under § 12-105 or § 12-111 of the Health-General Article as incompetent to stand trial or not criminally responsible;

(14) Release from detention or confinement;

(15) Conditional release, revocation of conditional release, or discharge of an individual committed to the Department of Health and Mental Hygiene as incompetent to stand trial or as not criminally responsible;

(16) An escape from confinement, or escape from commitment;

(17) A pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;

(18) Entry of an appeal to an appellate court;

(19) Judgment of an appellate court;

(20) Order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement; and

(21) Any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the Secretary or the Court of Appeals.

(b) *Establishment and operation of central repository.* — (1) There is a criminal justice information system central repository in the Department of Public Safety and Correctional Services.

(2) The repository is under the administrative control of the Secretary and shall be operated as directed by the Secretary with the advice of the Advisory Board.

(c) *Time for reporting criminal history record information.* — Every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event; and

(4) The time requirements in this subsection may be reduced by rules adopted by the Secretary or the Court of Appeals.

(d) *Reporting methods.* — Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) If the information can readily be collected and reported through the court system, submittal to the central repository by the Administrative Office of the Courts; or

(3) If the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by such agencies.

(e) *Maintenance and dissemination of more detailed information.* — Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of any such criminal history record information is governed by the provisions of § 749.

(f) *Avoidance of duplication in reporting.* — The Secretary and the Court of Appeals may determine, by rule, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting. (1976, ch. 239; 1979, ch. 633; 1984, ch. 501, § 2; 1988, ch. 122; 1989, ch. 5, § 1.)

§ 748. Agreements with criminal justice agencies; sharing criminal history record information.

(a) *Duty of Secretary and Chief Judge of Court of Appeals; provisions of agreements.* — The Secretary and the Chief Judge of the Court of Appeals shall develop agreements between the central repository and criminal justice agencies pertaining to:

(1) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(2) The services to be provided to the agency by the central repository;

(3) The conditions and limitations upon the dissemination of criminal history record information by the agency;

(4) The maintenance of security in all transactions between the central repository and the agency;

(5) The method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(6) Audit requirements to ensure the accuracy of all information reported or disseminated;

(7) The timetable for the implementation of the agreement:

(8) Governing the development of a fee schedule and the collection of these fees for accessing criminal history records for other than criminal justice purposes

(9) Other provisions that the Chief Judge and the Secretary may deem necessary.

(b) *Sharing information with other states and countries and federal agencies.* — The Secretary and the Chief Judge of the Court of Appeals may develop procedures for the sharing of criminal history record information with federal criminal justice agencies and criminal justice agencies of other states and other countries, consistent with the provisions of this subtitle. (1976, ch. 239; 1979, ch. 633.)

§ 749. Dissemination of criminal history record information.

A criminal justice agency and the central repository may not disseminate criminal history record information except in accordance with the applicable federal law and regulations. (1976, ch. 239.)

§ 750. Compliance with §§ 735 to 741.

Notwithstanding any other provisions of this subtitle no record may be maintained or disseminated inconsistently with the provisions of §§ 735 through 741 of Article 27. (1976, ch. 239.)

§ 751. Right of inspection; copies.

(a) Subject to the provisions of § 752 (f), a person may inspect criminal history record information maintained by a criminal justice agency concerning him. A perron's attorney may inspect such information if he satisfactorily establishes his identity and presents a written authorization from his client.

(b) Nothing in this section requires a criminal justice agency to make a copy of any information or allows a person to remove any document for the purpose of making a copy of it. A person having the right of inspection may make notes of the information. (1976, ch. 239.)

§ 752. Challenging information.

(a) *Notice of challenge.* — A person who has inspected criminal history record information relating to him may challenge the completeness, contents, accuracy, or dissemination of such information by giving written notice of his challenge to the central repository and to the agency at which he inspected the information, if other than the central repository. The notice shall set forth the portion of the information challenged, the reason for the challenge, certified documentation or other evidence supporting the challenge, if available, and the change requested in order to correct or complete the information or the dissemination of the information. The notice shall contain a sworn statement, under penalty of perjury, that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(b) *Audit of information; notice of repository's determination.* — Upon receipt of the notice, the central repository shall conduct an audit of that part of the person's criminal history record information necessary to determine the accuracy of the challenge. As part of the audit, the central repository may require any criminal justice agency that was the source of challenged information to verify the information. The central repository shall notify the person of the results of its audit and its determination within 90 days after receipt of the notice of challenge. This notice shall be in writing, and, if the challenge or any part of it is rejected, the notice shall inform the person of his rights of appeal.

(c) *Correction of records.* — If the challenge or any part of it is determined to be valid, the central repository shall make the appropriate correction on its records and shall notify any criminal justice agency which has custody of the incomplete or inaccurate information, or portion of it, of the correction, and the agency shall take appropriate steps to correct its records. The agency shall certify to the central repository that the correction was made.
(1983, ch. 8.)

(d) *Notice of correction when information disseminated.* — A criminal justice agency required to correct any criminal history record information pursuant to subsection (c) that had previously disseminated such information shall give written notice to the agency or person to whom the information was disseminated of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

(e) *Notice to agencies of denial of challenge.* — If the challenge, or any part of it, is denied, the central repository shall give written notice of the denial to any agency with which a copy of the challenge was filed.

(f) *Inspection or challenge of information relevant to pending criminal proceeding.* — A person is not entitled to inspect or challenge any criminal history record information pursuant to this subtitle if the information or any part of it is relevant to a pending criminal proceeding. This subsection does not affect any right of inspection and discovery permitted under the Maryland Rules or under any statute, rule, or regulation not part of or adopted pursuant to this subtitle.

(g) *Delay in requiring performance of duties by central repository.* — The provisions of this section concerning the duties of the central repository may, by rule of the Secretary, be delayed until the Secretary determines that the central repository is able to comply with them, but not later than July 1, 1977. Until then, the duties of the central repository shall be performed by the appropriate criminal justice agencies. (1976, ch. 239.)

§ 753. Rights of appeal.

(a) *Rules for administrative appeals.* — The Secretary and the Court of Appeals shall adopt appropriate rules and procedures for administrative appeals from decisions by criminal justice agencies denying the right of inspection of, or challenges made to, criminal history record information.

These rules shall include provisions for:

(1) The forms, manner, and time for taking an appeal;
(2) The official or tribunal designated to hear the appeal;
(3) Hearing and determining the appeal; and
(4) Implementing the decision on appeal.

(b) *Right to take administrative appeal.* — A person aggrieved by a decision of a criminal justice agency concerning inspection or a challenge may take an administrative appeal in accordance with the rules and procedures adopted by the Secretary and the Court of Appeals.

(c) *Judicial review.* — A person aggrieved by a decision on an administrative appeal, including the central repository and a criminal justice agency, may seek judicial review in accordance with the Administrative Procedure Act and the Maryland Rules. (1976, ch. 239.)

§ 754. Requiring inspection or challenge of information in order to qualify for employment.

(a) It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment.

(b) Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than $5,000 or imprisonment for not more than six months, or both, for each violation. (1976, ch. 239.)

§ 755. Inspection and challenge of information recorded prior to July 1, 1976.

Criminal history record information which was recorded prior to July 1, 1976 is subject to the right of access and challenge in accordance with this subtitle. However, the duty of a criminal justice agency is to make a reasonable search for such information. There is no duty to provide access to criminal history record information that cannot be located after a reasonable search. (1976, ch. 239.)

§ 292. Expunging criminal arrest record of person not convicted; probation and discharge of first offenders.

(a) Whenever any person who has not previously been convicted of any offense under this subheading or under any other prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances as defined in this subheading, and who is tried for any offense specified in this subheading and is found not guilty, or where the charges against such person are dismissed in any manner, by either the court or the prosecuting authority, the court, if satisfied that the best interest of the person and the welfare of the people of this State would be served thereby, shall expunge the criminal record resulting from the arrest in such case. No expunged criminal arrest record shall thereafter be regarded as an arrest for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose.

§ 292. Expunging criminal arrest record of person not convicted; probation and discharge of first offenders [Repealed effective January 1, 1991].

(b) (1) Whenever any person who has not previously been convicted of any offense under this subheading or under any prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances defined in this subheading, pleads guilty to or is found guilty of any of the offenses specified in this subheading, the court, if satisfied that the best interests of the person and the welfare of the people of this State would be served thereby may, with the consent of such person stay the entering of the judgment of guilt, defer further proceedings, and place such person on probation subject to such reasonable terms and conditions as may be appropriate.

(2) (i) The terms and conditions may include ordering the person to pay a fine or pecuniary penalty to the State, to be paid through the office of the clerk of the court. Before the court orders a fine or pecuniary penalty, the person is entitled to notice and a hearing to determine the amount of the fine or pecuniary penalty, what payment will be required, and how payment will be made. Any fine or pecuniary penalty imposed as a term or condition of probation shall be within the amount prescribed by law for a violation resulting in conviction. The court may in addition require that such person undergo inpatient or outpatient treatment for drug abuse.

(ii) In Charles County, St. Mary's County, and Calvert County, the court may also impose a sentence of confinement as a condition of probation.

(3) By consenting to and receiving a stay of entering of the judgment of guilt as provided by this subsection, the person waives all rights to appeal from the judgment of guilt by the court at any time. Prior to the person consenting to the stay of entering of the judgment of guilt, the court shall notify the person that by consenting to and receiving the stay of entry of judgment, he waives the right to appeal from the judgment of guilt by the court at any time.

(4) Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as otherwise provided. Upon fulfillment of the terms

and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without a judgment of conviction and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by the law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under § 293 of this subheading. Discharge and dismissal under this section may occur only once with respect to any person.

(5) Upon petition, any public criminal record in any such case shall be expunged upon the satisfactory completion of any such period of probation. Any expunged arrest and/or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose, provided that any such conviction shall continue to constitute an offense for purposes of this subheading or any other criminal statute under which the existence of a prior conviction is relevant.
(1989, ch. 572.)

State Government
Title 10 Governmental Procedures
Subtitle 6. Records
Part III Access to Public Records

§ 10-611. Definitions.

(a) *In general.* — In this Part III of this subtitle the following words have the meanings indicated.

(b) *Applicant.* — "Applicant" means a person or governmental unit that asks to inspect a public record.

(c) *Custodian.* — "Custodian" means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

(d) *Official custodian.* — "Official custodian" means an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record.

(e) *Person in interest.* — "Person in interest" means:

(1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; or

(2) if the person has a legal disability, the parent or legal representative of the person.

(f) *Public record.* — (1) "Public record" means the original or any copy of any documentary material that:

(i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat;
9. a recording; or
10. a tape.

(2) "Public record" includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision. (An. Code 1957, art. 76A, § 1; 1984, ch. 284, § 1; ch. 285, § 8.)

As it appeared in Ch. 284, Acts of 1984, this section was derived from former Art. 76A, § 1 (a) through (d), (f), (g), and (i), as those subsections related to the State and its units. However, this section was amended by Ch. 285, Acts of 1984.

See the General Revisor's Note to this subtitle.

Defined terms:

"Includes";"including":	§ 1-101
"Person":	§ 1-101
"Political subdivision":	§ 10-601

Effect of amendment. — Section 8, ch. 285, Acts 1984, effective Oct. 1, 1984, substituted "an officer or employee of the State or of a political subdivision" for "a State officer or State employee" in subsection (d), and in subsection (f), inserted "or of a political subdivision" in subparagraph (i) of paragraph (1) and in paragraph (2).

Editor's note. — Section 9, ch. 285, Acts 1984, provides that "the provisions of this act are intended solely to correct outdated references and technical errors in the law and to delete certain obsolete provisions and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

University of Baltimore Law Review. — For note discussing executive privilege to prevent disclosure of official information, see 10 U. Balt. L. Rev. 385 (1981).

Official who obtains personnel records is "custodian". — Once a public official obtained the personnel records of a former employee of the urban services agency through the use of his offices as comptroller and a member of the board of estimates, he became a "custodian," regardless of whether he could be considered an official who supervised the former employee's work. 65 Op. Att'y Gen. 365 (1980).

Public Defender is "official custodian" of trial transcript obtained by the Public Defender's office in the course of its legal representation of an indigent defendant. 68 Op. Att'y Gen. — (January 25, 1983).

Police records must be considered "public records." 57 Op. Att'y Gen. 518 (1972).

"Arrest logs" are public records. 63 Op. Att'y Gen. 543 (1978).

Police investigative report is a "public record" that is subject to disclosure to any person, including members of the press, unless refusal to disclose it is mandated or permitted by a statutory exception or otherwise by law. 64 Op. Att'y Gen. 236 (1979).

And voter registration records open to public inspection are clearly "public records," and not privileged or made confidential by law. 62 Op. Att'y Gen. 396 (1977).

And school attendance records. — The filing with a local board of education of the names and addresses of all pupils attending a school in a particular county would constitute a "public record." 59 Op. Att'y Gen. 586 (1974).

And personnel file of urban services agency. — The personnel file of a former employee of an urban services agency was a "public record," since all records in the file would have either been made or received by the urban services agency, a Baltimore City agency, in connection with the transaction of public business. 65 Op. Att'y Gen. 365 (1980).

And trial transcript is public record. 68 Op. Att'y Gen. — (January 25, 1983).

§ 10-612. General right to information.

(a) *General right to information.* — All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) *General construction.* — To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

(c) *General Assembly.* — This Part III of this subtitle does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a law of the State, registered. (An. Code 1957, art. 76A, §§ 1A, 3; 1984, ch. 284, § 1.)

§ 10-613. Inspection of public records.

(a) *In general.* — Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.

(b) *Rules or regulations.* — To protect public records and to prevent unnecessary interference with official business, each official custodian shall adopt reasonable rules or regulations that, subject to this Part III of this subtitle, govern timely production and inspection of a public record. (An. Code 1957, art. 76A, § 2; 1984, ch. 284, § 1.)

§ 10-614. Applications.

(a) *Required.* — (1) A person or governmental unit that wishes to inspect a public record shall submit a written application to the custodian.

(2) If the individual to whom the application is submitted is not the custodian of the public record, within 10 working days after receiving the application, the individual shall give the applicant:

(i) notice of that fact; and

(ii) if known:

1. the name of the custodian; and

2. the location or possible location of the public record.

(b) *Grant or denial by custodian.* — (1) Within 30 days after receiving an application, the custodian shall grant or deny the application.

(2) A custodian who approves the application shall produce the public record immediately or within the reasonable period that is needed to retrieve the public record, but not to exceed 30 days after receipt of the application.

(3) A custodian who denies the application shall:

(i) immediately notify the applicant;

(ii) within 10 working days, give the applicant a written statement that gives:

1. the reasons for the denial;

2. the legal authority for the denial; and

3. notice of the remedies under this Part III of this subtitle for review of the denial; and

(iii) permit inspection of any part of the record that is subject to inspection and is reasonably severable.

(4) With the consent of the applicant, any time limit imposed under this subsection may be extended for not more than 30 days. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

§ 10-614. Applications.

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(i) notice of that fact; and

(ii) if known:

1. the name of the custodian; and
2. the location or possible location of the public record.

(b) *Grant or denial by custodian.* — (1) Within 30 days after receiving an application, the custodian shall grant or deny the application.

(2) A custodian who approves the application shall produce the public record immediately or within the reasonable period that is needed to retrieve the public record, but not to exceed 30 days after receipt of the application.

(3) A custodian who denies the application shall:

(i) immediately notify the applicant;

(ii) within 10 working days, give the applicant a written statement that gives:

1. the reasons for the denial;
2. the legal authority for the denial; and
3. notice of the remedies under this Part III of this subtitle for review of the denial; and

(iii) permit inspection of any part of the record that is subject to inspection and is reasonably severable.

(4) With the consent of the applicant, any time limit imposed under this subsection may be extended for not more than 30 days. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

§ 10-615. Required denials — In general.

A custodian shall deny inspection of a public record or any part of a public record if:

(1) by law, the public record is privileged or confidential; or

(2) the inspection would be contrary to:

(i) a State statute;

(ii) a federal statute or a regulation that is issued under the statute and has the force of law;

(iii) the rules adopted by the Court of Appeals; or

(iv) an order of a court of record. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

§ 10-616. Required denials — Specific records.

(a) *In general.* — Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this section.

(b) *Adoption records.* — A custodian shall deny inspection of public records that relate to the adoption of an individual.

(c) *Welfare records.* — A custodian shall deny inspection of public records that relate to welfare for an individual.

(d) *Letters of reference.* — A custodian shall deny inspection of a letter of reference.

(e) *Circulation records.* — A custodian shall deny inspection of a circulation record of a public library that identifies the transactions of a borrower.

(f) *Gifts.* — A custodian shall deny inspection of library, archival, or museum material given by a person to the extent that the person who made the gift limits disclosure as a condition of the gift.

(g) *Retirement records.* — (1) Subject to paragraphs (2) through (4) of this subsection, a custodian shall deny inspection of a retirement record for an individual.

(2) A custodian shall permit inspection:

(i) by the person in interest;

(ii) by the appointing authority of the individual; and

(iii) after the death of the individual, by a beneficiary, personal representative, or other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual.

(3) A custodian shall permit inspection by the employees of a county unit that, by county law, is required to audit the retirement records for current or former employees of the county. However, the information obtained during the inspection is confidential, and the county unit and its employees may not disclose any information that would identify a person in interest.

(4) On request, a custodian shall state whether the individual receives a retirement or pension allowance.

(h) *Personnel records.* — (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.

(2) A custodian shall permit inspection by:

(i) the person in interest; or

(ii) an elected or appointed official who supervises the work of the individual.

(i) *Hospital records.* — A custodian shall deny inspection of a hospital record that:

(1) relates to:

(i) medical administration;

(ii) staff;

(iii) medical care; or

(iv) other medical information; and

(2) contains general or specific information about 1 or more individuals.

(j) *Student records.* — (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a school district record about the biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.

(2) A custodian shall permit inspection by:

(i) the person in interest; or

(ii) an elected or appointed official who supervises the student. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-617. Required denials — Specific information.

(a) *In general.* — Unless otherwise provided by law, a custodian shall deny inspection of a part of a public record, as provided in this section.

(b) *Medical and psychological information.* — (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of the part of a public record that contains medical or psychological information about an individual, other than an autopsy report of a medical examiner.

(2) A custodian shall permit the person in interest to inspect the public record to the extent permitted under § 4-302 (b) of the Health-General Article.

(c) *Sociological information.* — If the official custodian has adopted rules or regulations that define sociological information for purposes of this subsection, a custodian shall deny inspection of the part of a public record that contains sociological information, in accordance with the rules or regulations.

(d) *Commercial information.* — A custodian shall deny inspection of the part of a public record that contains any of the following information provided by or obtained from any person or governmental unit:

(1) a trade secret;

(2) confidential commercial information;

(3) confidential financial information; or

(4) confidential geological or geophysical information.

(e) *Public employees.* — A custodian shall deny inspection of the part of a public record that contains the home address or telephone number of an employee of a unit or instrumentality of the State or of a political subdivision unless:

(1) the employee gives permission for the inspection; or

(2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

(f) *Financial information.* — (1) This subsection does not apply to the salary of a public employee.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness.

(3) A custodian shall permit inspection by the person in interest.

(g) *Information systems.* — A custodian shall deny inspection of the part of a public record that contains information about the security of an information system.

(h) *Licensing records.* — (1) Subject to paragraphs (2) through (4) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or profession.

(2) A custodian shall permit inspection of the part of a public record that gives:

(i) the name of the licensee;

(ii) the business address of the licensee or, if the business address is not available, the home address;

(iii) the business telephone number of the licensee;

(iv) the educational and occupational background of the licensee;

(v) the professional qualifications of the licensee;

(vi) any orders and findings that result from formal disciplinary actions; and

(vii) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility.

(3) A custodian may permit inspection of other information about a licensee if:

(i) the custodian finds a compelling public purpose; and

(ii) the rules or regulations of the official custodian permit the inspection.

(4) Except as otherwise provided by this subsection or other law, a custodian shall permit inspection by the person in interest.

(5) A custodian who sells lists of licensees shall omit from the lists the name of any licensee, on written request of the licensee. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-618. Permissible denials.

(a) *In general.* — Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

(b) *Interagency and intra-agency documents.* — A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.

(c) *Examinations.* — (1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters.

(2) After a written promotional examination has been given and graded, a custodian shall permit a person in interest to inspect the examination and the results of the examination, but may not permit the person in interest to copy or otherwise to reproduce the examination.

(d) *Research projects.* — (1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.

(2) A custodian may not deny inspection of the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available.

(e) *Real property.* — (1) Subject to paragraph (2) of this subsection or other law, until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property.

(2) A custodian may not deny inspection to the owner of the property.

(f) *Investigations.* — (1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of:

(i) records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff;

(ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or

(iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff.

(2) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

(iii) constitute an unwarranted invasion of personal privacy;

(iv) disclose the identity of a confidential source;

(v) disclose an investigative technique or procedure;

(vi) prejudice an investigation; or

(vii) endanger the life or physical safety of an individual. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-619. Temporary denials.

(a) *Permitted.* — Whenever this Part III of this subtitle authorizes inspection of a public record but the official custodian believes that inspection would cause substantial injury to the public interest, the official custodian may deny inspection temporarily.

(b) *Petition.* — (1) Within 10 working days after the denial, the official custodian shall petition a court to order permitting the continued denial of inspection.

(2) The petition shall be filed with the circuit court for the county where:

(i) the public record is located; or

(ii) the principal place of business of the official custodian is located.

(3) The petition shall be served on the applicant, as provided in the Maryland Rules.

(c) *Rights of applicant.* — The applicant is entitled to appear and to be heard on the petition.

(d) *Hearing.* — If, after the hearing, the court finds that inspection of the public record would cause substantial injury to the public interest, the court may pass an appropriate order permitting the continued denial of inspection. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

Determination whether disclosure is contrary to the public interest is within the discretion of the custodian. 64 Op. Att'y Gen. 236 (1979).

§ 10-620. Copies.

(a) *In general.* — (1) Except as otherwise provided in this subsection, an applicant who is authorized to inspect a public record may have:

(i) a copy, printout, or photograph of the public record; or

(ii) if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph.

(2) An applicant may not have a copy of a judgment until:

(i) the time for appeal expires; or

(ii) if an appeal is noted, the appeal is dismissed or adjudicated.

(b) *Conditions.* — (1) The copy, printout, or photograph shall be made:

(i) while the public record is in the custody of the custodian; and

(ii) whenever practicable, where the public record is kept.

(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs. (An. Code 1957, art. 76A, § 4; 1984, ch. 284, § 1.)

§ 10-621. Fees.

(a) *In general.* — Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record.

(b) *Limitation on search and preparation fees.* — The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.

(c) *Limitation on reproduction fees.* — (1) If another law sets a fee for a copy, printout, or photograph of a public record, that law applies.

(2) The official custodian otherwise may charge any reasonable fee for making or supervising the making of a copy, printout, or photograph of a public record.

(3) The official custodian may charge for the cost of providing facilities for the reproduction of the public record if the custodian did not have the facilities.

(d) *Waiver.* — The official custodian may waive a fee under this section if:

(1) The applicant asks for a waiver; and

(2) After consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest. (An. Code 1957, art. 76A, § 4; 1984, ch. 284, § 1.)

§ 10-622. Administrative review.

(a) *Scope of section.* — This section does not apply when the official custodian temporarily denies inspection under § 10-619 of this subtitle.

(b) *Permitted.* — If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative review in accordance with that subtitle of a decision of the unit, under this Part III of this subtitle, to deny inspection of any part of a public record.

(c) *Not required.* — A person or governmental unit need not exhaust the remedy under this section before filing suit. (An. Code 1957, art. 76A, § 5; 1984, ch. 284, § 1.)

§ 10-623. Judicial review.

(a) *Petition authorized.* — Whenever a person or governmental unit is denied inspection of a public record, the person or governmental unit may file a complaint with the circuit court for the county where:

(1) the complainant resides or has a principal place of business; or

(2) the public record is located.

(b) *Defendant.* — (1) Unless, for good cause shown, the court otherwise directs and notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to the complaint within 30 days after service of the complaint.

(2) The defendant:

(i) has the burden of sustaining a decision to deny inspection of a public record; and

(ii) in support of the decision, may submit a memorandum to the court.

(c) *Court.* — (1) Except for cases that the court considers of greater importance, a proceeding under this section, including an appeal, shall:

(i) take precedence on the docket;

(ii) be heard at the earliest practicable date; and

(iii) be expedited in every way.

(2) The court may examine the public record in camera to determine whether any part of it may be withheld under this Part III of this subtitle.

(3) The court may:

(i) enjoin the State, a political subdivision, or a unit, official, or employee of the State or of a political subdivision from withholding the public record;

(ii) pass an order for the production of the public record that was withheld from the complainant; and

(iii) for noncompliance with the order, punish the responsible employee for contempt.

(d) *Damages.* — (1) A defendant governmental unit is liable to the complainant for actual damages and any punitive damages that the court considers appropriate if the court finds that any defendant knowingly and willfully failed to disclose or fully to disclose a public record that the complainant was entitled to inspect under this Part III of this subtitle.

(2) An official custodian is liable for actual damages and any punitive damages that the court considers appropriate if the court finds that, after temporarily denying inspection of a public record, the official custodian failed to petition a court for an order to continue the denial.

(e) *Disciplinary action.* — (1) Whenever the court orders the production of a public record that was withheld from the applicant and, in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall send a certified copy of its finding to the appointing authority of the custodian.

(2) On receipt of the statement of the court and after an appropriate investigation, the appointing authority shall take the disciplinary action that the circumstances warrant.

(f) *Costs.* — If the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred. (An. Code 1957, art. 76A, §§ 3, 5; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-624. Personal records.

(a) *"Personal record" defined.* — In this section, "personal record" means a public record that names or, with reasonable certainty, otherwise identifies an individual by an identifying factor such as:

(1) an address;

(2) a description;

(3) a finger or voice print;

(4) a number; or

(5) a picture.

(b) *Annual report.* — (1) This subsection does not apply to:

(i) a unit in the Legislative Branch of the State government;

(ii) a unit in the Judicial Branch of the State government; or

(iii) a board of license commissioners.

(2) If a unit or instrumentality of the State government keeps personal records, the unit or instrumentality shall submit an annual report to the Secretary of General Services, as provided in this subsection.

(3) An annual report shall state:

(i) the name of the unit or instrumentality;

(ii) for each set of the personal records:

1. the name;
2. the location; and
3. if a subunit keeps the set, the name of the subunit;

(iii) for each set of personal records that has not been previously reported:

1. the category of individuals to whom the set applies;
2. a brief description of the types of information that the set contains;
3. the major uses and purposes of the information;
4. by category, the source of information for the set; and
5. the policies and procedures of the unit or instrumentality as to access and challenges to the personal record by the person in interest and storage, retrieval, retention, disposal, and security, including controls on access; and

(iv) for each set of personal records that has been disposed of or changed significantly since the unit or instrumentality last submitted a report, the information required under item (iii) of this paragraph.

(4) A unit or instrumentality that has 2 or more sets of personal records may combine the personal records in the report only if the character of the personal records is highly similar.

(5) The Secretary of General Services shall adopt regulations that govern the form and method of reporting under this subsection.

(6) The annual report shall be available for public inspection.

(c) *Access for research.* — The official custodian may permit inspection of personal records for which inspection otherwise is not authorized by a person who is engaged in a research project if:

(1) the researcher submits to the official custodian a written request that:

(i) describes the purpose of the research project;

(ii) describes the intent, if any, to publish the findings;

(iii) describes the nature of the requested personal records;

(iv) describes the safeguards that the researcher would take to protect the identity of the persons in interest; and

(v) states that persons in interest will not be contacted unless the official custodian approves and monitors the contact;

(2) the official custodian is satisfied that the proposed safeguards will prevent the disclosure of the identity of persons in interest; and

(3) the researcher makes an agreement with the unit or instrumentality that:

(i) defines the scope of the research project;

(ii) sets out the safeguards for protecting the identity of the persons in interest; and

(iii) states that a breach of any condition of the agreement is a breach of contract. (An. Code 1957, art. 76A, § 5A; 1984, ch. 284, § 1.)

§ 10-625. Corrections of public record.

(a) *Request for change permitted.* — A person in interest may request a unit of the State government to correct inaccurate or incomplete information in a public record that:

(1) the unit keeps; and

(2) the person in interest is authorized to inspect.

(b) *Contents of request.* — A request under this section shall:

(1) be in writing;

(2) describe the requested change precisely; and

(3) state the reasons for the change.

(c) *Action on request.* — (1) Within 30 days after receiving a request under this section, a unit shall:

(i) make or refuse to make the requested change; and

(ii) give the person in interest written notice of the action taken.

(2) A notice of refusal shall contain the unit's reasons for the refusal.

(d) *Statement of disagreement.* — (1) If the unit finally refuses a request under this section, the person in interest may submit to the unit a concise statement that, in 5 pages or less, states the reasons for the request and for disagreement with the refusal.

(2) Whenever the unit provides the disputed information to a third party, the unit shall provide to that party a copy of the statement submitted to the unit by the person in interest.

(e) *Administrative and judicial review.* — If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative and judicial review in accordance with that subtitle of:

(1) a decision of the unit to deny:
(i) a request to change a public record; or
(ii) a right to submit a statement of disagreement; or
(2) the failure of the unit to provide the statement to a third party. (An. Code 1957, art. 76A, §§ 4A, 5; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-626. Unlawful disclosure of personal records.

(a) *Liability.* — A person, including an officer or employee of a governmental unit, is liable to an individual for actual damages and any punitive damages that the court considers appropriate if:

(1) the person willfully and knowingly permits inspection or use of a public record in violation of this Part III of this subtitle; and

(2) the public record names or, with reasonable certainty, otherwise identifies the individual by an identifying factor such as:

(i) an address;
(ii) a description;
(iii) a finger or voice print;
(iv) a number; or
(v) a picture.

(b) *Costs.* — If the court determines that the complainant has substantially prevailed, the court may assess against a defendant reasonable counsel fees and other litigation costs that the complainant reasonably incurred. (An. Code 1957, art. 76A, § 5; 1984, ch. 284, § 1.)

§ 10-627. Prohibited acts; criminal penalties.

(a) *Prohibited acts.* — A person may not:

(1) willfully or knowingly violate any provision of this Part III of this subtitle;

(2) fail to petition a court after temporarily denying inspection of a public record; or

(3) by false pretenses, bribery, or theft, gain access to or obtain a copy of a personal record whose disclosure to the person is prohibited by this Part III of this subtitle.

(b) *Criminal penalties.* — A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000. (An. Code 1957, art. 76A, §§ 3, 5; 1984, ch. 284, § 1.)

§ 10-628. Immunity for certain disclosures.

A custodian is not civilly or criminally liable for transferring or disclosing the contents of a public record to the Attorney General under Article 64A, § 12J of the Code. (An. Code 1957, art. 76A, § 5; 1984, ch. 284, § 1.)

§§ 10-629, 10-630.

Reserved.

Rule 1218. Court Information System.

a. *Reporting and Transmittal of Criminal History Record Information.*

1. The District Court of Maryland shall transmit to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services the data elements of criminal history record information on offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals or his designee for purposes of completing a criminal history record maintained by the Central Repository of Criminal History Record Information.

2. Transmittal of Reports of Dispositions.

When a defendant has been charged by citation and a conviction is entered by reason of his payment of a fine or forfeiture of collateral before trial, the conviction is not a reportable event under Article 27, Section 747 (a) (10), Annotated Code of Maryland.

b. *Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings.*

Unless expunged, sealed, marked confidential or otherwise prohibited by statute, court rule or order, criminal history record information contained in court records of public judicial proceedings is subject to inspection by any person at the times and under conditions as the clerk of a court reasonably determines necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of his office. (Added Dec. 21, 1977, effective Jan. 1, 1978.)

Regulations

Title 12
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 06 STATE POLICE

Chapter 08 Implementation of the Criminal Justice Information System Statute

Authority: Article 27, §746, Annotated Code of Maryland

.01 Purpose of Regulations.

The purpose of these regulations is to implement the provisions of Article 27, §§742—755, Annotated Code of Maryland.

.02 Applicability of Regulations.

These regulations apply only to the executive branch of State government and local criminal justice agencies other than those in the judicial branch of government.

.03 Definitions.

A. "Collection" refers to the receipt, organization, and processing of CHRI by a criminal justice agency, a criminal justice repository, or CRCR.

B. "Conviction criminal history record information" means CHRI regarding reportable events which have resulted in a finding of guilt. For the purpose of dissemination, the acceptance of a plea of nolle contendere by a court shall be considered as conviction CHRI.

C. "Criminal history record information (CHRI)" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) Data pertaining to a proceeding under Title 3, Subtitle 8, of the Courts and Judicial Proceedings Article (Juvenile Causes) of the Annotated Code of Maryland, but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court;

(3) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of local ordinances, or State or local regulations, or violations of the Natural Resources Article, unless the individual is arrested on a bench warrant issued for failure to appear in court or obey a court order for any of these violations, or unless the individual is committed to a correctional facility upon conviction for any of these violations;

(5) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16, Subtitle 4, of the Transportation Article of the Annotated Code of Maryland;

(6) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi; or

(7) Data contained in current case-in-progress systems or records pertinent to public judicial proceedings which are reasonably contemporaneous to the event to which the information relates.

D. "Criminal justice agency" means any government agency or subunit of an agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its an-

nual budget to any of these functions. The term does not include the Juvenile Services Administration or a juvenile court, but it does include the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, and municipal police departments and agencies, sheriffs' offices, correctional facilities, parole and probation departments, jails and detention centers,

(2) The Offices of the Attorney General, the State's Attorneys, and any other person authorized by law to prosecute persons accused of criminal offenses;

(3) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, including the courts of the Supreme Bench of Baltimore City, the District Court of Maryland, and the offices of the clerks of these courts.

E. "Criminal justice information system" means the equipment, facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of CHRI.

F. "Disseminate" means to transmit CHRI in any oral or written form. The term does not include:

(1) The transmittal of this information within a criminal justice agency;

(2) The reporting of this information as required by Article 27, §747, Annotated Code of Maryland; or

(3) The transmittal of this information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

G. "Non-conviction criminal history record information" means arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor; or that a prosecutor has elected not to commence criminal proceedings; or that proceedings have been indefinitely postponed; as well as all acquittals and all dismissals.

H. "Reportable event" means an event specified or provided for in Article 27, §747, Annotated Code of Maryland.

I. "Reporting" means the transmittal of CHRI by criminal justice agencies or repositories to the Criminal Records Central Repository (CRCR).

.04 Criminal Records Central Repository (CRCR).

A. Pursuant to Article 27, §747(b), Annotated Code of Maryland, the criminal justice information system central repository will be the "Criminal Records Central Repository (CRCR)" of the Maryland State Police. The CRCR will perform all functions heretofore assigned to the State Central Crime Records Bureau, and other tasks delegated to it by the Secretary to ensure the accuracy, completeness, and security of CHRI in Maryland.

B. The CRCR has the responsibility to enter into agreements with agencies which, by law or regulatory process, have the right to access or contribute to CHRI. Each agreement will comply with Article 27, §748, Annotated Code of Maryland and will require the approval of the Secretary.

C. The CRCR has the authority to perform audits of any criminal justice agency with respect to any individual CHRI to ensure the completeness and accuracy of information reported or disseminated.

D. The CRCR has the authority to inspect and evaluate the procedures and facilities relating to the privacy and security of CHRI in any agency bound by these regulations and to enforce the sanctions agreed upon with the CRCR.

E. The CRCR has the authority to deny a criminal justice agency access to any CHRI unless access is in accordance with an approved agreement.

F. The CRCR has the authority to refuse acceptance of any CHRI unless the information is submitted in accordance with an approved agreement.

.05 Right of an Individual to Inspect His Criminal History Record.

A. A person may inspect criminal history record information concerning him maintained by a criminal justice agency, unless the information or any part of it is relevant to a pending criminal proceeding. This latter restriction does not affect any right of inspection and discovery permitted by rule of court or by statute.

B. A fee of $5, payable to the Maryland State Police, will be charged an individual for each request to review his record, unless the individual files a verified certificate of indigency.

C. If an individual wishes to file a request and subsequently review his criminal history record at the CRCR, he may do so at the following barracks of the Maryland State Police between the hours of 9 a.m. and 3 p.m., Monday through Friday, except on State holidays. An individual may review and challenge his record only at the bar-

rack listed beside the county in which he resides or at the CRCR located at the Maryland State Police Headquarters in Pikesville, Maryland.

Allegany County	Barrack "C" MSP Cumberland, Maryland
Anne Arundel County	Barrack "J" MSP Annapolis, Maryland
Baltimore City	Headquarters, MSP Pikesville, Maryland
Baltimore County	Headquarters, MSP Pikesville, Maryland
Calvert County	Barrack "H" MSP Waldorf, Maryland
Caroline County	Barrack "I" MSP Easton, Maryland
Carroll County	Barrack "G" MSP Westminster, Maryland
Cecil County	Barrack "F" MSP North East, Maryland
Charles County	Barrack "H" MSP Waldorf, Maryland
Dorchester County	Barrack "E" MSP Salisbury, Maryland
Frederick County	Barrack "B" MSP Frederick, Maryland
Garrett County	Barrack "C" MSP Cumberland, Maryland
Harford County	Barrack "D" MSP Bel Air, Maryland
Howard County	Barrack "A" MSP Jessup, Maryland
Kent County	Barrack "I" MSP Easton, Maryland
Montgomery County	Barrack "N" MSP Rockville, Maryland
Prince George's County	Barrack "L" MSP Forrestville, Maryland
Queen Anne's County	Barrack "I" MSP Easton, Maryland
St. Mary's County	Barrack "H" MSP Waldorf, Maryland
Somerset County	Barrack "E" MSP Salisbury, Maryland
Talbot County	Barrack "I" MSP

	Easton, Maryland
Washington County	Barrack "O" MSP
	Hagerstown, Maryland
Wicomico County	Barrack "E" MSP
	Salisbury, Maryland
Worcester County	Barrack "E" MSP
	Salisbury, Maryland

D. Until all criminal history data is filed at the CRCR, an individual may file a request and subsequently review that part of his criminal history record maintained by a criminal justice agency other than the CRCR. This request and review is subject to the procedures of the criminal justice agency which maintains the record. Each criminal justice agency which maintains criminal history record information will adopt procedures for individual review and challenge of that information. These procedures will be in compliance with applicable federal and State law and regulations.

E. An offender held in custody at a law enforcement agency, detention center, or correctional institution as the result of a court action may file a request and subsequently review his criminal history record at the location of his confinement.

F. Before an individual may review his record he will verify his identity by fingerprint comparision with the CRCR record through the use of Form CRCR001.

G. Any attorney may review his client's criminal history record if he satisfactorily establishes his identity and presents a written authorization from his client.

H. Form CRCR001, properly completed and including the individual's right thumbprint or other available print if the right thumb cannot be fingerprinted, will be forwarded to the CRCR for identification, verification, and record check.

I. The CRCR will verify the identity of the applicant.

J. Upon confirmation of the applicant by fingerprint comparison and other available identifiers, the CRCR will complete Form CRCR001 and return it and a copy of any record information within 30 days to the agency or barrack which submitted the request.

K. The CRCR or other agency possessing the individual's criminal history record may deny review of a record if, in its opinion, the individual cannot satisfactorily identify himself as the subject of that record, or if the individual is not entitled to review the record under the limitations set forth in Article 27, §752(f), Annotated Code of Mary-

land. The reason for denial will be indicated on Form CRCR001 by the CRCR or other agency which denies access and shall be returned to the individual within 30 days. The individual will be advised in writing of his right to appeal the denial of review.

L. The CRCR will retain a copy of Form CRCR001.

M. When an individual returns to review his criminal history record, he shall countersign Form CRCR001. An individual inspecting his criminal history record may make notes of the information or may obtain a certified copy at his expense.

N. A person who challenges his criminal history record information may challenge the completeness, the contents, the accuracy, or the dissemination of this information.

.06 Right of an Individual to Challenge a Denial to Inspect.

A. If an individual is denied the right to inspect his criminal history record, pursuant to the procedures in Regulation .05 above, he may challenge this denial in accordance with the procedures in this regulation. This regulation does not pertain to court procedures or court records where inspection has been denied by the courts.

B. A fee of $5 payable to the Maryland State Police will be charged an individual for each request to challenge his record, unless the individual files a verified certificate of indigency.

C. An individual shall file a challenge to a denial of his request to inspect his record by submitting Form CRCR002 and a complete set of fingerprints taken at the location of his original request by the original agency or by the Maryland State Police at the identified barrack. An individual shall file a challenge within 10 days of the denial to inspect his record.

D. The Superintendent of the Maryland State Police has the authority to designate a review officer.

E. The Superintendent of the Maryland State Police shall set a review date within 30 days of the date the challenge was filed, and within the 30-day period the full set of fingerprints submitted by the person who challenged the record will be compared with the fingerprints on the arrest record.

F. The Superintendent of the Maryland State Police will issue to the individual and to the CRCR a written decision stating whether the individual filing the challenge is the individual in the record. A copy of the decision will be retained by the CRCR and copies will be disseminated by the CRCR to any other agency which is a party to the denial process.

G. If the Superintendent decides that the challenger is identical to the individual in the record, the challenger may, upon submission of the written decision of the Superintendent to the official who denied access to the record, view his record.

H. If the Superintendent decides that the challenger is not the individual in the record, the challenger may not be permitted to inspect the record.

I. The challenger or the agency maintaining the record may appeal the decision of the Superintendent, and this appeal shall be taken in accordance with the Administrative Procedure Act, Article 41, §244, et. seq., Annotated Code of Maryland.

.07 Right of an Individual to Challenge Completeness, Contents, Accuracy, and Dissemination.

A. An individual who has inspected his criminal history record information may challenge the completeness, contents, accuracy, or dissemination of this information.

B. A fee of $5, payable to the Maryland State Police, shall be charged an individual for each challenge to the completeness, contents, accuracy, and dissemination of his criminal history record, unless the individual files a verified certificate of indigency.

C. The individual will submit Form CRCR002 as notice of his challenge to the CRCR and to the agency at which he inspected the information, if other than the Maryland State Police. Upon receipt of the notice, the CRCR will conduct an examination of that part of the person's criminal history record information which has been challenged as to completeness, contents, accuracy, and dissemination. As part of the examination, the CRCR may require any criminal justice agency that was the source of challenged information to verify the information. The CRCR will advise the person of the results of its examination and its determination within 90 days after receipt of the individual's notice of challenge. This notice shall be in writing via Form CRCR003 and, if the challenge or any part of it is rejected, the notice will inform the person of his rights of appeal..

D. If the challenge is determined to be valid, the CRCR will make the appropriate correction on its record and notify any criminal justice or other agency which has custody of the incomplete or inaccurate information, of this correction. The criminal justice agency shall correct its records and certify to the CRCR that the correction was made.

E. A criminal justice agency or other agency required to correct any criminal history record information that had previously disseminated this incorrect information shall give written notice of the correction to any agency or individual to whom the information had

been disseminated. The recipient agency or individual will promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

F. If the individual's challenge to the completeness, contents, accuracy, or dissemination is denied by the CRCR, he may appeal the decision in accordance with the procedures outlined below.

G. A fee of $5, payable to the Maryland State Police, will be charged an individual for each request to appeal a denial of his record, unless the individual files a verified certificate of indigency.

H. Within 30 days of a denial, an individual will file Form CRCR002 to appeal a denial of a challenge with the Superintendent of the Maryland State Police and the local law enforcement agency which contributed or created the record, if other than the Maryland State Police, and the CRCR.

I. The Superintendent has the authority to designate a hearing officer.

J. The Superintendent of the Maryland State Police shall set a hearing date within 30 days of the date the appeal was filed, and the hearing shall be held within 60 days of the date the appeal was filed.

K. Failure of an applicant to appear at the hearing shall be cause to deny the challenge.

L. At the challenge hearing, the applicant who filed the challenge and any agency party to the challenge may be represented by an attorney, may introduce additional evidence, and may interrogate persons responsible for recording or maintaining the criminal history record in question.

M. The Superintendent of the Maryland State Police shall issue to the applicant and to the CRCR a written order stating the decision of the hearing. A copy of the order shall be retained by the CRCR and disseminated by CRCR to any other agency or person who is party to the hearing.

N. If the Superintendent's order concludes that the challenge to the completeness, contents, accuracy, or dissemination of the record is correct, the order will direct that the record be corrected. The CRCR and the local law enforcement agency which contributed or created the record shall correct its records and certify to the Superintendent that the correction was made.

O. A criminal justice agency required to correct any criminal history record information pursuant to §N, immediately above, that had

previously disseminated this information, shall give written notice to the agency or person to whom the information was disseminated, of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

P. Any party to the matter may further appeal the decision of the Superintendent, and this appeal shall be taken in accordance with the Administrative Procedure Act, Article 41, §244, et. seq., Annotated Code of Maryland.

.08 Collection.

A. The CRCR will collect and store CHRI from all criminal justice agencies or CHRI repositories in the State.

B. Receipt by CRCR of reported data shall be organized so as to accurately reflect the processing of an individual through the criminal justice system and to insure complete, accurate, private, and secure records.

.09 Reporting.

A. Every criminal justice agency or CHRI repository shall report CHRI, whether collected manually or by means of an automated system, to the CRCR in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event.

B. CHRI will be reported by all criminal justice agencies to CRCR in an organized manner that reflects the identification of the offender and the movements of that individual through the criminal justice system. Reports will conform to federal and State laws and regulations as supplemented by operational procedures issued by CRCR relating to the completeness, accuracy, privacy, and security of CHRI.

.10 Dissemination of Criminal History Record Information.

A. A criminal justice agency and the CRCR may not disseminate criminal history record information except in accordance with federal

and State laws and regulations and the regulations promulgated pursuant to Article 27, §746, Annotated Code of Maryland.

B. Subject to the provisions of §F, below, the CRCR and a criminal justice agency shall disseminate CHRI, be it conviction or non-conviction criminal history record information, to a criminal justice agency upon a request made in accordance with applicable regulations adopted by the Secretary. A criminal justice agency may request this information from the CRCR or another criminal justice agency only if it has a need for the information:

(1) In the performance of its function as a criminal justice agency; or

(2) For the purpose of hiring or retaining its own employees and agents.

C. Subject to the provisions of §§G, H, and I, below, and except as otherwise authorized by §F, below, the CRCR may not disseminate to a non-criminal justice federal, State, or local government agency:

(1) Conviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute, ordinance, executive order, or court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, order, or rule specifies the existence or non-existence of a prior conviction or other criminal conduct as a condition to the grant, denial, suspension, revocation, or termination of the license, employment, right, or privilege. References to "good moral character," "trustworthiness," or other less specific traits are sufficient to authorize dissemination where they are determined by the courts to be inclusive of criminal conduct.

(2) Non-conviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute, ordinance, executive order, court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, executive order, or court rule, decision, or order specifies access to non-conviction CHRI in consideration of the decision to grant, deny, suspend, revoke, or terminate a license, employment, right, or privilege.

D. Subject to the provisions of §§G, H, and I, below, and except as otherwise authorized by §F, below, the CRCR may not disseminate to a private non-governmental employer or the private employer's designated agent:

(1) Conviction CHRI unless the employer demonstrates to the Secretary that the activities or duties of the prospective employee or employee for whom the conviction CHRI is requested would bring the prospective employee or employee into such close and sensitive contact with the public that the use of the information in hiring, transfer, or promotion of the employee would serve to protect the safety or be in the best interests of the general public or bring the prospective employee or employee into such close and sensitive contact with the employer's enterprise as to endanger the goodwill or fiscal well-being of the enterprise.

(2) Non-conviction CHRI unless the employer is expresaly authorized by statute, ordinance, executive order, or court rule, order, or decision specifying the right of access to non-conviction CHRI and the purpose and conditions for access.

E. The Secretary will establish a procedure whereby employers may petition for the right to be granted access to conviction CHRI consistent with §D(1), above. The petition shall require the employer to list the instances where access is desired and the reason for requesting the access consistent with this regulation. The Secretary, with the advice of the Advisory Board, shall develop specific classes for which access consistent with this regulation are to be provided and shall maintain for each class a list of all employers who have petitioned for and been granted access.

F. The following non-criminal justice persons and agencies may receive from CRCR conviction and non-conviction CHRI for the purpose and under the conditions stated:

(1) The Department of Personnel or other appointing authority of the federal, State, or local unit of government may receive this information for the purpose of employment suitability or eligibility for security clearances;

(2) The Maryland Public Defender or any defense counsel of record may receive this information for the purpose of the defense of a client in a pending criminal proceeding;

(3) A bail bondsman may receive this information relating to a client, if authorized by the Maryland rules;

(4) The Juvenile Services Administration may receive this information for the purposes of an investigation pursuant to the disposition of a juvenile case;

(5) The Governor's Commission on Law Enforcement and the Administration of Justice may receive this information for the purposes of research, evaluation, and statistical analysis of criminal activity, and that any statistical analyses derived from this information may not include the name of any individual or any other unique identifiers relating to the individual;

(6) A person or agency engaged in legitimate research, evaluation, or statistical analysis activities may, pursuant to an agreement with the Secretary or the Chief Judge of the Court of Appeals, receive this information necessary to these activities, but this information may not include the name of any individual;

(7) A person or agency under contract with a criminal justice agency to provide specific services required by the criminal justice agency to perform any of its criminal justice functions may, pursuant to an agreement with the Secretary, receive this information necessary in order to carry out its contract; and

(8) The Attorney Grievance Commission and any of its subunits, the Board of Law Examiners and any of its subunits, the Commission on Judicial Disabilities, and a Judicial Nominating Commission may receive and utilize CHRI for the purpose of exercising their respective functions in connection with lawyer discipline, bar admissions, judicial discipline, and judicial selection.

G. Criminal Justice Agency.

(1) A criminal justice agency may not disseminate CHRI to another criminal justice agency until the disseminating agency has requested and received from CRCR verification that the information to be disseminated is complete, accurate, and current. The criminal justice agency or CRCR shall verify the identity of the criminal justice agency to which the disseminating agency intends to provide the information.

(2) CRCR shall maintain a record or log of the request showing the date the request was made, the information to be disseminated, the criminal justice agency receiving the information, and the date of the dissemination.

(3) This section does not apply if the receiving criminal justice agency demonstrates to a responsible official of the disseminating criminal justice agency or CRCR that a delay in the receipt of information from CRCR will unduly impede necessary action by the requesting criminal justice agency or will violate or materially impair a

substantive right of the person about whom the information is needed. However, the disseminating agency shall maintain a log of each dissemination under these conditions, showing the date of dissemination, the information disseminated, the criminal justice agency to whom it was disseminated, and the date of the dissemination.

H. Only CRCR may disseminate CHRI to a non-criminal justice agency or individual. CRCR shall verify the identity of the agency or person requesting to receive the information and shall maintain a record or log of the request showing the date the request was made, the purpose for which the request was made, the information disseminated, the agency or person receiving the information, and the date of the dissemination.

I. CRCR, through agreement with another criminal justice agency, may specify the other criminal justice agency as a location at which a non-criminal justice agency or individual may inquire to CRCR for the purpose of receiving CHRI. The agreement may also provide for CRCR to authorize the criminal justice agency to disseminate to the non-criminal justice agency appropriate CHRI maintained by the criminal justice agency. Under these circumstances the disseminating criminal justice agency shall maintain a log of each dissemination, showing the date the request was made, the purpose for which the request was made, the information disseminated, the agency or person receiving the information, and the date of the dissemination. CRCR shall maintain in its log the fact that it authorized the criminal justice agency to disseminate the CHRI and the agency or individual to whom the CHRI was disseminated.

J. An agency or individual may not confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself.

K. Any logs required to be kept under this regulation shall be maintained for at least 3 years.

L. The use of CHRI by an authorized agency or individual is limited to the specific purpose or purposes stated in this section and may not be disseminated further except with specific authorization.

M. When a request for the dissemination of CHRI is made by a criminal justice agency from another state, disseminations are to be limited to the purposes for which CHRI is disseminated to criminal justice agencies within Maryland.

N. In addition to any other remedy or penalty authorized by law, the Secretary may determine any individual or agency to be in violation of the provisions of this regulation and may take the necessary steps to enforce compliance with this section, including revocation of any agreement between the agency and CJIS as well as appropriate judicial or administrative proceedings.

.11 Security.

A. The Secretary adopts the specific federal regulations promulgated regarding security. These regulations were promulgated in the Federal Register, Volume 41, Number 55, dated March 19, 1976, and pursuant to Article 41, §256 H(a) Annotated Code of Maryland, the federal regulations are being reprinted as follows:

"(A) Security—Wherever criminal history record information is collected, stored, or disseminated, each state shall insure that the following requirements are satisfied by security standards established by state legislation or in the absence of such legislation by regulations approved or issued by the Governor of the State:

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.

(3)(A) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:

(i) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(ii) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

(iii) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

(iv) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program, or file.

(v) The programs specified in (ii) and (iv) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the programs) are kept continuously under maximum security conditions.

(vi) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for (a) the physical security of criminal history record information under its control or in its custody and (b) the protection of such information from unauthorized access, disclosure, or dissemination.

(vii) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(B) A criminal justice agency shall have the right to audit, monitor, and inspect procedures established above.

(4) The criminal justice agency will:

(A) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(B) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(C) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for:

(i) The physical security of criminal history record information under its control or in its custody; and

(ii) The protection of such information from unauthorized access, disclosure, or dissemination.

(D) Institute procedures where computer processing is not utilized to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(E) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations."

B. In the event a breach of the physical security of CHRI or a failure to meet physical security standards of CHRI as stipulated in these regulations and as supplemented by operational policies issued by CRCR relating to the physical security of CHRI occurs, the Secretary of Public Safety and Correctional Services has the responsibility to insure that the breach is corrected.

C. In the event a failure to comply with personnel policies relating to CHRI as stipulated in these regulations and as supplemented by personnel policies issued by CRCR relating to CHRI occurs, the Secretary of Public Safety and Correctional Services has the responsibility to insure that this failure is corrected.

D. In the event a breach of the operational security of the Criminal Justice Information System (as defined in Article 27, §743(g), Annotated Code), or a failure to meet the operating security standards of that system as stipulated in these regulations and as supplemented by operational procedures issued by CRCR relating to the security of operations in the Criminal Justice Information System occurs, the Secretary of Public Safety and Correctional Services has the responsibility to insure that this breach or failure is corrected.

E. In the event the privacy or confidentiality of CHRI has been intentionally or inadvertantly abused or where the potential for this abuse may exist, the Secretary of Public Safety and Correctional Services has the responsibility to insure that this abuse or potential for abuse is corrected.

.12 Auditing.

A. An audit of a random representative sample of State and local criminal justice agencies and repositories will be made annually by

MARYLAND

Amendments to Regulations

Title 12

Department of Public Safety and Correctional Services

Subtitle 06 STATE POLICE

12.06.08 Implementation of the Criminal Justice Information System Statute

Authority: Article 27, §746,
Annotated Code of Maryland

Notice of Final Action

Notice is given that, on November 16, 1978, new Regulations .01—.14, under COMAR 12.06.08 **Implementation of the Criminal Justice Information System Statute**, were adopted by the Department of Public Safety and Correctional Services.

These new regulations, which were proposed for adoption in 4:25 Md. R. 1919—1928 (December 2, 1977), have been adopted substantially as proposed, with minor changes as shown below. The regulations become effective coincident with the date of this issue of the Maryland Register.

.01—.02 (proposed text unchanged)

.03 Definitions.

A. (proposed text unchanged)

B. "Criminal history record information (CHRI)" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1)—(3) (proposed text unchanged)

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, [*except offenses involving death or injury to a person, or offenses under §11-902 of Article 66 ½ of the Code*] *or violations of local ordinances, or State or local regulations, or violations of the Natural Resources Article, unless the individual is arrested on a bench warrant issued for failure to appear in court or obey a court order for any of these violations, or unless the individual is committed to a correctional facility upon conviction for any of these violations;*

(5)—(7) (proposed text unchanged)

C.—H. (proposed text unchanged)

I. "Conviction criminal history record information" means CHRI regarding reportable events which have resulted in a finding of guilt. For the purpose of dissemination [*, a finding of probation before verdict or judgment, or*] *the acceptance of a plea of nolle contendere by a court* [*,*] *shall be considered as conviction CHRI.*

.04 (proposed text unchanged)

.05 Right of an Individual to Inspect his Criminal History Record.

A.—E. (proposed text unchanged)

F. Before an individual may review his record he will verify his identity by fingerprint comparision with the CRCR record through the use of Form CRCR001 [[*as described in these regulations*]].

G.—L. (proposed text unchanged)

M. When an individual returns to review his criminal history record, he shall countersign Form CRCR001. An individual inspecting his criminal history record may make notes of the information [[*but cannot require the agency to make a copy of any information or to remove any document in order to make a copy*]] *or may obtain a certified copy at his expense.*

N. (proposed text unchanged)

.06—.07 (proposed text unchanged)

.08 CRCR Forms. (entire text deleted)

[[*.09*]] *.08*—[[*.10*]] *.09* (proposed text unchanged)

[[*.11*]] *.10* ***Dissemination of Criminal History Record Information.***

A.—B. (proposed text unchanged)

C. Subject to the provisions of §§ [[*(F) and*]] *G, H, and I, below, and except as otherwise authorized by §* [[*(E)*]] *F, below, the CRCR may not disseminate to a non-criminal justice federal, State, or local government agency:*

(1)—(2) (proposed text unchanged)

D. Subject to the provisions of §§ [[*(F) and*]] *G, H, and I, below, and except as otherwise authorized by §* [[*(E)*]] *F, below, the CRCR may not disseminate to a private non-governmental employer or the private employer's designated agent:*

(1) (proposed text unchanged)

(2) Non-conviction CHRI unless the employer is expressly authorized by statute, ordinance, executive order, or court rule, order, or decision specifying the right of access to non-conviction CHRI and the purpose and conditions for access.

E. (proposed text unchanged)

[[*(1) Non-conviction CHRI unless the employer is expressly authorized by statute, ordinance, executive order, or court rule, order or decision specifying the right of access to non-conviction CHRI and the purpose and conditions for access.*]]

F.—N. (proposed text unchanged)

[[*.12*]] *.11*—[[*.14*]] *.13* (proposed text unchanged)

ROBERT J. LALLY
Secretary
Department of Public Safety
and Correctional Services

[Md. R. Doc. No. 78-1743. Filed at Div. of St. Doc. Nov. 17, 1978.]

CRCR. The audit shall insure that CHRI is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of Article 27, §§742--755, Annotated Code of Maryland. A quality control audit of a representative sample of CHRI will be made on a regular basis.

B. The CRCR will establish the methods, procedures, and standards for auditing criminal justice agencies and CHRI repositories.

C. Criminal justice agencies and CHRI repositories will retain and provide access to CHRI source documents, dissemination logs, security manuals, and other data as CRCR may deem necessary to perform an audit assuring adherence to the privacy, security, completeness, accuracy, and dissemination of CHRI.

D. Each criminal justice agency and CHRI repository will be subject to an on-site audit by CRCR to evaluate that agency's compliance with applicable rules, regulations, agreements, and laws pertaining to physical, personnel, and operational security, dissemination, and completeness and accuracy of CHRI.

E. Each criminal justice agency and CHRI repository will cooperate with CRCR in performing audits required by applicable federal and State laws and regulations.

.13 Agreements.

Agreements will be developed between the CRCR and criminal justice agencies and CHRI repositories which will incorporate the principles and requirements of applicable federal and State laws and regulations pertaining to the privacy, security, completeness, accuracy, and dissemination of CHRI.

Administrative History

Effective date: March 2, 1977 (4:5 Md R. 384)
Chapter revised effective December 1, 1978 (5:24 Md R. 1798)

CHAPTER 4

STATUTES

§7. Definitions of statutory terms; statutory construction

"Public records". Twenty-sixth, "Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;

(c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

(d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subparagraph shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;

(e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subparagraph shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids

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(803 CMR 1.00: RESERVED)

803 CMR 2.00: GENERAL INFORMATION

Section

Section 2.01 Authority to Promulgate
Section 2.02 Regulations Do Not Limit Statutory Authority
Section 2.03 Definitions
Section 2.04 CORI Inclusions and Exclusions
Section 2.05 Regulations and Advisory Rulings
Section 2.06 Appendix A

2.01: Authority to Promulgate.

803 CMR is promulgated in accordance with M.G.L. c. 6, s. 168 and s. 173 and s. 175 and M.G.L. c. 30A.

2.02: Regulations Do Not Limit Statutory Authority.

Nothing contained in 803 CMR shall be interpreted to limit the authority granted to the Criminal History Systems Board by M.G.L. c. 6, s. 167 and s. 178 and any other applicable provision of general laws.

2.03: Definitions.

(1) Criminal History Systems Board (CHSB). The CHSB consists of thirteen members as provided by M.G.L. c. 6, s. 168. The CHSB provides for and exercises control over the installation, operation and maintenance of the data processing and data communication systems known as the Criminal Offender Record Information System and performs other duties as provided in 803 CMR.

(2) Security and Privacy Council (Council). The Council consists of nine members as provided by M.G.L. c. 6, s. 170. The Council conducts a continuing study and review and makes recommendations concerning individual privacy and system security in connection with the collection, storage, dissemination and usage of criminal offender record information and performs other duties as provided in 803 CMR.

(3) Criminal Offender Record Information (CORI). CORI is defined as records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceeding, sentencing, incarceration, rehabilitation, or release.

(4) Criminal Justice Agency. A state, or federal court with criminal jurisdiction or a juvenile court; state county or local police; any government agency which incarcerates or rehabilitates juvenile offenders as its principal function; or any government agency which has a primary responsibility to perform duties relating to:
(a) crime prevention including research or the sponsorship of research;
(b) the apprehension, prosecution, defense, adjudication, incarceration or rehabilitation of criminal offenders; or
(c) the collection, storage, dissemination or usage of CORI.

(5) Evaluative Information. Records, data or reports concerning identifiable individuals charged with crime and compiled by Criminal Justice agencies which appraise mental conditions, physical conditions, extent of social adjustment, rehabilitative progress, and the like which are primarily used in connection with bail, pre-trial or post-trial release proceedings, sentencing, correntional and rehabilitative planning, probation, or parole. Such information is not included in the

2.03: continued

definition of CORI, but its dissemination is restricted by 803 CMR and M.G.L. c. 6, s. 172 and s. 178.

(6) Intelligence Information. Records and data compiled by a criminal justice agency for the purposes of criminal investigations, including reports of informants, investigators or other persons or any type of surveillance associated with an identifiable individual. Intelligence shall also include records and data compiled by a criminal justice agency for the purpose of investigating a substantial threat to an individual, or to the order or security of a correctional facility. Such information is not included in the definition of CORI.

(7) Purge. The removal of CORI so that there is no trace of information removed and no indication that such information was removed.

(8) Dissemination. The release of CORI in any communicable form.

(9) Criminal Justice Information System (CJIS). That system referred to in 803 CMR and otherwise known as CJIS is the automated Criminal Offender Record Information System referred to in M.G.L. c. 6, s. 168.

(10) Juvenile Agencies Which Perform Criminal Justice Functions. Agencies of the juvenile justice system which perform as their principal function criminal justice duties or activities with respect to juveniles shall be deemed criminal justice agencies.

(11) Regulations. Regulations includes the whole or any part of any rule, standard, other requirement of general application and future effect, including the amendment or repeal thereof, adopted by the CHSB to interpret or implement the law enforced or administered by the CHSB but does not include:

(a) an advisory ruling of the CHSB;
(b) procedures concerning the internal management or discipline of the CHSB which do not substantially affect the rights of or the procedures available to the public; or
(c) decisions issued in adjudicatory proceedings.

2.04: CORI Inclusions and Exclusions.

(1) Statistical Records and Reports. CORI shall not include statistical data in which individuals are not identified and from which identities are not ascertainable.

(2) Juvenile Data. CORI shall not include information concerning a person who is under the age of seventeen years unless that person is prosecuted criminally.

(3) Photographs and Fingerprints. CORI shall include fingerprints, photographs and other identifying data which is recorded as the result of the initiation of a criminal proceeding. CORI shall not include photographs, fingerprints, or other identifying data of an individual used for investigative purposes if the individual is not identified.

(4) Content, Use, Regulation Pertaining to Evaluative Information. The content and use of evaluative information, and the inspection, receipt of copies and challenge of such information by an individual shall not be governed by 803 CMR except that:

(a) Each criminal justice agency holding evaluative information shall, pursuant to M.G.L. s. 30A, and M.G.L. c. 6, s. 171 promulgate regulations governing the content and use of evaluative information. Such regulations shall provide for the inspecttion, receipt of copies and challange of information by the individual about whom the evaluative information is compiled.
(b) The final adoption of such regulations by each criminal justice

2.04: continued

agency shall be subject to the approval of the Board. Each criminal justice agency shall propose such regulations and transmit the same in writing to the Board within a reasonable period of time following the effective date of these regulations.
(c) If any criminal justice agency holding evaluative information fails to propose or adopt such regulations, the Board may promulgate regulations for that criminal justice agency.

(5) Authorization for Public Dissemination of CORI.
(a) A criminal justice agency with official responsibility for a pending criminal investigation or prosecution may disseminate CORI that is specifically related to and contemporaneous with an investigation or prosecution;
(b) A criminal justice agency may disseminate CORI that is specifically related to and contemporaneous with the search for or apprehension of any person, or with a disturbance at a penal institution;
(c) A criminal justice agency may confirm to individual members of the public, in response to specific inquiries, statements that an offender currently:
1. resides in a correctional or related facility;
2. is on furlough, parole or probation, or pre-release status;
3. is a participant in a rehabilitation or education program.

(6) Dissemination of CORI During Certain Proceeding. No provision of these regulations shall be construed to prohibit disseminaton of criminal offender record information in the course of criminal proceedings, or other proceedings expressly required by a statute to be made public, including published opinions, where such disclosure is limited to that necessary to carry on such proceedings effectively.

(8) Public Records. CORI shall not include public records as defined in M.G.L. c. 4, s. 6 including police daily logs under M.G.L. c. 41, s. 98F.

(9) Certain Published Records. CORI shall not include published records of public court or administrative proceedings, or public judicial, administrative or legislative proceedings.

(10) Exclusion of Minor Offenses. CORI shall not include information concerning offenses that are not punishable by incarceration.

(11) Summons and Subpoena. Nothing in these regulations shall prohibit an agency from disseminating CORI pursuant to a valid subpoena or summons issued by a court or a body or person authorized by law to issue such process.

2.05: Regulations and Advisory Rulings.

(1) Initial Procedure to Handle Recommended Regulations. Upon receipt of a petition for the adoption, amendment or repeal of a regulation submitted pursuant to 803 CMR 6.12 upon written recommendation by a member of the CHSB that a regulation be adopted, amended, or repealed, the CHSB shall determine whether to schedule proceedings in accordance with 803 CMR 2.05(2). If the petition has been presented to the CHSB under 803 CMR 4.12, the chairman of the CHSB shall, within ten days after such determination, notify the petitioner of the CHSB's action.

(2) Procedure for the Adoption, Amendment or Repeal of Regulations When a Public Hearing is Required.
(a) Notice. Notice of a public hearing shall be given at least twenty-one (21) days prior to the date of the hearing unless some other time is specified by any applicable law. The CHSB shall

2.05: continued

notify the Secretary of State of the public hearing at least thirty (30) days in advance thereof in accordance with M.G.L. c. 6, s. 171 , c. 30A, s. 2. The CHSB shall publish the notice in at least one (1) newpaper of general circulation, and where appropriate, in such trade, industry or professional publications as the CHSB may select. The CHSB shall notify in writing any person or group which has filed a written request for notice pursuant to 803 CMR 2.05, or specified by law to receive such notice. The notice shall contain the following:

1. the CHSB's statutory authority to adopt, amend or repeal regulations;
2. the time and place of the public hearing;
3. the express terms or substance of the proposed repeal of a regulation.
4. any additonal matter required by any law.

The above notwithstanding, the CHSB shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

(b) Procedure. At the time and place designated in the notice referred to in 803 CMR 2.05(2)(a), the CHSB shall hold a public hearing. The hearing shall be presided over by the chairman or other member designated by the chairman. Within ten (10) days after the close of the public hearing, written statements and arguments may be filed with the CHSB unless the CHSB in its discretion finds such to be unnecessary. The CHSB shall consider all relevant matters presented to it before adopting, amending or repealing any regulation.

(c) Oral Participation. All interested persons shall be given an opportunity to make an oral presentation. In its diescretion, the CHSB may limit the length of oral presentation.

(d) Emergency Rule. If the CHSB finds that the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of reouirements of notice and public hearings would be contrary to the public interest, the CHSB may dispense with such requirements and adopt the regulation as an emergency in accordance with M.G.L. 30A, s. 2.

The CHSB's finding and brief statement of the reasons for its finding shall be incorporated in the emergency regulations as filed with the Secretary of State. Any emergency regulation so adopted shall state the date on which it is to be effective and the date upon which it shall expire. If no effective date is stated, the regulation shall be presumed to take effect upon being filed with the Secretary of State under 803 CMR 2.05(4). An emergency regulation shall not remain in effect for longer than three (3) months unless during the time it is in effect the CHSB gives notice and holds a public hearing and adopts it as a permanent regulation in accordance with these regulations.

(3) Availability of Regulations. The Chairman of the CHSB shall be responsible for keeping all the CHSB's regulations. All the regulations of the CHSB shall be available for inspection during normal business hours at the CHSB's offices. Copies of all regulations shall be available to any person on request. The CHSB may charge a reasonable fee for each copy.

(4) Filing of Regulations. Upon the adoption of a regulation, two attested copies ahll be filed with the Secretary of State together with a citation of the statutory authority under which the regulation has been promulgated. The regulation shall take effect upon publication pursuant to M.G.L. c. 30A, s. 6 unless a later date is required by any law or is specified by the CHSB.

(5) Advisory Ruling.

(a) Any interested person or his or her attorney may at any time

2.05: continued

request an advisory ruling with respect to the applicability to any factual situation of any statute or regulation enforced or administered by the CHSB. The request shall be to the CHSB by mail or delivered in person during normal business hours.
(b) All requests shall be signed by the reouesting party or the requesting party's attorney, contain the requesting party's address or the address of his or her attorney, and state clearly and concisely the substance of the request. The request may be accompanied by any supporting data, or arguments. If the CHSB determines that an advisory ruling will not be rendered, the CHSB shall as soon as practicable notify the requesting party that the request is denied. If an advisory ruling is rendered, a copy of the ruling shall be sent to the requesting party or his or her attorney.
(c) The CHSB may notify any person that an advisory ruling has been requested and may receive and consider arguments or data from persons other than the person requesting the ruling.

(6) Request for Notice.
(a) Any person or organization may file a request in writing to receive notice of meeting, rulings, hearings or regulations which may affect such person or group.
(b) the request shall contain the name and address of such person or organization.

(7) Rules of Adjudicatory Proceedings. Pursuant to M.G.L. c.30A, s.9, the CHSB shall conduct all adjudicatory proceedings in accordance with 801 CMR 1.00.

2.06: Appendix A: FORMS

(1) Dissemination Log

DISSEMINATION LOG

All Criminal Offender Record Information (CORI) disseminated outside your agency must be recorded on this form or a similar form. The information must be maintained for at least one year from the date of dissemination and shall be made available for audit or inspection by the Criminal History System Board and Security and Privacy Council.

Date of Dissemination	Name of Offender	Name and address of party to whom CORI disseminated

2.06: continued

(2) Complaint Form for Exceptions to Criminal Offender Record Information

Complaint form for Exceptions to

Criminal Offender Record Information

Each individual reviewing his or her own Criminal Offender Record Information (CORI) has the right of challenge under M.G.L. c. 6, s. 175. Any complaints concerning the contents, accuracy, completeness, mode of maintenance and/or disclosure of CORI should be made on this form and submitted to the Criminal History Systems Board. One Ashburton Place, Boston, MA 02108. One copy of this form will be forwarded to the agency in question and a second copy will be forwarded to the Security and Privacy Council.

1. Individual making exceptions

   a. Name: _____
   LAST FIRST MIDDLE

   b. Current Address: _____

   _____

   c. Telephone No.: ( ) _____

   d. Date of Birth: _____

2. CORI about which you have a complaint or are making an exception.

   a. Agency where CORI was inspected

      Name of Agency: _____

      Address: _____

   b. Date of CORI was inspected: _____

3. ATTACH A COPY OF THE CORI to this form.

4. Set forth in the space below the details concerning the complaint or exceptions. Attach additional sheets, if needed.

Under the penalties of perjury I affirm that the statments and representations I have made regarding this complaint are in good faith and true to the best of my knowledge and belief.

_____ _____

DATE SIGNATURE

2.06: continued

(3) Application for Access to Criminal Offender Record Information for the Purpose of Research

CHSB Form 6.01

EDWARD J. KING
Governor
GEORGE A. LUCIANO
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety
Criminal History Systems Board
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-0590

WILLIAM HIGGINS, JR.
Chairman
LOUIS H. SAKIN
Executive Director

APPLICATION FOR ACCESS TO

CRIMINAL OFFENDER RECORD INFORMATION FOR

THE PURPOSE OF RESEARCH

All researchers must obtain a copy of Criminal History Systems Board regulations pertaining to research 803 CMR 8.01-8.03.

I. Title of Research Proposal:

II. Name of Principal Researcher:

Address:

Telephone No.:

III. Attachments

A.

Attach to this form a letter on the official letterhead of the institution/agency. The letter should state that this research project has been thoroughly reviewed by the institution/agency and found to be conducted for valid educational, scientific or other legitimate public purpose. The letter should be signed by the supervisor of the principal researcher.

B.

Attach to this form a detailed description of the research proposal. It must include with specificity a description of the type of criminal offender record information (CORI) which is required for the research, where the CORI is located, and the purposes for which the CORI is required.

2.06: continued

(3) continued

IV. Preservation of Subject Anonymity; Destruction of Identifying Data

In the space below, or on an attachment, describe the procedures that will be taken to comply with 803 CMR 8.02 regarding preservation of subject anonymity and destruction of identifying data.

V. I hereby affirm that all facts and representations made in this application and in all accompanying agreements of non-disclosure are true and accurate to the best of my knowledge, information and belief.

_____ _____

Date Signature of Principal Researcher

2.06: continued

(4) Agreement of Non-disclosure

AGREEMENT OF NON-DISCLOSURE

Every research member, including the principal researcher, must complete the following agreement. This form may be reproduced as needed.

Name of researcher:

Address:

Telephone No.:

Title of research project:

I hereby agree, as a member of this research project, not to disclose to any unauthorized party any criminal offender record information from which an individual might be identified.

(Signature must be witnessed by a Notary Public.)

Date

Signature of Researcher

Notary Public
My commission expires:

2.06: continued

(5) Certification Request Form for Non-criminal Justice Agencies Seeking Access to Criminal Offender Record Information

This form is for the use of non-criminal justice agencies or individuals requesting certification for access to Criminal Offender Record Information (CORI) pursuant to M.G.L. c. 6, s. 172(b) and 803 CMR 5.01 and 5.03.

1. Agency or individual seeking certification

   Name: _____

   Address: _____

   Telephone No.: ___( )_____

   Person to contact: _____

2. Cite specifically the statutory provisions(s) (e.g. M.G.L. c. 138, s. 12(4)) upon which you base your request.

State/Federal Statute	Chapter/Title/ Article No.	Section No.	Paragraph No.

3. Attach a copy of the above provision(s) and indicate, by marking, the specific language upon which you base your request.

4. State the need for access to CORI relative to the statutory responsibilities cited in items 2 and 3 above.

5. For banks only - attach a copy of your FDIC certificate.

   For security guard companies - attach a copy of your license from the Department of Public Safety.

I hereby affirm that all facts and representations made in this document are true and accurate to the best of my knowledge, information and belief.

_____
Signature of person filling out form

_____
Title

2.06: continued

(5) continued

Certification Request Form for Criminal Justice Agencies

Seeking Access to Criminal Offender Record Information

This form is for the use of criminal justice agencies requesting certification for access to Criminal Offender Record Information (CORI) pursuant to M.G.L. c. 6, s. 172(a) and 803 CMR 5.01 and 5.03.

1. Agency making request

   Name: _____

   Address: _____

   Telephone No.: ___( )_____

   Person to be contacted: _____

2. Cite specifically the statutory or regulatory provisions which establish your agency as a governmental agency involved in criminal justice activities, and the provisions which indicate your agency's need for CORI.

State/Federal Statute	Chapter/Title/No.	Section No.	Paragraph No.

3. Attach a copy of the above provision(s) and indicate, by marking, the specific language upon which you base your request.

4. State your agency's need for access to CORI relative to the above cited provision(s) and to the actual performance of its criminal justice duties and responsibilities.

I hereby affirm that all facts and representations made in this document are true and accurate to the best of my knowledge, information and belief.

_____
Signature of person filling out form

_____
Title

2.06: continued

(6) Authorization for Third Parties (Including Attorneys) to Inspect and/or Copy Criminal Offender Record Information

CHSB Form 4.06(a)

This form must be retained and stored by the agency holding the criminal record

AUTHORIZATION FOR THIRD PARTIES

(INCLUDING ATTORNEYS)

TO INSPECT AND/OR COPY

CRIMINAL OFFENDER RECORD INFORMATION

1. Identification of the individual named in the criminal record

1. Name: _____
First Middle Last

2. Date of Birth: ____/____/____
Month Day Year

3. Social Security Number: _____

4. Permanent Address: _____

_____

5. Mother's maiden name: _____

I hereby authorize _____
name of authorized agent

to inspect and/or copy my own criminal record.

_____ _____
Date Signature of individual named in criminal record

2.06: continued

(6) continued

CHSB Form 4.06(a) -2-

II. Identification of Individual Authorized to Inspect and/or Copy the Criminal Record

1. Name: _____
First Middle Last

2. Current Address: _____

_____

I (check one) (am ☐ presently
(am not ☐
a correctional inmate or parolee.

I (check one) (have ☐ been a
(have not ☐
correctional inmate or parolee within the last five years.

I hereby swear or affirm under the penalties of perjury that the above information is correct; that I have been authorized to inspect and/or copy the criminal record of the individual; and that I will not use this authorization for the purpose of gaining access to any other person's criminal record.

_____ _____
Date Signature of authorized third party

REGULATORY AUTHORITY

803 CMR 2.00: M.G.L. c. 6, ss. 168, 173, 175

2.06: continued

(6) Authorization for Third Parties (Including Attorneys) to Inspect and/or Copy Criminal Offender Record Information

CHSB Form 4.06(a)

This form must be retained and stored by the agency holding the criminal record

AUTHORIZATION FOR THIRD PARTIES

(INCLUDING ATTORNEYS)

TO INSPECT AND/OR COPY

CRIMINAL OFFENDER RECORD INFORMATION

1. Identification of the individual named in the criminal record

1. Name: _____
First Middle Last

2. Date of Birth: ____/____/____
Month Day Year

3. Social Security Number: _____

4. Permanent Address: _____

_____

5. Mother's maiden name: _____

I hereby authorize _____
name of authorized agent

to inspect and/or copy my own criminal record.

_____ _____
Date Signature of individual named in criminal record

803 CMR 3.00: ACCESS PROCEDURES (CERTIFICATION)

Section 3.01 General Requirements
Section 3.02 Criminal Justice Agencies: Eligibility for Access
Section 3.03 Non Criminal Justice Agencies: Eligibility for Access
Section 3.04 Joint Sub Committee of the CHSB and Council to Screen Request for Certification under M.G.L. c. 6, s. 172(c)
Section 3.05 Final Certification Procedures for M.G.L. c. 6, s. 172(c) Certifications
Section 3.06 Joint Meeting of CHSB and Council
Section 3.07 Computer Terminal Access to CORI
Section 3.08 Limitations on Access to CORI
Section 3.09 Access by other than Personal Identifying Information
Section 3.10 Listing of Dissemination of CORI
Section 3.11 Listing of Certified Agencies

3.01: General Requirements.

(1) Any individual or agency requesting certification for access to CORI under the provisions of M.G.L. c. 6, s. 172 shall apply in writing to the CHSB or the Security and Privacy Council. Such application shall be made on one of the following forms contained in the Appendix to these regulations: 8.03 CMR 2.06, CHSB Form 172(b) (Non Criminal Justice Agency Request), CHSB Form 172(c) (Public Interest Request).

(2) Within a reasonable time of receipt by the CHSB of sufficient data on which to base a determination regarding an application under M.G.L. c. 6, s. 172(a) or (b) and following consultation with the Security and Privacy Council, the CHSB shall meet and consider the application for certification. Requests for certification under M.G.L. c. 6, s. 172(c) shall be considered according to 803 CMR 3.04 through 803 CMR 3.06

(3) No CORI shall be disseminated to any such agency or individual prior to certification by the CHSB.

3.02: Criminal Justice Agencies: Eligibility for Access.

(1) In order to obtain certification as a criminal justice agency pursuant to M.G.L. c. 6, s. 172(a), the agency requesting such certification must show that it conforms to the definiton of "Criminal Justice Agency" which appears in M.G.L. c. 6, s. 167 and 803 CMR 2.03

(2) Only those officials and employees of Criminal Justice Agencies as determined by the administrative heads of such agencies to require CORI for the actual performance of their criminal justice duties shall have access to CORI. Such administrative heads shall maintain for inspection by the CHSB, a list of such authorized employees by position, title, or name.

(3) Consultants and contractors to criminal justice agencies shmll complete a written agreement to use CORI only as permitted by M.G.L. c. 6, s. 167 and s. 178 and these regulations. Such agreements shall be held by the criminal justice agency and the CHSB.

(4) A certified criminal justice agency which is a subunit of a non-criminal justice agency shall not disseminate CORI, directly or through any intermediary, to any uncertified official, employee, consultant or contractor of the non-criminal justice agency of which it is a part.

3.03: Non Criminal Justice Agencies: Eligibility for Access.

(1) In order to obtain certification pursuant to M.G.L. c. 6, s. 172(b), a non criminal justice agency must show that it is required to have access to CORI by statute.

3.03: continued

"Required to have access by statute" means that there is a specific statutory directive that such individual or agency:
(a) Have access to CORI or;
(b) Must use CORI in the exercise of its decision making process.
(c) The following shall not constitute sufficient justification for certification under this section:
1. An administrative or executive directive, in the absence of specific statutory language;
2. A statutory requirement to consider good character, moral character, trustworthiness or similar subjective characteristics.

(2) Consultants and contractors to non-criminal justice agencies shall complete a written agreement to use CORI only as permitted by M.G.L. c. 6, s. 167-178 and these regulations. Such agreements shall be held by the criminal justice agency and the CHSB.

(3) A certified non-criminal justice agency which is a subunit of a non-criminal justice agency shall not disseminate CORI, directly or through any intermediary, to any uncertified official, employee, consultant or contractor of the non-criminal justice agency of which it is a part.

3.04: Joint Sub Committee of the CHSB and Council to Screen Request for Certification under M.G.L. c. 6, s. 172(c).

(1) There shall be a joint subcommittee of the CHSB and Security and Privacy Council composed of at least two members, or the designees, of each agency.

(2) The Joint Subcommittee shall meet to consider applications for certification under M.G.L. c. 6, s. 172 (c) and shall make recommendations to the Board and Council concerning those applications.
(a) Written recommendations of the Joint Subcommittee shall specify:
1. The identity of the agency or individual under consideration for certification.
2. Whether the agency should be certified to receive CORI and the reasons supporting this recommendation.
3. The extent of access to CORI, if any, for which this agency or individual should be be certified.

3.05: Final Certification Procedures for M.G.L. c. 6, s. 72(c) Certifications.

(1) The Council shall meet prior to the CHSB and shall:
(a) Determine whether a requesting agency or individual should be certified for access to CORI and state the reasons therefor.
(b) Determine the extent of access to CORI, if any, for which the agency or individual should be certified.
(c) Transmit all determinations to the CHSB as soon as practicable.

(2) The CHSB shall meet following the Council meeting and shall determine:
(a) Whether a requesting agency or individual should be certified for access to CORI and state the reasons therefore.
(b) The extent of access to CORI, if any, for which the agency or individual should be certified.

3.06: Joint Meeting of CHSB and Council.

If both the CHSB and Council have separately determined that a requesting agency or individual should be certified, a majority of CHSB and Council members present at a duly scheduled CHSB meeting shall determine by majority vote the extent of access to CORI for which such agency or individual shall be certified.

803 CMR 3.00: ACCESS PROCEDURES (CERTIFICATION)

Section 3.01 General Requirements
Section 3.02 Criminal Justice Agencies: Eligibility for Access
Section 3.03 Non Criminal Justice Agencies: Eligibility for Access
Section 3.04 Joint Sub Committee of the CHSB and Council to Screen Request for Certification under M.G.L. c. 6, s. 172(c)
Section 3.05 Final Certification Procedures for M.G.L. c. 6, s. 172(c) Certifications
Section 3.06 Joint Meeting of CHSB and Council
Section 3.07 Computer Terminal Access to CORI
Section 3.08 Limitations on Access to CORI
Section 3.09 Access by other than Personal Identifying Information
Section 3.10 Listing of Dissemination of CORI
Section 3.11 Listing of Certified Agencies

3.01: General Requirements.

(1) Any individual or agency requesting certification for access to CORI under the provisions of M.G.L. c. 6, s. 172 shall apply in writing to the CHSB or the Security and Privacy Council. Such application shall be made on one of the following forms contained in the Appendix to these regulations: 8.03 CMR 2.06, CHSB Form 172(b) (Non Criminal Justice Agency Request), CHSB Form 172(c) (Public Interest Request).

(2) Within a reasonable time of receipt by the CHSB of sufficient data on which to base a determination regarding an application under M.G.L. c. 6, s. 172(a) or (b) and following consultation with the Security and Privacy Council, the CHSB shall meet and consider the application for certification. Requests for certification under M.G.L. c. 6, s. 172(c) shall be considered according to 803 CMR 3.04 through 803 CMR 3.06

(3) No CORI shall be disseminated to any such agency or individual prior to certification by the CHSB.

3.02: Criminal Justice Agencies: Eligibility for Access.

(1) In order to obtain certification as a criminal justice agency pursuant to M.G.L. c. 6, s. 172(a), the agency requesting such certification must show that it conforms to the definiton of "Criminal Justice Agency" which appears in M.G.L. c. 6, s. 167 and 803 CMR 2.03

(2) Only those officials and employees of Criminal Justice Agencies as determined by the administrative heads of such agencies to require CORI for the actual performance of their criminal justice duties shall have access to CORI. Such administrative heads shall maintain for inspection by the CHSB, a list of such authorized employees by position, title, or name.

(3) Consultants and contractors to criminal justice agencies shmll complete a written agreement to use CORI only as permitted by M.G.L. c. 6, s. 167 and s. 178 and these regulations. Such agreements shall be held by the criminal justice agency and the CHSB.

(4) A certified criminal justice agency which is a subunit of a non-criminal justice agency shall not disseminate CORI, directly or through any intermediary, to any uncertified official, employee, consultant or contractor of the non-criminal justice agency of which it is a part.

3.03: Non Criminal Justice Agencies: Eligibility for Access.

(1) In order to obtain certification pursuant to M.G.L. c. 6, s. 172(b), a non criminal justice agency must show that it is required to have access to CORI by statute.

3.07: Computer Terminal Access to CORI.

Computer terminal access to CORI shall be limited to certified criminal justice agencies, unless such access is otherwise authorized by the CHSB.

3.08: Limitations on Access to CORI.

The extent of access to CORI shall be limited to that necessary for the actual performance of the Criminal Justice duties of criminal justice agencies under M.G.L. c. 6, s. 172(a), to that necessary for the actual performance of the statutory duties of agencies and individuals granted access under M.G.L. c. 6, s. 172(b), and to that necessary for the actual performance of the actions or duties sustaining the public interest as to agencies or individuals granted access under M.G.L. c. 6, s. 172(c).

3.09: Access by Other Than Personal Identifiying Information.

Except for approved research program or upon written authorization of the CHSB and the head of the agency whose CORI is sought, access to and dissemination of CORI shall be limited to inquiries based on name, fingerprints or other personal identifying characteristics.

3.10: Listing of Dissemination of CORI.

Each agency or individual certified by the CHSB shall maintain a listing of CORI disseminated and the agencies or individuals to whom it has disseminated each item of CORI. Such listing shall be on a form prescribed by the CHSB and maintained for at least one year from the date of dissemination. Such listing shall be made available for audit or inspection by the CHSB and Security and Privacy Council.

3.11: Listing of Certified Agencies.

The CHSB shall maintain a list of all agencies certified under M.G.L. c. 6, s. 172(a)(b)(c) and s. 173. A copy of such list shall be provided to any individual or agency on request.

REGULATORY AUTHORITY

803 CMR 3.00: M.G.L. c. 6, ss. 168, 173, 175

803 CMR 4.00: INDIVIDUAL RIGHTS, NOTIFICATION, INSPECTION

Section 4.01 Notice to Individuals
Section 4.02 Release of CORI to Individuals
Section 4.03 Inspection of CORI in Manual Systems
Section 4.04 Inspection of CORI in CJIS
Section 4.05 Copies of CORI and Documents Indicating the Absence of a Record
Section 4.06 Authorization of Third Parties to Inspect and Copy CORI
Section 4.07 Complaints About CORI; Security & Privacy Council Review of Inaccurate, Incomplete or Misleading CORI
Section 4.08 Criminal History Systems Board Review of Improper Dissemination or Maintenance Complaints
Section 4.09 Action Upon Complaints
Section 4.10 Circulation of Challenged Records
Section 4.11 Audits
Section 4.12 Petition for Issuance, Amendment, or Repeal of Regulation

4.01: Notice to Individuals.

(1) The notice referred to in 803 CMR 4.01(2) shall be posted in all state and county correctional facilities, jails and probation and parole supervision offices. The notice shall be posted in places readily accessable to CORI subjects.

(2) Annually, the Executive Director shall file with the Secretary of State and cause to be published in one or more newspapers of general circulation in each standard metropolitan statistical area of the Commonwealth, once each week for three consecutive weeks a notice setting forth in clearly understandable language the following:

(a) The name, title, and address of the Executive Director of the CHSB;

(b) A definition of CORI;

(c) Notification that any individual who thinks CORI with respect to him or her is held in the system may have a search made, and, if such information is so held, may inspect, copy and challange it as provided in these regulations;

(d) The location where CORI in the automated system may be inspected; and

(e) A statement that the notice is published in compliance with these regulations and an indication as to where a copy of these regulations may be obtained.

4.02: Release of CORI to Individuals.

(1) Each individual shall have the right to inspect and copy CORI relating to him or her in accordance with M.G.L. c.6, s.175 and these regulations.

(2) Any individual who is denied the right to inspect or copy CORI relating to him or her may, within 30 days of such denial, petition the CHSB for an order requiring the release of such CORI. The CHSB shall act on such petition within 60 days of receipt.

4.03: Inspection of CORI in Manual Systems.

Agencies at which criminal offender records are sought to be inspected shall prescribe reasonable hours and places of inspection, and shall impose such additional restrictions as may be approved by the board, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them.

4.04: Inspection of CORI in CJIS.

CORI maintained in CJIS shall be available for inspection by the individual to whom it refers at reasonably convenient locations designated by the CHSB. The CHSB shall designate at least one such location within each county.

4.05: Copies of CORI and Documents Indicating the Absence of a Record.

(1) An individual shall have a right to receive, if practicable, a computer print-out or a photocopy of CORI, including personal identifiers, referring to him or her.

(2) If no CORI referring to the requesting individual can be found in the criminal justice agency's files, then such agency shall disclose this fact to the individual, in writing if requested.

(3) In order for any individual other than the individual named in the CORI to inspect and or copy CORI under this section, all requirements of 803 CMR 4.06 must be met.

(4) An agency holding CORI may impose a reasonable charge for copying services, not to exceed its usual charges to the public for such services, or the actual cost of such copying, whichever is less.

(5) An individual may make and retain a written summary or notes of the CORI reviewed and he or she may take with him or her such summary of notes.

4.06: Authorization of Third Parties to Inspect and Copy CORI.

(1) An individual named in CORI may give his or her informed written authorization to third parties, including but not limited to attorneys, family members, and persons or agencies furthering the individual's health or rehabilitation, to inspect and copy CORI pertaining to that individual. A third party so authorized may inspect and copy CORI in accordance with 803 CMR 4.05 upon presenting such authorization and satisfactory identification to the agency holding the CORI. Wehre the individual is unable, due to a physical or mental incapacity, to give such informed written authorization, a criminal justice agency may disseminate CORI necessary for treatment purposes or for notifying families of the physical or mental healti of an individual without such authorization. This provision shall not apply to consultants and contractors under 803 CMR 3.01(3).

(2) An attorney authorized to inspect and copy an individual's CORI may further designate, in writing, an agent to act on his or her behalf in inspecting or copying an individual's CORI. If such agent is not himself or herself an attorney, the attorney shall provide, in addition a statement indicating that the agent is acting under the attorney's supervision.

(3) All authorizations and designations pursuant 803 CMR 4.06(1) and (2) received by agencies holding CORI shall be retained in the individual's case record.

(4) If a party authorized for access to CORI pertaining to another individual is either presently or has been within the last five years a correctional inmate or a parolee, such access shall be permitted only upon approval of the agency holding the CORI.

(5) A party authorized for access to CORI pertaining to another individual shall be prohibited from making any further dissemination of such CORI, except to the individual who has given such auhorization. Upon disseminating CORI pursuant to this section, criminal justice agencies shall provide authorized parties with written notice of this

4.06: continued

prohibition and of the statutory penalties for improper dissemination of CORI.

(6) Where a criminal justice agency has reason to suspect the bona fide basis or authenticity of a third party authorization, the agency may refuse to allow the party purportedly authorized to inspect or copy CORI. Such a situation may arise where the agency suspects that the authorization has been coerced, or given for an unlawful purpose. When refusing a request to inspect and copy CORI on this basis, the agency shall notify the individual to whom the CORI pertains of such refusal and of the right to petition the CHSB for review of such refusal.

(7) Agencies shall implement 803 CMR in a manner consistent with the provisions of M.G.L. c. 151, s. 4 restricting an employer's right to condition employment on an applicant being required to disclose certain CORI.

4.07: Complaints About CORI; Security & Privacy Council Review of Inaccurate, Incomplete or Misleading CORI.

(1) If an individual believes his CORI is inaccurate, incomplete or misleading, he shall make a request in writing to the agency having custody or control of the records to modify them. If the agency declines to so act, or if the individual believes the agency's decision to be otherwise unsatisfactory, the individual may in writing request review by the Security & Privacy Council.

(2) Whenever an individual brings a complaint to the attention of the Council, the Council shall review said complaint to determine whether a prima facie basis for the complaint has been established.

(3) The Council shall, in each case in which it finds prima facie basis for complaint, conduct a hearing at which the individual may appear with counsel, present evidence, and examine and crossexamine witnesses.

(4) Written findings shall be issued within sixty days of receipt by the Council of the request for review. Failure to issue findings shall be deemed a decision of the Council. If the record in question is found to be inaccurate, incomplete or misleading, the Council shall recommend to the CHSB that appropriate action be taken in accordance with 803 CMR 6.09.

4.08: Criminal History Systems Board Review of Improper Dissemination or Maintenance Complaints.

If an individual believes that CORI referring to him has been improperly maintained or disseminated, he shall record such complaint on a form approved by the CHSB. The form shall include an oath or affirmation signed by the individual, that the exceptions are made in good faith and that they are, to the best of the individual's knowledge and belief, true. The form shall be forwarded to the CHSB.

4.09: Action Upon Complaints.

(1) The CHSB may require the individual making the complaint and any criminal justice agency within the state to file or present in person such written and oral statements, testimony, documents and arguments as the interests of justice may require.

4.09: continued

(2) The CHSB shall issue written findings of fact, conclusions and orders, in which the relief, if any, to which an individual is entitled and the basis of its decision are fully and specifically described.

4.10: Circulation of Challenged Records.

CORI challenged under the provisions of 803 CMR shall be deemed to be accurate, complete and valid until otherwise ordered by the CHSB.

4.11: Audits.

All forms, authorizations, statements and the like required by these regulations shall be maintained by the certified party holding the CORI and be subject to inspection by the CHSB and the Council.

4.12: Petition for Issuance, Amendment, or Repeal of Regulation.

Pursuant to M.G.L. c. 30A, s. 4 any interested person or his attorney may file with the CHSB a petition for the adoption, amendment or repeal of any regulation. The petition shall be sent to the CHSB by mail or deliverd in person during normal business hours. All petitions shall be signed by the petitioner or his or her attorney, contain his or her address or the address of his or her attorney, set forth clearly and concisely the text of the proposed regulation, and shall include any data, or arguments deemed relevant by the petitioner.

REGULATORY AUTHORITY

803 CMR 4.00: M.G.L. c. 6, ss. 168, 173, 175.

803 CMR 5.00: CRININAL JUSTICE INFORMATION SYSTEM, CONTENTS, COMPUTERIZATION

Section 5.01 Content and Identification Standards
Section 5.02 Access to Nonguilty Dispositions and Sealed Records
Section 5.03 Access to Inactive Records Restricted
Section 5.04 Access Restrictions
Section 5.05 Protection from Accidental Loss or Injury
Section 5.06 Protection Against Intentional Harm
Section 5.07 Unauthorized Access
Section 5.08 Personnel Security
Section 5.09 User Agreements

5.01: Content and Identification Standards.

(1) CORI compiled by each criminal justice agency shall be entered into and maintained in CJIS in accordance with procedures established by the CHSB.

(2) The Executive Director of the CHSB shall adopt procedures to ensure a high degree of certainty that CORI maintained in CJIS is correctly identified with the individual to whom it pertains.

5.02: Access to Nonguilty Dispositions and Sealed Records.

(1) All CORI relating to a criminal proceeding which has resulted in a nonguilty disposition and sealed records as defined in 803 CMR 5.02(3) shall be disseminated only in accordance with 803 CMR 5.04.

(2) Nonguilty dispositions shall include the following results of criminal proceedings:
(a) the finding by a court or jury of not guilty;
(b) the reversal of conviction on appeal where there is no possibility of further trial;
(c) the return by a grand jury of a no bill;
(d) the finding by a court of no probable cause;
(e) the filing of a nolle prosequi by the prosecutor or a dismissal;

(3) Sealed records shall include all records which have been sealed pursuant to court order or the administrative action of the Commissioner of Probation pursuant to M.G.L. c. 276, s. 100A, B, C.

5.03: Access to Inactive Records Restricted.

(1) All CORI relating to a criminal proceeding which has attained inactive status as defined herein shall be disseminated only in accordance with 803 CMR 5.04

(2) CORI which has attained inactive status shall include:
(a) All CORI relating to felony offenses provided that:
1. a period of 15 years has elapsed from the date of the criminal offender's final contact with any criminal justice agency relating to the particular felony offense, and;
2. the criminal offender has not been convicted of any criminal offense, except minor motor vehicle offenses, from that date to the present;
(b) All CORI relating to misdemanor offenses provided that:
1. a period of 10 years has elapsed from the date of the criminal offender's final contact with any criminal justice agency relating to the particular misdemeanor offense, and;
2. the criminal offender has not been convicted of any criminal offense, except minor motor vehicle offenses, from that date to the present, and;
3. the criminal offender has never been convicted of a felony.

5.03: continued

(3) The above notwithstanding, no CORI which relates to an individual against whom any criminal proceeding is currently pending shall be considered as having attained inactive status.

5.04: Access Restrictions.

(1) Access to all CORI which is restricted pursuant 803 CMR 5.02 and 5.03 shall be denied except:
(a) to the Criminal History Systems Board and the Security and Privacy Council where necessary to discharge the statutory responsibilities of those agencies;
(b) for purposes of research in accordance with 803 CMR 6.00 and subject to the prior approval of the Criminal History Systems Board;
(c) to the individual to whom such CORI pertains;
(d) to any criminal justice agency only to the extent necessary to conduct a pending criminal investigation or pending criminal proceeding or a pre-employment investigation of prospective criminal justice personnel;
(e) pursuant to court order to the extent specified in such order;

(2) With respect to CORI which is restricted pursuant to 803 CMR 5.02 a statement of "no record" shall be given in response to all inquiries not subject to the exceptions of 803 CMR 5.04(1)

5.05: Protection from Accidental Loss or Injury.

The Executive Director of the CHSB shall institute procedures for protection of information in CJIS from environmental hazards including fire, flood.and power failure.

5.06: Protection Against Intentional Harm.

The Executive Director of the CHSB shall institute procedures for protection of information in CJIS from environmental hazards including fire, flood and power failure.

5.07: Unauthorized Access.

The Executive Director of CHSB shall maintain controls over access to information in the automated CORI system by requiring identification, authorization and authentication of systems' users and their need to know.

5.08: Personnel Security.

(1) The Executive Director of the CHSB shall cause to be investigated the previous employment and criminal record of employees and contractors assigned to CORI systems.

(2) Investigations shall be conducted prior to assignment to the CORI system. Willful giving of false information shall disqualify an applicant or employee from assignment to the CORI system.

5.09: User Agreements.

The Executive Director of the CHSB shall cause each user of CJIS to execute a User Agreement. Content and form of said User Agreement shall be subject to the approval of the CHSB.

REGULATORY AUTHORITY

803 CMR 5.00: M.G.L. c. 6, ss. 168, 173, 175.

803 CMR 6.00: ACCESS TO CORI FOR RESEARCH PURPOSES

Section 6.01 Application Requirements
Section 6.02 Preservation of Subject Anonymity: Destruction of Identifying Data
Section 6.03 Inspection by Board and Council: Compliance

6.01: Application Requirements.

(1) Individuals and agencies requiring access to CORI for purposes research shall apply to the Board for such access, on form 6.01 approved by the CHSB and contained in the Appendix 803 CMR 2.06, except that any criminal justice agency holding CORI may utilize such CORI for research purposes.

(2) Any applicant for access to CORI shall be required to demonstrate that the research project is being conducted for valid educational, scientific, or other public purposes.

(3) All applicants shall provide to the Board a detailed description of the research project specifying the type of CORI required and the reason for which such CORI is required.

(4) The Board shall base its disposition of a request for access to CORI upon the pruposes for which the research is being conducted, the quality of the research project design, and the compliance with requirements pertaining to subject anonymity contained in 803 CMR 6.02.

6.02: Preservation of Subject Anonymity: Destruction of Identifying Data.

(1) All research projects and all published products of such research projects shall be designed to preserve the anonymity of the individuals about whom CORI relates. All applicants shall designate and specifically identify to the Board those project members responsible for preserving the anonymity of research subjects.

(2) Research projects afforded access to CORI pursuant to the regulations shall be limited to inspecting and extracting such data in accordance with 803 CMR 6.02.

(3) The project researchers shall segregate identifying data from the rest of the CORI by assigning an arbitrary code consisting of an original, nonduplicating number which shall be maintained in a a secure place under the control of the project director. Access to such code shall be limited to the project director and those project members specifically identified as responsible for preserving the anonymity of research pursuant to 803 CMR 6.02(1).

(4) Upon termination of the research project, the project director shall destroy the code developed pursuant to 803 CMR 6.02(3) and attest to the Board in writing that such destructions has been effected.

(5) The project director and each members of the research staff shall be required to complete an agreement not to disclose any CORI to unauthorized persons. See the Appendix to 803 CMR 2.06. Such agreement shall be held by the Board and made available for public inspection.

6.03: Inspection by Board and Council: Compliance.

(1) The Board and the Security and Privacy Council shall have the right to inspect any research project periodically. The Board may require periodic compliance reports. Any published product of the research project shall be submitted to the Board upon request.

6.03: continued

(2) In addition to those sanctions contained in M.G.L. c. 6, s. 178 and 803 CMR, the Board, upon failure of any research project to comply with M.G.L. c. 6, s. 167 and s. 178 or 803 CMR, may:

1. deny future access to CORI;
2. evoke approval for current access;and
3. demand and secure the return of all CORI.

REGULATORY AUTHORITY

803 CMR 6.00: M.G.L. c. 6, ss. 168, 173, 175.

(PAGES 99 THROUGH 104 ARE RESERVED FOR FUTURE USE)

or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.

(j) The names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.

(k) that part of the registration or circulation records of every public library which reveals the identity of a borrower.

(l) test questions and answers, scoring keys and sheets, and other examination data used to administer a licensing examination; provided, however, that such materials are used to administer another examination.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

Amended by St.1958, c. 626, § 1; St.1962, c. 427, § 1; St.1969, c. 831, § 2; St.1973, c. 1050, § 1; St.1977, c. 691, § 1; St.1978, c. 247; St.1979, c. 230; St.1982, c. 189, § 2; St.1983, c. 113; St.1985, c. 220.

Massachusetts General Laws Annotated (West)
Chapter 6

CRIMINAL OFFENDER RECORD INFORMATION SYSTEM

§ 167. Definitions

The following words shall, whenever used in this section or in sections one hundred and sixty-eight to one hundred seventy-eight, inclusive, have the following meanings unless the context otherwise requires: "Criminal justice agencies", those agencies at all levels of government which perform as their principal function, activities relating to (*a*) crime prevention, including research or the sponsorship of research; (*b*) the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or (*c*) the collection, storage, dissemination or usage of criminal offender record information.

"Criminal offender record information", records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of seventeen and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of seventeen; provided, however, that if a person under the age of seventeen is adjudicated as an adult, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

"Evaluative information", records, data, or reports concerning individuals charged with crime and compiled by criminal justice agencies which appraise mental condition, physical condition, extent of social adjustment, rehabilitative progress and the like, and which are primarily used in connection with bail, pre-trial or post-trial release proceedings, sentencing, correctional and rehabilitative planning, probation or parole.

"Intelligence information", records and data compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by a criminal justice agency for the purpose of investigating a substantial threat of harm to an individual, or to the order or security of a correctional facility.

"Interstate systems", all agreements, arrangements and systems for the interstate transmission and exchange of criminal offender record information. Such systems shall not include recordkeeping systems in the commonwealth maintained or controlled by any state or local agency, or group of such agencies, even if such agencies receive

or have received information through, or otherwise participated or have participated in, systems for the interstate exchange of criminal record information.

"Purge", remove from the criminal offender record information system such that there is no trace of information removed and no indication that said information was removed.

Added by St.1972, c. 805, § 1.

§ 168. Criminal history systems board; establishment; members; terms; meetings; expenses; regulations; powers and duties; executive director and other employees; reports; funds

There shall be a criminal history systems board hereinafter called the board, consisting of the following persons: the attorney general, the secretary of public safety, the chairman of the Massachusetts defenders committee, the chairman of the parole board, the commissioner of the department of correction, the commissioner of the department of public safety, the commissioner of the department of youth services, the commissioner of probation, the executive director of the committee on criminal justice, and the police commissioner of the city of Boston, or their designees, all of whom shall serve ex officio; and three other persons to be appointed by the governor for a term of three years, one of whom shall represent the Massachusetts district attorneys association, one of whom shall represent the Massachusetts chiefs of police association, and one of whom shall represent the county commissioners and sheriffs association. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of three years.

The governor shall designate annually the chairman of the board from among its members. No chairman may be appointed to serve more than two consecutive terms. The chairman shall hold regular meetings, one of which shall be an annual meeting and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of eight or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

The board, after giving the security and privacy council an opportunity to present its advice and recommendations, shall, with the approval of two-thirds of the board members or their designees present and voting, promulgate regulations regarding the collection, storage, access, dissemination, content, organization, and use of criminal offender record information. Rules and regulations shall not be adopted by the board until a hearing has been held in the manner provided by section two of chapter thirty A. The board shall have the authority to issue orders enforcing its rules and regulations after notice and hearing as provided by applicable law.

The board shall provide for and exercise control over the installation, operation and maintenance of data processing and data communication systems, hereinafter called the criminal offender record information system. Said system shall be designed to insure the prompt collection, exchange, dissemination and distribution of such criminal offender record information as may be necessary for the efficient administration and operation of criminal justice agencies, and to connect such systems directly or indirectly with similar systems in this or other states. The secretary of public safety shall appoint and fix the salary of an executive director, after reviewing final applicants with and securing the approval of the board. Such executive director shall not be subject to the provisions of chapter thirty-one or section nine A of chapter thirty. Said director shall be responsible for all data processing, for the management of the automated criminal offender record information and teleprocessing system, for the supervision of all personnel associated with that system and for the appointment of all such personnel except as otherwise provided by the board. The board may appoint such other employees, including experts and consultants, as it deems necessary to carry out its responsibilities, none of whom shall be subject to the provisions of chapter thirty-one or of section nine A of chapter thirty.

The board shall make an annual report to the governor and file a copy thereof with the state secretary, the clerk of the house of representatives and the clerk of the senate.

The board is authorized to enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision of federal, state, county, or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities or staff assistance in connection with its work. Such funds shall be deposited with the state treasurer and may be expended by the board in accordance with the conditions of the gift, grant, contribution, or bequest, without specific appropriation.

Amended by St.1978, c. 478, § 5; St.1979, c. 702, §§ 1 to 4.

§ 168. Criminal History Systems Board; Powers and Duties; Report.

[The first paragraph is amended to read as follows:]

There shall be a criminal history systems board, hereinafter called the board, consisting of the following persons: the secretary of public safety, who shall serve as chairman, the attorney general, the chief counsel for the committee for public counsel services, the chairman of the parole board; the commissioner of the department of correction, the commissioner of probation and commissioner of the department of youth services, or their designees, all of whom shall serve ex officio, and nine persons to be appointed by the governor for a term of three years, one of whom shall represent the Massachusetts District Attorneys Association, one of whom shall represent the Massachusetts Sheriffs Association, and one of whom shall represent the Massachusetts Chiefs of Police Association, one of whom shall represent private users of criminal offender record information, one of whom shall be a victim of crime, and four of whom shall be persons who have experience in issues relating to personal privacy. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of three years.

[The second paragraph is amended to read as follows:]

The chairman shall hold regular meetings, one of which shall be an annual meeting and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of eight or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

[The third paragraph is amended to read as follows:]

The board shall, with the approval of two-thirds of the board members or their designees present and voting, promulgate regulations regarding the collection, storage, access, dissemination, content, organization, and use of criminal offender record information. Rules and regulations shall not be adopted by the board until a hearing has been held in the manner provided by section two of chapter thirty A. After consultation with the executive office of communities and development and subject to the provision of said chapter thirty A, the board shall promulgate further regulations governing the collection and use by local housing authorities of such criminal offender record information as they may lawfully receive; provided, however, that such regulations shall provide that the following information be available to housing authorities operating pursuant to chapter one hundred and twenty-one B, upon request, solely for the purpose of evaluating applicants to housing owned by such housing authorities, in order to further the protection and well-being of tenants of such housing authorities: conviction date; and arrest and other data regarding any pending criminal charge; provided, further, that any housing authority receiving such data shall not make, and shall prohibit, any dissemination of such information, for any purpose other than as set forth herein. The board shall have the authority to hear complaints alleging that criminal offender record information, evaluative information, or records of juvenile proceedings have been unlawfully disseminated or obtained, and to issue orders enforcing its rules and regulations, including the imposition of civil fines payable to the commonwealth not to exceed five hundred dollars for each willful violation thereof, after notice and hearing as provided by applicable law.

[No change in balance of section.]

§ 169. Repealed by St.1979, c. 702, § 5

St.1979, c. 702, § 5, an emergency act repealing this section, was approved Nov. 9, 1979.

§ 171. Regulations generally; continuing education program; evaluative information

The board shall promulgate regulations (*a*) creating a continuing program of data auditing and verification to assure the accuracy and completeness of criminal offender record information; (*b*) assuring the prompt and complete purging of criminal record information, insofar as such purging is required by any statute or administrative regulation, by the order of any court of competent jurisdiction, or to correct any errors shown to exist in such information; and (*c*) assuring the security of criminal offender record information from unauthorized disclosures at all levels of operation.

The board shall cause to be initiated for employees of all agencies that maintain, receive, or are eligible to maintain or receive criminal offender record information a continuing educational program in the proper use and control of such information.

The content and use of evaluative information, and the inspection, receipt of copies and challenge of such information by an individual shall not be governed by the provisions of this act except as provided in this paragraph. Each criminal justice agency holding evaluative information shall, pursuant to section two of chapter thirty A, promulgate regulations to govern the content and use of evaluative information, and to govern, limit or prohibit the inspection, receipt of copies and challenge of such information by an individual referred to therein. Such regulations shall, at a minimum, provide that an agency which generates evaluative information shall make such information available within a reasonable time period upon request to the individual referred to therein unless such information falls within such exemptions as the agency shall establish in said regulations. No agency shall establish an exemption for evaluative material unless disclosure of such information would pose a direct and articulable threat to the safety of any individual or the security of a correctional facility, and such threat shall have been detailed in a certificate which is kept with such evaluative information. An agency shall reply in writing, upon the request of an individual for the release of their evaluative information. Said writing shall include the agency's decision to release or withhold the evaluative information in whole or in part and a listing of all sources of origin for all evaluative information generated by the custodial agency. Any individual aggrieved by an agency's decision denying access to evaluative information may appeal the denial in writing within thirty days thereafter to the board or to a three member panel thereof, as the board may determine, and the board or such panel or any court under section one hundred and seventy-seven shall have access to any certificate. The adoption of such regulations by each criminal justice agency shall be subject to the approval of the board, and shall be promulgated within time limits set by the board. If any criminal justice agency holding evaluative information fails to promulgate such regulations, then the board shall promulgate such regulations with respect to that criminal justice agency. Evaluative information shall be subject to the provisions of section one hundred and seventy-two and section one hundred and seventy-eight, as if such information was criminal offender record information.

CRIMINAL OFFENDER RECORD INFORMATION SYSTEM

§ 172. Accessibility and Dissemination of Information; Listing of Agencies or Individuals Receiving Information.

Except as otherwise provided in this section and sections one hundred and seventy-three to one hundred and seventy-five, inclusive, criminal offender record information, and where present, evaluative information, shall be disseminated, whether directly or through any intermediary, only to *(a)* criminal justice agencies; *(b)* such other agencies and individuals required to have access to such information by statute including United States Armed Forces recruiting offices for the purpose of determining whether a person enlisting has been convicted of a felony as set forth in Title 10, section 504 of the United States Code, to the active or organized militia of the commonwealth for the purpose of determining whether a person enlisting has been convicted of a felony; and *(c)* any other agencies and individuals where it has been determined that the public interest in disseminating such information to these parties clearly outweighs the interest in security and privacy. The extent of such access shall be limited to that necessary for the actual performance of the criminal justice duties of criminal justice agencies under clause *(a);* to that necessary for the actual performance of the statutory duties of agencies and individuals granted access under clause *(b);* and to that necessary for the actual performance of the actions or duties sustaining the public interest as to agencies or individuals granted access under clause *(c).* Agencies or individuals granted access under clause *(c)* shall be eligible to receive criminal offender record information obtained through interstate systems if the board determines that such information is necessary for the performance of the actions or duties sustaining the public interest with respect to such agencies or individuals.

The board shall certify those agencies and individuals requesting access to criminal offender record information that qualify for such access under clauses *(a)* or *(b)* of this section, and shall specify for each such agency or individual certified, the extent of its access. The board shall make a finding in writing of eligibility, or noneligibility of each such agency or individual which requests such access. No such information shall be disseminated to any agency or individual prior to the board's determination of eligibility, or, in cases in which the board's decision is appealed, prior to the final judgment of a court of competent jurisdiction that such agency or individual is so eligible.

No agency or individual shall have access to criminal offender record information under clause *(c),* unless the board, by a two-thirds majority of the members present and voting, determines and certifies that the public

interest in disseminating such information to such party clearly outweighs the interest in security and privacy. The extent of access to such information under clause (c) shall also be determined by such a two-thirds majority vote of the board. Certification for access under clause *(c)* may be either access to information relating to a specific identifiable individual, or individuals, on a single occasion; or a general grant of access for a specified period of time not to exceed two years. A general grant of access need not relate to a request for access by the party or parties to be certified. Except as otherwise provided in this paragraph the procedure and requirements for certifying agencies and individuals under clause *(c)* shall be according to the provisions of the preceding paragraphs of this section.

Each agency holding or receiving criminal offender record information shall maintain, for such period as the board shall determine, a listing of the agencies or individuals to which it has released or communicated such information. Such listings, or reasonable samples thereof, may from time to time, be reviewed by the board or the council to determine whether any statutory provisions or regulations have been violated.

Dissemination of criminal offender record information shall, except as provided in this section and for purposes of research programs approved under section one hundred and seventy-four, be permitted only if the inquiry is based upon name, fingerprints, or other personal identifying characteristics. The board shall adopt rules to prevent dissemination of such information where inquiries are based upon categories of offense or data elements other than said characteristics; provided, however, that access by criminal justice agencies to criminal offender record information on the basis of data elements other than personal identifying characteristics, including but not limited to, categories of offense, mode of operation, photographs and physical descriptive data generally, shall be permissible, except as may be limited by the regulations of the board. Except as authorized by this chapter it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. At the time of making any criminal record inquiry pursuant to clause (b) or (c) of the first paragraph of this section, the party certified to receive criminal offender record information shall submit to the board an acknowledgement that such inquiry will be undertaken, signed by the person who is the subject of such inquiry on a form prepared or approved by the board.

[Eff July 1, 1992] Notwithstanding any other provisions of this section, the following information shall be available to any person upon request: (a) criminal offender record information consisting of conviction data; provided, however, that all requests for such conviction data shall be made to the board; and provided, further, that the board shall disclose only conviction data which it maintains in a standardized format in its automated criminal history file, and (b) information indicating custody status and placement within the correction system; provided, however, that no information shall be disclosed that identifies family members, friends, medical or psychologi-

cal history, or any other personal information unless such information is directly relevant to such release or custody placement decision, and no information shall be provided if its release would violate any other provisions of state or federal law. The parole board, except as required by section one hundred and thirty of chapter one hundred and twenty-seven, the department of correction, a county correctional authority, or a probation department with the approval of a justice to the appropriate division of the trial court, may, in its discretion, make available a summary, which may include references to evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change his custody status.

[Eff July 1, 1992] Information shall be provided or made available pursuant to the preceding paragraph only if the individual named in the request or summary has been convicted of a crime punishable by imprisonment for a term of five years or more, or has been convicted of any crime and sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation or incarceration, or is under the custody of the parole board; or having been convicted of a misdemeanor, has been released from all custody or supervision for not more than one year; or having been convicted of a felony, has been released from all custody or supervision for not more than two years; or, having been sentenced to the custody of the department of correction, has finally been discharged therefrom, either having been denied release on parole or having been returned to penal custody for violation of parole, for not more than three years. In addition to the provisions of the preceding sentence, court records for all criminal cases shall be made available for public inspection for a period of one week following conviction and imposition of sentence.

Any individual or agency, public or private, that receives or obtains criminal offender record information, in violation of the provisions of this statute, whether directly or through any intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose. Notwithstanding the provisions of this section, the dissemination of information relative to a person's conviction of automobile law violations as defined by section one of chapter ninety C, or information relative to a person's charge of operating a motor vehicle while under the influence of intoxicating liquor which resulted in his assignment to a driver alcohol program as described in section twenty-four D of chapter ninety, shall not be prohibited where such dissemination is made, directly or indirectly, by the motor vehicle insurance merit rating board established pursuant to section one hundred and eighty-three of chapter six, to an insurance company doing motor vehicle insurance business within the commonwealth, or to such insurance company's agents, independent contractors or insurance policyholders to be used exclusively for motor vehicle insurance purposes. Notwithstanding the provisions of this section or chapter sixty-six A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically, provided that no alphabetical arrestee, suspect, or similar index is available to the public, directly or indirectly; (2) chronologically maintained court records of public judicial proceedings, provided that no alphabetical or similar index of criminal defendants is available to the public, directly or indirectly; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section one hundred and thirty of chapter one hundred and twenty-seven.

§ 172A. Information Request Fee.

The criminal history systems board shall assess a fee of twenty-five dollars for each request for criminal offender record information; provided, however, that such fees shall not be assessed for such requests from a victim of crime, witness, or family member of a homicide victim, all as defined by section one of chapter two hundred and fifty-eight B, from an individual seeking criminal offender record information pertaining to himself, from a governmental agency, or from such other person or group of persons as the board shall exempt. All such fees shall be deposited in the general fund.

History—
Added by 1990, 319, § 13, approved Dec 14, 1990, effective 90 days thereafter.

§ 172B. Release of Information for Purposes of Evaluating Adoptive or Foster Homes.

Notwithstanding any provision of section one hundred seventy-two of this chapter or of any other provision of law, the following information shall be available to the department of social services and the department of youth services, upon request, for the purpose of evaluating any and all foster homes and adoptive homes, whether with public or private agencies, in order to further the protection of children: conviction data, arrest data, sealed record data, and juvenile arrest or conviction data. The department of social services and the department of youth services shall not make, and shall prohibit, any dissemination of such information, for any purpose other than as set forth herein.

§ 173. Regulations for program research; monitoring; access restricted

The board shall promulgate regulations to govern the use of criminal offender record information for purposes of program research. Such regulations shall require preservation of the anonymity of the individuals to whom such information relates, shall require the completion of nondisclosure agreements by all participants in such programs, and shall impose such additional requirements and conditions as the board finds to be necessary to assure the protection of privacy and security interests.

The board may monitor any such programs to assure their effectiveness. The board may, if it determines that a program's continuance threatens privacy or security interests, prohibit access on behalf of any such program to criminal offender record information.

Added by St.1972, c. 805, § 1.

§ 174. Interstate system for exchange of record information; supervision of participation by state and local agencies; access limited; telecommunications access terminals

The board shall supervise the participation by all state and local agencies in any interstate system for the exchange of criminal offender record information, and shall be responsible to assure the consistency of such participation with the terms and purposes of sections one hundred and sixty-eight to section one hundred and seventy-eight, inclusive.

Direct access to any such system shall be limited to such criminal justice agencies as are expressly designated for that purpose by the board. Where any such system employs telecommunications access terminals, the board shall limit the number and placement of such terminals to those for which adequate security measures may be taken and as to which the board may impose appropriate supervisory regulations.

Added by St.1972, c. 805, § 1.

§ 175. Right of Individual to Inspect and Copy Record Information Concerning Self; Purge, Modification or Supplementation of Record.

[The first paragraph is amended to read as follows:]

Each individual shall have the right to inspect, and if practicable, copy, criminal offender record information which refers to him. If an individual believes such information to be inaccurate or incomplete, he shall request the agency having custody or control of the records to purge, modify or supplement them. If the agency declines to so act, or if the individual believes the agency's decision to be otherwise unsatisfactory, the individual may in writing request review by the board. The board shall in each case in which it finds prima facie basis for complaint, conduct a hearing at which the individual may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings shall be issued within sixty days of receipt by the board of the request for review. Failure to issue findings shall be deemed a decision of the board. If the record in question is found to be inaccurate, incomplete or misleading, the board shall order that the record be appropriately purged, modified, or supplemented by explanatory notation. Failure of the board to act shall be deemed a decision of the board.

Agencies at which criminal offender records are sought to be inspected shall prescribe reasonable hours and places of inspection, and shall impose such additional restrictions as may be approved by the board, including fingerprinting as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them.

§ 176. Appeal by Aggrieved Persons or Agencies.

Any individual or agency aggrieved by any order or decision of the board may appeal such order or decision to the superior court in the county in which he is a resident or in which the board issued the order or decision from which the individual or agency appeals. The court shall in each such case conduct a de novo hearing, and may order such relief as it finds equitable.

§ 177. Violations; civil liability

Any aggrieved person may institute a civil action in superior court for damages or to restrain any violation of sections one hundred and sixty-eight to one hundred and seventy-five, inclusive. If it is found in any such action that there has occurred a willful violation, the violator shall not be entitled to claim any privilege absolute or qualified, and he shall in addition to any liability for such actual damages as may be shown, be liable for exemplary damages of not less than one hundred and not more than one thousand dollars for each violation, together with costs and reasonable attorneys' fees and disbursements incurred by the person bringing the action.

§ 178. Penalties.

Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with the provisions of sections one hundred and sixty-eight to one hundred and seventy-five, inclusive, or any member, officer, employee or agency of the board or any participating agency, or any person connected with any authorized research program, who willfully falsifies criminal offender record information, or any records relating thereto, shall for each offense be fined not more than five thousand dollars, or imprisoned in a jail or house of correction for not more than one year, or both.

§ 178A. Release of Information to Certain Interested Persons.

A victim of crime, witness, or family member of a homicide victim, all as defined by section one of chapter two hundred and fifty-eight B, shall be certified by the board, upon request, to receive criminal offender record information, provided that the request for said information relates to the offense in which such person was involved. Criminal justice agencies may also disclose to such persons such additional information, including but not limited to evaluative information, as such agencies determine, in their discretion, is reasonably necessary for the security and well being of such persons.

History—
Added by 1990, 319, § 17, approved Dec 14, 1990, effective 90 days thereafter.

§ 178B. Restrictions on Dissemination to Terminate on Subject's Death.

The restrictions on the dissemination of criminal offender record information as provided in this chapter shall cease to exist at the death of the individual for whom a criminal justice agency has maintained criminal offender record information.

§ 34. Unlawful possession; particular controlled substances, including heroin and marihuana; prior convictions; criminal penalties; continuance; probation; dismissal; sealing of records

No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing heroin shall for the first offense be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

If any person who is charged with a violation of this section has not previously been convicted of a violation of any provision of this chapter or other provision of prior law relative to narcotic drugs or harmful drugs as defined in said prior law, or of a felony under the laws of any state or of the United States relating to such drugs, has had his case continued without a finding to a certain date, or has been convicted and placed on probation, and if, during the period of said continuance or of said probation, such person does not violate any of the conditions of said continuance or said probation, then upon the expiration of such period the court may dismiss the proceedings against him, and may order sealed all official records relating to his arrest, indictment, conviction, probation, continuance or discharge pursuant to this section; provided, however, that departmental records which are not public records, maintained by police and other law enforcement agencies, shall not be sealed; and provided further, that such a record shall be maintained in a separate file by the department of probation solely for the purpose of use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section. The record maintained by the department of probation shall contain only identifying information concerning the person and a statement that he has had his record sealed pursuant to the provisions of this section. Any conviction, the record of which has been sealed under this section, shall not be deemed a conviction for purposes of any disqualification or for any other purpose. No person as to whom such sealing has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, conviction, dismissal, continuance, sealing, or any other related proceeding, in response to any inquiry made of him for any purpose.

Notwithstanding any other penalty provision of this section, any person who is convicted for the first time under this section for the possession of marihuana or a controlled substance in Class E and who has not previously been convicted of any

offense pursuant to the provisions of this chapter, or any provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be placed on probation unless such person does not consent thereto, or unless the court files a written memorandum stating the reasons for not so doing. Upon successful completion of said probation, the case shall be dismissed and records shall be sealed.
Amended by St.1972, c. 806, §§ 23, 24; St.1974, c. 207; St.1974, c. 440; St.1975, c. 369.

CHAPTER 276

Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment and Bail; Probation Officers and Board of Probation

SEARCH WARRANTS

Probation

§ 100. Detailed Reports to Be Made of the Probation Work, etc.; Records; Accessibility of Information.

'Every probation officer, or the chief or senior probation officer of a court having more than one probation officer, shall transmit to the commissioner of probation, in such form and at such times as he shall require, detailed reports regarding the work of probation in the court, and the commissioner of correction, the penal institutions commissioner of Boston and the county commissioners of counties other than Suffolk shall transmit to the commissioner, as aforesaid, detailed and complete records relative to all paroles and permits to be at liberty granted or issued by them, respectively, to the revoking of the same and to the length of time served on each sentence to imprisonment by each prisoner so released specifying the institution where each such sentence was served; and under the direction of the commissioner a record shall be kept of all such cases as the commissioner may require for the information of the justices and probation officers. Police officials shall co-operate with the commissioner and the probation officers in obtaining and reporting information concerning persons on probation. The information so obtained and recorded shall

not be regarded as public records and shall not be open for public inspection but shall be accessible to the justices and probation officers of the courts, to the police commissioner for the city of Boston, to all chiefs of police and city marshals, and to such departments of the state and local governments as the commissioner may determine. Upon payment of a fee of three dollars for each search, such records shall be accessible to such departments of the federal government and to such educational and charitable corporations and institutions as the commissioner may determine. The commissioner of correction and the department of youth services shall at all times give to the commissioner and the probation officers such information as may be obtained from the records concerning prisoners under sentence or who have been released. The commissioner may use systems operated by the criminal history systems board, pursuant to sections one hundred sixty-seven to one hundred seventy-eight, inclusive, of chapter six, for any record-keeping lawfully required by him provided that such records remain subject to the regulations of said board. (Amended by 1969, 838, § 63, approved, with emergency preamble, August 28, 1969; by § 74 it takes effect on Oct. 1, 1969, or upon the qualification of the commissioner of youth services appointed under the provisions of § 1 of chapter 18A of the General Laws, whichever is the later; 1972, 805, § 8, approved July 19, 1972, effective 90 days thereafter; 1975, 534, approved August 21, 1975, effective 90 days thereafter.)

§ 100A. Sealing of Certain Criminal Record Files by Commissioner of Probation; Conditions; Exceptions; Effect.

Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the commissioner seal such file. The commissioner shall comply with such request provided (1) that said person's court appearance and court disposition records, including termination of court supervision, probation or sentence for any misdemeanor occurred not less than ten years prior to said request; (2) that said person's court appearance and court disposition records, including termination of court supervision, probation or sentence for any felony occurred not less than fifteen years prior to said request; (3) that said person had not been found guilty of any criminal offense within the commonwealth in the ten years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars; (4) said form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county within the preceding ten years; and (5) said person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses provided, however, that this section shall not apply in case of convictions for violations of sections one hundred and twenty-one to one hundred and thirty-one H, inclusive, of chapter one hundred and forty or for violations of chapter two hundred and sixty-eight or chapter two hundred and sixty-eight A.

In carrying out the provisions of this section, notwithstanding any laws to the contrary:

1. Any recorded offense which was a felony when committed and has since become a misdemeanor shall be treated as a misdemeanor.

2. Any recorded offense which is no longer a crime shall be eligible for sealing forthwith, except in cases where the elements of the offense continue to be a crime under a different designation.

3. In determining the period for eligibility, any subsequently recorded offenses for which the dispositions are "not guilty", "dismissed for want of prosecution", "dismissed at request of complainant", "nol prossed", or "no bill" shall not be held to interrupt the running of the required period for eligibility.

4. If it cannot be ascertained that a recorded offense was a felony when committed said offense shall be treated as a misdemeanor.

When records of criminal appearances and criminal dispositions are sealed by the commissioner in his files, he shall notify forthwith the clerk and the probation officer of the courts in which the convictions or dispositions have occurred, or other entries have been made, of such sealing, and said clerks and probation officers likewise shall seal records of the same proceedings in their files.

Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public service in the service of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions, except in imposing sentence in subsequent criminal proceedings.

An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' to an inquiry herein relative to prior arrests or criminal court appearances. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution." The attorney general may enforce the provisions of this paragraph by a suit in equity commenced in the superior court.

The commissioner, in response to inquiries by authorized persons other than any law enforcement agency, any court, or any appointing authority, shall in the case of a sealed record or in the case of court appearances and adjudications in a case of delinquency or the case of a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution, report that no record exists. (1971, 686, § 1; 1973, 533, §§ 2, 3; 1973, 1102; 1974, 525; 278.)

§ 100B. Sealing of Certain Juvenile Record Files; Conditions; Effect.

Any person having a record of entries of a delinquency court appearance in the commonwealth on file in the office of the commissioner of probation may, on a form furnished by the commissioner, signed under the penalties of perjury, request that the commissioner seal such file. The commissioner shall comply with such request provided (1) that any court appearance or disposition including court supervision, probation, commitment or parole, the records for which are to be sealed, terminated not less than three years prior to said request; (2) that said person has not been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the three years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceding three years; and (3) said form includes a statement by the petitioner that he has not been adjudicated delinquent or found guilty of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or committed as a delinquent in any state or county within the preceding three years.

When records of delinquency appearances and delinquency dispositions are sealed by the commissioner in his files, the commissioner shall notify forthwith the clerk and the probation officer of the courts in which the adjudications or dispositions have occurred, or other entries have been made, and the department of youth services of such sealing, and said clerks, probation officers, and department of youth services likewise shall seal records of the same proceedings in their files.

Such sealed records of a person shall not operate to disqualify a person in any future examination, appointment or application for public service under the government of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards of commissioners, except in imposing sentence for subsequent offenses in delinquency or criminal proceedings.

Notwithstanding any other provision to the contrary, the commissioner shall report such sealed delinquency record to inquiring police and court agencies only as "sealed delinquency record over three years old" and to other authorized persons who may inquire as "no record". The information contained in said sealed delinquency record shall be made available to a judge or probation officer who affirms that such person, whose record has been sealed, has been adjudicated a delinquent or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed subsequent to sealing of such record. Said information shall be used only for the purpose of consideration in imposing sentence. (Added by 1972, 404, approved June 8, 1972, effective 90 days thereafter.)

§ 100C. Sealing of Certain Criminal Records; Effect.

[The first paragraph is amended to read as follows:]

In any criminal case wherein the defendant has been found not guilty by the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable cause has been made by the court, the commissioner of probation shall seal said court appearance and disposition recorded in his files and the clerk and the probation officers of the courts in which the proceedings occurred or were initiated shall likewise seal the records of the proceedings in their files. The provisions of this paragraph shall not apply if the defendant makes a written request to the commissioner not to seal the records of the proceedings.

In any criminal case wherein a nolle prosequi has been entered, or a dismissal has been entered by the court, except in cases in which an order of probation has been terminated, and it appears to the court that substantial justice would best be served, the court shall direct the clerk to seal the records of the proceedings in his files. The clerk shall forthwith notify the commissioner of probation and the probation officer of the courts in which the proceedings occurred or were initiated who shall likewise seal the records of the proceedings in their files.

Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public employment in the service of the commonwealth or of any political subdivision thereof.

An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include in addition to the statement required under section one hundred A the following statement: "An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court appearances." The attorney general may enforce the provisions of this section by a suit in equity commenced in the superior court.

The commissioner, in response to inquiries by authorized persons other than any law enforcement agency or any court, shall in the case of a sealed record report that no record exists. After a finding or verdict of guilty on a subsequent offense such sealed record shall be made available to the probation officer and the same, with the exception of a not guilty, a no bill, or a no probable cause, shall be made available to the court. (Added by 1973, 322, § 1, approved May 29, 1973, effective 90 days thereafter.)

Chapter 127

§ 23. Identification of prisoners

The officer in charge of a penal institution to which a person is committed under a sentence of imprisonment for any crime shall, unless the court otherwise orders, take or cause to be taken his name, age, height, weight, photograph and general description and copies of his finger prints in accordance with the finger print system of identification of criminals. The court may order to be taken the photograph and the aforesaid description and finger prints of a person convicted of a felony who is not committed to a penal institution. All such photographs and identifying matter shall be transmitted forthwith to the commissioner of public safety.

Amended by St.1941, c. 69.

§ 25. Fugitives from justice

Whenever the officer in charge of a prison, lockup or other place of detention has received a request from any authority, either by circular or otherwise, to assist in the apprehension of a fugitive from justice, such officer may take an exact description of any person committed to such prison or held in such lockup or other place of detention, and may include in such descriptions copies of the finger prints in accordance with the finger print system of identification. But said officer shall not take a description of a person who, he has reason to believe, is not a fugitive from justice. All descriptions so made shall be forthwith transmitted to the office of the commissioner of public safety.

§ 27. Forwarding of criminal history by district attorney

The district attorney who prosecuted such prisoners as are described in section twenty-three shall forward to the department of correction the criminal history of each prisoner as shown upon the trial, upon blanks to be furnished by the commissioner of public safety.

Amended by St.1955, c. 770, § 22.

Chapter 128A

§ 9A. Licensing and registering of agents, veterinarians, blacksmiths, owners, trainers, jockeys and stable employees; badge; suspension and revocation; criminal records

For the purpose of enabling the commission to exercise and maintain a proper control over horse and dog racing conducted under the provisions of this chapter, the rules, regulations and conditions prescribed by the commission under section nine shall provide for the licensing and registering at reasonable and uniform fees, of agents, assumed names, colors, partnerships and minor agreements and shall provide for the licensing at reasonable and uniform fees of veterinarians, blacksmiths, owners, trainers, jockeys and stable employees at horse tracks and veterinarians, owners and trainers of dogs participating in such racing, and any other persons having access to horses and dogs.

Such rules and regulations shall also provide for the fingerprinting of all licensees. Every person so licensed shall be required to display and wear a badge containing a photograph. Such rules and regulations may also provide for the suspension and revocation of licenses so granted and for the imposition on persons so licensed of reasonable forfeitures and penalties for the violation of any rule or regulation prescribed by the commission and for the use of the proceeds of such penalties and forfeitures.

The commission shall have access to criminal offender record information of applicants for any license granted pursuant to this chapter, including officers, directors and beneficial owners of ten per cent or more of the stock of a corporation applying for such a license, and for applicants for employment by the commission. Such access shall be exercised in accordance with sections one hundred and sixty-seven to one hundred and seventy-eight, inclusive, of chapter six.

Amended by St.1978, c. 494, § 7.

Chapter 234A

§ 33. Criminal history records of jurors

The court, the office of jury commissioner, and the clerk of court or assistant clerk shall have authority to inquire into the criminal history records of grand and trial jurors for the limited purpose of corroborating and determining their qualifications for juror service. Notwithstanding any other special or General Law to the contrary, the said authority shall include the right to request and receive such criminal history records and information from the criminal offender record information system as is necessary for the purpose of carrying out the provisions of this chapter. All criminal offender record information obtained under this section shall be held confidential by persons authorized hereunder.

Added by St.1982, c. 298, § 1.

Chapter 263

§ 1A Fingerprinting and photographing

Whoever is arrested by virtue of process, or is taken into custody by an officer, and charged with the commission of a felony shall be fingerprinted, according to the system of the bureau of identification in the department of public safety, and may be photographed. Two copies of such fingerprints and photographs shall be forwarded within a reasonable time to the commissioner of public safety by the person in charge of the police department taking such fingerprints and photographs.

Amended by St.1972, c. 217.

Chapter 66

§ 10 Public inspection and copies of records; presumption; exception

(a) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. The following fees shall apply to any public record in the custody of the state police, the capitol police, the Massachusetts Bay Transportation Authority police, the metropolitan district commission police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration

and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph (*b*) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

The commissioner of public safety and his agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The commissioner of public safety and his agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

CHAPTER 66A. FAIR INFORMATION PRACTICES [NEW]

Sec.
1. Definitions.
2. Holders maintaining personal data system; duties.
3. Rules and regulations.

Chapter 66A of the General Laws, consisting of sections 1 to 3, was added by St.1975, c. 776, § 1, approved December 17, 1975, and by section 5 made effective July 1, 1976.

Section 5 of St.1975, c. 776, was amended by St.1976, c. 249, § 3, an emergency act, approved July 16, 1976, to read: "This act shall take effect on July first, nineteen hundred and seventy-six; provided, however, that for nonemployee records maintained by any criminal justice agency this act shall take effect on July first, nineteen hundred and seventy-seven."

§ 1. Definitions

As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:—

"Agency", any agency of the executive branch of the government, including but not limited to any constitutional or other office, executive office, department, division, bureau, board, commission or committee thereof; or any authority created by the general court to serve a public purpose, having either statewide or local jurisdiction.

"Automated personal data system", a personal data system in which personal data is stored, in whole or in part, in a computer or in electronically controlled or accessible files.

"Computer accessible", recorded on magnetic tape, magnetic film, magnetic disc, magnetic drum, punched card, or optically scannable paper or film.

"Criminal justice agency", an agency at any level of government which performs as its principal function activity relating to (*a*) the apprehension, prosecution, defense, adjudication, incarceration, or rehabilitation of criminal offenders; or (*b*) the collection, storage, dissemination, or usage of criminal offender record information.

"Data subject", an individual to whom personal data refers. This term shall not include corporations, corporate trusts, partnerships, limited partnerships, trusts or other similar entities.

"Holder", an agency which collects, uses, maintains or disseminates personal data or any person or entity which contracts or has an arrangement with an agency whereby it holds personal data as part or as a result of performing a governmental or public function or purpose. A holder which is not an agency is a holder, and subject to the provisions of this chapter, only with respect to personal data so held under contract or arrangement with an agency.

"Manual personal data system", a personal data system which is not an automated or other electronically accessible or controlled personal data system.

"Personal data", any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual; provided, however, that such information is not contained in a public record, as defined in clause Twenty-sixth of section seven of chapter four and shall not include intelligence information, evaluative information or criminal offender record information as defined in section one hundred and sixty-seven of chapter six.

"Personal data system", a system of records containing personal data, which system is organized such that the data are retrievable by use of the identity of the data subject.

Added by St.1975, c. 776, § 1. Amended by St.1976, c. 249, § 1; St.1977, c. 601, § 6.

§ 2. Holders maintaining personal data system; duties

Every holder maintaining personal data shall:—

(*a*) identify one individual immediately responsible for the personal data system who shall insure that the requirements of this chapter for preventing access to or dissemination of personal data are followed;

(*b*) inform each of its employees having any responsibility or function in the design, development, operation, or maintenance of the personal data system, or the use of any personal data contained therein, of each safeguard required by this chapter, of each rule and regulation promulgated pursuant to section three which pertains to the operation of the personal data system, and of the civil remedies described in section three B of chapter two hundred and fourteen available to individuals whose rights under chapter sixty-six A are allegedly violated;

(*c*) not allow any other agency or individual not employed by the holder to have access to personal data unless such access is authorized by statute or regulations which are consistent with the purposes of this chapter or is approved by the data subject whose personal data are sought if the data subject is entitled to access under clause (*i*). Medical or psychiatric data may be made available to a physician treating a data subject upon the request of said physician, if a medical or psychiatric emergency arises which precludes the data subject's giving approval for the release of such data, but the data subject shall be given notice of such access upon termination of the emergency. A holder shall provide lists of names and addresses of applicants for professional licenses and lists of professional licensees to associations or educational organizations recognized by the appropriate professional licensing or examination board. A holder shall comply with a data subject's request to disseminate his data to a third person if practicable and upon payment, if necessary, of a reasonable fee;

(*d*) take reasonable precautions to protect personal data from dangers of fire, theft, flood, natural disaster, or other physical threat;

(*e*) comply with the notice requirements set forth in section sixty-three of chapter thirty;.

(*f*) in the case of data held in automated personal data systems, and to the extent feasible with data held in manual personal data systems, maintain a complete and accurate record of every access to and every use of any personal data by persons or organizations outside of or other than the holder of the data, including the identity of all such persons and organizations which have gained access to the personal data and their intended use of such data and the holder need not record any such access of its employees acting within their official duties;

(*g*) to the extent that such material is maintained pursuant to this section, make available to a data subject upon his request in a form comprehensible to him, a list of the uses made of his personal data, including the identity of all persons and organizations which have gained access to the data;

(*h*) maintain personal data with such accuracy, completeness, timeliness, pertinance and relevance as is necessary to assure fair determination of a data subject's qualifications, character, rights, opportunities, or benefits when such determinations are based upon such data;

(*i*) inform in writing an individual, upon his request, whether he is a data subject, and if so, make such data fully available to him or his authorized representative, upon his request, in a form comprehensible to him, unless doing so is prohibited by this clause or any other statute. A holder may withhold from a data subject for the period hereinafter set forth, information which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest, but this sentence is not intended in any way to derogate from any right or power of access the data subject might have under administrative or judicial discovery procedures. Such information may be withheld for the time it takes for the holder to complete its investigation and commence an administrative or judicial proceeding on its basis, or one year from the commencement of the investigation or whichever occurs first. In making any disclosure of information to a data subject pursuant to this chapter the holder may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the data subject is not. No holder shall rely on any exception contained in clause Twenty-sixth of section seven of chapter four to withhold from any data subject personal data otherwise accessible to him under this chapter.

(*j*) establish procedures that (1) allow each data subject or his duly authorized representative to contest the accuracy, completeness, pertinence, timeliness, relevance or dissemination of his personal data or the denial of access to such data maintained in the personal data system and (2) permit personal data to be corrected or amended when the data subject or his duly authorized representative so requests and there is no disagreement concerning the change to be made or, when there is disagreement with the data subject as to whether a change should be made, assure that the data subject's claim is noted and included as part of the data subject's personal data and included in any subsequent disclosure or dissemination of the disputed data;

(*k*) maintain procedures to ensure that no personal data are made available in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed;

(*l*) not collect or maintain more personal data than are reasonably necessary for the performance of the holder's statutory functions.

Added by St.1975, c. 776, § 1. Amended by St.1976, c. 240, § 2; St.1977, c. 691, §§ 7 to 12.

§ 3. Rules and regulations

The secretary of each executive office shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities within each of said executive offices subject to the approval of the commissioner of administration. The department of community affairs shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to local housing and redevelopment authorities of the cities and towns. Any agency not within any such executive office shall be subject to the regulations of the commissioner of administration. The attorney general, the state secretary, the state treasurer and the state auditor shall adopt applicable regulations for their respective departments.
Added by St.1975, c. 776, § 1. Amended by St.1977, c. 691, § 13.

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28.241. State police central records division; responsibility for criminal identification and records; materials

Sec. 1. The central records division of the department of state police shall be responsible for criminal identification and records * * *. The division shall be supplied with the necessary apparatus and materials for collecting, filing, and preserving criminal records filed with the division.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.241a. Definitions

Sec. 1a. As used in this act:

(a) "Commanding officer" means the department of state police employee in charge of the central records division.

(b) "Criminal history record information" means name, date of birth, fingerprints; photographs, if available; personal descriptions, including physical measurements, identifying marks, scars, amputations, and tattoos; aliases and prior names; social security and driver's license numbers and other identifying numbers; information on misdemeanor convictions; and felony arrests and convictions.

(c) "Division" means the central records division of the department of state police.

(d) "Felony" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony.

(e) "Misdemeanor" means either of the following:

(i) A violation of a penal law of this state which is not a felony, or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.

(ii) A violation of a local ordinance which substantially corresponds to state law.

P.A.1925, No. 289, § 1a, added by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

For effective date provisions of P.A.1986, No. 231, see the note following § 28.241.

28.242. Commanding officer of division; duties

Sec. 2. (1) The commanding officer of the division shall procure and file for purposes of criminal identification criminal history record * * * information on all persons who

have been * * * convicted within the state of a felony or * * * a misdemeanor * * *, or both * * *.

* * *

(2) The commanding officer shall provide all reporting officials with forms, numerical identifiers, and instructions which specify in detail the nature of the information required, the time it is to be forwarded, the method of classifying, and other matters to facilitate criminal history record information collection and compilation. * * *

(3) The commanding officer shall file * * * the fingerprint impressions and photographs, if available, of all persons confined in a prison or other state correctional facility.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.243. Fingerprints, forwarding to state police; return of information upon release or finding of not guilty

Sec. 3. (1) The police department of each city or village, any duly constituted police department of a township, the sheriff's department of each county, the department of state police, and any other governmental law enforcement agency in the state, immediately upon the arrest of any person for a felony or for a misdemeanor for which the maximum possible penalty exceeds 92 days imprisonment or a fine of $500.00, or both, shall take the person's fingerprints * * * in duplicate and forward the fingerprints to the department of state police within 72 hours of arrest. One set of fingerprints shall be sent to the division on forms furnished by the commanding officer and 1 set of fingerprints shall be furnished to the director of the federal bureau of investigation on forms furnished by the director * * *.

(2) The police department of each city or village, any duly constituted police department of a township, the sheriff's department of each county, the department of state police, and any other governmental law enforcement agency in the state may take 1 set of fingerprints of a person who is arrested for a misdemeanor punishable by imprisonment for not more than 92 days, or a fine of not more than $500.00, or both, and who fails to produce satisfactory evidence of identification as required by section 1 of Act No. 44 of the Public Acts of 1961, being section 780.581 of the Michigan Compiled Laws. These fingerprints shall be forwarded to the department of state police immediately. Upon completion of the identification process by the department of state police, the fingerprints shall be returned to the arresting agency.

(3) The police department of each city or village, any duly constituted police department of a township, the sheriff's department of each county, the department of state police, and any other governmental law enforcement agency in the state, upon the arrest of a person for a misdemeanor, may take the person's fingerprints on forms furnished by the commanding officer but may not forward the fingerprints to the department unless the person is convicted of a misdemeanor.

(4) If a person arrested for having committed a felony or a misdemeanor is released without a charge made against him or her, the official taking or holding the person's fingerprints, arrest card, and description shall immediately return this information to the person without the necessity of a request. If this information is not returned, the person shall have the absolute right to demand and receive its return at any time after the person's release and without need to petition for court action. The local police agency shall notify the commanding officer in writing that no charge was made against the arrested person if the arrested person's fingerprints were forwarded to the department.

(5) If an accused * * * is found not guilty of the offense * * *, the arrest card, the fingerprints, and description shall be returned to him or her by * * * the official holding

Deletions from text indicated by asterisks * * *

this information. If for any reason the official holding the information does not return the information within 60 days of the finding of not guilty, the accused shall have the right to obtain an order from the court having jurisdiction over the case for the return of the information. If * * * the order of return is not complied with, the accused shall have the right to petition the circuit court of the county where the original charge was made for a preemptory writ of mandamus to require issuance of the order of return. Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall notify the commanding officer of any finding of not guilty or not guilty by reason of insanity, dismissal, or nolle prosequi, if it appears that the accused was initially arrested for a felony or a misdemeanor punishable by imprisonment for more than 92 days.

(6) Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall immediately advise the commanding officer of the final disposition of the arrest for which the accused was fingerprinted if the accused was convicted of a felony or a misdemeanor. With regard to any conviction, the clerk shall transmit to the commanding officer information as to any finding of guilty or guilty but mentally ill; any plea of guilty, nolo contendere, or guilty but mentally ill; the offense of which the accused was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate.

(a) Section 7411 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7411 of the Michigan Compiled Laws.

(b) Sections 11 to 15 of chapter II of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 762.11 to 762.15 of the Michigan Compiled Laws.

(c) Section 4a of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.4a of the Michigan Compiled Laws. The commanding officer shall record the disposition of each charge and shall inform the director of the federal bureau of investigation of the final disposition of the felony or misdemeanor arrest.

(7) The commanding officer shall compare the fingerprints and description received with those already on file * * * and if the commanding officer finds that the person arrested has a criminal record * * *, the commanding officer shall immediately inform the arresting agency and prosecuting attorney of this fact. * * *

* * *

(8) The provisions of this section requiring the return of the fingerprints, arrest card, and description shall not apply if the person arrested was charged with the commission or attempted commission of a crime, with or against a child under 16 years of age, or the crime of criminal sexual conduct in any degree, rape, sodomy, gross indecency, indecent liberties, or child abusive commercial activities, or the person arrested has a prior conviction except a misdemeanor traffic offense, unless a judge of a court of record, except the probate court, by express order entered on the record, orders the return.

* * *

(9) Subsection (3) does not permit the forwarding to the department of the fingerprints of a person accused and convicted under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or under a local ordinance substantially corresponding to state law unless the offense is punishable upon conviction by imprisonment for more than 92 days or is an offense which would be punishable by imprisonment for more than 92 days as a second conviction.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

Substantive changes in text indicated by underline

28.243a. Refusing to allow fingerprinting; advising that refusal constitutes misdemeanor

Sec. 3a. Any person required to have his or her fingerprints taken under section 3 [1] who refuses to allow or resists the taking of his or her fingerprints is guilty of a misdemeanor. Such person must be advised that his or her refusal constitutes a misdemeanor.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

[1] Section 28.243.

28.244. Cooperation with state bureaus, federal bureau of investigation, and United States justice department

Sec. 4. The commanding officer shall cooperate with the bureaus in other states and with the federal bureau of investigation and the United States justice department * * *, to develop and carry on a complete interstate, national, and international system of criminal identification and records * * *.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.245. Cooperation; local bureaus

Sec. 5. The commanding officer shall offer assistance and when practicable, instruction, to county sheriffs, chiefs of police, and other peace officers in establishing an efficient local bureau of identification in their districts.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.245a. Random performance audits; report of information not supplied

Sec. 5a. (1) The commanding officer may perform random performance audits of the criminal history record information required under this act.

Deletions from text indicated by asterisks * * *

(2) If the commanding officer finds during a performance audit that criminal history record information is not being supplied as required under this act, the commanding officer shall report this fact to the attorney general.

P.A.1925, No. 289, § 5a, added by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.246. Neglect or refusal to report or perform acts required; penalties; nonfeasance

Sec. 6. Neglect or refusal of any of the officers or officials mentioned in sections 2, 3, and 7 [1] to * * * report as required under this act or to * * * perform any other act required to be * * * performed by him or her under this act shall constitute a misdemeanor, punishable by a fine of not less than $25.00 nor more than $100.00, or by imprisonment * * * for * * * not more than 60 days, or * * * both * * *. Such neglect or refusal shall also constitute nonfeasance in office and subject the official or officer to removal from office.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

[1] Sections 28.242, 28.243, and 28.247.

28.247. Reports of sexually motivated crimes and crimes involving sexual conduct; confidential filing system; violation of confidentiality, penalties

Sec. 7. The sheriff of every county and the chief executive officer of the police department of every city, village, and township shall make * * * reports of accused persons against whom a warrant has been issued and the disposition thereof in sexually motivated crimes and crimes involving sexual conduct verified as such and the disposition of cases resulting from such charges. The department of state police shall provide the forms necessary for reporting such information and the department shall file the reports or copies thereof in a separate confidential filing system. The reports shall be available for examination only by the attorney general, any prosecuting attorney, any court of record, the director of the state police, county sheriffs, * * * the chief executive officer of the police department of any city, village, or township and their authorized officers. The reports shall be held confidential except for official use. Any person who violates any of the confidential provisions of this section shall be guilty of a misdemeanor, punishable by imprisonment * * * for not more than 1 year, or by a fine of not more than $500.00, or both.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.248, 28.249. Repealed by P.A.1986, No. 231, § 2, Eff. June 1, 1987

Substantive changes in text indicated by underline

762.14 Effect of assignment to status of youthful trainee; conviction; civil disability; proceedings closed to public inspection

Sec. 14. An assignment of a youth to the status of youthful trainee, as provided in this chapter, shall not be deemed to be a conviction of crime and such person shall suffer no civil disability, right or privilege following his release from such status because of such assignment as a youthful trainee. Unless such person shall be later convicted of the crime alleged to have been committed, referred to in section 1,[1] all proceedings relative to the disposition of the criminal charge and to the assignment as youthful trainee shall be closed to public inspection, but shall be open to the courts of the state, the department of corrections, the department of social services and law enforcement personnel in the performance of their duties and such information may only be used for the performance of such duties.

[1] Section 762.1.

762.15 Applicability of act to certain youths over 15

Sec. 15. The provisions of this chapter may also be applied to a youth over the age of 15 years whose jurisdiction has been waived under the provisions of section 27 of chapter 4 of this act.[1]

[1] Section 764.27.

764.29. Arraignment for felony or certain misdemeanor complaints; fingerprints

Sec. 29. (1) At the time of arraignment of a person on a complaint for a felony or a misdemeanor punishable by imprisonment for more than 92 days, the magistrate shall examine the court file to determine if the person has had fingerprints taken as required by section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws.

(2) If the person has not had his or her fingerprints taken prior to the time of arraignment for the felony or the misdemeanor punishable by imprisonment for more than 92 days, upon completion of the arraignment, the magistrate shall do either of the following:

(a) Order the person to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the person so that the person's fingerprints can be taken.

(b) Order the person committed to the custody of the sheriff for the taking of the person's fingerprints.

CHAPTER IX. JUDGMENT AND SENTENCE

Section
769.1a. Order of restitution; authority of court; enforcement [New].

Section
769.16a. Final disposition for felonies and misdemeanor complaints; report to state police, content, form; exceptions; fingerprints. [New]

769.1. Authority of court to pronounce judgment and pass sentence; fingerprints

Sec. 1. (1) A judge of a court having jurisdiction is authorized and empowered to pronounce judgment against and pass sentence upon a person convicted of an offense in a court held by that judge. The sentence shall not be in excess of the sentence prescribed by law.

(2) The sentencing of a person convicted of a felony or a misdemeanor punishable by imprisonment for more than 92 days shall not occur until the court has examined the court file and has determined that the fingerprints of the person have been taken.

Amended by P.A.1986, No. 232, § 1, Eff. June 1, 1987.

769.4a Conditional sentence; deferral of proceedings, probation; counseling program; discharge and dismissal of proceedings; limits on discharges and dismissals of proceedings

Sec. 4a. (1) When a person, who has not been convicted previously of a violation of section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, being sections 750.81 and 750.81a of the Michigan Compiled Laws, and the victim of the assault is the offender's spouse, former spouse, or a person residing or having resided in the same household as the victim, pleads guilty to, or is found guilty of, a violation of section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, the court, without entering a judgment of guilt, and with the consent of the accused, may defer further proceedings and place the accused on probation as provided in this section. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this chapter.

(2) An order of probation entered under subsection (1) may require the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the program.

(3) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only 2 discharges and dismissals under this section with respect to any person. The department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action under section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, has already once availed himself or herself of this section.

Amended by P.A.1980, No. 471, § 1, Eff. March 31, 1981.

769.16a. Final disposition for felonies and misdemeanor complaints; report to state police, content, form; exceptions; fingerprints

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor punishable by imprisonment for more than 92 days, the clerk of the court entering the disposition shall immediately advise the department of state police of the final disposition of the charge on forms approved by the state court administrator. The report to the department of state police shall include information as to the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate:

(a) Section 7411 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7411 of the Michigan Compiled Laws.

(b) Sections 11 to 15 of chapter II of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 762.11 to 762.15 of the Michigan Compiled Laws.

(c) Section 4a of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.4a of the Michigan Compiled Laws.

(2) Except as otherwise provided in subsection (3), upon sentencing of a person convicted of a misdemeanor or of a violation of a local ordinance substantially corresponding to state law, the clerk of the court imposing sentence immediately shall advise the department of state police of the conviction on forms approved by the state court administrator. The clerk of a court is not required to report a conviction under this subsection if the clerk is required to report the conviction under subsection (1).

(3) The clerk of a court is not required to and shall not, unless ordered by a judge of the court, report a conviction of a misdemeanor offense if either of the following apply:

(a) The conviction is under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or under a local ordinance substantially corresponding to a provision of Act No. 300 of the Public Acts of 1949, unless the offense is punishable by imprisonment for more than 92 days or is an offense which would be punishable by more than 92 days as a second conviction.

(b) A sentence of imprisonment is not imposed, except as an alternative sentence, and any fine and costs ordered total less than $100.00.

(4) As part of the sentence for a conviction of an offense described in subsection (2), the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police if fingerprints have not already been taken.

P.A.1927, No. 506, c. IX, § 16a, added by P.A.1986, No. 232, § 1, Eff. June 1, 1987.

Chapter 780

Criminal Procedure Setting Aside Convictions

780.621 Application for order setting aside conviction; setting aside of certain convictions prohibited; time and contents of application; submitting application and fingerprints to department of state police; report; application fee; contest of application by attorney general or prosecuting attorney; affidavits and proofs; court order. [M.S.A. 28.1274(101)]

Sec. 1. (1) Except as provided in subsection (2), a person who is convicted of not more than 1 offense may file an application with the convicting court for the entry of an order setting aside the conviction.

(2) A person shall not apply to have set aside, nor may a judge set aside, a conviction for a felony for which the maximum punishment is life imprisonment or a conviction for a traffic offense.

(3) An application shall not be filed until the expiration of 5 years following imposition of the sentence for the conviction which the applicant seeks to set aside or 5 years following completion of any term of imprisonment for that conviction, whichever occurs later.

(4) The application shall contain the following information and shall be signed under oath by the person whose conviction is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the conviction which is to be set aside.

(c) A statement that the applicant has not been convicted of an offense other than the one which is sought to be set aside as a result of this application.

(d) A statement as to whether the applicant has previously filed an application to set aside this or any other conviction and, if so, the disposition of the application.

(e) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(f) A consent to the use of the nonpublic record created under section 3, to the extent authorized by section 3.

(5) The applicant shall submit a copy of the application and a complete set of fingerprints to the department of state police, which shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of $15.00 payable to the state of Michigan which shall be used by the department of state police to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and upon the office of the prosecuting attorney who prosecuted the crime, and an opportunity shall be given to the attorney general and to the prosecuting attorney to contest the application.

(8) Upon the hearing of the application the court may require the filing of such affidavits and the taking of such proofs as it considers proper.

(9) If the court determines that the circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction. The setting aside of a conviction under this act is a privilege and conditional and is not a right.

780.621a Definitions. [M.S.A. 28.1274(101a)]

Sec. 1a. As used in this act:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere, or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Traffic offense" means a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

780.622 Entry of order; effect. [M.S.A. 28.1274(102)]

Sec. 2. (1) Upon the entry of an order as provided for in section 1, the applicant, for purposes of the law, shall be considered not to have been previously convicted, except as provided in this section and section 3.

(2) The applicant shall not be entitled to the remission of any fine, costs, or other sums of money paid as a consequence of a conviction which is set aside.

(3) This act shall not affect the right of the applicant to rely upon the conviction to bar subsequent proceedings for the same offense.

(4) This act shall not affect the right of a victim of a crime to prosecute or defend a civil action for damages.

(5) This act shall not be construed to create a right to commence an action for damages for incarceration under the sentence which the applicant served before the conviction is set aside pursuant to this act.

780.623 Sending copy of order to arresting agency and department of state police; retention and availability of nonpublic record of order and other records; providing copy of nonpublic record to person whose conviction set aside; fee; nonpublic record exempt from disclosure; prohibited conduct; misdemeanor. [M.S.A. 28.1274(103)]

Sec. 3. (1) Upon the entry of an order pursuant to section 1(9), the court shall send a copy of the order to the arresting agency and the department of state police.

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case to which the order applies. Except as provided in subsection (3), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) For consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person, who has filed an application to set aside a conviction, has previously had a conviction set aside pursuant to this act.

(c) For the court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense which is punishable as a felony or by imprisonment for more than 1 year.

(d) For consideration by the governor, if a person whose conviction has been set aside applies for a pardon for another offense.

(3) A copy of the nonpublic record created under subsection (2) shall be provided to the person whose conviction is set aside under this act, upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(4) The nonpublic record maintained under subsection (1) shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(5) A person, other than the applicant, who knows or should have known that a conviction was set aside under this section, who divulges, uses, or publishes information concerning a conviction set aside under this section, except as provided in subsection (2), is guilty of a misdemeanor.

780.624 Setting aside of convictions; limitation. [M.S.A. 28.1274(104)]

Sec. 4. A person may have only 1 conviction set aside under this act.

Approved December 31, 1982.

750.491 Public records; removal, mutilation or destruction; penalty.

Sec. 491. All official books, papers or records created by or received in any office or agency of the state of Michigan or its political subdivisions, are declared to be public property, belonging to the people of the state of Michigan. All books, papers or records shall be disposed of only as provided in section 13c of Act No. 51 of the Public Acts of the First Extra Session of 1948, as added, being section 18.13c of the Compiled Laws of 1948, section 5 of Act No. 271 of the Public Acts of 1913, as amended, being section 399.5 of the Compiled Laws of 1948 and sections 2137 and 2138 of Act No. 236 of the Public Acts of 1961, being sections 600.2137 and 600.2138 of the Compiled Laws of 1948.

Any person who shall wilfully carry away, mutilate or destroy any of such books, papers, records or any part of the same, and any person who shall retain and continue to hold the possession of any books, papers or records, or parts thereof, belonging to the aforesaid offices and shall refuse to deliver up such books, papers, records, or parts thereof to the proper officer having charge of the office to which such books, papers, or records belong, upon demand being made by such officer or, in cases of a defunct office, the Michigan historical commission, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than $1,000.00.

750.492 Public records; inspection, use, copying, removal.

Sec. 492. Any officer having the custody of any county, city or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than $500.00. The custodian of said records and files may make such reasonable rules with reference to the inspection and examination of them as shall be necessary for the protection of said records and files, and to prevent interference with the regular discharge of the duties of such officer. The officer shall prohibit the use of pen and ink in making copies or notes of records and files in his office. No books, records and files shall be removed from the office of the custodian thereof, except by the order of the judge of any court of competent jurisdiction, or in response to a subpoena duces tecum issued therefrom, or for audit purposes conducted pursuant to Act No. 71 of the Public Acts of 1919, as amended, being sections 21.41 to 21.53 of the Compiled Laws of 1948, Act No. 52 of the Public Acts of 1929, being sections 14.141 to 14.145 of the Compiled Laws of 1948 or Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.433 of the Compiled Laws of 1948 with the permission of the official having custody of the records if the official is given a receipt listing the records being removed.

MAINTAINING AND SUPPLYING OF INFORMATION; LAW ENFORCEMENT AGENCIES

Caption editorially supplied

P.A.1980, No. 201, § 1

AN ACT to regulate the maintenance and supplying of information by a law enforcement agency to an interstate law enforcement intelligence organization; to regulate membership by a law enforcement agency in interstate law enforcement intelligence organizations; and to prescribe penalties.

The People of the State of Michigan enact:

752.1. Definitions

Sec. 1. As used in this act:

(a) "File" means all information about an individual recorded and retained by a law enforcement intelligence organization regardless of how the information is stored.

(b) "Freedom of information act" means an act which provides that members of the public have a right to inspect and copy certain records of governmental agencies, which for this state is Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(c) "Individual" means a natural person or a parent or guardian of a natural person who is less than 18 years of age, unless the person who is less than 18 years of age indicates otherwise.

(d) "Interstate law enforcement intelligence organization" means any intelligence gathering organization whose purpose is to promote the gathering, recording, and interstate exchange of confidential information not available through regular police channels and which provides a central clearinghouse for information dissemination to its membership. Interstate law enforcement intelligence organization includes, but is not limited to, the intelligence gathering organization registered as a charitable trust in the state of California with its principal offices located in Sacramento, California.

(e) "Law enforcement agency" means a state or local police department, a sheriff's department, a county prosecutor's office, the department of attorney general, or any other department or agency which enforces the laws of this state or the ordinances of a county, township, city, or village.

P.A.1980, No. 201, § 1, Imd. Eff. July 18.

752.2. Maintaining and supplying information; conditions

Sec. 2. A law enforcement agency may not supply information to or maintain files supplied by an interstate law enforcement intelligence organization unless 1 of the following conditions is met:

(a) The organization is the El Paso intelligence center.

(b) The interstate law enforcement intelligence organization is established by an act of congress.

(c) The interstate law enforcement intelligence organization is established within a federal investigative agency and membership is with the concurrence of the governor of this state.

(d) The interstate law enforcement intelligence organization is created by an act of the legislature in the state where the organization is located and by the legislature of this state.

P.A.1980, No. 201, § 2, Imd. Eff. July 18.

752.3. Maintaining and supplying information; membership in interstate law enforcement intelligence organization; conditions

Sec. 3. (1) Except as provided in section 2,[1] a law enforcement agency shall not maintain membership, supply information to, or maintain files supplied by an interstate law enforcement intelligence organization unless all of the following conditions are met by the interstate law enforcement intelligence organization:

(a) The organization is governed by a citizen oversight body which has the authority to periodically review the files maintained by the organization.

(b) The files maintained by an organization are relevant to a criminal investigation or pertinent to and within the scope of an authorized law enforcement activity.

(c) The organization does not maintain a record describing how an individual exercises rights guaranteed by the first amendment of the constitution of the United States.

(d) The organization has established guidelines which provide for the review of files at regular intervals to insure the accuracy and legality of the file information.

(e) The organization has established guidelines which provide for the destruction of outdated or inaccurate information.

(f) The organization permits its files located in a state with a freedom of information act to be accessible to the public in accordance with that act.

(2) This section shall take effect July 1, 1983.

P.A.1980, No. 201, § 3, Eff. July 1, 1983.

[1] Section 752.2.

752.4. Notice of membership

Sec. 4. A law enforcement agency which is a member of an interstate law enforcement intelligence organization shall notify the legislature and the governor of its membership not later than February 1 of each year.

P.A.1980, No. 201, § 4, Imd. Eff. July 18.

752.5. Exchange of information

Sec. 5. This act shall not be construed to prohibit the exchange of information through regular police channels between a law enforcement agency in this state and a law enforcement agency in another state, the District of Columbia, or the federal government.

P.A.1980, No. 201, § 5, Imd. Eff. July 18.

752.6. Violations

Sec. 6. A person who knowingly violates this act is guilty of a misdemeanor.

P.A.1980, No. 201, § 6, Imd. Eff. July 18.

Former § 752.6:

Chapter 15

Public Officers and Employees
Freedom of Information Act

15.231 Short title; public policy.

Sec. 1. (1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

15.232 Definitions.

Sec. 2. As used in this act:

(a) "Person" means an individual, corporation, partnership, firm, organization, or association.

(b) "Public body" means:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(c) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This act separates public records into 2 classes: (i) those which are exempt from disclosure under section 13, and (ii) all others, which shall be subject to disclosure under this act.

(d) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or

paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

15.233 Public records; right to inspect, copy, or receive; subscriptions; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3. (1) Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of a public record of a public body, except as otherwise expressly provided by section 13. A person has a right to subscribe to future issuances of public records which are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

(2) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

(3) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

This act does not require a public body to create a new public record, except as required in sections 5 and 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(5) The custodian of a public record shall, upon request, furnish a requesting person a certified copy of a public record.

15.234 Fees; waiver or reduction; affidavit; deposit; calculation of costs; provisions inapplicable to certain public records; review by bipartisan joint committee; appointment of members.

Sec. 4. (1) A public body may charge a fee for providing a copy of a public record. Subject to subsection (3), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because furnishing copies of the public record can be considered as primarily benefiting the general public. A copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request, to an individual who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) At the time the request is made, a public body may request a good faith deposit from the person requesting the public record or series of public records, if the fee provided in subsection (1) exceeds $50.00. The deposit shall not exceed ½ of the total fee.

(3) In calculating the costs under subsection (1), a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing public body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. A public body shall utilize the most economical means available for providing copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures, and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or where the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

(5) Three years after the effective date of this act a bipartisan joint committee of 5 members of each house shall review the operation of this section and recommend appropriate changes. The members of the house of representatives shall be appointed by the speaker of the house of representatives. The members of the senate shall be appointed by the majority leader of the senate.

15.235 Request to inspect or receive copy of public record; response to request; failure to respond; court order to disclose or provide copies; damages; contents of notice denying request; signing notice of denial; notice extending period of response; grounds for commencement of action.

Sec. 5. (1) A person desiring to inspect or receive a copy of a public record may make an oral or written request for the public record to the public body.

(2) When a public body receives a request for a public record it shall immediately, but not more than 5 business days after the day the request is received unless otherwise agreed to in writing by the person making the request, respond to the request by 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request as provided in subsection (2) constitutes a final decision by the public body to deny the request. If a circuit court, upon an action commenced pursuant to section 10, finds that a public body has failed to respond as provided in subsection (2), and if the court orders the public body to disclose or provide copies of the public record or a portion thereof, then the circuit court shall assess damages against the public body as provided in section 10(3).

(4) A written notice denying a request for a public record in whole or in part shall constitute a final determination by the public body to deny the request or portion thereof and shall contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or the portion thereof, is exempt from disclosure, if that is the reason for denying the request or a portion thereof.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion thereof.

(c) A description of a public record or information on a public record which is separated or deleted as provided in section 14, if a separation or deletion is made.

(d) A full explanation of the requesting person's right to seek judicial review under section 10. Notification of the right to judicial review shall include notification of the right to receive attorneys' fees and damages as provided in section 10.

(5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.

(6) If a public body issues a notice extending the period for a response to the request, the notice shall set forth the reasons for the extension and the date by which the public body shall do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion thereof, the requesting person may commence an action in circuit court, as provided in section 10.

15.236 Persons responsible for approving denial of request for public record.

Sec. 6. (1) For a public body which is a city, village, township, county, or state department, or under the control thereof, the chief administrative officer of that city, village, township, county, or state department, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners shall be considered the chief administrative officer for purposes of this subsection.

(2) For all other public bodies, the chief administrative officer of the respective public body, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5).

15.240 Action to compel disclosure of public records; commencement; orders; jurisdiction; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny a request or a portion thereof, the requesting person may commence an action in the circuit court to compel disclosure of the public records. If the court determines that the public records are not exempt from disclosure, the court shall order the public body to cease withholding or to produce a public record or a portion thereof wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant

resides or has his principal place of business, or the circuit court for the county in which the public record or an office of the public body is located shall have jurisdiction to issue the order. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(2) An action under this section arising from the denial of an oral request may not be commenced unless the requesting person confirms the oral request in writing not less than 5 days before commencement of the action.

(3) An action commenced pursuant to this section and appeals therefrom shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion thereof. The award shall be assessed against the public body liable for damages under subsection (5).

(5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of $500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body, not an individual, pursuant to whose public function the public record was kept or maintained.

15.241 Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

15.243 Exemptions from disclosure; withholding of information.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act:

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(c) A public record which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) Information the release of which would prevent the public body from complying with 20 U.S.C. section 1232g.

(f) A public record or information described in this section which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(h) Information or records subject to the attorney-client privilege.

(i) Information or records subject to the physician-patient, psychologist-patient, minister, priest or Christian science practitioner, or other privilege recognized by statute or court rule.

(j) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.

(k) Appraisals of real property to be acquired by the public body until (i) an agreement is entered into; or (ii) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(l) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(m) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

(n) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

(o) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, which if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(p) Information which would reveal the exact location of archeological sites. The secretary of state may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to provide for the disclosure of the location of archeological sites for purposes relating to the preservation or scientific examination of sites.

(q) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision shall not apply after 1 year has elapsed from the time the public body completes the testing.

(r) Academic transcripts of an institution of higher education established under sections 5, 6 or 7 of article 8 of the state constitution of 1963, where the record pertains to a student who is delinquent in the payment of financial obligations to the institution.

(s) Records of any campaign committee including any committee that receives monies from a state campaign fund.

(t) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a police or sheriff's agency or department, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informer.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences which law enforcement agencies are requested to check in the absence of their owners or tenants.

(2) This act shall not authorize the withholding of information otherwise required by law to be made available to the public, or to a party in a contested case under Act No. 306 of the Public Acts of 1969, as amended.

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

15.245 Repeal of §§ 24.221, 24.222, and 24.223.

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

15.246 Effective date.

Sec. 16. This act shall take effect 90 days after being signed by the governor.

Chapter 37

Elliott-Larsen Civil Rights Act

Article 2. Employees, Employment Agencies and Labor Organizations

37.2205a. Employer, employment agency, or labor organization prohibited from making record of arrest, detention or disposition of violation not resulting in conviction

Sec. 205a. (1)[1] An employer, employment agency, or labor organization, other than a law enforcement agency of the state or a political subdivision of the state, shall not in connection with an application for employment, personnel, or membership, or in connection with the terms, conditions, or privileges or employment, personnel, or membership request, make, or maintain a record of information regarding an arrest, detention, or disposition of a violation of law in which a conviction did not result. A person shall not be held guilty of perjury or otherwise giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold by this section. This section shall not apply to information relative to a felony charge before conviction or dismissal.

Amended by P.A. 1982, No. 45, § 1, Eff. March 30, 1983.

Chapter 333

Health - Public Health Code

Part 74. Offenses and Penalties

333.7411. Probation without judgment of guilt; violation of probation; discharge and dismissal; instruction or program on drug misuse

Sec. 7411. (1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(iv), (b), (c), or (d),[1] or of use of a controlled substance under section 7404,[2] or possession or use of an imitation controlled substance under section 7341[3] for a second time, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413.[4] There may be only 1 discharge and dismissal under this section as to an individual. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance, or an imitation controlled substance as defined in section 7341, covered in this article has already once utilized this section. For purposes of this section, a person subjected to a civil fine for a first violation of section 7341(4)[5] shall not be considered to have previously been convicted of an offense under this article.

(2) Except as provided in subsection (3), if an individual is convicted of a violation of this article, other than a violation of section 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i) to (iii),[6] the court as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program approved by the department on the medical, psychological, and social effects of the misuse of drugs. The court may order the individual to pay a fee, as approved by the director, for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of probation.

(3) If an individual is convicted of a second violation of section 7341(4), before imposing sentence under subsection (1), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence imposed under subsection (1), the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program shall be considered a violation of the terms of the probation.

Amended by P.A.1984, No. 347, § 1, Eff. March 29, 1985.

750.350a Taking or retaining child by adoptive or natural parent; intent; violation as felony; penalty; restitution for financial expense; effect of pleading or being found guilty; probation; discharge and dismissal; nonpublic record; defense. [M.S.A. 28.582(1)]

Sec. 350a. (1) An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or visitation rights pursuant to a lawful court order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.

(2) A person who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 1 year and 1 day, or a fine of not more than $2,000.00, or both.

(3) A person who violates this section, upon conviction, in addition to any other punishment, may be ordered to make restitution to the other parent, legal guardian, the person or persons who have adopted the child, or any other person having lawful charge of the child for any financial expense incurred as a result of attempting to locate and having the child returned.

(4) When a person who has not been convicted previously of a violation of section 349, 350, or this section, or under any statute of the United States or of any state related to kidnapping, pleads guilty to, or is found guilty of, a violation of this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the person on probation with lawful terms and conditions. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings against the person. Discharge and dismissal under this subsection shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including any additional penalties imposed for second or subsequent convictions. The department of state police shall retain a nonpublic record of an arrest and discharge and dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action has already availed himself or herself of this section.

(5) It shall be a complete defense under this section if an adoptive or natural parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

CHAPTER XIIA

712A.11 Preliminary inquiry; petition; effect of child attaining seventeenth birthday; fingerprints; amendment of petition or other court record; offer of court services. [M.S.A. 27.3178(598.11)]

Sec. 11. (1) If a person gives information to the juvenile division of the probate court that a child is within section 2(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or of the child require that further action be taken. If it appears that formal jurisdiction should be acquired, the court shall authorize a petition to be filed. Only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a child allegedly within section 2(a)(1) of this chapter. If the prosecuting attorney submits a petition requesting the court to take jurisdiction of a child allegedly within section 2(a)(1) of this chapter and it appears that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(2) The petition described in subsection (1) shall be verified and may be upon information and belief. The petition shall set forth plainly the facts that bring the child within this chapter and shall contain all of the following information:

(a) The name, birth date, and address of the child.

(b) The name and address of the child's parents.

(c) The name and address of the child's legal guardian, if there is one.

(d) The name and address of each person having custody or control of the child.

(e) The name and address of the child's nearest known relative, if no parent or guardian can be found.

(3) If any of the facts required by subsection (2) are not known to the petitioner, the petition shall so state. If the child attains his or her seventeenth birthday after the filing of the petition, the jurisdiction of the court shall continue beyond the child's seventeenth birthday, and the court shall have authority to hear and dispose of the petition in accordance with this chapter.

(4) At the time a petition is authorized, the court shall examine the court file to determine if a child has had fingerprints taken as required by section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws. If a child has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the child to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the child so the child's fingerprints can be taken.

(b) Order the child committed to the custody of the sheriff for the taking of the child's fingerprints.

(5) A petition or other court record may be amended at any stage of the proceedings, as the ends of justice require.

(6) If the juvenile diversion act is complied with and it appears that court services can be used in the prevention of delinquency without formal jurisdiction, the court may offer court services to children without a petition being authorized as provided in section 2(e) of this chapter.

712A.18 Orders of disposition; reimbursement; hearing; guidelines and model schedule; condition of probation; restitution; community service; fingerprints; report to state police. [M.S.A. 27.3178(598.18)]

Sec. 18. (1) If the court finds that a child concerning whom a petition has been filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (15), if the court finds that a child is within this chapter, the court may enter any of the following orders of disposition which is appropriate for the welfare of the child and society in view of the facts proven and ascertained:

(a) Warn the child or the child's parents, guardian, or custodian and dismiss the petition.

(b) Place the child on probation, or under supervision in the child's own home or in the home of an adult who is related to the child. As used in this subdivision "related" means any of the following relationships, by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt. The probation or supervision shall be upon such terms and conditions, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, designed for the physical, mental, or moral well-being and behavior of the child, as the court determines.

(c) Place the child in a suitable foster home, which if a home of persons not related to the child, shall be licensed as provided by law.

(d) Place the child in or commit the child to a private institution or agency approved or licensed by the state department of social services for the care of children of similar age, sex, and characteristics.

(e) Commit the child to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive children of similar age, sex, and characteristics. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution, the religious affiliation of the child shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. The court, in every order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, as amended, being sections 803.301 to 803.309 of the Michigan Compiled Laws or in Act No. 220 of the Public Acts of 1935, as amended, being sections 400.201 to 400.214 of the Michigan Compiled Laws, shall name the superintendent of the institution to which the child is committed as a special guardian to receive benefits due the child from the government of the United States, and the benefits shall be used to the extent necessary to pay for the portions of the cost of care in the institution which the parent or parents are found unable to pay.

(f) Provide the child with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items as the court considers necessary.

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct which, in the opinion of the court, has caused or tended to cause the child to come within or to remain under this chapter, or which obstructs placement or commitment of the child pursuant to an order under this section.

(2) An order of disposition placing a child in or committing a child to care outside the child's own home and under state or court supervision shall contain a provision for the reimbursement by the child, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the child, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). The reimbursement provision shall apply during the entire period the child remains in care outside of the child's own home and under state or court supervision, unless the child is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a child is released or discharged from care outside the child's own home and under state or court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the child's own home and under state or court supervision. The court may also collect benefits paid for the cost of care of a court ward from the government of the United States. Money collected for children placed with or committed to the state department of social services shall be accounted for and reported on an individual child basis.

(3) An order of disposition placing a child in the child's own home under subsection (1)(b) may contain a provision for the reimbursement by the child, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, amounts due shall be determined and treated in the same manner provided for an order entered under subsection (2).

(4) An order directed to a parent or a person other than the child shall not be effectual and binding on the parent or other person unless opportunity for hearing has been given pursuant to issuance of summons or notice as provided in sections 12 and 13 of this chapter, and until a copy of the order, bearing the seal of the court, is served on the parent or other person, personally or by first class mail, to the parent's or other person's last known address, as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a child, parent, guardian, or custodian, an order entered under this section may require the child, parent, guardian, or custodian to reimburse the court for attorney fees.

(6) The office of the state court administrator, under the supervision and direction of the supreme court and in consultation with the state department of social services and the Michigan probate and juvenile court judges association, shall create guidelines and a model schedule which may be used by the court in determining the ability of the child, parent, guardian, or custodian to pay for care and any costs of service ordered under subsection (2) or (3). The guidelines and model schedule shall take into account both the income and resources of the child, parent, guardian, or custodian.

(7) If the court finds that a child has violated any municipal ordinance or state or federal law, and the court has placed the child on probation, the court may, as a condition of probation, require the child to do either of the following:

(a) Both of the following:

(*i*) Pay restitution to the victim.

(*ii*) Engage in community service or with the victim's consent perform servic for the victim.

(b) Seek and maintain paid part-time or full-time employment and pay restituti to the victim from the earnings of that paid part-time or full-time employment.

(8) If the court imposes restitution as part of a sentence of probation, the followi shall apply:

(a) The court shall not require a child to pay restitution unless the child is or w be able to pay all or part of the restitution during the term of his or her probation. . determining the amount and method of payment of restitution, the court shall tal into account the financial resources of the child and the burden that the payment restitution will impose, with due regard to any other moral or legal financi obligations that the child may have.

(b) The amount of restitution a court orders a child to pay under subsection (7)(shall not exceed 30% of the net income per pay period from the child's paid part-tin or full-time employment.

(c) A child who is required to pay restitution and who is not in intentional defau of the payment of restitution may petition the court, or an adult acting on the child behalf may petition the court, for a modification of the amount of restitution owed for a cancellation of any unpaid portion of the restitution.

(d) The court shall cancel all or part of the amount of restitution due if it appea to the satisfaction of the court that payment of the amount due will impose a manife. hardship on the child.

(e) If the court cancels all or a part of the amount of restitution, the court ma modify the terms and conditions of probation to require the child to engage i community service.

(9) If a child is required to pay restitution as part of the sentence of probation, th court shall provide for payment to be made in specified installments and within specified period of time.

(10) If the court finds that the child is in intentional default of the payment restitution, a court may revoke or alter the terms and conditions of probation fc nonpayment of restitution.

(11) If a child who is ordered to engage in community service intentionally refuse to perform the required community service, the court may revoke or alter the term and conditions of probation.

(12) If the child is unable to pay all of the restitution ordered, after notice to th child's custodial parent and an opportunity for the parent to be heard, the court ma order the custodial parent to pay all or part of the unpaid portion of the restitutio ordered. The amount of restitution the parent is ordered to pay under this subsectio shall not exceed $2,500.00.

(13) If the court orders the custodial-parent to pay restitution under subsectio (12), the court shall take into account the financial resources of the parent and th burden that the payment of restitution will impose, with due regard to any othe moral or legal financial obligations that the parent may have. If a parent is require to pay restitution under subsection (12), the court shall provide for payment to b made in specified installments and within a specified period of time.

(14) A parent who has been ordered to pay restitution under subsection (12) may petition the court for a modification of the amount of restitution owed or for a cancellation of any unpaid portion of the restitution. The court shall cancel all or part of the amount of restitution due, if it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the parent.

(15) The court shall not enter an order of disposition for a juvenile offense as defined in section 1a of Act No. 289 of the Public Acts of 1925, being section 28.241a of the Michigan Compiled Laws, until the court has examined the court file and has determined that the child's fingerprints have been taken as required by section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws. If a child has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the child to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the child so the child's fingerprints can be taken.

(b) Order the child committed to the custody of the sheriff for the taking of the child's fingerprints.

(16) Upon disposition or dismissal of a juvenile offense, the clerk of the court entering the disposition or dismissal shall immediately advise the department of state police of the disposition or dismissal on forms approved by the state court administrator. The report to the department of state police shall include information as to the finding of the judge or jury and a summary of the disposition imposed.

712A.18e Application for entry of order setting aside adjudication; filing; contents; submitting copy of application and complete set of fingerprints to department of state police; comparing fingerprints; report; fee; serving copy of application on attorney general and prosecuting attorney; contesting application; hearing; affidavits; proofs; entry of order; setting aside adjudication as privilege and conditional; violation of §750.413; effect of entering order; sending copy of order to arresting agency and department of state police; nonpublic record of order and record; availability of nonpublic record; fee; exemption of nonpublic record from disclosure; divulging, using, or publishing information as misdemeanor.
[M.S.A. 27.3178(598.18e)]

Sec. 18e. (1) Except as provided in subsection (2), a person who has been adjudicated of not more than 1 juvenile offense and who has no felony convictions may file an application with the adjudicating court for the entry of an order setting aside the adjudication. A person may have only 1 adjudication set aside under this section.

(2) A person shall not apply to have set aside, nor may a judge set aside, an adjudication for an offense which if committed by an adult would be a felony for which the maximum punishment is life imprisonment or an adjudication for a traffic offense under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(3) An application shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication which the applicant seeks to set

aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

(4) The application shall contain the following information and shall be signed under oath by the person whose adjudication is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the adjudication that is to be set aside.

(c) A statement that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application.

(d) A statement that the applicant has not been convicted of any felony offense.

(e) A statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) A consent to the use of the nonpublic record created under subsection (13), to the extent authorized by subsection (13).

(5) The applicant shall submit a copy of the application and a complete set of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under subsection (13), and shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of adjudication or conviction of the applicant, and the setting aside of any adjudication or conviction of the applicant. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of $15.00 payable to the state of Michigan. The department of state police shall use the fee to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The attorney general and the prosecuting attorney shall have an opportunity to contest the application.

(8) Upon the hearing of the application, the court may require the filing of such affidavits and the taking of such proofs as it considers proper.

(9) Except as provided in subsection (10), if the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(10) Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense which if committed by an adult would be a violation or an attempted violation of section 413 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.

(11) Upon the entry of an order under this section, the applicant, for purposes of the law, shall be considered not to have been previously adjudicated, except as provided in subsection (13) and as follows:

(a) The applicant shall not be entitled to the remission of any fine, costs, or other sums of money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the same offense.

(c) This section does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

(d) This section shall not be construed to create a right to commence an action for damages for detention under the disposition which the applicant served before the adjudication is set aside pursuant to this section.

(12) Upon the entry of an order under this section, the court shall send a copy of the order to the arresting agency and the department of state police.

(13) The department of state police shall retain a nonpublic record of the order setting aside an adjudication and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies. Except as provided in subsection (14), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) For consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) For consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.

(c) To show that a person who has filed an application to set aside an adjudication has previously had an adjudication set aside pursuant to this section.

(d) For the court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(e) For consideration by the governor, if a person whose adjudication has been set aside applies for a pardon for another offense.

(14) A copy of the nonpublic record created under subsection (13) shall be provided to the person whose adjudication is set aside under this section upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(15) The nonpublic record maintained under subsection (13) shall be exempt from disclosure under Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(16) A person, other than the applicant, who knows or should have known that an adjudication was set aside under this section, who divulges, uses, or publishes information concerning an adjudication set aside under this section, except as provided in subsection (13), is guilty of a misdemeanor.

CRIMINAL JUSTICE DATA CENTER

LAW ENFORCEMENT INFORMATION NETWORK

(By authority conferred on the law enforcement information network policy council by section 4 of Act No. 163 of the Public Acts of 1974, being §28.214 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 28.5101 Definitions; A to C.

Rule 101. As used in these rules:

(a) "Act" means Act No. 163 of the Public Acts of 1974, being §28.211 et seq. of the Michigan Compiled Laws, and known as the L.E.I.N. policy council act of 1974.

(b) "Administration of criminal justice" means the performance of any of the following activities:

(i) Detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(ii) Identification of criminals.

(iii) Collection, storage, and dissemination of criminal history record information.

(c) "Agreement" means a contract between the executive agent of the criminal justice data center, the law enforcement information network policy council, and a terminal or non-terminal user agency or a satellite computer system which identifies the responsibilities of the criminal justice data center, the LEIN council, and the user agency.

(d) "Bit" means a unit of computer information.

(e) "Computerized criminal history," known as CCH, means information which is collected on individuals by criminal justice agencies, which is maintained in LEIN and NCIC computer files, and which consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any dispositions arising therefrom.

(f) "Convenience terminal" means an additional computer terminal which is installed in a user agency for the convenience of the user, but which is not required to handle an expanded workload in message traffic.

(g) "Criminal history record information," known as CHRI, means information which is collected on individuals by criminal justice agencies and which consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any dispositions arising therefrom, such as sentencing, correctional supervision, or release.

(h) "Criminal history record information system" means a system for the collection, processing, preservation, or dissemination of criminal history record information, including the equipment, facilities, procedures, agreements, and organizations thereof.

(i) "Criminal justice agency" means either of the following:

(i) A court.

(ii) A governmental agency, or any subunit thereof, which engages in the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget for the administration of criminal justice.

(j) "Criminal justice computer system" means a computer system, communications switcher, or any other device through which LEIN data passes or is processed and which is operated by, and under the exclusive management control of, either a criminal justice agency or a governing board where a majority of the board's members represent criminal justice agencies.

(k) "Criminal justice data center," known as CJDC, means the Michigan data center established by section 5a of Act No. 51 of the Public Acts of the First Extra Session of 1948, as amended, being §18.5a of the Michigan Compiled Laws, state of Michigan Executive Directive 1971-6, and Executive Reorganization Order No. 1972-3, being §10.112 of the Michigan Compiled Laws.

R 28.5102 Definitions; D to L.

Rule 102. As used in these rules:

(a) "Direct access" means access to the LEIN through a computer terminal which is either connected directly to the LEIN computer or is connected through a computer terminal which is linked to a satellite computer system.

(b) "Executive agent, CJDC" means the director of the Michigan state police as established by the state of Michigan Executive Directive 1971-6.

(c) "Full participation" means that a user agency has access to all LEIN and NCIC data and is authorized, where applicable, to enter, modify, and cancel records in the LEIN and NCIC, either directly or through a servicing terminal agency.

(d) "High-speed terminal" means a computer terminal that transmits data at a rate of 1200 or more bits per second.

(e) "Indirect access" means access to the LEIN by a non-terminal agency which receives service through a terminal agency.

(f) "Law enforcement information network," known as LEIN, means the Michigan law enforcement computer system and the series of computer terminal locations which allow criminal justice agencies to put in, and have access to, data.

(g) "LEIN council" means the council created by the act to provide for the establishment of policy and the promulgation of rules governing the use of the LEIN.

(h) "LEIN data" means data that is available either from or through the LEIN computer and includes all of the following:

(i) Wanted and missing person records.

(ii) Stolen and missing license plate records.

(iii) Stolen and wanted vehicle records.

(iv) Criminal history record information.

(v) Michigan department of state vehicle registrations and driver records.

(vi) Vehicle registration and driver records of other states.

(vii) Provision for an intrastate and interstate message switching service to allow the delivery and receipt of administrative messages which are related to criminal justice matters.

(i) "Limited participation" means that a user agency shall have only restricted access to certain LEIN and NCIC data, as approved by the council.

R 28.5103 Definitions; M to O.

Rule 103. As used in these rules:

(a) "Management control" means the authority to set and enforce all of t following:

(i) Priorities.

(ii) Standards for the selection, supervision, and termination of personnel.

(iii) Policy governing the operation of computers which are used to process cri inal history record information insofar as the equipment is used to process, store, transmit criminal history record information and includes the supervision of equi ment, systems design, programming, and operating procedures necessary for the d velopment and implementation of the computerized criminal history program.

(b) "Microwave data link system" means a microwave system which is maintaine by the Michigan state police and which, with council approval, is interfaced to th LEIN.

(c) "Mobile digital terminal" means a device which is installed in a vehicle an which has the capability to send digital messages or receive digital messages, or both

(d) "National crime information center," known as NCIC, means the nationwid criminal justice data center which is located in Washington, D.C., and which is ad ministered by the U.S. department of justice. The authority for the NCIC progran is derived from 28 C.F.R. §534 (1976).

(e) "National law enforcement telecommunications system," known as NLETS means a national computerized message delivery system located in Phoenix, Arizona

(f) "NCIC advisory policy board" means that board established by 28 C.F.R §20.25 (1976), to make recommendations to the director of the federal bureau of investigation on general policy with respect to the philosophy, concept, and operational principles of NCIC.

(g) "NCIC data" means data that are available from the NCIC computer and includes all of the following:

(i) Wanted and missing person records.

(ii) Stolen and missing license plate records.

(iii) Stolen and wanted vehicle records.

(iv) Stolen gun, security, article, and boat records.

(v) Criminal history record information.

(h) "Noncriminal justice computer system" means a computer system, communications switcher, or any other device that is operated by a noncriminal justice agency and through which LEIN or NCIC data pass or are processed.

(i) "Non-terminal agency" means a criminal justice agency that is authorized to have indirect access to LEIN and its satellite computers through a terminal agency.

(j) "Originating agency identifier," known as ORI, means a 9 character code which is assigned by LEIN or NCIC, or both, and which is used to identify an agency for message transaction purposes.

R 28.5104 Definitions; P to U.

Rule 104. As used in these rules:

(a) "Private person" means an individual, partnership, association, corporation, governmental subdivision, or public or private organization of any kind that does not qualify for access to the LEIN.

(b) "Regional communications system" means a cooperative effort which is entered into by political subdivisions in a geographic area for the purpose of providing consolidated dispatch services for police, fire, and rescue services.

(c) "Satellite computer system" means a computer system that is directly interfaced to the LEIN.

(d) "Self-pay agency" means an agency that is authorized by the council to have direct access to the LEIN through equipment which shall be paid for by the user agency. The equipment may be either of the following:

(i) A terminal and related communication links which are procured through the CJDC.

(ii) A terminal with related communication links which is connected to an approved satellite computer system which is interfaced to the LEIN.

(e) "Standard LEIN terminal" means a teletype terminal which transmits data at a rate of 100 or less bits per second.

(f) "State-funded agency" means an agency that is authorized by the council to have direct access to LEIN data and services through a state-funded, standard LEIN terminal.

(g) "Terminal agency" means either of the following:

(i) A criminal justice agency in which a LEIN terminal is physically located.

(ii) An agency that has access to LEIN through a terminal connected to an authorized satellite computer.

(h) "User agency" means an authorized criminal justice agency or any other agency that is authorized to have either direct or indirect access to the LEIN.

R 28.5105 Adoption of federal standards.

Rule 105. The following federal standards are incorporated by reference in these rules:

(a) "Criminal Justice Information Systems," 28 C.F.R. part 20 (1976). Copies of these regulations may be inspected at the offices of the criminal justice data center, department of state police. Copies may be obtained without charge from the Federal Bureau of Investigation, Washington, D.C. 20535, and from the Department of State Police, 714 S. Harrison Road, E. Lansing, Michigan 48823.

(b) NCIC rules and procedures governing the utilization of the federal computerized criminal history programs which are published in a department of justice document entitled, "Computerized Criminal History Program, Background, Concept, and Policy," dated June 14, 1979. This publication may be obtained without charge at the offices of the Criminal Justice Data Center, Department of State Police, 714 S. Harrison Road, E. Lansing, Michigan 48823, or from the National Crime Information Center Section, Federal Bureau of Investigation, Washington, D.C. 20535.

R 28.5106 LEIN council; meetings; quorum; alternates.

Rule 106. (1) The council shall meet quarterly in January, April, July, and October and at other times as the chairman deems necessary.

(2) A quorum is required for the conduct of council business.

(3) A quorum of the council shall be a majority of council members.

(4) When a member of the council is unable to attend a meeting, he or she may designate a person who is not a member to act as his or her alternate. Written designation of the alternate shall be delivered to the executive secretary of the council before the commencement of the meeting. Alternates shall exercise the same voting privilege as that of the absent member.

(5) Meetings of the council shall be called by the chairman. Meeting announcements shall be mailed to the business address of each member not less than 7 days before the meeting.

(6) Meetings of the council shall be conducted pursuant to the "Roberts' Rules of Order."

(7) Council meetings shall be conducted in compliance with Act No. 267 of the Public Acts of 1976, as amended, being §15.261 et seq. of the Michigan Compiled Laws, and known as the open meetings act.

R 28.5107 LEIN council; committees.

Rule 107. (1) The chairman may establish committees of the council, appoint members, and designate chairpersons.

(2) Committees shall be comprised of not less than 3 members of the council.

(3) Committee reports and meeting minutes shall be submitted to the council in writing.

R 28.5108 LEIN council; officers; election; removal from office; powers and duties.

Rule 108. (1) The officers of the council shall consist of a chairman, vice-chairman, and an executive secretary.

(2) The officers, except the executive secretary, shall be elected by a majority vote of the council.

(3) Officers shall be elected at the regular July meeting of the council, shall serve for 1 year, and may succeed themselves.

(4) The elected officers of the council shall serve at the pleasure of the council and may be removed by an affirmative vote of 2/3 of the council.

(5) When a vacancy occurs in any office by reason of death, incapacity, resignation, or removal, a special election shall be held to select a council member to complete the unexpired term of the vacated office.

(6) The chairman shall be the chief executive officer of the council, shall preside at all meetings, and shall execute instruments for, and on behalf of, the council.

(7) The vice-chairman shall, in the absence or disability of the chairman, perform all duties and exercise all powers of the chairman and shall perform such other duties as may be assigned to him or her by the chairman.

(8) The executive secretary, subject to the recommendation of the council, shall be appointed by the director of the department of state police and shall hold office at the pleasure of the council. The executive secretary shall perform all of the following duties:

(a) Serve as the council's representative in the day-to-day administration of the LEIN.

(b) Prepare council meeting agendas, give notice of all meetings of the council, and maintain a written record of the proceedings of such meetings.

(c) Maintain custody of all documents of the council and provide for their safekeeping.

(d) Insure that all policies and rules that are established by council action are promulgated as required by Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws, and known as the administrative procedures act of 1969.

(e) Serve as an ex-officio, non-voting member of all committees of the council.

R 28.5109 ORI assignment and construction for Michigan law enforcement agencies.

Rule 109. (1) A user agency that has access to the LEIN shall be assigned an ORI.

(2) State police, sheriff department, and local law enforcement agency ORIs shall be constructed as follows:

(a) The first 2 characters shall be the abbreviation for the state. Each state shall have a 2-character alphabetic code identification. For example, Michigan's code is MI.

(b) The third and fourth characters shall be a 2-digit number identifying the county. These digits are derived from listing the 83 counties of Michigan alphabetically from Alcona to Wexford, then numbering them consecutively.

(c) The fifth, sixth, and seventh characters shall be a 3-digit number identifying a specific jurisdiction within a county and indicating the type of law enforcement agency, as follows:

(i) State police agencies .....001 to 099.
(ii) Sheriff departments .....100 to 183.
(iii) Municipal, township, or other police departments .....200 to 999.

(d) The eighth and ninth characters shall be used to explicitly identify internal divisions, units, or subunits within larger departments which have multiple terminals. The eighth character may be a letter or a number. The ninth character shall be a number.

R 28.5110 ORI assignment and construction for other Michigan criminal justice agencies and regional communication systems.

Rule 110. ORIs shall be assigned to authorized Michigan courts, prosecuting attorneys, parole and probation agencies, correctional institutions, pretrial service agencies, and regional communications systems. These ORIs shall be constructed as follows:

(a) The first 2 characters shall be the abbreviation for the state.

(b) The third and fourth characters shall identify the county.

(c) The fifth, sixth, and seventh characters shall identify a specific agency within the county.

(d) The eighth character shall identify the governmental level of the agency, as follows:

(i) A local or municipal agency is 1.

(ii) A county agency is 3.

(iii) A state agency is 5.
(iv) A federal agency is 7.
(e) The ninth character shall identify the type of agency, as follows:
(i) A prosecuting, district, or city attorney or the attorney general is A.
(ii) A pretrial service agency is B.
(iii) A correctional institution, including a jail, prison, detention or treatment center, or halfway house, is C.
(iv) A probation or parole agency is G.
(v) A court is J.
(vi) A medical examiner, coroner, or custodial facility in a medical or psychiatric institution is M.
(vii) A regional communication system is N.
(viii) A miscellaneous agency that is statutorily classified as a criminal justice agency is Y.

R 28.5111 LEIN ORI assignment; criteria.

Rule 111. (1) To qualify for a LEIN ORI assignment, an agency shall meet both of the following criteria:
(a) The agency shall be a governmental agency.
(b) The agency shall qualify as a criminal justice agency, as defined in R 28.5101.
(2) A nongovernmental agency may qualify for a LEIN ORI assignment if it meets both of the following criteria:
(a) The agency is statutorily vested with arrest powers.
(b) The agency is engaged primarily in the administration of criminal justice.

R 28.5112 NCIC ORI assignment; criteria.

Rule 112. (1) To qualify for an NCIC ORI assignment, an agency shall meet both of the following criteria:
(a) The agency shall be a governmental agency.
(b) The agency shall qualify as a criminal justice agency as defined in R 28.5101.
(2) An agency that does not meet the qualifications of a criminal justice agency may qualify for an NCIC ORI assignment if it meets the definition of an agency under the management control of a criminal justice agency.

R 28.5113 NCIC ORI assignment; unqualified agencies.

Rule 113. The following agencies do not qualify for an ORI assignment:
(a) A court that hears civil cases only.
(b) A correctional facility that houses only juveniles who are orphaned or declared incorrigible but who are not involved in the criminal justice process.
(c) Private school police.
(d) Railroad police.

R 28.5114 ORI assignment; request for issuance.

Rule 114. A request for the issuance of an ORI assignment shall be made on a form provided by the council and shall be accompanied by the statute, executive order, or other documentation which establishes the agency as a criminal justice agency or an agency under the management control of a criminal justice agency. Forms are available from the Executive Secretary, LEIN Policy Council, 714 S. Harrison Road, E. Lansing, Michigan 48823.

R 28.5115 ORI assignment and maintenance; responsibility.

Rule 115. The executive secretary of the council is responsible for assigning ORI numbers to all authorized agencies and shall maintain records of all assignments, additions, deletions, or corrections to ORI numbers.

R 28.5116 LEIN or NCIC entries; use of ORIs required.

Rule 116. A user agency shall use its assigned ORI on all records entered into the LEIN or NCIC.

R 28.5117 Cities and townships; ORI assignment.

Rule 117. A city or township that requires an elected or appointed constable to perform both statutory criminal and civil duties is eligible for an ORI assignment if the constable satisfies all of the following criteria:

(a) Complies with the minimum employment standards as established by the law enforcement training council pursuant to section 9 of Act No. 203 of the Public Acts of 1965, as amended, being §28.609 of the Michigan Compiled Laws.

(b) Has unrestricted arrest powers of a peace officer as defined in section 15 of Act No. 84 of the Public Acts of 1935, as amended, being §764.15 of the Michigan Compiled Laws.

(c) Is employed by the city or township as a full-time peace officer.

R 28.5118 Public hearings; applicable law.

Rule 118. Public hearings conducted by the LEIN council pursuant to the act shall be in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws.

R 28.5119 Contested cases; applicable law.

Rule 119. LEIN council administrative procedures in contested cases and judicial review shall be in accordance with and subject to sections 71 to 87 and 101 to 106 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 and 24.301 to 24.306 of the Michigan Compiled Laws.

R 28.5120 Special programming requests from a user agency.

Rule 120. A request received by the CJDC from a user agency for special programming or other special work which is of benefit only to the requestor shall be processed as follows:

(a) The request shall be submitted in writing to the executive secretary of the LEIN council and shall include all of the following information:

(i) A description of the special programming or work desired.

(ii) The purpose or reason for the request.

(iii) When the special programming or other work is needed.

(b) When a request is received, the executive secretary shall forward a letter to the user agency acknowledging receipt thereof.

(c) The executive secretary shall determine if the request requires LEIN council approval. If so, he or she shall forward the request to the appropriate committee of the LEIN council for review. The committee shall determine if there are any budgetary requirements and shall recommend approval or disapproval to the LEIN council.

(d) If the request is approved by the LEIN council, the executive secretary shall notify the user agency in writing.

(e) A request from a user agency for special programming or special work that does not require LEIN council review and approval shall be forwarded to the director of the CJDC by the executive secretary for further processing.

PART 2. ACCESS, ELIGIBILITY, AND DATA DISSEMINATION PROVISIONS

R 28.5201 LEIN access; authorized agencies.

Rule 201. Access to LEIN data shall be restricted to the following agencies:

(a) A criminal justice agency.

(b) A nongovernmental agency that is statutorily vested with arrest powers and whose primary function is the administration of criminal justice.

(c) A regional or local organization which is established pursuant to a statute, ordinance, resolution, or executive order, which has as its primary function the collecting and processing of criminal justice information, and whose governing board has, as a majority of its members, persons who represent criminal justice agencies.

(d) A governmental agency that maintains vehicle registration and driver records as 1 of its primary functions.

R 28.5202 NCIC access; authorized agencies.

Rule 202. Access to NCIC data shall be restricted to the following agencies:

(a) A criminal justice agency.

(b) Agencies at all government levels that have, as a principal function, the collection and provision of fingerprint identification information.

(c) A regional or local organization which is established pursuant to a statute, ordinance, resolution, or executive order, which has as its primary function the collecting and processing of criminal justice information, and whose governing board has, as a majority of its members, persons who represent criminal justice agencies.

(d) A government agency that maintains vehicle registration and driver records as 1 of its primary functions.

R 28.5203 Criminal justice agency; participation in LEIN and NCIC; criteria.

Rule 203. (1) A criminal justice agency may qualify for either full or limited participation in the LEIN and NCIC.

(2) To qualify for full participation in the LEIN and NCIC systems, a criminal justice agency shall comply with all of the following:

(a) Complete an agreement with the executive agent, CJDC, and the LEIN policy council.

(b) Insure that computers, terminals, other related equipment that is used to gain access to these systems, and all personnel either operating or having access to such equipment are under the management control of either of the following:

(i) A criminal justice agency administrator.

(ii) A governing board that is established by a statute, ordinance, resolution, or executive order. The majority of the governing board's membership shall be representatives of criminal justice agencies.

(c) Establish procedures to insure that, upon inquiry, all records that are entered into either the LEIN or NCIC files can be promptly confirmed as valid. A terminal agency shall either maintain a 24-hours-a-day, 7-days-a-week operation or shall establish an alternative records verification procedure. This verification procedure shall require council approval before implementation.

(3) In addition to the requirements of subrule (2) of this rule, a law enforcement agency shall meet both of the following criteria:

(a) Be vested with the power of arrest as defined in Act No. 175 of the Public Acts of 1927, as amended, being §764.15 et seq. of the Michigan Compiled Laws.

(b) A local, county, or state law enforcement agency shall establish an interim bond procedure as outlined in Act No. 157 of the Public Acts of 1970, as amended, being §780.581 et seq. of the Michigan Compiled Laws.

R 28.5204 Regional communications systems; participation in LEIN and NCIC; criteria.

Rule 204. (1) To qualify for participation in the LEIN and NCIC systems, a regional communications system shall comply with all of the following:

(a) Complete an agreement with the executive agent, CJDC, and the LEIN policy council.

(b) Insure that computers, terminals, other related equipment that it used to gain access to these systems, and all personnel either operating or having access to such equipment are under the management control of either of the following:

(i) A criminal justice agency administrator.

(ii) A governing board that is established by a statute, ordinance, resolution, or executive order. The majority of the governing board's membership shall be representatives of criminal justice agencies.

(c) Establish procedures to insure that, upon inquiry, all records entered into either the LEIN or NCIC files can be promptly confirmed as valid. A regional communications system shall either maintain a 24-hours-a-day, 7-days-a-week operation or shall establish an alternative records verification procedure. The verification procedure shall require council approval before implementation.

(2) Unless specifically approved by the council, regional communications systems shall not be authorized to have access to either computerized or manually maintained criminal history record information.

R 28.5205 Nongovernment agency; limited participation in LEIN; criteria.

Rule 205. To qualify for limited participation in the LEIN, a nongovernment agency shall comply with all of the following:

(a) Be statutorily vested with the powers of arrest and have, as its primary function, the administration of criminal justice.

(b) Complete an agreement with the executive agent, CJDC, and the LEIN policy council.

(c) Insure that computers, terminals, and other related equipment that is used to gain access to LEIN files are under the management control of the user agency administrator.

(d) Establish procedures to insure that, upon inquiry, all records entered into the LEIN can be promptly confirmed as valid. A terminal agency shall either maintain a 24-hours-a-day, 7-days-a-week operation or shall establish an alternative records verification procedure. The verification procedure shall require council approval before implementation.

R 28.5206 Criminal justice agency serviced through a noncriminal justice computer system; participating in LEIN; criteria.

Rule 206. To qualify to participate in the LEIN, a criminal justice agency that is serviced by a noncriminal justice computer system shall comply with both of the following requirements:

(a) Exercise management control over the operation of all hardware at the noncriminal justice computer center which is used to process, store, or forward either LEIN or NCIC data.

(b) Complete a written agreement with the noncriminal justice agency that operates the computer center. The agreement shall give the criminal justice agency all of the following rights and powers:

(i) A guarantee that the criminal justice agency network shall receive the highest priority in the areas of maintenance, support, and assignment of personnel and hardware resources.

(ii) The right to final approval in the selection of all software used to communicate with the LEIN.

(iii) The right to approve all employees who will have access to hardware which connects to the LEIN.

(iv) The authority to make any necessary audits to insure system security.

(v) The authority to review management output records to ensure that the criminal justice agency's guaranteed priority agreement is being honored.

R 28.5207 Agencies participating in LEIN; change in status.

Rule 207. The council shall be notified in writing in advance of any proposed changes in the status of an agency participating, or approved for participation, in the LEIN. Continued participation in the LEIN is subject to review of the new status by the council to determine if all eligibility requirements are met. Changes in status include, but are not limited to, all of the following situations:

(a) A single jurisdiction LEIN user planning to join a regional communications system.

(b) A change in the management structure of a criminal justice computer system or a regional communications system.

(c) A change in the management structure of a noncriminal justice computer system or data center which services criminal justice agencies.

(d) A noncriminal justice computer system or data center planning to discontinue or alter service to a criminal justice agency.

R 28.5208 LEIN data dissemination generally.

Rule 208. (1) Except as outlined in R 28.5210 and R 28.5211, data received through the LEIN shall only be disseminated to a criminal justice agency or an agency that is statutorily authorized to have access to such data.

(2) Data, either computerized or manually processed, that are received by a user agency through the LEIN shall be used for criminal justice purposes only. This includes data received from any of the following systems:

(a) The LEIN.

(b) The NCIC.

(c) The Michigan department of state.

(d) The national law enforcement telecommunications system.

(e) Any other agency or system from which information is received and forwarded to a user agency through the LEIN.

(3) The LEIN, or information received through the LEIN, shall not be used for personal reasons.

(4) A user agency shall not sell or disseminate any information obtained through the LEIN to any individual, group of individuals, organization, governmental agency, or corporation which is not legally authorized to have access to this information.

R 28.5209 LEIN data dissemination; CJDC release to user agency.

Rule 209. (1) Except as prescribed in subrule (2) of this rule, a user agency's message transactions into, through, or from the LEIN shall not be released by the CDJC to another user agency without the written consent of the administrative head of the agency whose message transactions are being requested.

(2) The CJDC may release a user agency's message transactions to another agency under any of the following conditions:

(a) Upon written request from a local, county, state, or federal prosecuting attorney who shall specify that the information required is for a valid criminal justice purpose.

(b) A court order.

(c) A request made under Act No. 442 of the Public Acts of 1976, as amended, being §15.231 et seq. of the Michigan Compiled Laws, and known as the freedom of information act. The CJDC or the executive secretary of the council shall notify the administrative head of a user agency when that agency's message transactions have been released to a private person as a result of a request made under this act.

R 28.5210 Criminal history record information; user agency dissemination to private person prohibited; request from private person to review information; obtaining information by private person.

Rule 210. (1) A user agency shall not disseminate criminal history record information received through the LEIN to a private person.

(2) A private person, upon request, satisfactory verification of his or her identity by fingerprint comparison, and payment of any required processing fee, may review the criminal history record maintained about him or her in the files of the Central Records Division, Department of State Police, 7150 Harris Drive, Lansing, Michigan 48913.

(3) To obtain criminal history record information, a private person may appear at a user agency and request that his or her fingerprints be taken on an applicant or noncriminal fingerprint card. The user agency shall return the card to the private person who may then forward the fingerprint card and a letter of request to the central records division of the department of state police. The central records division of the department of state police shall search its files and shall mail the criminal history record information and fingerprints to the person making the request.

R 28.5211 Warrant or stolen property information; receipt of verbal information by a private person; request for written information by a private person.

Rule 211. (1) A private person may receive verbal information as to whether or not a warrant ordering his or her arrest has been issued by a court and entered into either LEIN or NCIC files, if he or she appears in person at a law enforcement user agency and is properly identified.

(2) A private person may receive verbal information as to whether or not vehicle, a vehicle part, or other stolen property has been entered into either LEIN NCIC files, if he or she appears at a law enforcement user agency, is proper identified, and satisfactorily explains to the user agency the purpose or need f the information.

(3) If a private person requests a terminal-prepared or other printed or writte record of the information, he or she may be referred to the court that issued the warra or, in the case of a stolen vehicle, vehicle part, or other stolen property, to the use agency that is responsible for the original entry into either the LEIN or NCIC file

R 28.5212 LEIN access; non-terminal user agency.

Rule 212. (1) A user agency that accepts the installation of a LEIN termina which is either partially or fully funded by state allocated funds shall agree to pro vide LEIN access to an authorized non-terminal user agency which is assigned to i by the CJDC. When an assignment for service is to be made, the CJDC shall conside all of the following factors:

(a) Radio frequency compatability between the involved agencies.

(b) Geographical location of the terminal and non-terminal agencies.

(c) Ability of the terminal agency to provide normal services to a non-terminal agency based on reasonable requests from the non-terminal agency.

(2) A terminal agency shall provide all of the following services to an authorized non-terminal agency:

(a) Entry, inquiry, modification, or cancellation services for wanted and missing persons records, stolen and wanted vehicles, and stolen property records.

(b) Inquiry service to computerized or manually stored criminal history record information which is maintained in either the Michigan department of state police files or in similiar files in other local, state, or federal agencies.

(c) Inquiry service to computerized or manually stored vehicle registration and driver records which are maintained in either the Michigan department of state files or in similiar files in other states.

(d) Intrastate and interstate administrative message service.

(e) Any other LEIN services which are or may become available and which are authorized by the council.

(3) A terminal agency shall not charge a non-terminal agency any fees for LEIN access without the approval of the council.

R 28.5213 LEIN use by user agency authorized to examine applicants for operator and chauffeur licenses.

Rule 213. A user agency that is authorized to conduct examinations of applicants for operator and chauffeur licenses, as prescribed in section 309 of Act No. 300 of the Public Acts of 1949, as amended, being §257.309 of the Michigan Compiled Laws, may use the LEIN to gain access to the secretary of state's driver files for record clearance purposes if such use does not impede or interfere with the ability of the LEIN to adequately serve the needs of the law enforcement community.

R 28.5214 Criminal history record information; dissemination by radio devices prohibited.

Rule 214. Radio devices, whether digital or voice, shall not be used to transmit criminal history record information beyond that information which is necessary to effect an immediate identification to insure adequate safety for a law enforcement officer or the general public where such information was originally transmitted over the LEIN to a radio broadcasting device or location.

PART 3. TERMINALS AND EQUIPMENT

R 28.5301 LEIN access; terminal or computer system; council approval.

Rule 301. A terminal or computer system shall not have direct access to the LEIN without the prior approval of the council.

R 28.5302 Terminal installation; application; changes, additions, or corrections; processing.

Rule 302. (1) An application for the installation of a terminal shall be made on a form prescribed by the council and shall be filed with the executive secretary of the council. The application shall indicate if the request is for a state-funded or self-pay terminal.

(2) An applicant shall answer all questions on the application truthfully and shall not misrepresent any material fact on the application.

(3) Changes, additions, or corrections to the original application, including, but not limited to, changes in business address or officers shall be filed with the executive secretary of the council within 10 days after the changes are made.

(4) When an application for a terminal is received, the executive secretary of the council shall process the application as follows:

(a) Review for completeness and chronologically number each application received.

(b) Forward a letter to the applicant agency acknowledging receipt of the application.

(c) Forward a copy of each application to the council for review and approval or disapproval.

(5) The council shall review all pending applications not less than 4 times yearly.

R 28.5303 State-funded terminal installation application; council review.

Rule 303. An application for the installation of a state-funded terminal shall be reviewed by the council on a comparative basis with other such applications and consideration shall be given to each of following factors:

(a) The population of the area served by the applicant agency.

(b) The number of patrol units that will be serviced by the terminal if the applicant agency is a law enforcement agency.

(c) The applicant agency's workload requiring LEIN data and services.

(d) The number of records entered or to be entered in LEIN and NCIC files.

(e) The geographical location of the applicant agency.

(f) The current accessibility to the LEIN.

(g) The compatibility in radio frequencies between the involved agencies.

(h) The emergency needs of the applicant agency.

R 28.5304 Self-pay terminal installation application; council review; approval.

Rule 304. (1) An application for the installation of a self-pay terminal shall be individually reviewed by the council and shall not be compared with pending applications for state-funded terminals.

(2) The council may approve a terminal installation for a self-pay agency if both of the following criteria are met:

(a) The CJDC has sufficient computer equipment to provide satisfactory LEIN data and service.

(b) Installation does not reduce the ability of the CJDC to furnish adequate service to existing LEIN terminal agencies.

R 28.5305 State funding of terminal installations generally.

Rule 305. (1) The council shall approve the installation of a LEIN terminal, consistent with the availability of state funds, if the applicant agency meets the minimum criteria as established by the council.

(2) The council shall periodically review and audit the operation of a LEIN terminal agency and may remove state funding support when the established minimum criteria are not met.

(3) A self-pay agency shall be considered for state funding when new or additional state funds are allocated for LEIN terminals if both of the following criteria are met:

(a) The self-pay agency meets the minimum criteria as established by the council.

(b) The relative ranking of the self-pay agency in respect to other self-pay agencies warrants removal of the self-pay status.

(4) LEIN terminals that are installed in Michigan department of state facilities shall be state-funded consistent with the availability of state funds.

R 28.5306 Federal criminal justice agency; access to LEIN data; criteria.

Rule 306. A federal criminal justice agency shall be authorized to have direct access to LEIN data if such agency complies with both of the following criteria:

(a) The agency pays the costs for the terminal, its installation, and related communications links.

(b) The agency executes an agreement with the executive agent, CJDC, and the council.

R 28.5307 State-funded agency; terminal upgrading.

Rule 307. (1) A state-funded agency may upgrade its standard LEIN terminal to a high-speed terminal. The high-speed terminal shall be procured through the CJDC.

(2) The maximum amount of state funds that may be credited toward the upgrading of terminal equipment shall not exceed the average cost of a standard LEIN terminal and its related communication links.

R 28.5308 State-funded agency; return of state-funded terminal equipment; credit.

Rule 308. A state-funded agency which upgrades its LEIN data access either through its own or a shared noncriminal justice computer and which returns its state-funded terminal equipment may be credited with either of the following:

(a) The average cost of a standard LEIN terminal and its related communication links.

(b) The line costs to interface the satellite computer system to the LEIN.

R 28.5309 CJDC responsibilities to a state-funded agency.

Rule 309. The CJDC, with respect to a state-funded agency and contingent upon the availability of state funds appropriated for such purposes, shall do all of the following:

(a) Place all orders for the installation, relocation, or removal of terminals, communication links, and other related equipment.

(b) Make all technical service arrangements that are related to the installation, maintenance, relocation, and removal of equipment.

(c) Perform the system analysis, design, and programming which is required at the CJDC.

(d) Provide a standard terminal and related communications equipment.

(e) Provide the necessary computers and related resources at the CJDC to insure access to the LEIN.

R 28.5310 CJDC responsibilities to a self-pay agency.

Rule 310. (1) The CJDC shall provide a self-pay agency which uses terminal and related communications equipment which is procured through the CJDC with the same access to the LEIN as is provided to a state-funded agency.

(2) If a self-pay agency elects to obtain its own equipment which is not identical to equipment offered through the CJDC, the CJDC responsibilities shall be limited to all of the following:

(a) Providing technical information as to the communications disciplines and message structures which are required for successful interface to the LEIN.

(b) Providing access to the LEIN in the same manner and format as is provided to a state-funded user agency.

(c) Placing orders for the installation, relocation, or removal of communications lines and other related communications equipment.

(d) Performing required programming at the CJDC which is identical to that provided to state-funded participant agencies.

(e) Providing the necessary computers and related equipment at the CJDC to insure access to LEIN data and services.

(f) Providing reference manuals, publications, and bulletins in the identical language and formats as are furnished to a state-funded agency.

(g) Correcting those problems which are determined to be related to the CJDC or to related communication links. The CJDC is not responsible for the correction of any problem that is associated with the user agency's equipment.

(3) The CJDC shall not provide training to user agencies in the operation of equipment which differs from equipment procured through the CJDC.

R 28.5311 Self-pay user agency; responsibilities.

Rule 311. (1) A self-pay user agency is responsible for the procurement of, and payment for, all consumable supplies which are required for the terminal or computer, or both.

(2) A self-pay agency which uses equipment that is not identical to equipment offered through the CJDC is responsible for all of the following:

(a) Compliance with the data transmission rates and communication disciplines established by the CJDC.

(b) Payment of the cost of the communication line link to the CJDC.

(c) Payment of the cost of connecting the communication line to the transmission control unit at the CJDC.

(d) Providing for the training of personnel in the use of terminal equipment.

(e) Insuring that the user agency's system will provide access to all authorized data as performed on state-funded terminals.

(f) Payment of the costs for reprogramming or equipment modifications, or both, which become necessary as a result of changes made at the CJDC.

R 28.5312 Non-law enforcement criminal justice agency; terminal installation; criteria for council approval.

Rule 312. The installation of a terminal in a non-law enforcement criminal justice agency shall be approved by the council if all of the following criteria are met:

(a) The applicant agency pays the installation, terminal leasing, and communication equipment costs.

(b) The installation does not reduce the ability of the LEIN to provide satisfactory service to law enforcement agencies.

(c) The applicant agency executes an agreement with the executive agent, CJDC, and the council.

R 28.5313 Emergency terminal installation.

Rule 313. (1) The commanding officer of the operations division of the Michigan state police or the director of the CJDC may order the installation of a terminal under emergency circumstances.

(2) If a terminal is installed for emergency purposes, the chairman of the LEIN council shall be immediately notified by the CJDC.

(3) The emergency installation of a terminal is subject to the subsequent review and approval of the council.

R 28.5314 Convenience terminals; payment of installation costs.

Rule 314. All costs associated with the installation of a convenience terminal, including the costs for leasing a terminal and the communications link, shall be paid by the applicant agency.

R 28.5315 Microwave data links; interface to LEIN; serviced terminals; council approval.

Rule 315. (1) Each microwave data link system interface to the LEIN shall be approved by the council.

(2) A terminal that is serviced through the microwave data link system shall be approved by the council.

R 28.5316 State microwave link to LEIN; written request; criteria for approval.

Rule 316. (1) A user agency that wishes to have direct access to the LEIN through a state microwave link shall submit a written request to the council which shall include all of the following information:

(a) Details of the agency plan for use of the microwave link.

(b) The type of terminal, computer, and other related equipment which the agency plans to use.

(c) Information as to whether the interface request is for state funding support or is on a self-pay basis.

(2) The council may approve a request from an agency for a microwave interface to the LEIN if all of the following criteria are met:

(a) The applicant agency is geographically located within the area that is serviced by existing state microwave equipment.

(b) A channel on the state microwave system is available for use by the applicant agency.

(c) The communications division of the department of state police approves the use of the channel for LEIN data transmission.

(d) The agency workload justifies the microwave interface.

R 28.5317 Installation of mobile terminal having access to LEIN; council approval.

Rule 317. (1) The installation of a mobile terminal having access to the LEIN shall be subject to the approval of the council.

(2) The applicant agency that requests approval shall notify the council in writing and shall provide all of the following information:

(a) The fact that a mobile terminal system is planned.

(b) The type of mobile terminal.

(c) The number of mobile terminals planned for installation.

(d) The date or dates of installation.

(3) The agency shall insure that all mobile terminals are secure from use by unauthorized personnel.

R 28.5318 Terminal environment; location and security.

Rule 318. All of the following constraints that pertain to terminal environment, location, and security shall be binding on a terminal agency:

(a) The terminal shall be located in a safe, clean, and dry environment.

(b) Each user agency shall provide electric service and controlled temperature and humidity levels specified by the terminal manufacturer.

(c) In a law enforcement agency, the principal terminal shall be located within, or adjacent to, the communications equipment control console to insure continuous monitoring of the printer or terminal screen, or both.

(d) The terminal shall be placed in a secure location which is under the direct control and supervision of authorized personnel of the user agency. The terminal shall be inaccessible to the public or to other persons who are not qualified or authorized to operate, view, or possess data transmitted or received by the LEIN.

R 28.5319 State-funded terminal agency; termination of LEIN access through a satellite computer system; application for LEIN terminal.

Rule 319. A state-funded terminal agency which elects to have access to the LEIN through a satellite computer system, which returns its state-funded terminal to the CJDC, and which subsequently terminates its LEIN access through the satellite system may apply for a LEIN terminal by submitting an application as prescribed in R 28.5302.

PART 4. RECORDS

R 28.5401 Records responsibility generally.

Rule 401. A user agency is responsible for the accuracy and completeness of any record it enters into the LEIN and NCIC files. Each record in the file shall be identified with the agency that entered the record.

R 28.5402 Law enforcement user agency; entry of wanted persons and stolen vehicle and property records.

Rule 402. (1) A law enforcement user agency shall enter, into either the LEIN or NCIC files, the records of all persons wanted by the agency and all vehicles or other property stolen in the agency's primary police jurisdiction.

(2) The entry shall be made as soon as possible after the investigating department either ascertains that a vehicle or other property is stolen or obtains a warrant for an individual's arrest. In no case shall this time be more than 12 hours after the user agency determines that it has grounds to believe that a vehicle or other property is stolen or that a wanted person should be taken into custody.

(3) All record entries shall be made pursuant to the procedures and codes published in the LEIN operations manual and the NCIC operating manual.

R 28.5403 Terminal agency; continuous terminal operation required; council waiver.

Rule 403. (1) A terminal agency that enters records into either the LEIN or NCIC files shall insure that its terminal is operated on a 24-hours-per-day, 7-days-a-week basis by competent, trained operators.

(2) The council may waive the requirement of operating a terminal on a 24-hours-per-day, 7-days-a-week basis, if an acceptable alternative is available to insure that the agency's record can be immediately confirmed.

R 28.5404 Record and broadcast message cancellation; CJDC record removal.

Rule 404. (1) A user agency shall promptly cancel a record from both the LEIN and NCIC files when a wanted person is arrested or returned, property is recovered, or in any other circumstance where the record is no longer valid.

(2) A user agency that initiates a broadcast message which is disseminated through the LEIN and which requests that a person be arrested or that property be recovered shall insure that the broadcast message is cancelled when it is no longer valid.

(3) The CJDC, with the approval of the council, may remove a record from the LEIN or NCIC file if a substantial question exists concerning the record's validity or accuracy. Immediately upon the removal of any record, the CJDC shall notify the entering agency of the action taken.

R 28.5405 Record inquiry; confirmation of validity.

Rule 405. (1) If, following an inquiry, a positive response is received from the LEIN or NCIC which indicates that a person is wanted or that property is stolen, the inquiring agency shall immediately confirm the validity of the record with the entering agency.

(2) If technically possible, an inquiry which is directed to the entering agency and which requests record confirmation shall be by means of a terminal-transmitted message. A response to such an inquiry shall be returned by means of a terminal message.

(3) A user agency shall respond promptly to an inquiry from another authorized agency which is relative to the validity and currentness of both its LEIN and NCIC record entries.

R 28.5406 Positive response to inquiry; retention of computer printout.

Rule 406. (1) If an operational computer inquiry concerning an individual or property results in a valid, positive response, the original copy of the terminal-produced printout which shows the record on file in either the LEIN or NCIC shall be retained for use in documenting probable cause for the detention of a missing person, the arrest of a wanted person, or the seizure of property.

(2) The printout shall be retained for as long as the possibility exists that a person will challenge an arrest, search, or any other law enforcement action taken, based on information contained in the printout.

R 28.5407 Active records file; maintenance.

Rule 407. A user agency shall maintain complete and accurate files of all active records which are entered into the LEIN or NCIC, or both, and shall insure that the files are readily accessible to the terminal operator or to any other person who is responsible for confirming the validity of records upon inquiry.

R 28.5408 Regional communications systems; maintenance of active records file.

Rule 408. (1) A regional communications system that is authorized to enter records into the LEIN files or NCIC files, or both, for multiple member agencies shall maintain separate, active records for each agency serviced.

(2) If a member agency that participates in a regional communications system has access to the LEIN via another terminal located within its own department in addition to the terminal or terminals at the regional communications system, the member agency shall select 1 location, either the agency location or the communications center, that shall enter and maintain the records of that agency.

R 28.5409 LEIN record validation programs; records listing; data comparison; cancellation or removal of inaccurate or invalid records; written certification of record's accuracy and validity; retention of current validation listing; failure to comply with validation and certification requirements; validation time extension.

Rule 409. (1) A LEIN user agency that enters records into the LEIN and NCIC files shall participate in the LEIN record validation programs.

(2) The CJDC shall periodically prepare a listing of each record entered into the LEIN and NCIC files and shall forward the listing to the responsible agency. The responsible agency shall do all of the following:

(a) Compare the data in each record that appears in the listing with the information in its record case files to verify that the data is valid and accurate.

(b) If possible, determine from the complainant or court if the record information is still current and valid.

(c) Take the necessary steps to immediately cancel or remove a record from the LEIN which is determined to be inaccurate or invalid. A non-terminal agency shall insure that when a record is no longer valid it is promptly cancelled by the agency's servicing terminal.

(d) Within 45 days of the receipt of the listing, have the agency head or his or her designated representative provide written certification, on forms provided by the CJDC, that the records which appear on the listing are accurate and valid. The completed form shall be returned to the CJDC within the prescribed period.

(e) Retain the most current copy of each validation listing until the next listing is received from the CJDC.

(3) A user agency that fails to comply with the validation and certification requirements within the prescribed time period shall have its records removed from the LEIN and NCIC files.

(4) A user agency that requires more than 45 days to validate its records shall submit a written request to the council for a reasonable time extension. The council chairman or the executive secretary of the council shall grant such extensions when warranted.

R 28.5410 Records retention periods.

Rule 410. A record shall be automatically purged from the computerized files of the LEIN or NCIC, or both, when the maximum retention period, as indicated in the following, has been exceeded:

(a) An unrecovered stolen vehicle record that does not include a vehicle identification number shall be retained for 90 days after entry.

(b) An unrecovered felony vehicle record shall be retained for 90 days after entry.

(c) An unrecovered stolen vehicle record that contains a vehicle indentification number and a stolen vehicle part record shall be retained for the year of entry plus 4 years.

(d) An unrecovered stolen license plate record, whether or not associated with a stolen vehicle, shall be retained for 90 days after the license plate has expired.

(e) A non-expiring license plate record shall be retained for the year of entry plus 4 years.

(f) An unrecovered stolen or missing gun record shall be retained indefinitely or until action is taken by the originating agency to cancel it.

(g) A recovered gun record shall be retained for the year of entry plus 2 years.

(h) An unrecovered stolen, embezzled, counterfeited, or missing securities record, other than a traveler's check or a money order, shall be retained for the year of entry plus 4 years.

(i) A stolen or missing traveler's check or money order record shall be retained for the year of entry plus 2 years.

(j) An unrecovered stolen boat record shall be retained for the year of entry plus 4 years.

(k) An unrecovered stolen article record shall be retained for the year of entry plus 1 year.

(l) A warrant record shall be retained indefinitely unless cancelled by the entering agency.

(m) A felony record that is entered before the issuance of a warrant by a court shall be retained for 48 hours from the time of entry.

(n) A missing person record, other than a juvenile missing person record, shall be retained indefinitely.

(o) A juvenile missing person record shall be retained until the juvenile has reached the age of 17 years.

R 28.5411 Out-of-state license plate data; purge procedures.

Rule 411. Out-of-state license plate information that is included on a LEIN wanted or missing person or vehicle record entry shall be purged in accordance with either of the following:

(a) One year after the license plate has expired.

(b) When requested by the state of registry, either directly or through NCIC.

R 28.5412 Wanted person record entry into NCIC; extradition rules.

Rule 412. (1) Before entering a wanted person record into the NCIC files, the user agency shall, to the maximum extent possible, determine if extradition will be authorized by the prosecuting attorney if the wanted individual is located in another state.

(2) If an agency is certain that a wanted person will not be extradited, the record shall not be entered into the NCIC.

(3) If a prosecuting attorney establishes limits on extradition to within a certain distance or from certain states, the limitations shall be defined and included when the record is entered into the NCIC files.

(4) In some instances extradition cannot be forecast at the time a wanted person record is entered in the NCIC files. When it is determined that the person will not be extradited, the record shall be immediately cancelled from the NCIC files.

R 28.5413 Parking violation arrest warrants; entry and inquiry provisions.

Rule 413. (1) An arrest warrant that is issued by a court for violation of a parking statute or ordinance may be entered into the LEIN files if the violator was either personally served with the citation or has received 25 or more parking citations.

(2) A user agency shall not use the LEIN between the hours of 8 a.m. and 3 a.m. the following day for the purpose of obtaining vehicle registration information to record on a parking violation citation.

R 28.5414 Warrants or orders for arrest of a member of the military forces charged with desertion or absence without leave; entry into LEIN prohibited.

Rule 414. A warrant or any other order which is issued by a branch of the United States military services and which directs the arrest of a member of the military forces who is charged with desertion or absence without authorized leave, AWOL, shall not be entered into the LEIN computer files. It is the responsibility of the military service concerned to enter such warrants or orders into the NCIC computer files through specific federal terminals designated for this purpose.

STATE OF MICHIGAN

JAMES J. BLANCHARD
GOVERNOR

EXECUTIVE ORDER

1990-10

PROVISION FOR DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

WHEREAS, the Policy Council of the Law Enforcement Information Network (LEIN) has adopted the Code of Federal Regulations, Title 28, Chapter I, Part 20 within administrative rule R28.5105 to regulate access and dissemination of criminal history record information (CHRI) available within this network; and

WHEREAS, Section 20.21b(2) of Title 28 states that non-criminal justice agencies and individuals may obtain nonconviction information for purposes "authorized by statute, ordinance, executive order, or court rule, decision, or order..."; and

WHEREAS, there are non-criminal justice agencies with a defined responsibility needing access to nonconviction data, whether directly or through an intermediary; and

WHEREAS, these non-criminal justice agencies must have authority to access the criminal history record data base, whether directly or through an intermediary;

NOW, THEREFORE, I, JAMES J. BLANCHARD, Governor of the State of Michigan, pursuant to the powers vested in me by the Michigan Constitution of 1963 and the laws of the State of Michigan, do hereby Order that the non-criminal justice agencies listed in Appendix A shall have authority to receive conviction and nonconviction criminal history record information whether directly or through an authorized intermediary.

IT IS FURTHER ORDERED that before any information is released, user agreements which establish requirements and procedures for accessing the criminal history record information must be entered into with the Michigan Department of State Police.

IT IS FURTHER ORDERED that the use of the criminal history record information shall be limited to the purposes stated in the aforementioned appendix. Each agency shall also have the authority to require fingerprinting for the purpose of checking the state offender file to meet the required responsibility.

IT IS FURTHER ORDERED that this Executive Order shall take effect 60 days from the date of signing hereof.

Given under my hand and the Great Seal of the State of Michigan, this 30th day of May In the Year of Our Lord, One Thousand Nine Hundred Ninety, and of the Commonwealth, One Hundred Fifty-Four.

James J. Blanchard
GOVERNOR

BY THE GOVERNOR:

Richard H. Austin
SECRETARY OF STATE

RECEIVED
MAY 31 1990
LEIN FIELD SERVICES

STATE OF MICHIGAN

JAMES J. BLANCHARD
GOVERNOR

PROVISION FOR DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

APPENDIX A

The following is a list of non-criminal justice agencies and their responsibility for which nonconviction data is required. These agencies are provided with the authority to receive nonconviction criminal history record information pursuant to Executive Order 1990-10.

I. Authorized persons within the Office of the Governor who are responsible for determining the propensity on the part of a person to serve the public in a fair, honest, and open manner.

II. Authorized persons within the Department of Social Services who are responsible for the licensing and regulation of child or adult care homes, facilities or institutions.

III. Authorized persons within the Department of Social Services who are responsible for the protection, care, or placement of children in the custody of the court or the state.

IV. Authorized persons within the Department of Education who are responsible for the issuance of teacher's certificates.

V. Authorized persons within any administrative agency of state government who are responsible for the enforcement and compliance with state regulated occupational or professional licenses or certificates.

Minnesota Statutes Annotated

Chapter 299C

Bureau of Criminal Apprehension

299C.01 Criminal bureau

Subdivision 1. All the powers and duties now vested in or imposed upon the bureau of criminal apprehension or the superintendent of the bureau of criminal apprehension as prescribed by chapter 626, or any other law, are hereby transferred to, vested in, and imposed upon the commissioner of public safety. The bureau of criminal apprehension and the office of the superintendent of the bureau of criminal apprehension as heretofore constituted are abolished.

Subd. 2. A division in the department of public safety to be known as the bureau of criminal apprehension is hereby created, under the supervision and control of the superintendent of criminal apprehension, who shall be appointed by the commissioner and serve at his pleasure in the unclassified service of the state civil service, to whom shall be assigned the duties and responsibilities described in this section.

Subd. 3. All powers, duties and responsibilities relating to the licensing and regulation of private detectives and protective agents heretofore assigned by law to the secretary of state or any other state department or agency shall be transferred to, vested in and imposed upon the commissioner of public safety.

Subd. 4. The division of the bureau of criminal apprehension shall perform such functions and duties as relate to statewide and nationwide crime information systems as the commissioner may direct.

Laws 1969, c. 1129, art. I, § 3, eff. July 1, 1970.

299C.03 Superintendent; rules, regulations

The superintendent, with the approval of the commissioner of public safety, from time to time, shall make such rules and regulations and adopt such measures as he deems necessary, within the provisions and limitations of sections 299C.03 to 299C.08, 299C.10, 299C.11, 299C.17, 299C.18, and 299C.21, to secure the efficient operation of the bureau. The bureau shall cooperate with the respective sheriffs, constables, marshals, police, and other peace officers of the state in the detection of crime and the apprehension of criminals throughout the state, and shall have the power to conduct such investigations as the superintendent, with the approval of the commissioner of public safety, may

deem necessary to secure evidence which may be essential to the apprehension and conviction of alleged violators of the criminal laws of the state. The various members of the bureau shall have and may exercise throughout the state the same powers of arrest possessed by a sheriff, but they shall not be employed to render police service in connection with strikes and other industrial disputes.

Amended by Laws 1949, c. 739, § 21; Laws 1951, c. 713, § 34; Laws 1971, c. 25, § 97.

299C.04 Employees, civil service; expenses

The superintendent is hereby authorized to appoint, in the manner provided, and to remove as provided by the state civil service law, and to prescribe the duties of such skilled and unskilled employees, including an identification expert, as may be necessary to carry out the work of the bureau; provided, that the appointment and removal of such skilled and unskilled employees shall be in the manner provided by the state civil service law. The superintendent and all officers and employees of the bureau shall, in addition to their compensation, receive their actual and necessary expenses incurred in the discharge of their duties, provided that the total expense of the bureau during any year shall not exceed the appropriation therefor.

Amended by Laws 1953, c. 503, § 1.

299C.05 Division of criminal statistics

There is hereby established within the bureau a division of criminal statistics, and the superintendent, within the limits of membership herein prescribed, shall appoint a qualified statistician and one assistant to be in charge thereof. It shall be the duty of this division to collect, and preserve as a record of the bureau, information concerning the number and nature of offenses known to have been committed in the state, of the legal steps taken in connection therewith from the inception of the complaint to the final discharge of the defendant, and such other information as may be useful in the study of crime and the administration of justice. The information so collected and preserved shall include such data as may be requested by the United States department of justice, at Washington, under its national system of crime reporting.

299C.06 Division powers and duties; local officers to cooperate

It shall be the duty of all sheriffs, chiefs of police, city marshals, constables, prison wardens, superintendents of insane hospitals, reformatories and correctional schools, probation and parole officers, school attendance officers, coroners, county attorneys, court clerks, the liquor control commissioner, the commissioner of highways, and the state fire marshal to furnish to the division statistics and information regarding the number of crimes reported and discovered, arrests made, complaints, informations, and indictments, filed and the disposition made of

same, pleas, convictions, acquittals, probations granted or denied, receipts, transfers, and discharges to and from prisons, reformatories, correctional schools, and other institutions, paroles granted and revoked, commutation of sentences and pardons granted and rescinded, and all other data useful in determining the cause and amount of crime in this state and to form a basis for the study of crime, police methods, court procedure, and penal problems. Such statistics and information shall be furnished upon the request of the division and upon such forms as may be prescribed and furnished by it. The division shall have the power to inspect and prescribe the form and substance of the records kept by those officials from which the information is so furnished.

299C.09 System for identification of criminals; records and indexes

The bureau shall install systems for identification of criminals, including the finger-print system, the modus operandi system, and such others as the superintendent deems proper. The bureau shall keep a complete record and index of all information received in convenient form for consultation and comparison. The bureau shall obtain from wherever procurable and file for record finger and thumb prints, measurements, photographs, plates, outline pictures, descriptions, modus operandi statements, or such other information as the superintendent considers necessary, of persons who have been or shall hereafter be convicted of a felony, gross misdemeanor, or an attempt to commit a felony or gross misdemeanor, within the state, or who are known to be habitual criminals. To the extent that the superintendent may determine it to be necessary, the bureau shall obtain like information concerning persons convicted of a crime under the laws of another state or government, the central repository of this records system is the bureau of criminal apprehension in St. Paul.

Amended by Laws 1957, c. 790, § 1; Laws 1969, c. 9, § 92, eff. Feb. 12, 1969.

299C.10 Identification data

It is hereby made the duty of the sheriffs of the respective counties and of the police officers in cities of the first, second, and third classes, under the direction of the chiefs of police in such cities, to take or cause to be taken immediately finger and thumb prints, photographs, and such other identification data as may be requested or required by the superintendent of the bureau; of all persons arrested for a felony, gross misdemeanor, of all juveniles committing felonies as distinguished from those committed by adult offenders, of all persons reasonably believed by the arresting officer to be fugitives from justice, of all persons in whose possession, when arrested, are found concealed firearms or other dangerous weapons, burglar tools or outfits,

high-power explosives, or articles, machines, or appliances useable for an unlawful purpose and reasonably believed by the arresting officer to be intended for such purposes, and within 24 hours thereafter to forward such finger-print records and other identification data on such forms and in such manner as may be prescribed by the superintendent of the bureau of criminal apprehension.

299C.11 Prints, furnished to bureau by sheriffs and chiefs of police

The sheriff of each county and the chief of police of each city of the first, second, and third classes shall furnish the bureau, upon such form as the superintendent shall prescribe, with such finger and thumb prints, photographs, and other identification data as may be requested or required by the superintendent of the bureau, which may be taken under the provisions of section 299C.10, of persons who shall be convicted of a felony, gross misdemeanor, or who shall be found to have been convicted of a felony or gross misdemeanor, within ten years next preceding their arrest. Upon the determination of all pending criminal actions or proceedings in favor of the arrested person, he shall, upon demand, have all such finger and thumb prints, photographs, and other identification data, and all copies and duplicates thereof, returned to him, provided it is not established that he has been convicted of any felony, either within or without the state, within the period of ten years immediately preceding such determination.

Amended by Laws 1957, c. 790, § 3.

299C.12 Records kept by peace officers; reports

Every peace officer shall keep or cause to be kept a permanent written record, in such form as the superintendent may prescribe, of all felonies reported to or discovered by him within his jurisdiction and of all warrants of arrest for felonies and search warrants issued to him in relation to the commission of felonies, and shall make or cause to be made to the sheriff of the county and the bureau reports of all such crimes, upon such forms as the superintendent may prescribe, including a statement of the facts and a description of the offender, so far as known, the offender's method of operation, the action taken by the officer, and such other information as the superintendent may require.

299C.13 Information as to criminals to be furnished by bureau to peace officers

Upon receipt of information data as to any arrested person, the bureau shall immediately ascertain whether the person arrested has a criminal record or is a fugitive from justice, and shall at once inform the arresting officer of the facts ascertained. Upon application by any sheriff, chief of police, or other peace officer in the state, or by an officer of the United States or by an officer of another state, territory, or government duly authorized to receive the same and effecting reciprocal interchange of similar information with the division, it shall be the duty of the bureau to furnish all information in its possession pertaining to the identification of any person.

299C.14 Officers of penal institutions to furnish bureau with data relating to released prisoners

It shall be the duty of the officials having charge of the penal institutions of the state or the release of prisoners therefrom to furnish to the bureau, as the superintendent may require, finger and thumb prints, photographs, identification data, modus operandi reports, and criminal records of prisoners heretofore, now, or hereafter confined in such penal institutions, together with the period of their service and the time, terms, and conditions of their discharge.

299C.15 Bureau to cooperate with other criminal identification organizations

The bureau shall cooperate and exchange information with other organizations for criminal identification, either within or without the state, for the purpose of developing, improving, and carrying on an efficient system for the identification and apprehension of criminals.

299C.155. Standardized evidence collection; DNA analysis data and records

Subdivision 1. Definition. As used in this section, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another human biological specimen for identification purposes.

Subd. 2. Uniform evidence collection. The bureau shall develop uniform procedures and protocols for collecting evidence in cases of alleged or suspected criminal sexual conduct, including procedures and protocols for the collection and preservation of human biological specimens for DNA analysis. Law-enforcement agencies and medical personnel who conduct evidentiary exams shall use the uniform procedures and protocols in their investigation of criminal sexual conduct offenses. The uniform procedures and protocols developed under this subdivision are not subject to the rulemaking provisions of chapter 14.

Subd. 3. DNA analysis and data bank. The bureau shall adopt uniform procedures and protocols to maintain, preserve, and analyze human biological specimens for DNA. The bureau shall establish a centralized system to cross-reference data obtained from DNA analysis. The uniform procedures and protocols developed under this subdivision are not subject to the rulemaking provisions of chapter 14.

Subd. 4. Records. The bureau shall perform DNA analysis and make data obtained available to law enforcement officials in connection with criminal investigations in which human biological specimens have been recovered. Upon request, the bureau shall also make the data available to the prosecutor and the subject of the data in any subsequent criminal prosecution of the subject.

299C.16 Bureau to broadcast information to peace officers

The bureau shall broadcast, by mail, wire, and wireless, to peace officers such information as to wrongdoers wanted, property stolen or recovered, and other intelligence as may help in controlling crime.

299C.17 Reports to bureau by clerks of court

The superintendent shall have power to require the clerk of court of any county to file with the department, at such time as the superintendent may designate, a report, upon such form as the superintendent may prescribe, furnishing such information as he may require with regard to the prosecution and disposition of criminal cases. A copy of the report shall be kept on file in the office of the clerk of court.

299C.18 Reports

Biennially, on or before November 15, in each even-numbered year the superintendent shall submit to the governor and the legislature a detailed report of the operations of the bureau, of information about crime and the handling of crimes and criminals by state and local officials collected by the bureau, and his interpretations of the information, with his comments and recommendations. In such reports he shall, from time to time, include his recommendations to the legislature for dealing with crime and criminals and information as to conditions and methods in other states in reference thereto, and shall furnish a copy of such report to each member of the legislature.

299C.21 Penalty on local officers refusing information

If any public official charged with the duty of furnishing to the bureau finger-print records, reports, or other information required by sections 299C.06, 299C.10, 299C.11, 299C.17, shall neglect or refuse to comply with such requirement, the bureau, in writing, shall notify the state, county, or city officer charged with the issuance of a warrant for the payment of the salary of such official. Upon the receipt of the notice the state, county, or city official shall withhold the issuance of a warrant for the payment of the salary or other compensation accruing to such officer for the period of 30 days thereafter until notified by the bureau that such suspension has been released by the performance of the required duty.

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STATE DEPARTMENTS AND AGENCIES

Administration

CHAPTER 13

GOVERNMENT DATA PRACTICES

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GENERAL REQUIREMENTS

13.01 GOVERNMENT DATA.

Subdivision 1. **Applicability.** All state agencies, political subdivisions and statewide systems shall be governed by this chapter.

Subd. 2. **Citation.** This chapter may be cited as the "Minnesota government data practices act."

History: *1979 c 328 s 1; 1981 c 311 s 1,39; 1Sp1981 c 4 art 1 s 4,5; 1982 c 545 s 24*

13.02 COLLECTION, SECURITY AND DISSEMINATION OF RECORDS; DEFINITIONS.

Subdivision 1. **Applicability.** As used in this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of the department of administration.

Subd. 3. **Confidential data on individuals.** "Confidential data on individuals" means data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data.

Subd. 4. **Data not on individuals.** "Data not on individuals" means all government data which is not data on individuals.

Subd. 5. **Data on individuals.** "Data on individuals" means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

Subd. 6. **Designee.** "Designee" means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.

Subd. 7. **Government data.** "Government data" means all data collected, created, received, maintained or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.

Subd. 8. **Individual.** "Individual" means a natural person. In the case of a minor or an individual adjudged mentally incompetent, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

Subd. 9. **Nonpublic data.** "Nonpublic data" means data not on individuals which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the subject, if any, of the data.

Subd. 10. **Person.** "Person" means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

Subd. 11. **Political subdivision.** "Political subdivision" means any county, statutory or home rule charter city, school district, special district and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. It includes any nonprofit corporation which is a community action agency organized pursuant to the economic opportunity act of 1964 (P.L. 88-452) as amended, to qualify for public funds, or any nonprofit social service agency which performs services under contract to any political subdivision, statewide system or state agency, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with state agencies, political subdivisions or statewide systems.

Subd. 12. **Private data on individuals.** "Private data on individuals" means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data.

Subd. 13. **Protected non-public data.** "Protected non-public data" means data not on individuals which is made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

Subd. 14. **Public data not on individuals.** "Public data not on individuals" means data which is accessible to the public pursuant to section 13.03.

Subd. 15. **Public data on individuals.** "Public data on individuals" means data which is accessible to the public in accordance with the provisions of section 13.03.

Subd. 16. **Responsible authority.** "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the

collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.

Subd. 17. **State agency.** "State agency" means the state, the university of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.

Subd. 18. **Statewide system.** "Statewide system" includes any record-keeping system in which government data is collected, stored, disseminated and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions.

Subd. 19. **Summary data.** "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

13.03 ACCESS TO GOVERNMENT DATA.

Subdivision 1. **Public data.** All government data collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every state agency, political subdivision and statewide system shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.

Subd. 2. **Procedures.** The responsible authority in every state agency, political subdivision, and statewide system shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner. Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all records containing government data except as otherwise expressly provided by law.

A responsible authority may designate one or more designees.

Subd. 3. **Request for access to data.** Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy government data at reasonable times and places, and if the person requests, he shall be informed of the data's meaning. The responsible authority or designee shall provide copies of government data upon request. The responsible authority may require the requesting person to pay the actual costs of making, certifying and compiling the copies. If the responsible authority or designee is not able to provide copies at the time a request is made he shall supply copies as soon as reasonably possible.

If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall so inform the requesting person orally at the time of the request, and in writing as soon thereafter as possible, and shall cite the statute, temporary classification, or federal law on which the determination is based.

Subd. 4. **Change in classification of data.** The classification of data in the possession of an agency shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a

specific statute applicable to the data in the possession of the disseminating or receiving agency.

13.04 RIGHTS OF SUBJECTS OF DATA.

Subdivision 1. **Type of data.** The rights of individuals on whom the data is stored or to be stored shall be as set forth in this section.

Subd. 2. **Information required to be given individual.** An individual asked to supply private or confidential data concerning himself shall be informed of: (a) the purpose and intended use of the requested data within the collecting state agency, political subdivision or statewide system; (b) whether he may refuse or is legally required to supply the requested data; (c) any known consequence arising from his supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data. This requirement shall not apply when an individual is asked to supply investigative data to a law enforcement officer.

Subd. 3. **Access to data by individual.** Upon request to a responsible authority, an individual shall be informed whether he is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon his further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge to him and, if he desires, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to him for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created. The responsible authority shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority may require the requesting person to pay the actual costs of making, certifying, and compiling the copies.

The responsible authority shall comply immediately, if possible, with any request made pursuant to this subdivision, or within five days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible. If he cannot comply with the request within that time, he shall so inform the individual, and may have an additional five days within which to comply with the request, excluding Saturdays, Sundays and legal holidays.

Subd. 4. **Procedure when data is not accurate or complete.** An individual may contest the accuracy or completeness of public or private data concerning himself. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (a) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (b) notify the individual that he believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.

The determination of the responsible authority may be appealed pursuant to the provisions of the administrative procedure act relating to contested cases.

13.05 DUTIES OF RESPONSIBLE AUTHORITY.

Subdivision 1. **Public document of data categories.** The responsible authority shall prepare a public document containing his name, title and address, and a

description of each category of record, file, or process relating to private or confidential data on individuals maintained by his state agency, statewide system, or political subdivision. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to maintain the accuracy of the document. The document shall be available from the responsible authority to the public in accordance with the provisions of sections 13.03 and 15.17.

Subd. 2. **Copies to commissioner.** The commissioner may require responsible authorities to submit copies of the public document required in subdivision 1, and may request additional information relevant to data collection practices, policies and procedures.

Subd. 3. **General standards for collection and storage.** Collection and storage of public, private or confidential data on individuals and use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature, local governing body or mandated by the federal government.

Subd. 4. **Limitations on collection and use of data.** Private or confidential data on an individual shall not be collected, stored, used or disseminated by political subdivisions, statewide systems or state agencies for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or agencies specifically authorized access to that data by state, local, or federal law subsequent to the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or agencies subsequent to the collection of the data when the responsible authority maintaining the data has requested approval for a new or different use or dissemination of the data and that request has been specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or agency if the individual subject or subjects of the data have given their informed consent. Whether a data subject has given informed consent shall be determined by rules of the commissioner. Informed consent shall not be deemed to have been given by an individual subject of the data by the signing of any statement authorizing any person or agency to disclose information about him or her to an insurer or its authorized representative, unless the statement is:

(1) In plain language;

(2) Dated;

(3) Specific in designating the particular persons or agencies the data subject is authorizing to disclose information about him or her;

(4) Specific as to the nature of the information he or she is authorizing to be disclosed;

(5) Specific as to the persons or agencies to whom he or she is authorizing information to be disclosed;

(6) Specific as to the purpose or purposes for which the information may be used by any of the parties named in clause (5), both at the time of the disclosure and at any time in the future;

(7) Specific as to its expiration date which should be within a reasonable period of time, not to exceed one year except in the case of authorizations given in connection with applications for life insurance or noncancelable or guaranteed renewable health insurance and identified as such, two years after the date of the policy.

Subd. 5. **Data protection.** The responsible authority shall (1) establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected; and (2) establish appropriate security safeguards for all records containing data on individuals.

Subd. 6. **Contracts.** Except as provided in section 13.46, subdivision 5, in any contract between a governmental unit subject to this chapter and any person, when the contract requires that data on individuals be made available to the contracting parties by the governmental unit, that data shall be administered consistent with this chapter. A contracting party shall maintain the data on individuals which it received according to the statutory provisions applicable to the data.

Subd. 7. **Preparation of summary data.** The use of summary data derived from private or confidential data on individuals under the jurisdiction of one or more responsible authorities shall be permitted. Unless classified pursuant to section 13.06, summary data is public. The responsible authority shall prepare summary data from private or confidential data on individuals upon the request of any person, provided that the request is in writing and the cost of preparing the summary data is borne by the requesting person. The responsible authority may delegate the power to prepare summary data (1) to the administrative officer responsible for any central repository of summary data; or (2) to a person outside of its agency if the person, in writing, sets forth his purpose and agrees not to disclose, and the agency reasonably determines that the access will not compromise private or confidential data on individuals.

Subd. 8. **Publication of access procedures.** The responsible authority shall prepare a public document setting forth in writing the rights of the data subject pursuant to section 13.04 and the specific procedures in effect in the state agency, statewide system or political subdivision for access by the data subject to public or private data on individuals.

Subd. 9. **Intergovernmental access of data.** A responsible authority shall allow another responsible authority access to data classified as not public only when the access is authorized or required by statute or federal law. An agency that supplies government data under this subdivision may require the requesting agency to pay the actual cost of supplying the data.

Data shall have the same classification in the hands of the agency receiving it as it had in the agency providing it.

Subd. 10. **International dissemination prohibited.** No state agency or political subdivision shall transfer or disseminate any private or confidential data on individuals to the private international organization known as Interpol.

13.06 TEMPORARY CLASSIFICATION.

Subdivision 1. **Application to commissioner.** Notwithstanding the provisions of section 13.03, the responsible authority of a state agency, political subdivision or statewide system may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, or data not on individuals as non-public or protected non-public, for its own use and for the use of other

similar agencies, political subdivisions or statewide systems on a temporary basis until a proposed statute can be acted upon by the legislature. The application for temporary classification is public.

Upon the filing of an application for temporary classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of 45 days, or until the application is disapproved or granted by the commissioner, whichever is earlier.

Subd. 2. **Contents of application for private or confidential data.** An application for temporary classification of data on individuals shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as private or confidential; and either

(a) That data similar to that for which the temporary classification is sought has been treated as either private or confidential by other state agencies or political subdivisions, and by the public; or

(b) That a compelling need exists for immediate temporary classification, which if not granted could adversely affect the public interest or the health, safety, well being or reputation of the data subject.

Subd. 3. **Contents of application for nonpublic or nonpublic protected data.** An application for temporary classification of government data not on individuals shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as nonpublic or protected nonpublic; and either

(a) That data similar to that for which the temporary classification is sought has been treated as nonpublic or protected nonpublic by other state agencies or political subdivisions, and by the public; or

(b) Public access to the data would render unworkable a program authorized by law; or

(c) That a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety or welfare of the public.

Subd. 4. **Procedure when classification affects others.** If the commissioner determines that an application for temporary classification involves data which would reasonably be classified in the same manner by all agencies, political subdivisions, or statewide systems similar to the one which made the application, the commissioner may approve or disapprove the classification for data of the kind which is the subject of the application for the use of all agencies, political subdivisions, or statewide systems similar to the applicant. If the commissioner deems this approach advisable, he shall provide notice of his intention by publication in the state register and by notification to the intergovernmental information systems advisory council, within ten days of receiving the application. Within 30 days after publication in the state register and notification to the council, an affected agency, political subdivision, the public, or statewide system may submit comments on the commissioner's proposal. The commissioner shall consider any comments received when granting or denying a classification for data of the kind which is the subject of the application, for the use of all agencies, political subdivisions, or statewide systems similar to the applicant. Within 45 days after the close of the period for submitting comment, the commissioner shall grant or disapprove the application. Applications processed under this subdivision shall be either approved or disapproved by the commissioner within 90 days of the receipt of the application. For purposes of subdivision 1, the data which is the subject of the classification shall be deemed to be classified as set forth in the application for a period of 90 days, or until the application is disapproved or

granted by the commissioner, whichever is earlier. If requested in the application, or determined to be necessary by the commissioner, the data in the application shall be so classified for all agencies, political subdivisions, or statewide systems similar to the applicant until the application is disapproved or granted by the commissioner, whichever is earlier. Proceedings after the grant or disapproval shall be governed by the provisions of subdivision 5.

Subd. 5. **Determination.** The commissioner shall either grant or disapprove the application for temporary classification within 45 days after it is filed. If the commissioner disapproves the application, he shall set forth in detail his reasons for the disapproval, and shall include a statement of what classification he believes is appropriate for the data which is the subject of the application. Twenty days after the date of the commissioner's disapproval of an application, the data which is the subject of the application shall become public data, unless the responsible authority submits an amended application for temporary classification which requests the classification deemed appropriate by the commissioner in his statement of disapproval or which sets forth additional information relating to the original proposed classification. Upon the filing of an amended application, the data which is the subject of the amended application shall be deemed to be classified as set forth in the amended application for a period of 20 days or until the amended application is granted or disapproved by the commissioner, whichever is earlier. The commissioner shall either grant or disapprove the amended application within 20 days after it is filed. Five working days after the date of the commissioner's disapproval of the amended application, the data which is the subject of the application shall become public data. No more than one amended application may be submitted for any single file or system.

If the commissioner grants an application for temporary classification, it shall become effective immediately, and the complete record relating to the application shall be submitted to the attorney general, who shall review the classification as to form and legality. Within 25 days, the attorney general shall approve the classification, disapprove a classification as confidential but approve a classification as private, or disapprove the classification. If the attorney general disapproves a classification, the data which is the subject of the classification shall become public data five working days after the date of the attorney general's disapproval.

Subd. 6. **Expiration of temporary classification.** Emergency classifications granted before July 1, 1979 are redesignated as temporary classifications. All temporary classifications granted under this section prior to April 24, 1980 and still in effect, and all temporary classifications thereafter applied for and granted pursuant to this section shall expire on July 31, 1981 or 24 months after the classification is granted, whichever occurs later.

Subd. 7. **Legislative consideration of temporary classifications.** On or before January 15 of each year, the commissioner shall submit all temporary classifications in effect on January 1 in bill form to the legislature.

13.07 DUTIES OF THE COMMISSIONER.

The commissioner shall with the advice of the intergovernmental information services advisory council promulgate rules, in accordance with the rulemaking procedures in the administrative procedures act which shall apply to state agencies, statewide systems and political subdivisions to implement the enforcement and administration of this chapter. The rules shall not affect section 13.04, relating to rights of subjects of data. Prior to the adoption of rules authorized by this section the commissioner shall give notice to all state agencies and political subdivisions in

the same manner and in addition to other parties as required by section 14.06 of the date and place of hearing, enclosing a copy of the rules and regulations to be adopted.

13.08 CIVIL REMEDIES.

Subdivision 1. **Action for damages.** Notwithstanding section 466.03, a political subdivision, responsible authority or state agency which violates any provision of this chapter is liable to a person who suffers any damage as a result of the violation, and the person damaged may bring an action against the political subdivision, responsible authority, statewide system or state agency to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the political subdivision, statewide system or state agency shall, in addition, be liable to exemplary damages of not less than $100, nor more than $10,000 for each violation. The state is deemed to have waived any immunity to a cause of action brought under this chapter.

Subd. 2. **Injunction.** A political subdivision, responsible authority, statewide system or state agency which violates or proposes to violate this chapter may be enjoined by the district court. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate this chapter.

Subd. 3. **Venue.** An action filed pursuant to this section may be commenced in the county in which the individual alleging damage or seeking relief resides, or in the county wherein the political subdivision exists, or, in the case of the state, any county.

Subd. 4. **Action to compel compliance.** In addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person may bring an action in district court to compel compliance with this chapter and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. If the court determines that an action brought under this subdivision is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority. The matter shall be heard as soon as possible. In an action involving a request for government data under section 13.03 or 13.04, the court may inspect in camera the government data in dispute, but shall conduct its hearing in public and in a manner that protects the security of data classified as not public.

13.09 PENALTIES.

Any person who willfully violates the provisions of sections 13.02 to 13.09 or any lawful rules and regulations promulgated thereunder is guilty of a misdemeanor. Willful violation of sections 13.02 to 13.09 by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.

DATA MAINTAINED BY STATE AGENCIES AND POLITICAL SUBDIVISIONS

13.30 ATTORNEYS.

Notwithstanding the provisions of this chapter and section 15.17, the use, collection, storage, and dissemination of data by an attorney acting in his

professional capacity for the state, a state agency or a political subdivision shall be governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility; provided that this section shall not be construed to affect the applicability of any statute, other than this chapter and section 15.17, which specifically requires or prohibits disclosure of specific information by the attorney, nor shall this section be construed to relieve any responsible authority, other than the attorney, from his duties and responsibilities pursuant to this chapter and section 15.17.

13.31 BENEFIT DATA.

Subdivision 1. **Definition.** As used in this section, "benefit data" means data on individuals collected or created because an individual seeks information about becoming, is, or was an applicant for or a recipient of benefits or services provided under various housing, home ownership, and rehabilitation and community action agency programs administered by state agencies, political subdivisions, or statewide systems. Benefit data does not include welfare data which shall be administered in accordance with section 13.46.

Subd. 2. **Public data.** The names and addresses of applicants for and recipients of benefits characterized as the urban homesteading, home ownership, and new housing programs operated by a housing and redevelopment authority in a city of the first class are classified as public data on individuals.

Subd. 3. **Private data.** Unless otherwise provided by law, all other benefit data is private data on individuals, except pursuant to a valid court order.

13.32 EDUCATIONAL DATA.

Subdivision 1. As used in this section:

(a) "Educational data" means data on individuals maintained by a public educational agency or institution or by a person acting for the agency or institution which relates to a student.

Records of instructional personnel which are in the sole possession of the maker thereof and are not accessible or revealed to any other individual except a substitute teacher, and are destroyed at the end of the school year, shall not be deemed to be government data.

Records of a law enforcement unit of a public educational agency or institution which are maintained apart from education data and are maintained solely for law enforcement purposes, and are not disclosed to individuals other than law enforcement officials of the jurisdiction are confidential: provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

Records relating to a student who is employed by a public educational agency or institution which are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose are classified pursuant to section 13.43.

(b) "Student" includes a person currently or formerly enrolled or registered, and applicants for enrollment or registration at a public educational agency or institution.

(c) "Substitute teacher" means an individual who performs on a temporary basis the duties of the individual who made the record, but does not include an individual who permanently succeeds the maker of the record in his position.

Subd. 2. **Student health data.** Health data concerning students, including but not limited to, data concerning immunizations, notations of special physical or mental problems and records of school nurses; and pupil census data, including but not limited to, emergency information, family information and data concerning parents shall be considered educational data. Access by parents to student health data shall be pursuant to section 13.02, subdivision 8.

Subd. 3. Except as provided in subdivision 5, educational data is private data on individuals and shall not be disclosed except as follows:

(a) Pursuant to section 13.05;

(b) Pursuant to a valid court order;

(c) Pursuant to a statute specifically authorizing access to the private data;

(d) To disclose information in health and safety emergencies pursuant to the provisions of 20 U.S.C., Section 1232g(b)(1)(I) and 45 C.F.R., Section 99.36 which are in effect on July 1, 1979;

(e) Pursuant to the provisions of 20 U.S.C., Sections 1232g(b)(1), (b)(4)(A), (b)(4)(B), (b)(1)(B), (b)(3) and 45 C.F.R., Sections 99.31, 99.32, 99.33, 99.34 and 99.35 which are in effect on July 1, 1979; or

(f) To appropriate health authorities but only to the extent necessary to administer immunization programs.

Subd. 4. A student shall not have the right of access to private data provided in section 13.04, subdivision 3, as to financial records and statements of his parents or any information contained therein.

Subd. 5. Information designated as directory information pursuant to the provisions of 20 U.S.C., Section 1232g and regulations adopted pursuant thereto which are in effect on July 1, 1979 is public data on individuals.

13.33 ELECTED OFFICIALS; CORRESPONDENCE; PRIVATE DATA.

Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient.

13.34 EXAMINATION DATA.

Data consisting solely of testing or examination materials, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity or fairness of the testing or examination process are classified as nonpublic, except pursuant to court order. Completed versions of personnel, licensing, or academic examinations shall be accessible to the individual who completed the examination, unless the responsible authority determines that access would compromise the objectivity, fairness, or integrity of the examination process. Notwithstanding section 13.04, the responsible authority shall not be required to provide copies of completed examinations or answer keys to any individual who has completed an examination.

13.35 FEDERAL CONTRACTS DATA.

To the extent that a federal agency requires it as a condition for contracting with a state agency or political subdivision, all government data collected and maintained by the state agency or political subdivision because that agency

contracts with the federal agency are classified as either private or nonpublic depending on whether the data are data on individuals or data not on individuals.

13.36 FIREARMS DATA.

All data pertaining to the purchase or transfer of firearms and applications for permits to carry firearms which are collected by state agencies, political subdivisions or statewide systems pursuant to sections 624.712 to 624.718 are classified as private, pursuant to section 13.02, subdivision 12.

13.37 GENERAL NONPUBLIC DATA.

Subdivision 1. **Definitions.** As used in this section, the following terms have the meanings given them.

(a) "Security information" means government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.

(b) "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(c) "Labor relations information" means management positions on economic and non-economic items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

Subd. 2. **Classification.** The following government data is classified as nonpublic data with regard to data not on individuals, pursuant to section 13.02, subdivision 9, and as private data with regard to data on individuals, pursuant to section 13.02, subdivision 12: Security information, trade secret information, sealed absentee ballots prior to opening by an election judge, sealed bids prior to the opening of the bid, and labor relations information. Provided that specific labor relations information which relates to a specific labor organization is classified as protected nonpublic data pursuant to section 13.02, subdivision 13.

13.38 HEALTH DATA.

Subdivision 1. **Private data.** The following data created, collected and maintained by the department of health, political subdivisions, or statewide systems are classified as private, pursuant to section 13.02, subdivision 12: data on individual patients pertaining to the investigation and study of non-sexually transmitted diseases, except that the data may be made public to diminish a threat to the public health.

Subd. 2. **Confidential data.** The following data created, collected and maintained by a department of health operated by the state or a political subdivision are classified as confidential, pursuant to section 13.02, subdivision 3: investigative files on individuals maintained by the department in connection with the epidemiologic investigation of sexually transmitted diseases, provided that infor-

mation may be released to the individual's personal physician and to a health officer, as defined in section 145.01, for the purposes of treatment, continued medical evaluation and control of the disease.

13.39 INVESTIGATIVE DATA.

Subdivision 1. **Definitions.** A "pending civil legal action" includes but is not limited to judicial, administrative or arbitration proceedings. Whether a civil legal action is pending shall be determined by the chief attorney acting for the state agency, political subdivision or statewide system.

Subd. 2. **Civil actions.** Data collected by state agencies, political subdivisions or statewide systems as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data pursuant to section 13.02, subdivision 13 in the case of data not on individuals and confidential pursuant to section 13.02, subdivision 3 in the case of data on individuals. Any agency, political subdivision or statewide system may make any data classified as confidential or protected nonpublic pursuant to this subdivision accessible to any person, agency or the public if the agency, political subdivision or statewide system determines that the access will aid the law enforcement process, promote public health or safety or dispel widespread rumor or unrest.

13.40 LIBRARY DATA.

Subdivision 1. All records collected, maintained, used or disseminated by a library operated by any state agency, political subdivision or statewide system shall be administered in accordance with the provisions of this chapter.

Subd. 2. That portion of records maintained by a library which links a library patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials is classified as private, pursuant to section 13.02, subdivision 12, and shall not be disclosed except pursuant to a valid court order.

13.41 LICENSING DATA.

Subdivision 1. **Definition.** As used in this section "licensing agency" means any board, department or agency of this state which is given the statutory authority to issue professional or other types of licenses, except the various agencies primarily administered by the commissioner of public welfare. Data pertaining to persons or agencies licensed or registered under authority of the commissioner of public welfare shall be administered pursuant to section 13.46, subdivision 4.

Subd. 2. **Private data.** The following data collected, created or maintained by any licensing agency are classified as private, pursuant to section 13.02, subdivision 12: data, other than their names and addresses, submitted by applicants for licenses; the identity of complainants who have made reports concerning licensees or applicants which appear in inactive complaint data unless the complainant consents to having his or her name disclosed; the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action; the identity of patients whose medical records are received by any health licensing agency for purposes of review or in anticipation of a contested matter; inactive investigative data relating to violations of statutes or rules; and the record of any disciplinary proceeding except as limited by subdivision 4.

Subd. 3. **Confidential data.** The following data collected, created or maintained by any licensing agency are classified as confidential, pursuant to section 13.02, subdivision 3: active investigative data relating to the investigation of complaints against any licensee.

Subd. 4. **Public data.** Licensing agency minutes, application data on licensees, orders for hearing, findings of fact, conclusions of law and specification of the final disciplinary action contained in the record of the disciplinary action are classified as public, pursuant to section 13.02, subdivision 15. The entire record concerning the disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action.

13.42 MEDICAL DATA.

Subdivision 1. **Definition.** As used in this section: (a) "Directory information" means name of the patient, date admitted, general condition, and date released.

(b) "Medical data" means data collected because an individual was or is a patient or client of a hospital, nursing home, medical center, clinic, health or nursing agency operated by a state agency or political subdivision including business and financial records, data provided by private health care facilities, and data provided by or about relatives of the individual.

Subd. 2. **Public hospitals; directory information.** If a person is a patient in a hospital operated by a state agency or political subdivision pursuant to legal commitment, directory information is public data. If a person is a patient other than pursuant to commitment in a hospital controlled by a state agency or political subdivision, directory information is public data unless the patient requests otherwise, in which case it is private data on individuals.

Directory information about an emergency patient who is unable to communicate which is public under this subdivision shall not be released until a reasonable effort is made to notify the next of kin. Although an individual has requested that directory information be private, the hospital may release directory information to a law enforcement agency pursuant to a lawful investigation pertaining to that individual.

Subd. 3. **Classification of medical data.** Unless the data is summary data or a statute specifically provides a different classification, medical data are private but are available only to the subject of the data as provided in section 144.335, and shall not be disclosed to others except:

(a) Pursuant to section 13.05;

(b) Pursuant to a valid court order;

(c) To administer federal funds or programs;

(d) To the surviving spouse or next of kin of a deceased patient or client;

(e) To communicate a patient's or client's condition to a family member or other appropriate person in accordance with acceptable medical practice, unless the patient or client directs otherwise; or

(f) As otherwise required by law.

13.43 PERSONNEL DATA.

Subdivision 1. As used in this section, "personnel data" means data on individuals collected because the individual is or was an employee of or an

applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a state agency, statewide system or political subdivision or is a member of an advisory board or commission.

Subd. 2. Except for employees described in subdivision 5, the following personnel data on current and former employees, volunteers and independent contractors of a state agency, statewide system or political subdivision and members of advisory boards or commissions is public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; and the final disposition of any disciplinary action and supporting documentation; work location; a work telephone number; badge number; honors and awards received; data which accounts for the individual's work time; and, city and county of residence.

Subd. 3. **Public employment.** Except for applicants described in subdivision 5, the following personnel data on current and former applicants for employment by a state agency, statewide system or political subdivision is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. Names of applicants shall be private data except when certified as eligible for appointment to a vacancy or when applicants are considered by the appointing authority to be finalists for a position in public employment. For purposes of this subdivision, "finalist" means an individual who is selected to be interviewed by the appointing authority prior to selection.

Subd. 4. All other personnel data is private data on individuals, except pursuant to a valid court order.

Subd. 5. All personnel data maintained by any state agency, statewide system or political subdivision relating to an individual employed as or an applicant for employment as an undercover law enforcement officer is private data on individuals.

Subd. 6. **Access by labor organizations.** Personnel data may be disseminated to labor organizations to the extent that the responsible authority determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of chapter 179. Personnel data shall be disseminated to labor organizations and to the bureau of mediation services to the extent the dissemination is ordered or authorized by the director of the bureau of mediation services.

Subd. 7. **Employee assistance data.** All data created, collected or maintained by any state agency or political subdivision to administer employee assistance programs similar to the one authorized by section 16.02, subdivision 28, are classified as private, pursuant to section 13.02, subdivision 12. This section shall not be interpreted to authorize the establishment of employee assistance programs.

13.44 PROPERTY COMPLAINT DATA.

The names of individuals who register complaints with state agencies or political subdivisions concerning violations of state laws or local ordinances concerning the use of real property are classified as confidential, pursuant to section 13.02, subdivision 3.

13.45 SALARY BENEFIT SURVEY DATA.

Salary and personnel benefit survey data purchased from consulting firms, nonprofit corporations or associations or obtained from employers with the written understanding that the data shall not be made public which is maintained by state agencies, political subdivisions or statewide systems are classified as nonpublic pursuant to section 13.02, subdivision 9.

13.46 WELFARE DATA.

Subdivision 1. **Definitions.** As used in this section:

(a) "Individual" means an individual pursuant to section 13.02, subdivision 8, but does not include a vendor of services.

(b) "Program" includes all programs for which authority is vested in a component of the welfare system pursuant to statute or federal law.

(c) "Welfare system" includes the department of public welfare, county welfare boards, human services boards, community mental health boards, state hospitals, state nursing homes, and persons, agencies, institutions, organizations and other entities under contract to any of the above agencies to the extent specified in the contract.

Subd. 2. **General.** Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

(a) Pursuant to section 13.05;

(b) Pursuant to a valid court order;

(c) Pursuant to a statute specifically authorizing access to the private data;

(d) To an agent of the welfare system, including appropriate law enforcement personnel, who are acting in the investigation, prosecution, criminal or civil proceeding relating to the administration of a program;

(e) To personnel of the welfare system who require the data to determine eligibility, amount of assistance, and the need to provide services of additional programs to the individual;

(f) To administer federal funds or programs; or

(g) Between personnel of the welfare system working in the same program.

Subd. 3. **Investigative data.** Data on persons including data on vendors of services, which is collected, maintained, used or disseminated by the welfare system in an investigation, authorized by statute and relating to the enforcement of rules or law, is confidential pursuant to section 13.02, subdivision 3, and shall not be disclosed except:

(a) Pursuant to section 13.05;

(b) Pursuant to statute or valid court order;

(c) To a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense.

The data referred to in this subdivision shall be classified as public data upon its submission to a hearing examiner or court in an administrative or judicial proceeding.

Subd. 4. **Licensing data.** All data pertaining to persons licensed or registered under the authority of the commissioner of public welfare, except for personal and personal financial data submitted by applicants and licensees under the home day care program and the family foster care program, is public data. Personal and personal financial data on home day care program and family foster

care program applicants and licensees is private data pursuant to section 13.02, subdivision 12.

Subd. 5. **Medical data; contracts.** Data relating to the medical, psychiatric or mental health of any person, including diagnosis, progress charts, treatment received, case histories, and opinions of health care providers, which is collected, maintained, used or disseminated by a private health care provider under contract to any agency of the welfare system is private data on individuals, and is subject to the provisions of sections 13.02 to 13.07, and this section, except that the provisions of section 13.02, subdivision 5, shall not apply. Access to medical data referred to in this subdivision by the individual who is the subject of the data is subject to the provisions of section 144.335.

Subd. 6. **Other data.** Data collected, used, maintained or disseminated by the welfare system that is not data on individuals is public pursuant to section 13.03, except that security information as defined in section 13.37, subdivision 1, clause (a) shall be nonpublic.

DATA MAINTAINED ONLY BY POLITICAL SUBDIVISIONS

13.50 APPRAISAL DATA.

Subdivision 1. **Confidential data.** Estimated or appraised values of individual parcels of real property which are made by personnel of a political subdivision or by independent appraisers acting for political subdivisions for the purpose of acquiring land through purchase or condemnation are classified as confidential data on individuals pursuant to section 13.02, subdivision 3.

Subd. 2. **Public data.** The data made confidential by the provisions of subdivision 1 shall become public upon the occurrence of any of the following:

(a) The negotiating parties exchange appraisals;

(b) The data are submitted to a court appointed condemnation commissioner;

(c) The data are presented in court in condemnation proceedings; or

(d) The negotiating parties enter into an agreement for the purchase and sale of the property.

13.51 ASSESSOR'S DATA.

Subdivision 1. **Generally.** The following data collected, created and maintained by political subdivisions are classified as private, pursuant to section 13.02, subdivision 12, or nonpublic depending on the content of the specific data:

Data contained on sales sheets received from private multiple listing service organizations where the contract with the organizations requires the political subdivision to refrain from making the data available to the public.

Subd. 2. **Income property assessment data.** The following data collected by political subdivisions from individuals or business entities concerning income properties are classified as private or nonpublic data pursuant to section 13.02, subdivisions 9 and 12:

(a) Detailed income and expense figures for the current year plus the previous three years;

(b) Average vacancy factors for the previous three years;

(c) Verified net rentable areas or net usable areas, whichever is appropriate;

(d) Anticipated income and expenses for the current year; and

(e) Projected vacancy factor for the current year.

13.52 DEFERRED ASSESSMENT DATA.

Any data, collected by political subdivisions pursuant to section 435.193, which indicate the amount or location of cash or other valuables kept in the homes of applicants for deferred assessment, are private data pursuant to section 13.02, subdivision 12.

13.53 FOSTER CARE DATA.

The following data collected, created and maintained by a community action agency in a study of the impact of foster care policies on families are classified as confidential data, pursuant to section 13.02, subdivision 3: names of persons interviewed; foster care placement plans obtained from other public and private agencies; and all information gathered during interviews with study participants.

13.54 HOUSING AGENCY DATA.

Subdivision 1. **Definition.** For purposes of this section "housing agency" means the public housing agency or housing and redevelopment authority of a political subdivision.

Subd. 2. **Confidential data.** The following data on individuals maintained by the housing agency are classified as confidential data, pursuant to section 13.02, subdivision 3: correspondence between the agency and the agency's attorney containing data collected as part of an active investigation undertaken for the purpose of the commencement or defense of potential or actual litigation, including but not limited to: referrals to the office of the inspector general or other prosecuting agencies for possible prosecution for fraud; initiation of lease terminations and unlawful detainer actions; admission denial hearings concerning prospective tenants; commencement of actions against independent contractors of the agency; and tenant grievance hearings.

Subd. 3. **Protected nonpublic data.** The following data not on individuals maintained by the housing agency are classified as protected nonpublic data, pursuant to section 13.02, subdivision 13: correspondence between the agency and the agency's attorney containing data collected as part of an active investigation undertaken for the purpose of the commencement or defense of potential or actual litigation, including but not limited to, referrals to the office of the inspector general or other prosecuting bodies or agencies for possible prosecution for fraud and commencement of actions against independent contractors of the agency.

Subd. 4. **Nonpublic data.** The following data not on individuals maintained by the housing agency are classified as nonpublic data, pursuant to section 13.02, subdivision 9: all data pertaining to negotiations with property owners regarding the purchase of property. With the exception of the housing agency's evaluation of properties not purchased, all other negotiation data shall be public at the time of the closing of the property sale.

13.55 ST. PAUL CIVIC CENTER AUTHORITY DATA.

Subdivision 1. **Nonpublic classification.** The following data received, created or maintained by the St. Paul civic center authority are classified as nonpublic data pursuant to section 13.02, subdivision 9:

(a) A letter or other documentation from any person who makes inquiry to the authority as to the availability of authority facilities for staging events;

(b) Identity of firms and corporations which contact the authority;

(c) Type of event which they wish to stage in authority facilities;

(d) Suggested terms of rentals; and

(e) Responses of authority staff to these inquiries.

Subd. 2. **Public data.** The data made nonpublic by the provisions of subdivision 1 shall become public upon the occurrence of any of the following:

(a) A lease or contract is entered into between the authority and the inquiring party or parties;

(b) The event which was the subject of inquiry does not occur; or

(c) The event which was the subject of inquiry occurs elsewhere.

13.56 SEXUAL ASSAULT DATA.

Subdivision 1. **Definitions.** (a) "Community based program" means any office, institution, or center offering assistance to victims of sexual assault and their families through crisis intervention, medical, and legal accompaniment and subsequent counseling.

(b) "Sexual assault counselor" means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault.

(c) "Victim" means a person who consults a sexual assault counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.

(d) "Sexual assault communication data" means all information transmitted in confidence between a victim of sexual assault and a sexual assault counselor and all other information received by the sexual assault counselor in the course of providing assistance to the victim. The victim shall be deemed the subject of sexual assault communication data.

Subd. 2. **Classification.** All sexual assault communication data is classified as private data on individuals.

13.57 SOCIAL RECREATIONAL DATA.

The following data collected and maintained by political subdivisions for the purpose of enrolling individuals in recreational and other social programs are classified as private, pursuant to section 13.02, subdivision 12: data which describes the health or medical condition of the individual, family relationships and living arrangements of an individual or which are opinions as to the emotional makeup or behavior of an individual.

DATA MAINTAINED ONLY BY STATE AGENCIES

13.65 ATTORNEY GENERAL DATA.

Subdivision 1. **Private data.** The following data created, collected and maintained by the office of the attorney general are classified as private, pursuant to section 13.02, subdivision 12:

(a) The record, including but not limited to, the transcript and exhibits of all disciplinary proceedings held by a state agency, board or commission, except in those instances where there is a public hearing;

(b) Communications and non-investigative files regarding administrative or policy matters which do not evidence final public actions;

(c) Consumer complaint data, other than that data classified as confidential, including consumers' complaints against businesses and follow-up investigative materials; and

(d) Investigative data, obtained in anticipation of, or in connection with litigation or an administrative proceeding where the investigation is not currently active.

Subd. 2. **Confidential data.** The following data created, collected and maintained by the office of the attorney general are classified as confidential, pursuant to section 13.02, subdivision 3: data acquired through communications made in official confidence to members of the attorney general's staff where the public interest would suffer by disclosure of the data.

Subd. 3. **Public data.** Data describing the final disposition of disciplinary proceedings held by any state agency, board or commission are classified as public, pursuant to section 13.02, subdivision 15.

13.66 CORRECTIONS OMBUDSMAN DATA.

Subdivision 1. **Private data.** The following data maintained by the ombudsman for corrections are classified as private, pursuant to section 13.02, subdivision 12:

(a) All data on individuals pertaining to contacts made by clients seeking the assistance of the ombudsman, except as specified in subdivisions 2 and 3;

(b) Data recorded from personal and phone conversations and in correspondence between the ombudsman's staff and persons interviewed during the course of an investigation;

(c) Client index cards;

(d) Case assignment data; and

(e) Monthly closeout data.

Subd. 2. **Confidential data.** The following data maintained by the ombudsman are classified as confidential, pursuant to section 13.02, subdivision 3: the written summary of the investigation to the extent it identifies individuals.

Subd. 3. **Public data.** The following data maintained by the ombudsman are classified as public, pursuant to section 13.02, subdivision 15: client name, client location; and the inmate identification number assigned by the department of corrections.

13.67 EMPLOYEE RELATIONS DATA.

The following data collected, created or maintained by the department of employee relations are classified as nonpublic pursuant to section 13.02, subdivision 9:

(a) The commissioner's plan prepared by the department, pursuant to section 3.855, which governs the compensation and terms and conditions of employment for employees not covered by collective bargaining agreements until the plan is submitted to the legislative commission on employee relations;

(b) Data pertaining to grievance or interest arbitration that has not been presented to the arbitrator or other party during the arbitration process; and

(c) Notes and preliminary drafts of reports prepared during personnel investigations and personnel management reviews of state departments and agencies.

13.68 ENERGY AND FINANCIAL DATA AND STATISTICS.

Subdivision 1. Energy and financial data, statistics, and information furnished to the department of energy, planning and development by a coal supplier or petroleum supplier pursuant to section 116J.17, either directly or through a federal department or agency are classified as nonpublic data as defined by section 13.02, subdivision 9.

Subd. 2. **Energy audit data.** Data contained in copies of bids, contracts, letters of agreement between utility companies and third party auditors and firms, and in utility statements or documents showing costs for employee performance of energy audits which are received by the department of energy, planning and development in order to arbitrate disputes arising from complaints concerning the award of contracts to perform energy conservation audits are classified as protected nonpublic data not on individuals as defined by section 13.02, subdivision 13.

13.69 PUBLIC SAFETY DATA.

Subdivision 1. The following data collected and maintained by the state department of public safety are classified as private, pursuant to section 13.02, subdivision 12: medical data on driving instructors, licensed drivers, and applicants for parking certificates and special license plates issued to physically handicapped persons. The following data collected and maintained by the state department of public safety are classified as confidential, pursuant to section 13.02, subdivision 3: data concerning an individual's driving ability when that data is received from a member of the individual's family.

Subd. 2. **Photographic negatives.** Photographic negatives obtained by the department of public safety in the process of issuing drivers licenses or Minnesota identification cards shall be private data on individuals pursuant to section 13.02, subdivision 12.

13.70 REVENUE DEPARTMENT DATA.

Subdivision 1. The following data created, collected and maintained by the state department of revenue are classified as protected non-public, pursuant to section 13.02, subdivision 13: criteria used in the computer processing of income tax returns to determine which returns are selected for audit; department criteria used to determine which income tax returns are selected for an in-depth audit; and department criteria and procedures for determining which accounts receivable balances below a specified amount are cancelled or written-off.

Subd. 2. **Informant data.** Names of informers, informer letters and other unsolicited data, in whatever form, furnished to the state department of revenue by a person, other than the data subject or revenue department employee, which inform that a specific taxpayer is not or may not be in compliance with the tax laws of this state are classified as confidential data pursuant to section 13.02, subdivision 3.

13.71 SURPLUS LINE INSURANCE DATA.

All data appearing on copies of surplus line insurance policies collected by the insurance division of the department of commerce pursuant to section 60A.20 are classified as private, pursuant to section 13.02, subdivision 12.

13.72 TRANSPORTATION DEPARTMENT DATA.

Subdivision 1. **Estimates for construction projects.** Estimates of the cost of construction projects of the Minnesota department of transportation prepared by department employees are non-public data and are not available to the public from the time of final design until the bids are opened for the project.

Subd. 2. **Rideshare data.** The following data on participants, collected by the department of transportation for the purpose of administering the rideshare program, are classified as private pursuant to section 13.02, subdivision 12: residential address and phone number; beginning and ending work hours; current mode of commuting to and from work; and type of rideshare service information requested.

13.73 WORKERS' COMPENSATION SELF-INSURANCE DATA.

Financial data relating to nonpublic companies which are submitted to the commissioner of insurance for the purpose of obtaining approval to self-insure workers' compensation liability as a group are classified as nonpublic data, pursuant to section 13.02, subdivision 9.

DATA MAINTAINED BY CRIMINAL JUSTICE AGENCIES

13.80. Domestic abuse data

All government data on individuals which is collected, created, received or maintained by police departments, sheriffs' offices or clerks of court pursuant to the domestic abuse act, section 518B.01, are classified as confidential data, pursuant to section 13.02, subdivision 3, until a temporary court order made pursuant to subdivisions 5 or 7 of section 518B.01 is executed or served upon the data subject who is the respondent to the action.

13.81. Repealed by Laws 1985, c. 298, § 45, eff. June 5, 1985

The repealed section, which related to law enforcement data, was derived from:
Laws 1984, c. 552, § 1.
Laws 1982, c. 545, § 24.
Laws 1981, c. 311, §§ 15, 39.
Laws 1981, c. 273, § 1.
St.1980, § 15.1695.
Laws 1979, c. 328, § 20.

See, now, § 13.82.

13.82. Comprehensive law enforcement data

Subdivision 1. Application. This section shall apply to agencies which carry on a law enforcement function, including but not limited to municipal police departments, county sheriff departments, fire departments, the bureau of criminal apprehension, the Minnesota state patrol, the board of peace officer standards and training, and the department of commerce.

Subd. 2. Arrest data. The following data created or collected by law enforcement agencies which documents any actions taken by them to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty shall be public at all times in the originating agency:

(a) Time, date and place of the action;

(b) Any resistance encountered by the agency;

(c) Any pursuit engaged in by the agency;

(d) Whether any weapons were used by the agency or other individual;

(e) The charge, arrest or search warrants, or other legal basis for the action;

(f) The identities of the agencies, units within the agencies and individual persons taking the action;

(g) Whether and where the individual is being held in custody or is being incarcerated by the agency;

(h) The date, time and legal basis for any transfer of custody and the identity of the agency or person who received custody;

(i) The date, time and legal basis for any release from custody or incarceration;

(j) The name, age, sex and last known address of an adult person or the age and sex of any juvenile person cited, arrested, incarcerated or otherwise substantially deprived of liberty;

(k) Whether the agency employed wiretaps or other eavesdropping techniques, unless the release of this specific data would jeopardize an ongoing investigation;

(*l*) The manner in which the agencies received the information that led to the arrest and the names of individuals who supplied the information unless the identities of those individuals qualify for protection under subdivision 10; and

(m) Response or incident report number.

Subd. 3. Request for service data. The following data created or collected by law enforcement agencies which documents requests by the public for law enforcement services shall be public government data:

(a) The nature of the request or the activity complained of;

(b) The name and address of the individual making the request unless the identity of the individual qualifies for protection under subdivision 10;

(c) The time and date of the request or complaint; and

(d) The response initiated and the response or incident report number.

Subd. 4. Response or incident data. The following data created or collected by law enforcement agencies which documents the agency's response to a request for service or which describes actions taken by the agency on its own initiative shall be public government data:

(a) Date, time and place of the action;

(b) Agencies, units of agencies and individual agency personnel participating in the action unless the identities of agency personnel qualify for protection under subdivision 10;

(c) Any resistance encountered by the agency;

(d) Any pursuit engaged in by the agency;

(e) Whether any weapons were used by the agency or other individuals;

(f) A brief factual reconstruction of events associated with the action;

(g) Names and addresses of witnesses to the agency action or the incident unless the identity of any witness qualifies for protection under subdivision 10;

(h) Names and addresses of any victims or casualties unless the identities of those individuals qualify for protection under subdivision 10;

(i) The name and location of the health care facility to which victims or casualties were taken; and

(j) Response or incident report number.

Subd. 5. Data collection. Except for the data defined in subdivisions 2, 3 and 4, investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or civil wrong is confidential or protected nonpublic while the investigation is active. Inactive investigative data is public unless the release of the data would jeopardize another ongoing investigation or would reveal the identity of individuals protected under subdivision 10. Photographs which are part of inactive investigative files and which are clearly offensive to common sensibilities are classified as private or nonpublic data, provided that the existence of the photographs shall be disclosed to any person requesting access to the inactive investigative file. An investigation becomes inactive upon the occurrence of any of the following events:

(a) a decision by the agency or appropriate prosecutorial authority not to pursue the case;

(b) expiration of the time to bring a charge or file a complaint under the applicable statute of limitations, or 30 years after the commission of the offense, whichever comes earliest; or

(c) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data.

Any investigative data presented as evidence in court shall be public. Data determined to be inactive under clause (a) may become active if the agency or appropriate prosecutorial authority decides to renew the investigation.

During the time when an investigation is active, any person may bring an action in the district court located in the county where the data is being maintained to authorize disclosure of investigative data. The court may order that all or part of the data relating to a particular investigation be released to the public or to the person bringing the action. In making the determination as to whether investigative data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data. The data in dispute shall be examined by the court in camera.

Subd. 6. Access to data for crime victims. The prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or the victim's legal representative upon written request unless the prosecuting authority reasonably believes:

(a) That the release of that data will interfere with the investigation; or

(b) That the request is prompted by a desire on the part of the requester to engage in unlawful activities.

Subd. 7. Withholding public data. A law enforcement agency may temporarily withhold response or incident data from public access if the agency reasonably believes that public access would be likely to endanger the physical safety of an individual or cause a perpetrator to flee, evade detection or destroy evidence. In such instances, the agency shall, upon the request of any person, provide a statement which explains the necessity for its action. Any person may apply to a district court for an order requiring the agency to release the data being withheld. If the court determines that the agency's action is not reasonable, it shall order the release of the data and may award costs and attorney's fees to the person who sought the order. The data in dispute shall be examined by the court in camera.

Subd. 8. Public benefit data. Any law enforcement agency may make any data classified as confidential pursuant to subdivision 5 accessible to any person, agency or the public if the agency determines that the access will aid the law enforcement process, promote public safety or dispel widespread rumor or unrest.

Subd. 9. Public access. When data is classified as public under this section, a law enforcement agency shall not be required to make the actual physical data available to the public if it is not administratively feasible to segregate the public data from the confidential. However, the agency must make the information described as public data available to the public in a reasonable manner. When investigative data becomes inactive, as described in subdivision 5, the actual physical data associated with that investigation, including the public data, shall be available for public access.

Subd. 10. Protection of identities. A law enforcement agency may withhold public access to data on individuals to protect the identity of individuals in the following circumstances:

(a) When access to the data would reveal the identity of an undercover law enforcement officer;

(b) When access to the data would reveal the identity of a victim of criminal sexual conduct or intrafamilial sexual abuse or of a violation of section 617.246, subdivision 2;

(c) When access to the data would reveal the identity of a paid or unpaid informant being used by the agency if the agency reasonably determines that revealing the identity of the informant would threaten the personal safety of the informant; or

(d) When access to the data would reveal the identity of a victim of or witness to a crime if the victim or witness specifically requests not to be identified publicly, and the agency reasonably determines that revealing the identity of the victim or witness would threaten the personal safety or property of the individual.

Subd. 11. Data retention. Nothing in this section shall require law enforcement agencies to create, collect or maintain data which is not required to be created, collected or maintained by any other applicable rule or statute.

Subd. 12. Data in arrest warrant indices. Data in arrest warrant indices are classified as confidential data until the defendant has been taken into custody, served with a warrant, or appears before the court, except when the law enforcement agency determines that the public purpose is served by making the information public.

Subd. 13. Property data. Data that uniquely describe stolen, lost, confiscated, or recovered property or property described in pawn shop transaction records are classified as either private data on individuals or nonpublic data depending on the content of the not public data.

Subd. 14. Reward program data. To the extent that the release of program data would reveal the identity of an informant or adversely affect the integrity of the fund, financial records of a program that pays rewards to informants are protected nonpublic data in the case of data not on individuals or confidential data in the case of data on individuals.

Subd. 15. Exchanges of information. Nothing in this chapter prohibits the exchange of information by law enforcement agencies provided the exchanged information is pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation, except not public personnel data.

Subd. 16. Deliberative processes. Data that reflect deliberative processes or investigative techniques of law enforcement agencies are confidential data on individuals or protected nonpublic data; provided that information, reports, or memoranda that have been adopted as the final opinion or justification for a decision of a law enforcement agency are public data.

Amended by Laws 1984, c. 552, § 2; Laws 1985, c. 298, §§ 30 to 36, eff. June 5, 1985; Laws 1986, c. 444.

13.83. Medical examiner data

Subdivision 1. Definition. As used in this section, "medical examiner data" means data relating to deceased individuals and the manner and circumstances of their death which is created, collected, used or maintained by a county coroner or medical examiner in the fulfillment of official duties pursuant to chapter 390, or any other general or local law on county coroners or medical examiners.

Subd. 2. Public data. Unless specifically classified otherwise by state statute or federal law, the following data created or collected by a medical examiner or coroner on a deceased individual is public: name of the deceased; date of birth; date of death; address; sex; race; citizenship; height; weight; hair color; eye color; build; complexion; age, if known, or approximate age; identifying marks, scars and amputations; a description of the decedent's clothing; marital status; location of death including name of hospital where applicable; name of spouse; whether or not the decedent ever served in the armed forces of the United States; social security number; occupation; business; father's name (also birth name, if different); mother's name (also birth name, if different); birthplace; birthplace of parents; cause of death; causes of cause of death; whether an autopsy was performed and if so, whether it was conclusive; date and place of injury, if applicable, including work place; how injury occurred; whether death was caused by accident, suicide, homicide, or was of undetermined cause; certification of attendance by physician; physician's name and address; certification by coroner or medical examiner; name and signature of coroner or medical examiner; type of disposition of body; burial place name and location, if applicable; date of burial, cremation or removal; funeral home name and address; and name of local register or funeral director.

Subd. 3. Unidentified individual; public data. Whenever a county coroner or medical examiner unable during an investigation to identify a deceased individual, may release to the public any relevant data which would assist in ascertaining identity.

Subd. 4. Confidential data. Data created or collected by a county coroner or medical examiner which is part of an active investigation mandated by chapter 390, or any other general or local law relating to coroners or medical examiners is confidential data on individuals pursuant to section 13.02, subdivision 3, until the completion of the coroner's or medical examiner's final summary of findings at which point the data collected in the investigation and the final summary thereof shall become private data on individuals, except that nothing in this subdivision shall be construed to make private or confidential the data elements identified in subdivision 2 at any point in the investigation or thereafter.

Subd. 5. Private data. All other medical examiner data on deceased individuals is private pursuant to section 13.02, subdivision 12, and shall not be disclosed except pursuant to the provisions of chapter 390, or any other general or local law on county coroners or medical examiners, or pursuant to a valid court order.

Subd. 6. Other data. Unless a statute specifically provides a different classification, all other data created or collected by a county coroner or medical examiner that is not data on deceased individuals or the manner and circumstances of their death is public pursuant to section 13.03.

Subd. 7. Court review. Any person may petition the district court located in the county where medical examiner data is being maintained to authorize disclosure of private or confidential medical examiner data. The petitioner shall notify the medical examiner or coroner. The court may notify other interested persons and require their presence at a hearing. A hearing may be held immediately if the parties agree, and in any event shall be held as soon as practicable. After examining the data in camera, the court may order disclosure of the data if it determines that disclosure would be in the public interest.

Subd. 8. Access to private data. The data made private by this section shall be accessible to the legal representative of the decedent's estate or to the decedent's surviving spouse or next of kin or their legal representative.

Subd. 9. Change in classification. Notwithstanding section 13.10, data classified as private or confidential by this section shall be classified as public 30 years after the date of death of the decedent.

Amended by Laws 1985, c. 298, § 37, eff. June 5, 1985; Laws 1986, c. 444; Laws 1987, c. 49, § 1.

13.84. Court services data

Subdivision 1. Definition. As used in this section "court services data" means data that are created, collected, used or maintained by a court services department, parole or probation authority, correctional agency, or by an agent designated by the court to perform studies or other duties and that are on individuals who are or were defendants, parolees or probationers of a municipal, district or county court, participants in diversion programs, petitioners or respondents to a family court, or juveniles adjudicated delinquent and committed, detained prior to a court hearing or hearings, or found to be dependent or neglected and placed under the supervision of the court.

Subd. 2. General. Unless the data is summary data or a statute, including sections 609.115 and 257.70, specifically provides a different classification, the following court services data are classified as private pursuant to section 13.02, subdivision 12:

(a) Court services data on individuals gathered at the request of a municipal, district or county court to determine the need for any treatment, rehabilitation, counseling, or any other need of a defendant, parolee, probationer, or participant in a diversion program, and used by the court to assist in assigning an appropriate sentence or other disposition in a case;

(b) Court services data on petitioners or respondents to a family court gathered at the request of the court for purposes of, but not limited to, individual, family, marriage, chemical dependency and marriage dissolution adjustment counseling, including recommendations to the court as to the custody of minor children in marriage dissolution cases;

(c) Court services data on individuals gathered by psychologists in the course of providing the court or its staff with psychological evaluations or in the course of counseling individual clients referred by the court for the purpose of assisting them with personal conflicts or difficulties.

Subd. 3. Third party information. Whenever, in the course of gathering the private data specified above, a psychologist, probation officer or other agent of the court is directed by the court to obtain data on individual defendants, parolees, probationers, or petitioners or respondents in a family court, and the source of that data provides the data only upon the condition of its being held confidential, that data and the identity of the source shall be confidential data on individuals, pursuant to section 13.02, subdivision 3.

Subd. 4. Probation data. Progress reports and other reports and recommendations provided at the request of the court by parole or probation officers for the purpose of determining the appropriate legal action or disposition regarding an individual on probation are confidential data on individuals.

Subd. 5. Disclosure. Private or confidential court services data shall not be disclosed except:

(a) Pursuant to section 13.05;

(b) Pursuant to a statute specifically authorizing disclosure of court services data;

(c) With the written permission of the source of confidential data;

(d) To the court services department, parole or probation authority or correctional agency having statutorily granted supervision over the individual subject of the data; or

(e) Pursuant to a valid court order.

Subd. 6. Public data. The following court services data on adult individuals is public:

(a) name, age, sex, occupation and the fact that an individual is a parolee, probationer or participant in a diversion program, and if so, at what location;

(b) the offense for which the individual was placed under supervision;

(c) the dates supervision began and ended and the duration of supervision;

(d) court services data which was public in a court or other agency which originated the data;

(e) arrest and detention orders, orders for parole or probation revocation and the reasons for revocation;

(f) the conditions of parole, probation or participation and the extent to which those conditions have been or are being met;

(g) identities of agencies, units within agencies and individuals providing supervision; and

(h) the legal basis for any change in supervision and the date, time and locations associated with the change.

Subd. 7. Limitation. Nothing in this section shall limit public access to data made public by section 13.82.

Amended by Laws 1985, c. 298, §§ 38, 39, eff. June 5, 1985.

13.85. Corrections and detention data

Subdivision 1. Definition. As used in this section, "corrections and detention data" means data on individuals created, collected, used or maintained because of their lawful confinement or detainment in state reformatories, prisons and correctional facilities, municipal or county jails, lockups, work houses, work farms and all other correctional and detention facilities.

Subd. 2. Private data. Unless the data are summary data or arrest data, or a statute specifically provides a different classification, corrections and detention data on individuals are classified as private pursuant to section 13.02, subdivision 12, to the extent that the release of the data would either (a) disclose personal, medical, psychological, or financial information or (b) endanger an individual's life.

Subd. 3. Confidential data. Corrections and detention data are confidential, pursuant to section 13.02, subdivision 3, to the extent that release of the data would: (a) endanger an individual's life, (b) endanger the effectiveness of an investigation authorized

by statute and relating to the enforcement of rules or law, (c) identify a confidential informant, or (d) clearly endanger the security of any institution or its population.

Subd. 4. Public data. After any presentation to a court, any data made private or confidential by this section shall be public to the extent reflected in court records.

13.86. Investigative detention data

Subdivision 1. Definition. As used in this section, "investigative detention data" means government data created, collected, used or maintained by the state correctional facilities, municipal or county jails, lockups, work houses, work farms and other correctional and detention facilities which: (a) if revealed, would disclose the identity of an informant who provided information about suspected illegal activities, and (b) if revealed, is likely to subject the informant to physical reprisals by others.

Subd. 2. General. Investigative detention data is confidential and shall not be disclosed except:

(a) Pursuant to section 13.05 or any other statute;

(b) Pursuant to a valid court order; or

(c) To a party named in a civil or criminal proceeding, whether administrative or judicial, to the extent required by the relevant rules of civil or criminal procedure.

13.87. Criminal history data

Subdivision 1. Definition. For purposes of this section, "criminal history data" means all data maintained in criminal history records compiled by the bureau of criminal apprehension and disseminated through the criminal justice information system, including, but not limited to fingerprints, photographs, identification data, arrest data, prosecution data, criminal court data, custody and supervision data.

Subd. 2. Classification. Criminal history data maintained by agencies, political subdivisions and statewide systems are classified as private, pursuant to section 13.02, subdivision 12.

Subd. 3. Limitation. Nothing in this section shall limit public access to data made public by section 13.82.

13.88. Community dispute resolution center data

The guidelines shall provide that all files relating to a case in a community dispute resolution program are to be classified as private data on individuals, pursuant to section 13.02, subdivision 12, with the following exceptions:

(1) When a party to the case has been formally charged with a criminal offense, the data are to be classified as public data on individuals, pursuant to section 13.02, subdivision 15.

(2) Data relating to suspected neglect or physical or sexual abuse of children or vulnerable adults are to be subject to the reporting requirements of sections 626.556 and 626.557.

13.89. Dissemination of data to protection and advocacy systems

Subdivision 1. Mental retardation. Data on clients and residents of facilities licensed pursuant to sections 144.50 to 144.58, 245.781 to 245.812, and 252.28, subdivision 2, may be disseminated to the protection and advocacy system established in this state pursuant to Part C of Public Law Number 98–527 to protect the legal and human rights of persons with mental retardation or other related conditions who live in residential facilities for these persons if:

(1) the protection and advocacy system receives a complaint by or on behalf of that person; and

(2) the person does not have a legal guardian or the state or a designee of the state is the legal guardian of the person.

Subd. 2. Mental illness or emotional impairment. Data on an individual who has significant mental illness or emotional impairment and who is an inpatient or resident in a facility rendering care or treatment may be disseminated to the protection and advocacy system established in this state pursuant to Public Law Number 99–319[1] to protect the rights of mentally ill individuals if:

(1) the protection and advocacy system receives a complaint by or on behalf of the person or there is probable cause to believe that the person has been subjected to abuse or neglect, as defined in Public Law Number 99–319;[1]

(2) the person is by reason of a mental or physical condition unable to authorize the system to have access to data; and

(3) the person does not have a legal guardian or the state is the legal guardian of the person.

Laws 1985, c. 298, § 42, eff. June 5, 1985. Amended by Laws 1987, c. 236, § 1.

[1] 42 U.S.C.A. § 10802.

13.90. Government data practices

Subdivision 1. Definition. For purposes of this section, "judiciary" means any office, officer, department, division, board, commission, committee, or agency of the courts of this state, whether or not of record, including but not limited to the board of law examiners, the lawyer's professional responsibility board, the board of judicial standards, the lawyer's trust account board, the state law library, the state court administrator's office, the district court administrator's office, and the office of the court administrator.

Subd. 2. Application. The judiciary shall be governed by this chapter, until August 1, 1987, or until the implementation of rules adopted by the supreme court regarding access to data, whichever comes first. Any data made a part of a criminal or civil case shall not be governed by this chapter at any time.

Laws 1985, c. 298, § 44, eff. June 5, 1985. Amended by Laws 1986, 1st Sp., c. 3, art. 1, § 82.

14.63. Application

Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under the provisions of sections 14.63 to 14.68, but nothing in sections 14.63 to 14.68 shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo provided by law. A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the court of appeals and served on the agency not more than 30 days after the party receives the final decision and order of the agency.

Amended by Laws 1983, c. 247, § 9, eff. Aug. 1, 1983.

14.64. Petition; service

Proceedings for review under sections 14.63 to 14.68 shall be instituted by serving a petition for a writ of certiorari personally or by certified mail upon the agency and by promptly filing the proof of service in the office of the clerk of the appellate courts and the matter shall proceed in the manner provided by the rules of civil appellate procedure.

If a request for reconsideration is made within ten days after the decision and order of the agency, the 30-day period provided in section 14.63 shall not begin to run until service of the order finally disposing of the application for reconsideration. Nothing herein shall be construed as requiring that an application for reconsideration be filed with and disposed of by the agency as a prerequisite to the institution of a review proceeding under sections 14.63 to 14.68.

Copies of the writ shall be served, personally or by certified mail, upon all parties to the proceeding before the agency in the proceeding in which the order sought to be reviewed was made. For the purpose of service, the agency upon request shall certify to the petitioner the names and addresses of all parties as disclosed by its records. The agency's certification shall be conclusive. The agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review. A copy of the petition shall be provided to the attorney general at the time of service of the parties.

14.65. Stay of decision; stay of other appeals

The filing of the writ of certiorari shall not stay the enforcement of the agency decision; but the agency may do so, or the court of appeals may order a stay upon such terms as it deems proper. When review of or an appeal from a final decision is commenced under sections 14.63 to 14.68 in the court of appeals, any other later appeal under sections 14.63 to 14.68 from the final decision involving the same subject matter shall be stayed until final decision of the first appeal.

Amended by Laws 1983, c. 247, § 11, eff. Aug. 1, 1983.

14.66. Transmittal of record

Within 30 days after service of the writ of certiorari, or within any further time as the court allows, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

14.67. New evidence, hearing by agency

If, before the date set for hearing, application is made to the court of appeals for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

14.68. Procedure on review

The review shall be confined to the record, except that in cases of alleged irregularities in procedure, not shown in the record, the court of appeals may transfer the case to the district court for the county in which the agency has its principal office or the county in which the contested case hearing was held. The district court shall have jurisdiction to take testimony and to hear and determine the alleged irregularities in procedure. Appeal from the district court determination may be taken to the court of appeals as in other civil cases.

14.69. Scope of judicial review

In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

(a) In violation of constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the agency; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by substantial evidence in view of the entire record as submitted; or

(f) Arbitrary or capricious.

CHAPTER 13. APPENDIX

INTERIM RULES ON ACCESS TO PUBLIC RECORDS

Adopted October 2, 1985
Effective November 1, 1985

Rule
1. Scope of Rules.
2. Policy.
3. Definitions.
4. Manner of Making Request.
5. Response.
6. Inspection and Photocopying.
7. Appeal to State Court Administrator in Certain Cases.

ORDER PROMULGATING INTERIM RULES ON ACCESS TO PUBLIC RECORDS

WHEREAS, the Minnesota Supreme Court has the inherent power and statutory authority pursuant to Laws 1985, Chapter 298, to promulgate rules governing access to public records maintained by the judicial branch of the State of Minnesota;

NOW, THEREFORE, IT IS HEREBY ORDERED that the attached Interim Rules on Access to Public Records be, and the same hereby are, adopted for the regulation of access to data maintained by the judicial branch of the State of Minnesota, effective November 1, 1985.

IT IS HEREBY FURTHER ORDERED that there is established an Advisory Committee on Rules on Access to Public Records, to be appointed by this Court, to study the operation of the interim rules and to make recommendations to this Court concerning the need for their revision.

Dated: October 2, 1985

BY THE COURT

/s/DOUGLAS K. AMDAHL
CHIEF JUSTICE
MINNESOTA SUPREME COURT

INTERIM RULES ON ACCESS TO PUBLIC RECORDS

RULE 1. SCOPE OF RULES

These rules govern public access to public records maintained by the judicial branch of the State of Minnesota.

RULE 2. POLICY

All public records within the judicial branch shall be open to inspection by any member of the public at all times during the regular office hours maintained by the custodian of those records.

RULE 3. DEFINITIONS

Subdivision 1. When used in these rules, the words listed below have the meanings given them.

Subd. 2. "Public records" mean any recorded information, regardless of its physical form, storage media or conditions of use, that is collected, created, received, maintained, or disseminated by any component of the judicial branch, **except:**

(a) records maintained by a court administrator pursuant to the domestic abuse act, Minnesota Statutes, Section 518B.01, until a temporary court order made pursuant to subdivision 5 or 7 of Section 518B.01 is executed or served upon the record subject who is the respondent to the action;

(b) records on individuals maintained by a judicial branch court services department or probation authority, that are:

(i) gathered at the request of a municipal, district, or county court to determine the need for any treatment, rehabilitation, counseling, or any other need of a defendant, parolee, probationer, or participant in a diversion program, and used by the court to assist in assigning an appropriate sentence or other disposition in a case; or

(ii) gathered at the request of a family court for purposes of, but not limited to, individual, family, marriage, chemical dependency and marriage dissolution adjustment counseling, including recommendations to the court as to the custody of minor children in marriage dissolution cases; or

(iii) gathered by psychologists in the course of providing the court or its staff with psychological evaluations or in the course of counseling individual clients referred by the court for the purpose of assisting them with personal conflicts or difficulties;

Provided, however, that the following information on adult individuals is public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation and the extent to which those conditions have been or are being met; identifiers of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

(c) records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is public: name; actual gross salary; salary range; contract fees, actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public;

(d) records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant;

(e) correspondence between individuals and justices or judges;

(f) memoranda, notes, or preliminary drafts prepared by or under the direction of any justice, judge, referee, judicial officer, board member, or commissioner within the judicial branch that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue;

(g) the work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch;

(h) information collected by the judicial branch as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which is retained in anticipation of a pending civil legal action;

(i) schedules and related records, other than court orders regarding assignments of justices, judges, referees and judicial officers, the public disclosure of which would affect the orderly and effective administration of justice;

(j) records that have not been filed with the court administrator, admitted into evidence, or otherwise made a part of a civil or criminal case, the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals, or property against theft, tampering, improper use, illegal disclosure, trespass, or physical injury;

(k) records, including a formula, pattern, compilation, program, device, method, technique or process that was supplied by the judicial branch, that is the subject of efforts by the judicial branch that are reasonable under the circumstances to maintain its secrecy, and that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;

(*l*) computer programs and related components of a program for which the judicial branch has acquired a patent or copyright;

(m) records maintained by the State Judicial Information System and the Trial Court Information System for purposes of compliance with Minnesota Statutes, Section 542.27;

(n) records maintained by a library operated by the judicial branch, which links a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials;

(*o*) all records of the office of the Board of Law Examiners except the names of applicants admitted to practice and information ordered to be released by the Supreme Court pursuant to the Rules for Admission to the Bar, or by other order;

(p) information reported by lawyers to the Supreme Court or the Lawyers Trust Account Board for purposes of compliance with Rule 1.15 of the Minnesota Rules of Professional Conduct;

(q) passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Office;

(r) matters that are made inaccessible to the public pursuant to:

(i) state statute, other than Minnesota Statutes, Chapter 13; or

(ii) federal law; or

(iii) rules promulgated by the Minnesota Supreme Court regarding judicial or administrative proceedings, including but not limited to, rules governing the Lawyers Professional Responsibility Board, the Board of Judicial Standards, and the Board of Continuing Legal Education;

(s) any other records determined by order of the Supreme Court to be inaccessible to the public.

If a request is made for information which is not maintained in tangible form by the judicial branch in the regular course of business, the request shall be considered a request for information rather than a request to inspect a public record, and is not subject to the provisions of these rules.

Subd. 3. "Court administrator" means the court administrator pursuant to Laws 1985, Chapter 273, or the clerk of the appellate courts pursuant to Rule 101.02, subdivision 5 of the Minnesota Rules of Civil Appellate Procedure.

Subd. 4. "Judicial district administrator" means the district administrator pursuant to Minnesota Statutes, Section 484.68.

Subd. 5. "State court administrator" means the court administrator pursuant to Minnesota Statutes, Section 480.13.

Order of Supreme Court of Minnesota In Re Inaccessibility of Sealed Bids.

WHEREAS, the state court administrator's office has adopted a competitive bidding process for the service, purchase, and lease of micro processor computer systems to be installed at various judicial offices including appellate courts, trial courts, judicial district administration and court administration offices throughout the state, and

WHEREAS, the integrity of the bidding process requires that all sealed bids remain sealed until the time specified in the bid request for opening the bids, and

WHEREAS, sound public policy, reflected in Minn.Stat. § 13.37, requires that bona fide trade secrets, including but not limited to customer lists, that are submitted pursuant to a bid request remain unavailable to the public,

NOW, THEREFORE, pursuant to Rule 3, subdivision 2(s) of the Interim Rules on Access to Public Records, and by virtue of and under the inherent power and statutory authority of the Minnesota Supreme Court to regulate access to public records maintained by the judicial branch, IT IS HEREBY ORDERED that the following provisions apply to records submitted in response to a judicial branch bid request:

1. Sealed bids, including the number of bids received, shall be inaccessible to the public prior to the opening of the bids at the time specified in the bid request.

2. A common law trade secret or a trade secret as defined in Minn.Stat. § 325C.01, that is required to be submitted pursuant to a judicial branch bid request, shall be inaccessible to the public provided that:

a. the bidder marks the document(s) containing the trade secret "CONFIDENTIAL;"

b. the bidder submits as part of the bid a written request to maintain confidentiality; and

c. the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or obtained by the judicial branch from third parties.

Dated: March 25, 1987

BY THE COURT:

/s/Douglas K. Amdahl
Chief Justice

RULE 4. MANNER OF MAKING REQUEST

Subdivision 1. Custodian of Records. A request to inspect or to obtain copies of public records shall be made to the custodian of those records. The court administrator is the custodian of records of judicial proceedings within the court where the records are located, vital statistics records, and drivers license and permit application records. The judicial district administrator is the custodian of administrative records for the judicial district in which the records are located. The state court administrator is the custodian of records relating to overall administration of the courts of the State of Minnesota. The state law librarian is the custodian of the records of the State Law Library. The custodian of the records maintained by any board, commission, or committee shall be the individual designated by the board, commission, or committee. The custodian of the records of any other office shall be the individual designated by the appointing authority or, if the office is an elective office, the individual occupying the office.

Subd. 2. Designee. The custodian may appoint one or more designees to respond to inspection and copy requests.

Subd. 3. Form of Request.

(a) A request to inspect or obtain copies of public records shall be made in writing to the custodian of the records unless otherwise allowed by the custodian.

(b) A written request to inspect or obtain copies of administrative records shall include:

(i) the name, mailing address, and telephone number of the requesting person;

(ii) the specific documents which the person wishes to inspect or to have copied;

(c) A request to inspect or obtain copies of records other than administrative records shall be made in the manner designated by the custodian of the records.

RULE 5. RESPONSE

Subdivision 1. The custodian shall acknowledge the request orally or in writing no later than five working days after the request is made. The response shall indicate whether the records are public, and if so, when and where inspection may take place or copies may be obtained. The custodian must inform the requestor that the records will be available for inspection in no fewer than five working days.

Subd. 2. If the custodian determines the records can be made available for inspection or can be copied without unreasonable disruption to ongoing court or administrative activities, inspection or copying shall take place within five working days after the custodian receives the request.

Subd. 3. If the custodian determines the records cannot be made available for inspection or cannot be copied within five days after the custodian receives the request, the custodian shall notify the requestor of when and where inspection may take place or when and where copies will be provided, and shall inform the requestor of the reasons for the delay. Inspection must be permitted or copies provided within a reasonable time from the date of the request.

Subd. 4. If the records do not exist, the response shall so indicate.

Subd. 5. If the request does not provide sufficient information to locate the records, the request shall be returned, and the requestor notified.

Subd. 6. If access to the records is not permitted under these Rules, the response shall indicate the statute, federal law, or court or administrative rule that is the basis for denial of the inspection request.

Subd. 7. If either the court administrator or judicial district administrator, as custodian, cannot determine whether access to records of judicial proceedings or administrative records is permitted, the response shall state that the inspection request has been referred to the office of the state court administrator for determination. A response from the state court administrator shall be forwarded to the custodian or the person making the request no later than five working days after the state court administrator receives the referral.

Subd. 8. If the custodian determines that the number of records requested is so great that inspection or reproduction would create an unreasonable disruption to ongoing court or administrative activities, the custodian may require that the request be limited, or the custodian may limit the request.

Subd. 9. If the person making the request does not inspect or obtain the copies of the records during the time period permitted by the custodian, the request shall be deemed withdrawn, but may be renewed.

RULE 6. INSPECTION AND PHOTOCOPYING

Subdivision 1. Priority of Ongoing Court or Administrative Activities. Inspection and copying shall be conducted in a manner which will not disrupt ongoing court or administrative activities.

Subd. 2. Access to Original Records. The requesting person shall be allowed to inspect or to obtain copies of original versions of public records in the place where such records are normally kept, during regular working hours. However, if access to the original records would result in disclosure of information to which access is not permitted, jeopardize the security of the records, or prove otherwise impractical, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 3. Fees. Before providing copies, the custodian may require payment of the copying fee established by law or court rule. When a request involves any person's receipt of public information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted.

RULE 7. APPEAL TO STATE COURT ADMINISTRATOR IN CERTAIN CASES

A denial of or limitation upon a request to inspect public administrative records or public records of judicial proceedings may be appealed in writing to the state court administrator, and a written response will be sent to the requesting person no later than five working days after the state court administrator receives the appeal.

152.18. Discharge and dismissal

Subdivision 1. If any person is found guilty of a violation of section 152.024, 152.025, or 152.027 for possession of a controlled substance, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum term of imprisonment provided for such violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge the person from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against that person. Discharge and dismissal hereunder shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the department of public safety solely for the purpose of use by the courts in determining the merits of subsequent proceedings against such person. The court shall forward a record of any discharge and dismissal hereunder to the department of public safety who shall make and maintain the nonpublic record thereof as hereinbefore provided. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

Subd. 2. Upon the dismissal of such person and discharge of the proceedings against him pursuant to subdivision 1, such person may apply to the district court in which the trial was had for an order to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to subdivision 1, all recordation relating to arrest, indictment or information, trial and dismissal and discharge pursuant to subdivision 1. If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed, it shall enter such order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made for him for any purpose.

Subd. 3. Any person who has been found guilty of a violation of section 152.09 with respect to a small amount of marijuana which violation occurred prior to April 11, 1976, and whose conviction would have been a petty misdemeanor under the provisions of section 152.15, subdivision 2, clause (5) in effect on April 11, 1978, but whose conviction was for an offense more serious than a petty misdemeanor under laws in effect prior to April 11, 1976, may petition the court in which he was convicted to expunge from all official records, other than the nonpublic record retained by the department of public safety pursuant to section 152.15, subdivision 2, clause (5), all recordation relating to his arrest, indictment or information, trial and conviction of an offense more serious than a petty misdemeanor. The court, upon being satisfied that a small amount was involved in the conviction, shall order all the recordation expunged. No person as to whom an order has been entered pursuant to this subdivision shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge conviction of an offense greater than a petty misdemeanor, unless possession of marijuana is material to a proceeding.

242.31 Restoration of civil rights

Subdivision 1. Whenever a person who has been committed to the commissioner of corrections upon conviction of a crime following reference for prosecution under the provisions of section 260.125 is finally discharged from his control by order of the Minnesota corrections board, that discharge shall restore that person to all civil rights and, if so ordered by the Minnesota corrections board, also shall have the effect of setting aside the conviction, nullifying the same and of purging that person thereof. The Minnesota corrections board shall file a copy of the order with the district court of the county in which the conviction occurred, whereupon the court shall order the conviction set aside.

Subd. 2. Whenever a person described in subdivision 1 has been placed on probation by the court pursuant to section 609.135 and, after satisfactory fulfillment thereof, is discharged from probation, the court shall issue an order of discharge pursuant to section 609.165. On application of the defendant or on its own motion and after notice to the county attorney, the court in its discretion may also order that the defendant's conviction be set aside with the same effect as such an order under subdivision 1.

These orders restore the defendant to his civil rights and purge and free the defendant from all penalties and disabilities arising from his conviction and it shall not thereafter be used against him, except in a criminal prosecution for a subsequent offense if otherwise admissible therein.

Subd. 3. The Minnesota corrections board shall file a copy thereof with the district court of the county in which the conviction occurred, whereupon the court shall order the conviction set aside and all records pertinent to the conviction sealed. These records shall only be reopened in the case of a judicial criminal proceeding thereafter instituted.

The term "records" shall include but is not limited to all matters, files, documents and papers incident to the arrest, indictment, information, complaint, trial, appeal, dismissal and discharge, which relate to the conviction for which the order was issued.

Amended by Laws 1973, c. 654, § 15; Laws 1975, c. 271, § 6; Laws 1977, c. 392, § 5.

CHAPTER 364. CRIMINAL OFFENDERS, REHABILITATION

Section
364.01. Policy.
364.02. Definitions.
364.03. Relation of conviction to employment or occupation.
364.04. Availability of records.
364.05. Notification upon denial of employment or disqualification from occupation.
364.06. Violations, procedure.
364.07. Application.
364.08. Practice of law; exception.
364.09. Exceptions.
364.10. Violation of civil rights.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

364.01. Policy

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of

Laws 1974, c. 298, § 1.

364.02. Definitions

Subdivision 1. For the purposes of sections 364.01 to 364.10, the terms defined in this section have the meanings given them.

Subd. 2. "Occupation" includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the state of Minnesota, its agencies, or political subdivisions.

Subd. 3. "License" includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the state of Minnesota, its agents or political subdivisions before a person can pursue, practice, or engage in any occupation.

Subd. 4. "Public employment" includes all employment with the state of Minnesota, its agencies, or political subdivisions.

Subd. 5. "Conviction of crime or crimes" shall be limited to convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

Subd. 6. "Hiring or licensing authority" shall mean the person, board, commission, or department of the state of Minnesota, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment or the licensing of persons for occupations.

Laws 1974, c. 298, § 2.

364.03. Relation of conviction to employment or occupation

Subdivision 1. Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.

Subd. 2. In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

(a) The nature and seriousness of the crime or crimes for which the individual was convicted;

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(b) The relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;

(c) The relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

Subd. 3. A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Sufficient evidence of rehabilitation may be established by the production of:

(a) A copy of the local, state, or federal release order; and

(b) Evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or

(c) A copy of the relevant department of corrections discharge order or other documents showing completion of probation or parole supervision.

In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

(1) The nature and seriousness of the crime or crimes for which convicted;

(2) All circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;

(3) The age of the person at the time the crime or crimes were committed;

(4) The length of time elapsed since the crime or crimes were committed; and

(5) All other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

Laws 1974, c. 298, § 3. Amended by Laws 1986, c. 444.

364.04. Availability of records

The following criminal records shall not be used, distributed, or disseminated by the state of Minnesota, its agents or political subdivisions in connection with any application for public employment nor in connection with an application for a license:

(1) Records of arrest not followed by a valid conviction.

(2) Convictions which have been, pursuant to law, annulled or expunged.

(3) Misdemeanor convictions for which no jail sentence can be imposed.

Laws 1974, c. 298, § 4.

364.05. Notification upon denial of employment or disqualification from occupation

If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:

(1) The grounds and reasons for the denial or disqualification;

(2) The applicable complaint and grievance procedure as set forth in section 364.06;

(3) The earliest date the person may re-apply for a position of public employment or a license; and

(4) That all competent evidence of rehabilitation presented will be considered upon re-application.

Laws 1974, c. 298, § 5.

364.06. Violations, procedure

Any complaints or grievances concerning violations of sections 364.01 to 364.10 shall be processed and adjudicated in accordance with the procedures set forth in chapter 14, the administrative procedure act.

Laws 1974, c. 298, § 6. Amended by Laws 1982, c. 424, § 130.

364.07. Application

The provisions of sections 364.01 to 364.10 shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment on the grounds of conviction of a crime or crimes. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny, suspend, or terminate public employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of a crime or crimes but only in the same manner and to the same effect as provided for in sections 364.01 to 364.10. Nothing in sections 364.01 to 364.10 shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment.

Laws 1974, c. 298, § 7. Amended by Laws 1985, c. 248, § 70.

364.08. Practice of law; exception

This chapter shall not apply to the practice of law; but nothing in this section shall be construed to preclude the supreme court, in its discretion, from adopting the policies set forth in sections 364.01 to 364.10.

Laws 1974, c. 298, § 8.

364.09. Exceptions

This chapter shall not apply to the practice of law enforcement, to eligibility for a family day care license, a family foster care license, a home care provider license, or to eligibility for school bus driver endorsements. Nothing in this section shall be construed to preclude the Minnesota police and peace officers training board from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement.

Laws 1974, c. 298, § 9. Amended by Laws 1983, c. 304, § 5; Laws 1986, c. 444; Laws 1986, 1st Sp., c. 1, art. 9, § 28, eff. April 10, 1986; Laws 1987, c. 378, § 16, eff. June 3, 1987.

364.10. Violation of civil rights

Violation of the rights established in sections 364.01 to 364.10 shall constitute a violation of a person's civil rights.

Laws 1974, c. 298, § 10.

609.166. Convictions, setting aside in certain instances

Any person who is convicted of or pleads guilty to a felony, gross misdemeanor or misdemeanor may move the convicting court for the entry of an order setting aside the conviction where:

(a) the offense was committed before the person was 21 years of age;

(b) five years have lapsed since the person has served the sentence imposed or has been discharged from probation, and during the five year period the person has not been convicted of a felony or gross misdemeanor; and

(c) the offense is not one for which a sentence of life imprisonment may be imposed.

Laws 1971, c. 779, § 1, eff. June 5, 1971. Amended by Laws 1974, c. 331, § 1; Laws 1986, c. 444.

609.167. Procedure in entering order

Subdivision 1. A copy of the motion and supporting affidavits shall be served upon the office of the prosecuting attorney who prosecuted the offense 30 days prior to hearing on the motion.

Subd. 2. At hearing on the motion the court may require the filing of such further affidavits and the taking of such evidence as it deems necessary and proper.

Subd. 3. Where the court determines that the circumstances and behavior of the person from the date of conviction warrant setting aside the conviction, it may enter such an order.

Laws 1971, c. 779, § 2, eff. June 5, 1971. Amended by Laws 1986, c. 444.

609.168. Effect of order

Where an order is entered by the court setting aside the conviction the person shall be deemed not to have been previously convicted.

Laws 1971, c. 779, § 3, eff. June 5, 1971.

Chapter 638

638.02. Pardons

Subdivision 1. The board of pardons may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted. Every pardon or commutation of sentence shall be in writing and shall have no force or effect unless granted by a unanimous vote of the board duly convened.

Subd. 2. Any person, convicted of crime in any court of this state, who has served the sentence imposed by the court and has been discharged of the sentence either by order of court or by operation of law, may petition the board of pardons for the granting of a pardon extraordinary. If the board of pardons shall determine that such person has been convicted of no criminal acts other than the act upon which such conviction was founded and is of good character and reputation, the board may, in its discretion, grant to such person a pardon extraordinary. Such pardon extraordinary, when granted, shall have the effect of restoring such person to all civil rights, and shall have the effect of setting aside the conviction and nullifying the same and of purging such person thereof and such person shall never thereafter be required to disclose the conviction at any time or place other than in a judicial proceeding thereafter instituted.

The application for such pardon extraordinary and the proceedings thereunder and notice thereof shall be governed by the statutes and the rules of the board in respect to other proceedings before the board and contain such further information as the board may require.

Subd. 3. Upon granting a pardon extraordinary the board of pardons shall file a copy thereof with the district court of the county in which the conviction occurred, whereupon the court shall order the conviction set aside and all records pertinent to the conviction sealed. These records shall only be reopened in the case of a criminal judicial proceeding thereafter instituted.

Subd. 4. Any person granted a pardon extraordinary by the board of pardons prior to April 12, 1974 may apply to the district court of the county in which the conviction occurred for an order setting aside the conviction and sealing all such records as set forth in subdivision 3.

Subd. 5. The term "records" shall include but is not limited to all matters, files, documents and papers incident to the arrest, indictment, information, trial, appeal, dismissal and discharge, which relate to the conviction for which the pardon extraordinary has been granted.

Amended by Laws 1955, c. 448, § 1; Laws 1963, c. 819, § 1; Laws 1974, c. 582, § 1.

Regulations

Department of Administration
Data Privacy Division

Adopted Rules Governing the Enforcement and Administration of the "Minnesota Government Data Practices Act"

The rules proposed and published at *State Register*, Volume 3, Number 9, pp. 346-368, September 4, 1978 (3 S.R. 346) are adopted with the following amendments:

Rules as Adopted

2 MCAR § 1.201. Scope and purpose. These rules relate to and shall apply to the provisions of Minn. Stat. §§ ~~15.162~~ 15.1611 through ~~15.1671~~ 15.1699.

A. These rules shall apply to those governmental entities as defined by Minn. Stat. § ~~15.1671~~ 15.162, subds. 5, 7, and 8, which collect, create, use store, and disseminate data on individuals as defined in Minn. Stat. § 15.162, subd. 3.

(6 S.R. 265)

These rules shall only apply to data on individuals, as defined by Minn. Stat. § 15.162, subd. 3, which is created, collected, maintained, used or disseminated by governmental entities.

B. Non-profit social service agencies meeting the requirements of Minn. Stat. § 15.162, subd. 5 shall include, but are not limited to, agencies providing mental health, physical health, counseling and day-activities services.

1. These rules shall only apply in the instance where such an agency is required, by the terms of a written contract with a state agency, political subdivision, or statewide system to collect, create, store, use, or disseminate data on individuals.

2. In the event of such a contract, these rules shall only apply to the data on individuals that is actually generated by the social service agency because of the contract.

3. Any data generated by activities of the social service agency that are independent of the contractually based activities shall not be subject to these rules.

4. These rules shall not apply to personnel data maintained on employees of such social service agencies.

C. These rules shall not apply to any governmental data collected, created, used, stored, or disseminated which is not data on individuals as defined in Minn. Stat. § 15.162, subd. 3, except these rules shall apply to summary data.

D. Nothing in these rules shall limit the discovery procedures available at law to any party in a civil or criminal action or administrative proceeding as described in the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure as adopted by the Minnesota Supreme Court or in Minnesota Statutes and rules adopted thereunder.

E. Nothing in these rules shall restrict or limit the scope or operation of any judicial order or rule issued by a state or federal court.

In the event of the issuance of a subpoena duces tecum for any private or confidential data or a subpoena requiring any agent of an entity to testify concerning any private or confidential data, the court's attention shall be called, through the proper channels, to those statutory provisions, rules, or regulations which restrict the disclosure of such information.

F. Nothing in these rules shall be construed to diminish the rights conferred on subjects of data by Minn. Stat. § 13~~.~~865, or any other statute.

G. The purpose of these rules is to aid governmental entities in implementing and administering Minn. Stat. §§ ~~15.162~~ 15.1611 through ~~15.1671~~ 15.1699 as those sections relate to data on individuals. These rules are intended to guide entities so that while protection is given to individual privacy, neither necessary openness in government nor the orderly and efficient operation of government is curtailed.

2 MCAR § 1.202 Definitions. All terms shall have the meanings given them by Minn. Stat. § 15.162. Those terms and additional terms as used in these rules shall have the meanings as follows:

A. Act means Minn. Stat. §§ ~~15.162~~ 15.1611 through ~~15.1671~~ 15.1699, as amended, ~~commonly referred to as the "Data Privacy Act" or the Minnesota Fair Information Practices Act"~~ officially entitled the "Minnesota Government Data Practices Act".

~~B. Arrest information means only those elements of data that are expressly listed in § 15.162, subd. 1a of the Act. Arrest information shall only include data which is collected, created, or maintained by an entity whose officers, employees or agents are given arrest powers by statute, or the power to take into custody any person arrested by another citizen of this state.~~

~~1. Such entities include, but are not limited to, municipal police departments, county sheriff departments, the Minnesota State Patrol, and officers deputized as game wardens under the provisions of Minn. Stat. § 97.50.~~

~~C.~~ B. Data means "data on individuals" as defined in § 15.162, subd. 3 of the Act, unless stated otherwise.

1. Data can be maintained in any form, including, but not limited to, paper records and files, microfilm, computer medium, or other processes.

2. The duration of the existence of data, including whether certain data is temporary rather than permanent, is not relevant to compliance with these rules.

3. All data, in whatever form it is maintained, is "data on individuals" if it can in any way identify any particular ~~a unique~~ individual.

~~4. Code numbers representing unique individuals in certain data constitute "data on individuals", provided a list or index of any type is made available by which the code number can be crossreferenced to identify unique individuals. Such data may qualify for treatment as summary data, pursuant to 2 MCAR § 1.209.~~

4. Code numbers, which are used to represent particular individuals, constitute "data on individuals" if a list or index of any type is available by which the code number can be cross referenced to a name or other unique personal identifier so that any individual's identity is revealed. Code numbers, lists of code numbers or data associated with code numbers may qualify for treatment as summary data, pursuant to 2 MCAR § 1.209.

a. Code number means the labeling or enumeration of data by use of a letter, number, or combination thereof, which is used in place of an individual's name, including but not limited to index numbers, dummy numbers, SOUNDEX codes, and social security numbers.

5. Data is "data on individuals" if it identifies an individual in itself, or if it can be used in connection with other data elements to uniquely identify an individual. Such data shall include, but is not limited to, street addresses, job titles and so forth where the particular data could only describe or identify one individual.

~~D~~C. Confidential data, as defined in § 15.162, subd. 2a of the Act, shall only include data which is expressly classified as confidential by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is confidential only if a state statute or federal law provides substantially that:

a. Certain data shall not be available either to the public or to the data subject: or

b. Certain data shall not be available to anyone for any reason except agencies which need the data for agency purposes.

c. Certain data shall be confidential if a state statute or federal law provides that the data may be shown to the data subject only at the discretion of the person holding the data, and if such state statute or federal law provides standards which limit the exercise of the discretion of the person maintaining the data.

2. Data is not confidential if:

a. A state statute or federal law provides that the data is confidential, but the context of the statute or federal law, in which the term confidential appears, reasonably indicates the data is accessible by the data subject , or if the data subject is given access to the data only upon the discretion of the person holding the data and the state statute or federal law does not provide any standards which limit the exercise of such discretion. In such cases, the proper classification of the data is private.

3. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "confidential", or use wording to make data inaccessible to the data subject unless there is a state statute or federal law as the basis for the classification.

SD. Private data, as defined in § 15.162, subd. 5a of the Act, shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is private if a state statute or federal law provides substantially that:

a. Certain data shall not be available to the public but shall be available to the subject of that data:

b. Certain data shall not be available to anyone, except the data subject or his designated representative such as an attorney:

c. Certain data shall be confidential and the person the data is about may view the data at reasonable times: or

d. Certain data shall be confidential and may be shown to the data subject at the discretion of the person holding the data. Such data shall be private if the state statute or federal law does not provide standards which limit the exercise of the discretion of the person maintaining the data.

e. Certain data is confidential, but the context of the statute or federal law in which the term confidential appears, reasonably indicates the data is accessible by the individual who is the subject of the data.

2. Data is not private if:

a. A federal agency rule provides substantially that as a part of its plan for implementation of a certain federal program, a state agency, statewide system, or political subdivision must provide for the confidentiality of data obtained from program subjects.

3. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "private", or use wording to make data inaccessible to the public unless there is a state statute or federal law as the basis for the classification.

PE. Public data shall mean "data on individuals", ~~as defined in § 15.162, subd. 5b of the Act,~~ which is ~~neither private nor confidential data, and which is data that is an official record pursuant to Minn. Stat. § 15.17,~~ not classified by state statute, including Section 15.1642, or federal law as private or confidential data.

~~1. Data is public if:~~

~~a. A state statute or federal law substantially provides that certain data shall be made available to the public pursuant to Minn. Stat. § 15.17, or any other similar wording.~~

~~b. A state statute or federal law substantially requires the collection of certain data by a state agency, political subdivision or statewide system, and does not classify that data as private or confidential.~~

~~c. A state agency, statewide system, or political subdivision, without any express enabling authority to do so, collects certain data because that data is necessary to its operations, as defined at 2 MCAR § 1.216, B.~~

1. This rule shall not limit the ability of an entity to apply for temporary classifications of data pursuant to § 15.1642 of the Act.

(6 S.R. 267)

~~G~~F. Designee ~~means any person designated by a responsible authority to be in charge of individual file(s) or system(s) containing "data on individuals"~~ shall have the meaning given that term by Minn. Stat. Section 15.162, subd. 10.

~~H~~G. Entity means any governmental agency subject to the requirements of the Act, including state agencies, political subdivisions, and statewide systems as those terms are defined in § 15.162 of the Act.

1. State agency shall include any entity which is given power of statewide ~~impact~~ effect by statute or executive order.

2. Political subdivision shall include those local government entities which are given powers of less than statewide ~~impact~~ effect by statute or executive order.

3. Statewide systems shall include, but are not limited to, record keeping and data administering systems established by statute, federal law, administrative decision or agreement, or joint powers agreement.

a. Statewide systems shall include, but are not limited to, the Criminal Justice Information System administered by the Bureau of Criminal Apprehension, the Statewide Accounting System, ~~the Minnesota Education Computing Consortium,~~ and the various welfare systems primarily administered by the Department of Public Welfare.

~~I~~H. Federal Law means United States Code, rules and regulations of federal agencies as published in the ~~Federal Register~~ Code of Federal Regulations, and federal case law, including decisions of any court in the federal judicial system.

~~J~~I. Individual means any living human being. Individual shall not include any fictional entity or business such as a corporation, association, partnership, or sole proprietorship even in those instances where the name of such an entity or business includes the name of a natural person.

~~K~~J. RecordsManagement Act means Minn. Stat. § 138.17.

~~L~~K. Responsible Authority means the individual in each entity who is designated or appointed pursuant to § 15.162, subd. 6 of the Act.

1. In state agencies, the Responsible Authority shall be as follows, unless otherwise provided by state law:

a. Departments: the commissioner of the department.

b. Constitutional Offices: the constitutional officer.

c. University of Minnesota: the individual appointed by the Board of Regents.

d. All other state agencies: the chief executive officer, or if none, then an individual chosen by the agency's governing body.

2. In political subdivisions, the Responsible Authority shall be as follows, unless otherwise provided by state law:

a. Counties: each elected official of the county shall be the Responsible Authority for his respective office. An individual who is an employee of the county shall be appointed by the county board to be the Responsible Authority for any data administered outside the offices of elected officials.

b. Cities: the city council shall appoint an individual who is an employee of the city.

c. School Districts: the school board shall appoint an individual who is an employee of the school district.

d. Nonprofit Corporations or Nonprofit Social Service Agencies: unless a statute or the governmental entity which created the corporation or agency appoints an individual, the governing body of the corporation or agency shall appoint an individual. If no appointment is made, the chief executive officer of the nonprofit corporation or agency shall be the Responsible Authority. If the corporation or agency is part of a statewide system, the Responsible Authority for the statewide system shall be the Responsible Authority for the corporation or agency as determined by this rule.

e. All other political subdivisions: the governing body shall appoint an individual who is an employee of the political subdivision.

3. In "Statewide Systems", the Responsible Authority shall be as follows, unless otherwise provided by state law

a. The commissioner of any state department or any executive officer designated by statute or executive order as responsible for such a system; or

b. If a state statute or executive order does not designate an individual as Responsible Authority, the Commissioner of Administration shall appoint the Responsible Authority after the entities which participate in the system jointly apply for such an appointment in a form provided by the Commissioner of Administration.

~~M~~L. Summary Data, as defined in § 15.162, subd. 9 of the Act, means data which has been extracted, manipulated, or summarized from private or confidential data, and from which all data elements that could link the data to a specific individual have been removed.

(6 S.R. 268)

1. Summary data includes, but is not limited to, statistical data, case studies, reports of incidents, and research reports.

2. Once it is summarized from private or confidential data, summary data remains ~~Data is~~ summary ~~data~~ if the Responsible Authority maintains any list of numbers or other data which could uniquely identify any individual in the summary data ~~is~~ physically separated from the summary data and the Responsible Authority does ~~is~~ not ~~made~~ make such a list or other data available to persons who gain access to, or possession of the summary data.

2 MCAR § 1.203. Access to public data. The Responsible Authority shall comply with the following general rules governing access to public data.

A. The Responsible Authority shall provide access to public data to any person, without regard to the nature of that person's interest in the data.

1. The Responsible Authority shall establish procedures to describe how such access may be gained. The procedures established shall be in compliance with Section 15.1621 of the Act.

a. In such procedures, the Responsible Authority may limit the time during which ~~that public~~ access to public data is available to the time during which the normal operations ~~office hours~~ of the agency are conducted.

b. In such procedures, the Responsible Authority shall provide for a response to a request for access within a reasonable time.

c. The Responsible Authority ~~shall~~ may charge a reasonable fee for providing copies of public data ~~unless the costs incurred by the entity in providing the copies are minimal~~.

d. In determining the amount of the reasonable fee, the Responsible Authority shall be guided by the following:

(1) The cost of materials, including paper, used to provide the copies.

(2) The cost of the labor required to prepare the copies.

(3) Any schedule of standard copying charges as established by the agency in its normal course of operations.

(4) Any special costs necessary to produce such copies from machine based record keeping systems, including but not limited to computers and microfilm systems.

(5) Mailing costs.

2 MCAR § 1.204. Access to private data. Pursuant to §§ ~~15.1641~~ 15.163 and 15.162, subd. 5a of the Act, the Responsible Authority shall comply with the following rules concerning access to private data:

A. Access to private data shall be available only to the following:

1. The subject of such data, as limited by any applicable statute or federal law.

2. Individuals within the entity, whose work assignments reasonably require access.

3. Entities and agencies as determined by the Responsible Authority who are authorized by statute, including § ~~15.1641~~ (e) 15.163, subd. 4 of the Act, or federal law to gain access to that specific data.

4. Entities or individuals given access by the express written direction of the data subject.

B. The Responsible Authority shall establish written procedures to assure that access is gained only by those parties identified in Part A of this rule.

~~1. In those procedures, the Responsible Authority shall provide for reasonable measures that will assure that the person seeking to gain access to the private data is actually the subject of that data or the authorized representative of the data subject.~~

1. In those procedures, the Responsible Authority shall provide for reasonable measures to assure, in those instances where an individual who seeks to gain access to private data asserts that he or she is the subject of that data or the authorized representative of the data subject, that the individual making the assertion is in fact the subject of the data or the authorized representative of the data subject.

(6 S.R. 269)

2. Examples of such reasonable measures include, but are not limited to, the following:

a. Requiring the person seeking to gain access to appear at the offices of the entity to gain such access, or, in lieu of a personal apperance, requiring the ~~notarized~~ signature of any data subject who is unable to appear at the offices of the enuity.

b. Requiring the person to provide reasonable identification.

C. The Responsible Authority may limit the time that access is available to the data subject to the normal working hours of the agency.

D. The Responsible Authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

E. The Responsible Authority ~~shall~~ may charge the data subject a reasonable fee for providing copies of private data.

1. In determining the amount of the reasonable fee, the Responsible Authority shall be guided by the criteria set out in 2 MCAR § 1.203 concerning access to public data.

2 MCAR § 1.205. Access to private data concerning data subjects who are minors. Pursuant to §§ ~~15.1641, and~~ 15.162, subd. 4 and subd. 5a and 15.163 of the Act, the Responsible Authority shall comply with the following rules concerning access:

A. In addition to the particular requirements of this rule, access to private data concerning a minor data subject shall be subject to the requirements of 2 MCAR § 1.204 concerning access to all private data.

B. Access to private data concerning minors shall be available only to the following:

1. Those parties identified as having access to private data under ~~part~~ A. of 2 MCAR § 1.204.

2. Subject to the provisions of Minn. Stat. § 15.162, subd. 4, any other applicable statute, and the exception set out at ~~part C~~ + 1.205. C. 1. below, the parents of the minor data subject.

a. For purposes of this rule, the Responsible Authority shall presume the parent has the authority to exercise the rights inherent in the Act unless the Responsible Authority has been provided with evidence that there is a state law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

C. Pursuant to the provisions of Minn. Stat. § 15.162, subd. 4, the Responsible Authority shall establish procedures to provide access by the parents of a minor data subject to provide data concerning that minor, subject to the following:

1. The Responsible Authority may deny parental access to private data when the minor, who is the subject of that data, requests that the Responsible Authority deny such access.

a. The Responsible Authority shall provide minors from whom the entity collects private or confidential data with a notification that the minor individual has the right to request that parental access to private data be denied.

~~a~~b. The Responsible Authority may require the minor data subject to submit a written request that the data be withheld. The written request shall set forth the reasons for denying parental access and shall be signed by the minor.

2. Upon receipt of such a request, the Responsible Authority shall determine if honoring the request to deny parental access would be in the best interest of the minor data subject.

a. In making the determination, the Responsible Authority shall be guided by at least the following:

(1) Whether the minor is of sufficient age and maturity to be able to explain the reasons for and to understand the consequences of the request to deny access.

(2) Whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm.

(3) Whether there is ground for believing that the minor data subject's reasons for precluding parental access are reasonably accurate.

(4) Whether the data in question is of such a nature that disclosure of it to the parent could lead to physical or emotional harm to the minor data subject.

~~(5) Whether the data in question is subject to the rights of parental access outlined in the "Family Educational Rights and Privacy Act of 1974", Public Law 93-380, and the rules promulgated thereunder.~~

~~(6)~~ (5) Whether the data concerns medical, dental, or other health services provided pursuant to Minn. Stat. §§ 144.341 through 144.347. If so, the data may be released only if failure to inform the parent would seriously jeopardize the health of the minor.

3. The Responsible Authority shall not deny access by parents to data that is considered an "education record", as that

term is defined in Title 45 Code of Federal Regulations, Part 99, Section 99.3, unless the minor to whom the data pertains is enrolled as a full time student in a post-secondary educational institution or the student has attained the age eighteen. As of the date of the adoption of these rules, the term "education records" was defined by Title 45 Code of Federal Regulations, Part 99, Section 99.3 as follows: "'Education Records' (a) Means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution. (b) The term does not include: (1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which: (i) Are in the sole possession of the maker thereof, and (ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position. (2) Records of a law enforcement unit of an educational agency or institution which are: (i) Maintained apart from the records described in paragraph (a) of this definition; (ii) Maintained solely for law enforcement purposes, and (iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction: Provided, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit; (3) (i) Records relating to an individual who is employed by an educational agency or institution which: (A) Are made and maintained in the normal course of business; (B) Relate exclusively to the individual in that individual's capacity as an employee, and (C) Are not available for use for any other purpose. (ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student. (4) Records relating to an eligible student which are: (i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity; (ii) Created, maintained, or used only in connection with the provision of treatment to the student, and (iii) Not disclosed to anyone other than individuals providing the treatment: Provided, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution. (5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni."

4. Without a request from a minor, the Responsible Authority may deny parental access to private data on a minor, pursuant to the provisions of Minn. Stat. § 144.335 or any other statute or federal law that allows or requires the Responsible Authority the authority to do so, if such state statute or federal law provides standards which limit the exercise of the discretion of the Responsible Authority.

2 MCAR § 1.206. Access to confidential data. Pursuant to Minn. Stat. §§ ~~15.1641~~ 15.163 and 15.162, subd. 2a, the Responsible Authority shall comply with the following rules concerning access to confidential data:

A. Access to confidential data is available only to the following:

1. Individuals within the entity, whose work assignments reasonably require access.

2. Entities and agencies who are authorized by statute, including § ~~15.1641~~ 15.163 of the act, or federal law to gain access to that specific data.

B. The Responsible Authority shall establish written procedures to assure that access may be gained only by those parties identified in Part A of this rule.

1. In the drafting and administration of those procedures, the Responsible Authority shall provide measures by which data subjects or their authorized representatives shall be informed, upon request, if they are the subjects of confidential data.

a. The Responsible Authority shall not disclose the actual confidential data to the data subjects, but shall inform them whether confidential data concerning them is or is not retained.

b. The Responsible Authority shall take reasonable measures to assure that the person making inquiry is actually the individual data subject or the authorized representative of the data subject.

c. Reasonable measures may include, but are not limited to:

(1) Requiring the inquiring person to appear at the office of the entity to make his/her request;

(6 S.R. 271)

(2) Requiring the inquiring person to provide identification; or

(3) Requiring the notarized signature of any data subject who is unable to appear at the offices of the entity.

[2 MCAR § 1.207, "Access to Arrest Information," and 2 MCAR § 1.208, "Access to Investigative Data," as proposed by the Department of Administration have been withdrawn by the department. Subsequent sections of these rules have been re-numbered accordingly.]

2 MCAR § ~~1.209~~ 1.207 Access to summary data. Pursuant to Minn. Stat. § ~~15.1641 (d)~~ 15.163, subd. 7, the Responsible Authority shall comply with the following general rules concerning access to summary data:

A. Summary data is public data, unless classified by statute, federal law or temporary classification as not public. The Responsible Authority shall comply with 2 MCAR § 1.203, concerning access to public data.

B. The Responsible Authority shall prepare and implement procedures in his/her agency to assure that access to summary data is ~~given to anyone who requests such data~~ provided pursuant to Section 15.163, subd. 7 of the Act. In the preparation and administration of such procedures, the Responsible Authority shall comply with the following:

1. Preparation of summary data may be requested by any person. The request shall be in writing in a form provided by the Responsible Authority. Within ten days of the receipt of such a request, the Responsible Authority shall inform the requestor of the estimated costs if any, pursuant to Section 2 of this rule and subject to the provisions of that section either:

a. Provide the summary data requested; or

b. Provide a written statement to the requestor, describing a time schedule for preparing the requested summary data, including reasons for any time delays; or

c. Provide access to the requestor to the private or confidential data for the purpose of the requestor's preparation of summary data, pursuant to § ~~15.1641 (d)~~ 15.163, subd. 7, of the Act and subd. 4 of this section; or

d. Provide a written statement to the requestor stating reasons why the Responsible Authority has determined that the requestor's access would compromise the private or conndential data.

2. Any costs incurred in the preparation of summary data shall be borne by the requesting person. In assessing the costs associated with the preparation of summary data, the Responsible Authority shall:

a. Be guided by the provisions of 2 MCAR § 1.203 in determining costs.

b. Provide to the requesting person an estimate of the costs associated with the preparation of the summary data.

c. Prior to preparing or supplying the summary data, collect any funds necessary to reimburse the entity for its costs.

d. Charge no more than reasonable copying costs when the summary data being requested requires only copying and no other preparation.

e. Take into account the reasonable value to the entity of the summary data prepared, and where appropriate reduce the costs assessed to the requesting person.

3. For the purposes of administering Minn. Stat. § ~~15.1641 (d)~~ 15.163, subd. 7, the following terms shall have the meanings given them.

a. "Administrative officer" includes, but is not limited to, the entity's research director, statistician, or computer center director.

b. "Person outside" the entity includes the person requesting the summary data or any other person designated by the person requesting the data.

4. A non-disclosure agreement, as required by § ~~15.1641 (d)~~ 15.163, subd. 7 of the Act shall contain at least the following:

a. A general description of the private or confidential data which being used to prepare summary data.

b. The purpose for which the summary data is being prepared.

c. A statement that the preparer understands he/she may be subject to the civil or criminal penalty provisions of the Act in the event that the private or confidential data is disclosed.

5. Methods of preparing summary data include but are not limited to the following:

a. Removing from a set of data, a file, or a record keeping system all unique personal identifiers so that the data that remains fulfills the definition of summary data as defined by § 15.162, subd. 9 of the Act.

(6 S.R. 272)

b. Removing from the entity's report of any incident, or from any collection of data similar to an incident report, all unique personal identifiers so that the resulting report fulfills the definition of summary data in § 15.162, subd. 9 of the Act.

c. For the purpose of this rule, "removing all unique personal identifiers" includes but is not limited to:

(1) Blacking out personal identifiers on paper records.

(2) Tearing off or cutting out the portions of paper records that contain the personal identifiers.

(3) Programming computers in such a way that printed ~~or~~, terminal or other forms of output do not contain personal identifiers.

2 MCAR § 1.210 1.208. Classification of data. In order to comply with the provisions of §§ 15.162, ~~15.1611~~, 15.165 and 15.163 of the Act the Responsible Authority shall:

A. Review and identify all of the types of data maintained by the entity, including data retained as active and inactive.

B. ~~Determine the private, confidential or public classification for each type of data.~~ Determine what types of data maintained by the entity are classified as private or confidential, according to the definitions of those terms pursuant to § 15.162 of the Act and 2 MCAR § 1.202.

C. Identify either a state statute or provisions of federal law supporting any determination that certain data is either private or confidential.

D. Administer all agency data in accordance with the determinations made under 2 MCAR § 1.210 B.

2 MCAR § ~~1.211~~ 1.209. Authority of the Responsible Authority. ~~Jurisdiction, as that term is used in § 15.1611 (a) of the Act, means that the Responsible Authority shall have the authority to~~ Pursuant to § 15.162 through 15.1642 of the Act, the Responsible Authority shall have the authority to:

A. Implement the Act and these rules in each entity.

B. Make good faith attempts to resolve all administrative controversies arising from the entity's practices of creation, collection, use and dissemination of data.

C. Prescribe changes to the administration of the entity's programs, procedures, and design of forms to bring those activities into compliance with the Act and with these rules.

D. Take all administrative actions necessary to comply with the general requirements of the Act, particularly Minn. Stat. § 15.165, and these rules.

E. Where necessary, direct designees to perform the detailed requirements of the Act and these rules under the general supervision of the Responsible Authority.

2 MCAR § ~~1.212~~ 1.210. Appointment of the Responsible Authority.

A. Pursuant to § 15.162, subd. 6 of the Act, the governing body of each political subdivision and the governing body of each state agency whose activities are subject to the direction of a governing body shall, within 30 days of the effective date of these rules, if it has not done so, appoint a Responsible Authority.

1. This rule shall not affect the appointments of Responsible Authorities made previous to the adoption of this rule.

2. The governing body shall confer on the Responsible Authority full administrative authority to carry out the duties assigned by the Act and by these rules.

3. Governing bodies may use the forms set forth in the appendix to these rules to appoint the Responsible Authority.

2 MCAR § ~~1.213~~ 1.211. Appointment power of the Responsible Authority. Pursuant to § ~~15.1611 (a)~~ 15.1621, subd. 2 of the Act, the Responsible Authority shall, if he deems it to be in the best interest of the administration and enforcement of the Act, appoint designees who shall be members of the staff of the entity. In the exercise of this appointment power, the Responsible Authority shall comply with the following:

A. The appointment order shall be in writing and copies of the order constitute public data on individuals, pursuant to Minn. Stat. § 15.162, subd. 5(b) of the Act.

(6 S.R. 273)

B. The Responsible Authority shall instruct any designees in the requirement of the Act and of these rules. If the Responsible Authority deems it necessary, such instruction shall include:

1. Distribution to designees of written materials describing the requirements of the Act and of these rules.

2. Preparation of training programs whose objective is to familiarize agency personnel with the requirements of the Act and of these rules.

3. Requiring attendance of designees and other entity personnel at training programs held within or outside the entity.

2 MCAR § ~~1.211~~ 1.212. Duties of the Responsible Authority relating to public accountability. Pursuant to § 15.163 of the Act, the duties of the Responsible Authority shall include, but not be limited to the following:

A. For the purposes of public accountability, the Responsible Authority shall, within sixty days of the effective date of these rules, or until August 1 of each year when the requirements of Part B of this rule are fully complied with, place his/her name, job title and business address, and the name(s) and job titles of any designees selected by the Responsible Authority on a document.

1. Such document shall be made available to the public and/or posted in a conspicuous place by each entity.

2. The document shall identify the Responsible Authority or designees as the persons responsible for answering inquiries from the public concerning the provisions of the Act or of these rules.

B. In the public document to be prepared or updated by August 1 of each year as required by § 15.163 of the Act, the Responsible Authority shall identify and describe by type all records, files, or processes maintained by his/her entity, which contain private or confidential data.

1. In addition to the items to be placed in the public document as required by § 15.163 of the Act, the Responsible Authority shall include the following:

a. The name, title, and address of designees appointed by the Responsible Authority.

b. Identification of the files or systems for which each designee is responsible.

c. A citation of the state statute or federal law which classifies the each type of data as private or confidential.

2. The Responsible Authority shall draft the descripuons of the types of records, files, and processes in easily understandable English. Technical or uncommon expressions, understandable only by a minority of the general public shall be avoided, except where required by the subject matter.

3. The Responsible Authority may use the form set forth in the appendix to these rules to prepare this public document.

2 MCAR § ~~1.212~~ 1.213. Duties of the Responsible Authority relating to the administration of private and confidential data. In order to administer the requirements of § ~~15.1641~~ (e) 15.163, subd. 4 of the Act, the Responsible Authority shall determine for each type of record, file, or process identified in 2 MCAR § 1.214 whether the data contained therein was collected prior or on or subsequent to August 1, 1975.

A. For each type of record, file or process containing data collected prior to August 1, 1975, the Responsible Authority shall:

1. Review the federal, state or local legal enabling authority which mandated or necessitated the collection of the private or confidential data.

2. Based on that review, determine the lawful purpose for the collection of the data at the time it was originally collected.

3. Direct the staff of the entity that private or confidential data collected prior to August 1, 1975, shall not be used, stored, or disseminated for any purpose, unless that purpose is was authorized by the enabling authority which was in effect at the time the data was originally collected.

B. For each type of record, file, or process containing private or confidential data collected on or subsequent to August 1, 1975, the Responsible Authority shall:

1. Review the legal enabling authority which mandates or necessitates the collection of the data.

2. Identify the purposes for the collection of and the intended uses of all private or confidential data that have been communicated to data subjects or should have been communicated to data subjects at the time of data collection, pursuant to § 15.165, subd. 2 of the Act.

C. Using the purposes and uses identified in A. and B. of this rule, the Responsible Authority shall:

1. Prepare lists which identify the uses of and purposes for the collection of private or confidential data for each type of record, file or process identified in 2 MCAR § 1.214.

a. Each list shall identify all persons, agencies, or entities authorized by state or federal law to receive any data disseminated from the particular record, file or process.

(6 S.R. 274)

2. Pursuant to § 15.165, subd. 2 of the Act, either:

a. Attach each list identifying purposes, uses and recipients of data to all agency forms which collect the private or confidential data that will be retained in each record, file or process; or

b. Communicate, in any reasonable fashion, the contents of each list to data subjects at the time particular data that will be retained in each record, file, or process is collected from them. For purposes of this section, "reasonable fashion" shall include, but not be limited to:

(1) Oral communications made to data subjects.

(2) Providing data subjects with brochures that describe the entity's purposes for the collection of and the uses to be made of private and confidential data.

D. In administering the entity's private or confidential data consistent with the provisions of ~~the~~ these rules, the Responsible Authority shall:

1. Educate entity personnel as to authorized purposes and uses.

2. Prepare administrative procedures that will acquaint entity personnel with authorized purposes and uses.

3. Distribute policy directives requiring compliance with the entity's determination of authorized purposes and uses.

E. The Responsible Authority shall authorize a new purpose for the collection of private or confidential data or a new use for private or confidential data under any one of the following conditions:

1. If subsequent passage of federal or state legislation requires initiation of a new or different purpose or use pursuant to § ~~15.1611~~ ~~(c)~~ ~~(2)~~ ~~of the Act~~, 15.163, subd. 4(b), of the Act, or

2. The Responsible Authority, prior to initiation of the new or different purpose or use, complies with the provisions of either § ~~15.1611~~, ~~(c)~~ ~~(1)~~ ~~or~~ ~~(2)~~ 15.163, subd. 4(a), subd. 4 (c) or subd. 4(d) of the Act.

a. For the purposes of administration of Minn. Stat. § ~~15.1611~~ ~~(c)~~ ~~(1)~~ 15.163, subd. 4(a) or subd. 4(c), the Responsible Authority shall file a statement ~~on~~ in a form ~~provided~~ prescribed by the commissioner.

b. For the purposes of Minn. Stat. § ~~15.1611~~ ~~(c)~~ ~~(2)~~ 15.163, subd. 4(d) the following term shall have the meaning given it:

(1) "Informed consent" means the data subject possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the entity to initiate a new purpose or use of the data in question.

c. For the purposes of the administration of Minn. Stat. § ~~15.1611~~ ~~(c)~~ ~~(2)~~ 15.163, subd. 4(d), the Responsible Authority shall comply with the following:

(1) The Responsible Authority shall not take any action to coerce any data subject to give an "informed consent." The Responsible Authority shall explain the necessity for or consequences of the new or different purpose or use.

(2) All informed consents shall be given in writing. Prior to any signature being affixed to it by the data subject, such writing shall identify the consequences of the giving of informed consent.

(3) If the Responsible Authority makes reasonable efforts to obtain the informed consent of a data subject and if those efforts are not acknowledged in any way, the Responsible Authority shall interpret the silence of the data subject as the giving of an implied consent to the new or different purpose or use of the data.

(a) For purposes of this section, "reasonable efforts" shall include:

(i) Depositing in the United States Mail, postage pre-paid and directed to the last known address of the data subject, at least two communications requesting informed consent.

(ii) Waiting for a period of not less than 60 days for a response to the second request.

(4) The data subject may give informed consent to less than all of the data elements in any list of data elements presented by a Responsible Authority, thereby giving only partial consent.

(6 S.R. 275)

(a) Only those elements that the data subject has expressly consented to shall become part of the new or different purpose or use.

D. If the Responsible Authority seeks an individual's informed consent to the release of private data to an insurer or the authorized representative of an insurer, the Responsible Authority shall comply with the provisions of Minn. Stat. § 15.163, subd. 4 (d), (1) through (7).

2 MCAR § 1.216 1.214. Duties of the Responsible Authority as they relate to the administration of all entity data. Pursuant to § ~~15.1641 (b)~~ 15.163, subd. 3 of the Act, the Responsible Authority shall, within eighteen months of the effective date of these rules, formulate a plan that will provide for the review and analysis of the data administration practices of the entity..

A. In the formulation of this plan, the Responsible Authority shall at least provide for the preparation of a list of or index to all data or types of data currently collected, stored, used, or disseminated by the entity.

1. The list or index developed shall include the identification of the state statute(s), federal law(s), or local ordinance(s) that authorize(s) the programs or functions for which data or types of data are ~~is~~ collected, or which authorize(s) the actual ~~data~~ collection, storage, use or dissemination of data or types of data.

a. The plan shall further provide for the list or index to be updated when new or different data collection, storage, use or dissemination is authorized.

b. This list or index shall be available to members of the general public, upon request.

B. The Responsible Authority shall use this plan and the list or index developed to aid in the determination of whether collection and storage of data and use and dissemination of private or confidential data is necessary.

1. For purposes of this section, data is necessary if:

a. The particular data is both:

(1) Required to carry out programs and functions that are expressly or impliedly authorized by a provision of state statute, federal law or a local ordinance; and

(2) Periodically examined, updated, modified or referred to by the entity; or

b. The entity would be unable to fulfill its duties without undue or increased burden or expense, if the particular data were not collected, stored, used or disseminated; or

c. Retention of the particular data is required in the event that a legal action is brought against or by the entity; or

d. Retention of the particular data is essential to comply with a state or federal requirement that data be retained for a specified period for the purposes of auditing, records retention, historical interest, and other similar purposes.

C. For any data determined to be not necessary pursuant to B. of this rule, the Responsible Authority shall provide for the following activities in the entity's plan.

1. Taking all actions ~~which include making changes to forms designs, rewriting procedures, and so forth~~ including modification of the entity's data collection forms and data collection procedures, to assure that all ~~such~~ unnecessary data is no longer collected and stored and all ~~such~~ private and confidential data determined to be not necessary is no longer used and disseminated. Private data shall continue to be disseminated upon request by the data subject.

2. Disposing of ~~such~~ data determined to be not necessary pursuant to the procedures of the Records Management Act.

a. Inquiries concerning procedures for disposition of data may be directed to the Records Management Division, Department of Administration, St. Paul, Minnesota, 55155.

D. In the formulation of the plan described in A., of this rule, the Responsible Authority shall provide for the establishment of administrative mechanisms and procedures that comply with § ~~15.1641 (c)~~ 15.163, subd. 5 of the Act. For purposes of this section,

1. "Accurate" means that the data in question is reasonably correct and free from error.

2. "Complete" means that the data in question reasonably reflects the history of an individual's transactions with the particular entity. Omissions in an individual's history that place the individual in a false light shall not be permitted.

3. "Current" means that the data in question must be logically related to the entity's required and actual use of the data in its day-to-day operations.

[2 MCAR § 1.217. "Duties of the Responsible Authority as they relate to computerized data", as proposed by the Department of Administration has been withdrawn by the department. Subsequent sections of these rules have been re-numbered accordingly.]

2 MCAR ~~§ 1.218~~ 1.215. Administrative appeal. Pursuant to § 15.165, subd. 4 of the Act, an individual may appeal an adverse determination of a Responsible Authority to the Commissioner of Administration.

(6 S.R. 276)

A. The appeal shall follow the procedures established in Minnesota Statutes, Chapter 15, as amended, and the rules of the Office of ~~Hearing Examiners~~ Administrative Hearings relating to Contested Case Proceedings.

B. Notice of an appeal must be submitted to the commissioner within a reasonable time of the determination made by the Responsible Authority pursuant to § 15.165, subd. 4 of the Act. For purposes of this section, "reasonable time" shall mean 180 days unless the Responsible Authority has provided the individual with a written statement which informs the individual of the right to appeal the determination to the commissioner. In the event this statement is provided, "reasonable time" for purposes of this section shall mean 60 days.

1. The notice shall be in writing and addressed to the Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

2. The notice shall contain the following information:

a. The name, address, and phone number if any, of the appealing party.

b. The name of the Responsible Authority and the entity which he or she represents.

c. A description of the nature of the dispute, including a description of the data.

d. A description of the desired result of the appeal.

~~2. The Commissioner may require additional information if it is reasonably necessary in order to establish the Contested Case Proceeding.~~

3. ~~4.~~ Upon written request of the data subject stating reasons, the appeal may be processed under the name of a pseudonym.

C. The hearing examiner, at any stage of the proceedings, after all parties have had an opportunity to present their views, may recommend dismissal of any sham, capricious, or frivolous case, or any case not within the jurisdiction of the Department of Administration.

~~C~~D. The Department of Administration shall be reimbursed for all costs associated with the Contested Case Proceeding by the entity whose Responsible Authority has been the impetus for the individual's appeal to the Commissioner.

1. The commissioner shall establish appropriate accounting procedures to provide to the entity an itemized invoice.

2 MCAR § 1.219 1.216. General powers of the commissioner. Pursuant to § 15.163, subd. 2 of the Act and to assist in the general implementation and enforcement of the Act, the commissioner shall have the following powers:

A. If the commissioner determines that certain information is relevant to monitoring any entity's data collection and handling practices, policies and procedures, the commissioner shall require the Responsible Authority of such entity to submit the information.

B. Any inquiries concerning the Act or these rules and any information submissions required to be made by A. of this rule shall be directed to the Data Privacy ~~Unit~~ Division, Department of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

C. The Data Privacy ~~Unit~~ Division shall respond promptly to all inquiries within personnel and budgetary limitations.

2 MCAR § ~~1.220~~ 1.217. Duties of the commissioner relating to temporary classification of data. Pursuant to Minn. Stat. § 15.1642, the commissioner and Responsible Authorities shall comply with the following:

A. The Responsible Authority, pursuant to § 15.162, subd. 6 of the Act, shall prepare any application for ~~emergency~~ temporary classification in writing in a form provided by the commissioner. Copies of the form are available from the Data Privacy Division.

~~1. The form for an application is set out in the appendix to these rules. Copies of the form are available from the Data Privacy Unit.~~

B. For the purposes of the administration of § 15.1642 of the Act, the following terms have the meanings given to them:

1. "Days" means calendar, not working days.

(6 S.R. 277)

2. "Upon filing" means upon receipt of either an original or amended application by the commissioner.

3. "Date of disapproval" means the date the Responsible Authority actually receives the disapproval notification from the Commissioner.

4. "Within ~~20~~ 25 days of submission to the Attorney General" means within ~~20~~ 25 days of the date that the Attorney General's Office in the Department of Administration actually receives the record from the Commissioner.

C. Applications for ~~emergency~~ temporary classification of data shall be submitted to the Data Privacy ~~Unit~~ Division, Department of Administration, State of Minnesota, St. Paul, Minnesota 55155.

D. If the Data Privacy ~~Unit~~ Division requires the Responsible Authority to submit additional information in support of the application, that application is deemed to have been filed on the date the additional material is received by the Data Privacy ~~Unit~~ Division. The commissioner shall return any application to the applicant if the additional information requested is not received within 30 days.

~~E. The provisions of this rule shall terminate and cease to have force and effect on whichever of the following dates or events occurs later:~~

~~1. On August 1, 1979; or~~

~~2. On the effective date of a statute that repeals the Commissioner's authority to rule on emergency classification of data pursuant to Minn. Stat. § 15.1642, subd. 2.~~

2 MCAR § ~~1.221~~ 1.218. Severable provisions. If any provisions of these rules are found invalid for any reason, the remaining provisions shall remain valid.

ADVISORY FORM A

RESOLUTION APPOINTING A COUNTY RESPONSIBLE AUTHORITY

State of Minnesota

County of (name of county)

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, requires that (name of county) County appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals within the county and,

WHEREAS, the (name of county) County Board of Commissioners shares the concern expressed by the legislature on the responsible use of all County data and wishes to satisfy this concern by immediately appointing an administratively and technically qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the County Board of Commissioners appoints (name of individual) as the Responsible Authority for the purpose of meeting all requirements of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (name of county) COUNTY COMMISSIONERS ON (date)

ATTESTED TO: (signature of appropriate official)

(title of appropriate official)

ADVISORY FORM B

RESOLUTION APPOINTING A CITY RESPONSIBLE AUTHORITY

State of Minnesota

City of (insert name of city)

Resolution Title: Appointment of Responsible Authority

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, as amended, requires that the City of (insert name of city) appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals, within the City and,

(6 S.R. 278)

WHEREAS, the (insert name of city) City Council shares concern expressed by the legislature on the responsible use of all City data and wishes to satisfy this concern by immediately appointing an administratively qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the City Council of (insert name of city) appoints (name of individual appointed) as the Responsible Authority for the purposes of meeting all requirements of Minnesota Statutes, Section 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (insert name of city) CITY COUNCIL ON (date).

ATTESTED TO BY THE:

(Signature of Mayor) on (date)

(Signature of City Clerk) (date)

ADVISORY FORM C

RESOLUTION APPOINTING A SCHOOL DISTRICT RESPONSIBLE AUTHORITY

State of Minnesota

(name of district) School District

School District Number

Pursuant to the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (Insert name of individual), is hereby appointed Responsible Authority for the (insert name of district) School District Number (insert name of individual appointed) is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used within School District (insert number) are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADVISORY FORM D

RESOLUTION APPOINTING A RESPONSIBLE AUTHORITY FOR STATE OR LOCAL BOARDS OR COMMISSIONS

State of Minnesota

(insert name of board or commission)

Under the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (name of individual) is hereby appointed Responsible Authority for (insert name of board or commission).

(insert name of individual appointed) is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used by the (insert name of board or commission) are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration and published in the State Register on (insert date).

ADVISORY FORM E

PUBLIC DOCUMENT AS REQUIRED BY MINNESOTA STATUTES, SECTION 15.163

GOVERNMENTAL ENTITY: (Name of Entity) (Address)

RESPONSIBLE AUTHORITY: (Name) (Title) (Address)

(6 S.R. 279)

NAME OF RECORD, FILE, SYSTEM OR PROCESS	DESCRIPTION OF RECORD, FILE, SYSTEM OR PROCESS	CLASSIFICATION	CITATION OF STATUTE OR FEDERAL LAW THAT CLASSIFIES THE DATA	NAME, TITLE AND ADDRESS OF DESIGNEE, IF ANY FOR FILE, ETC.
(Insert a name sufficient to identify.)	(Describe in terms understandable by the general public).	(Insert private or confidential.)	(Insert citation to state or federal statute, federal rule, case law)	(Insert name, etc. of person appointed to be in charge of this file, etc.)

(Advisory Form F. "Application for Temporary Classification of Data", as proposed by the Department of Administration has been withdrawn by the Department.)

Office of the Secretary of State

Adopted Temporary Rule Governing Electronic or Automatic Data Processing System of Maintaining Duplicate Voter Registration Records

The rule proposed and published at *State Register*, Volume 6, Number 3, pp. 71-73, July 20, 1981 (6 S.R. 71) is adopted with the following amendments:

1 MCAR § 2.001 (Temporary)

F. Notice of ineffective registration. The county or municipality may modify the notice of ineffective registration in 1 MCAR § 2.0506 by adding the following additional statement:

~~"5.~~ 4. Month and day of birth are required."

or

~~"5.~~ 4. Month and day of birth are required on all registrations accepted in (name of county or municipality) after (date of notification of election)."

G. Request for birthdate

2. Please fill in your month and day of birth on the enclosed return form, sign the form, and mail it ~~in the postage-paid envelope~~ to (name of political subdivision). Return postage has been prepaid.

Only the month and day of your birth are requested; the year of your birth is not needed.

3. You will ~~not~~ NOT lose your registration if you do not provide this information or return this form, but your cooperation will be appreciated and helpful to election officials.

The return form shall include the following material:

The voter's name and address, pre-printed as they appear in the duplicate registration file.

_____ / _____

month of birth day of birth

Voter's signature

The return form shall be printed as a postage-paid postcard or the auditor or clerk shall include with the return form a postage-paid return envelope printed with the complete return mailing address of the political subdivision

(6 S.R. 280)

TITLE 45. PUBLIC SAFETY AND GOOD ORDER
Chapter 27. Mississippi Justice Information Center

§ 45-27-7 Duties and function of the justice information center.

(1) The Mississippi Justice Information Center shall:

(a) Develop, operate and maintain an information system which will support the collection, storage, retrieval and dissemination of all crime and offender data described in this chapter, consistent with those principles of scope, security and responsiveness prescribed by this chapter.

(b) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards and related training assistance necessary for the uniform operation of the statewide center.

(c) Offer assistance and, when practicable, instruction to all local law enforcement agencies in establishing efficient local records systems.

(d) Make available, upon request, to all local and state criminal justice agencies, to all federal criminal justice agencies and to criminal justice agencies in other states any information in the files of the center which will aid such agencies in the performance of their official duties. For this purpose the center shall operate on a twenty-four (24) hour basis, seven (7) days a week. Such information, when authorized by the director of the center, may also be made available to any other agency of this state or any political subdivision thereof and to any federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders.

(e) Cooperate with other agencies of this state, the crime information agencies of other states, and the national crime information center systems of the federal bureau of investigation in developing and conducting an interstate, national and international system of criminal identification and records.

(f) Institute necessary measures in the design, implementation and continued operation of the justice information system to ensure the privacy and security of the system. Such measures shall include establishing complete control over use of and access to the system and restricting its integral resources and facilities and those either possessed or procured and controlled by criminal justice agencies. Such security measures must meet standards developed by the center as well as those set by the nationally operated systems for interstate sharing of information.

(g) Provide data processing for files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property and such other files as may be of general assistance to law enforcement agencies; provided, however, that the purchase, lease, rental or acquisition in any manner of "computer equipment or services," as defined in section 25-53-3, Mississippi Code of 1972, shall be subject to the approval of the state central data processing authority.

(h) Maintain a field coordination and support unit which shall have all the power conferred by law upon any peace officer of this state.

(2) The investigative division shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other pertinent identifying data on persons who:

(i) Have been or are hereafter arrested or taken into custody in this state:

(A) For an offense which is a felony;

(B) For an offense which is a misdemeanor involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, fraud or false pretenses;

(C) As a fugitive from justice; or

(ii) Are or become habitual offenders; or

(iii) Are currently or become confined to any prison, penitentiary or other penal institution; or

(iv) Are unidentified human corpses found in the state.

(b) Compare all fingerprint and other identifying data received with that already on file and determine whether or not a criminal record is found for such person, and at once inform the requesting agency or arresting officer of those facts that may be disseminated consistent with applicable security and privacy laws and regulations. A record shall be maintained of the dissemination of each individual criminal history, including at least the date and recipient of such information.

(c) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records and cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of an individual.

§ 45-27-9. Submission of data to center by criminal justice agencies.

(1) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs (when specifically requested), and other identifying data on persons who have been lawfully arrested or taken into custody in this state for all felonies and certain misdemeanors described in section 45-27-7(2)(a). It shall be the duty of all chiefs of police, sheriffs, district attorneys, courts, judges, parole and probation officers, wardens or other persons in charge of correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its

responsibilities under this chapter.

(2) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, fingerprints according to the fingerprint system of identification established by the director of the federal bureau of investigation, full face and profile photographs (if equipment is available) and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in subsection (1) of this section, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file. Any record taken in connection with any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall be purged from the files of the center and destroyed. All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrests or takings into custody which result in release without charge or subsequent exoneration from criminal liability within twenty-four (24) hours of such release or exoneration.

(3) Fingerprints and other identifying data required to be taken under subsection (2) shall be forwarded within twenty-four (24) hours after taking for filing and classification, but the period of twenty-four (24) hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo Available" and the photographs shall be forwarded subsequently if the center so requests.

(4) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of such service or withdrawal. Also, the agency concerned must annually, no later than January 31 of each year and at other times if requested by the center, confirm all such arrest warrants which continue to be outstanding. The center shall purge and destroy files of all data relating to an offense when an individual is subsequently exonerated from criminal liability of that offense.

(5) All persons in charge of state correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the federal bureau of investigation or as otherwise directed by the center, and full face and profile photographs of all persons received on commitment to such institutions. The prints so taken shall be forwarded to the center, together with any other identifying data requested, within ten (10)

days after the arrival at the institution of the person committed. At the time of release, the institution will again obtain fingerprints, as before, and forward them to the center within ten (10) days, along with any other related information requested by the center. The institution shall notify the center immediately upon the release of such person.

(6) All persons in charge of law enforcement agencies, all court clerks, all municipal justices where they have no clerks, all justice court judges and all persons in charge of state and county probation and parole offices, shall supply the center with the information described in subsections (4) and (10) of this section on the basis of the forms and instructions to be supplied by the center.

(7) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and correctional institutions in this state having criminal identification files shall cooperate in providing the center with copies of such items in such files which will aid in establishing the nucleus of the state criminal identification file.

(8) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed a crime. In no event shall this time exceed twelve (12) hours after the reporting department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(9) All law enforcement agencies in the state shall immediately notify the center if at any time after making a report as required by subsection (8) of this section it is determined by the reporting department or agency that a person is no longer wanted or that a vehicle or property stolen has been recovered. Furthermore, if the agency making such apprehension or recovery is not the one which made the original report, then it shall immediately notify the originating agency of the full particulars relating to such apprehension or recovery.

(10) All law enforcement agencies in the state and clerks of the various courts shall promptly report to the center all instances where records of convictions of criminals are ordered expunged by courts of this state as now provided by law. The center shall promptly expunge from the files of the center and destroy all records pertaining to any convictions that are ordered expunged by the courts of this state as provided by law.

§ 45-27-11. Inspection of criminal offender records; correction of errors in records.

The center shall make a person's criminal records available for inspection by him or his attorney upon written application. Should such person or his attorney contest the accuracy of any portion of such records, the center shall make available to such person or his attorney a copy of the contested record upon written application identifying the portion of the record contested and showing the reason for the contest of accuracy. Forms, procedures, identification and other related aspects pertinent to such access may be prescribed by the center in making access available.

If an individual believes such information to be inaccurate or incomplete, he may request the original agency having custody or control of the records to purge, modify or supplement them and to so notify the center of such changes. Should the agency decline to so act or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual or his attorney may within thirty (30) days of such decision enter an appeal to the county or circuit court of the county of his residence or to such court in the county where such agency exists. The court in each such case shall conduct a de novo hearing and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as other appeals are entered.

Should the record in question be found to be inaccurate, incomplete or misleading, the court shall order it to be appropriately expunged, modified or supplemented by an explanatory notation. Each agency or individual in the state with custody, possession or control of any such record shall promptly cause each and every copy thereof in his custody, possession or control to be altered in accordance with the court's order. Notification of each such deletion, amendment and supplementary notation shall be promptly disseminated to any individuals or agencies to which the records in question have been communicated as well as to the individual whose records have been ordered so altered.

Agencies, including the center, at which criminal offender records are sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures, fees or restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security, to verify the identities of those who seek to inspect them and to maintain an orderly and efficient mechanism for such access.

§ 45-27-13. Penalties

(1) Any person who knowingly requests, obtains or attempts to obtain criminal history record information under false pretenses or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this chapter, or any member, officer, employee or agency of the investigative division of the Mississippi Justice Information Center, the council or any participating agency who knowingly falsifies criminal history record information, or any records relating thereto, shall for each such offense be fined not more than one thousand dollars ($ 1,000.00) or be imprisoned for not more than six (6) months, or both.

(2) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems, except in accordance with this chapter, shall for each such offense be fined not more than five thousand dollars ($ 5,000.00) or be imprisoned for not more than two (2) years, or both.

Title 25. Public Officers and Employees; Public Records
CHAPTER 53. Central Data Processing Authority
INFORMATION CONFIDENTIALITY OFFICERS

§ 25-53-51. Qualifications for Position.

To qualify for the position of information confidentiality officer a person must:

(a) Be an employee of a state agency or institution in a position such that his duties require him to handle or process or supervise the handling or processing of data in conjunction with the use of automated data processing equipment for an agency or institution other than that for whom he is regularly employed.

(b) Have been continuously employed for a period of at least one hundred eighty (180) days by such agency or institution or have successfully been cleared for employment through an investigation that shall consist of a determination as to good moral character and that the prospective employee has not been convicted of a felony. At the request of the executive director, the Mississippi Department of Public Safety shall be responsible for conducting background investigations of the prospective employee and expeditiously report the results of such investigation to the executive director. An employee may be provisionally employed based on a reference check by the employing agency pending final receipt of the results of the detailed background investigation conducted by the Mississippi Department of Public Safety for a period not to exceed sixty (60) days.

(c) Successfully complete a suitable instructional course on the subjects of information security, privacy and confidentiality and protection, to be developed and taught under the supervision of the executive director. An employee may work in a provisional capacity under the direct supervision of an information confidentiality officer as part of an on-the-job training program while completing instructional requirements, for a period not to exceed ninety (90) days.

(d) Be duly sworn to the following oath: "I, --------, do solemnly swear to protect and uphold the confidentiality of all information that may come to my knowledge that is designated as 'confidential information' by another state agency or institution for which I may handle or process in the normal course of my duties. I swear to exercise reasonable care in the handling and processing of all such designated data and further that I will not reveal or otherwise divulge information from such data obtained. I understand that proven violation of this oath will subject me to forfeiture of my bond and dismissal from employment."

(e) Enter into bond in the amount of five thousand dollars ($ 5,000.00) with a surety company authorized to do business in the state, and conditioned to pay the full amount thereof as liquidated damages to any person about whom confidential information is disclosed in violation of his oath.

(f) Be identified by a wallet-sized identification card with a picture of the person to be carried at all times while on duty.

§ 25-53-53. Handling and processing of information and data.

Information and data shall be considered public record information and data and receive normal handling and processing unless designated as "confidential information" by the agency and institution originating the data. Information and data designated as "confidential information" will receive special handling based on procedures agreed to by the executive director and the agency or institution head and shall be handled in accordance with the oath subscribed to by the confidentiality officer.

§ 25-35-55. Investigation of and hearing on complaints of allegedly improper disclosure of confidential information.

Upon written complaint of any person claiming to be adversely affected by disclosure of confidential information by any information confidentiality officer, the director shall give notice to the information confidentiality officer of the fact that such complaint has been filed and shall give such notice to the Chairman of the central data processing authority, who shall call a meeting of the members of the authority for the purpose of hearing such complaint. The authority shall then conduct an investigation into the matter and shall afford to the complaining party and the information confidentiality officer a hearing, of which reasonable notice shall be given. For purposes of such hearing, the authority, under signature of the secretary of the authority attested by the chairman, shall have the power to subpoena witnesses and documentary or other evidence. After such hearing, if the authority, based upon substantial evidence, shall find that the information confidentiality officer has disclosed confidential information in violation of his oath, the authority shall enter such finding of fact on its minutes and the information confidentiality officer shall be immediately discharged from employment. If the authority shall find that such oath has not been violated, it shall, likewise, enter such finding on its minutes and the complaint shall be dismissed. The finding of the authority shall be prima facie evidence of the truth thereof in any judicial procedure seeking forfeiture of the bond of such information confidentiality officer.

§ 25-53-59. Penalty for improper release or divulgence of confidential information.

Any information confidentiality officer who shall intentionally and wilfully violate his oath by releasing or divulging confidential information without proper authority shall be guilty of a misdemeanor and sentenced to not exceeding one (1) year in jail or a fine of not exceeding one thousand dollars ($ 1,000.00), or both.

§ 25-59-19. Records to be public property.

All records created or received in the performance of public duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

MISSOURI

Chapter 43
Highway Patrol, State

CRIMINAL RECORDS, CENTRAL REPOSITORY

43.500 Definitions

As used in section 43.500 to 43.530, the following terms mean:

(1) "Central repository", the Missouri state highway patrol criminal records division for compiling and disseminating complete and accurate criminal history records;

(2) "Committee", criminal records advisory committee;

(3) "Criminal history record information", information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release;

(4) "Final disposition", the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system;

(5) "State offense cycle number", a preprinted number on the state fingerprint card which is used to identify each arrest which may include multiple offenses for which a person is fingerprinted. This number will be associated with an offense incident from the date of arrest to the date the offender exits from the criminal justice system;

(6) "Without undue delay", as soon as possible but not later than thirty days after the criminal history event;

(7) "Administration of criminal justice", performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information, including fingerprint searches, photographs, and other indicia of identification.

43.503. Arrest, charge and disposition of misdemeanors and felonies to be sent to highway patrol

1. For the purpose of maintaining complete and accurate criminal history record information, all police officers of this state, the clerk of each court, the department of corrections and human resources, the sheriff of each county, the chief law enforcement official of a city not within a county and the prosecuting attorney of each county or the circuit attorney of a city not within a county shall submit certain criminal arrest, charge, and disposition information to the central repository for filing without undue delay in the form and manner required by sections 43.500 to 43.530.

2. All law enforcement agencies making misdemeanor and felony arrests as determined by section 43.506, shall furnish without undue delay, to the central repository, fingerprints, charges, and descriptions of all persons who are arrested for such offenses on standard fingerprint forms supplied by the highway patrol. All such agencies shall also notify the central repository of all decisions not to refer such arrests for prosecution. An agency making such arrests may enter into arrangements with other law enforcement agencies for the purpose of furnishing without undue delay such fingerprints, charges, and descriptions to the central repository upon its behalf.

3. The prosecuting attorney of each county or the circuit attorney of a city not within a county shall notify the central repository on standard forms supplied by the highway patrol of all charges filed, including all those added subsequent to the filing of a criminal court case, and whether charges were not filed in criminal cases for which the central repository has a record of an arrest. All records forwarded to the central repository by prosecutors or circuit attorneys as required by sections 43.500 to 43.530 shall include the state offense cycle number of the offense, and the originating agency identifier number of the reporting prosecutor, using such numbers as assigned by the highway patrol.

4. The clerk of the courts of each county or city not within a county shall furnish the central repository, on standard forms supplied by the highway patrol, with all final dispositions of criminal cases for which the central repository has a record of an arrest or a record of fingerprints reported pursuant to subsections 6 and 7 of this section. Such information shall include, for each charge:

(1) All judgments of not guilty, judgments or pleas of guilty including the sentence, if any, or probation, if any, pronounced by the court, nolle pros, discharges and dismissals in the trial court;

(2) Court orders filed with the clerk of the courts which reverse a reported conviction or vacate or modify a sentence;

(3) Judgments terminating or revoking a sentence to probation, supervision or conditional release and any resentencing after such revocation; and

(4) The offense cycle number of the offense, and the originating agency identifier number of the reporting court, using such numbers as assigned by the highway patrol.

5. The clerk of the courts of each county or city not within a county shall furnish court dispositions and state offense cycle number of the offense, which result in the commitment or assignment of an offender, to the jurisdiction of the department of corrections and human resources. This information shall be reported to the department of corrections and human resources at the time of commitment or assignment.

6. After the court pronounces sentence, including an order of supervision or an order of probation granted for any offense which is required by statute to be collected, maintained, or disseminated by the central repository, the prosecuting attorney or the circuit attorney of a city not within a county shall ask the court to order a law enforcement agency to fingerprint immediately all sentenced persons appearing before the court who have not previously been fingerprinted for the same case. The court shall order the requested fingerprinting if it determines that any sentenced person has not previously been fingerprinted for the same case. The law enforcement agency shall submit such fingerprints to the central repository without undue delay.

7. The department of corrections and human resources shall furnish the central repository with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency, or discharge of an individual who has been sentenced to the department's custody for any offenses which are mandated by this act to be collected, maintained or disseminated by the central repository. All records forwarded to the central repository by the department as required by sections 43.500 to 43.530 shall include the offense cycle number of the offense, and the originating agency identifier number of the department using such numbers as assigned by the highway patrol.

(L.1986, H.B. Nos. 873 & 874, § A (§ 2).)

43.506. Crimes to be reported, exceptions—method of reporting—certain arrest records to be closed, when

1. Those offenses considered reportable for the purposes of sections 43.500 to 43.530 include all felonies and serious or aggravated misdemeanors consistent with the reporting standards established by the National Crime Information Center, Federal Bureau of Investigation, for the Federal Interstate Identification Index System. The following types of offenses will not be considered reportable for the purposes of sections 57.403, RSMo, 43.500 to 43.530, and 595.200 to 595.218, RSMo: disturbing the peace, curfew violation, loitering, false fire alarm, disorderly conduct, nonspecific charges of suspicion or investigation, and general traffic violations and all misdemeanor violations of the state wildlife code. Second and subsequent offense traffic violations for driving under the influence of drugs or alcohol are reportable. All offenses considered reportable shall be reviewed annually and noted in the Missouri charge code manual established in section 43.512. All information collected under sections 43.500 to 43.530 shall be available only as set forth in section 610.120, RSMo, except that, notwithstanding any provision of law or regulation enacted pursuant thereto, all arrest records where any disposition indicates that a case has been nolle prossed, dismissed, or resulted in acquittal shall be closed for all dissemination purposes five years from the date of the arrest and shall not be opened or made disseminable unless and until the subject is charged with a new or subsequent offense.

2. With the exception of the manual reporting of arrests and fingerprints by law enforcement agencies as noted in subsection 2 of section 43.503, and notwithstanding subsections 2 to 7 of section 43.503, law enforcement agencies, court clerks, prosecutors and custody agencies may report required information by electronic medium either directly to the central repository or indirectly to the central repository via other criminal justice agency computer systems in the state with the approval of the advisory committee.

3. In addition to the repository of fingerprint records for individual offenders, the central repository of criminal history records for the state shall maintain a repository of latent prints.

(L.1986, H.B. Nos. 873 & 874, § A (§ 3).)

43.509. Rulemaking authority, department of public safety

The director of the department of public safety shall, in accordance with the provisions of chapter 536, RSMo, establish such rules and regulations as are necessary to implement the provisions of sections 43.500 to 43.530. All collection and dissemination of criminal history information shall be in compliance with chapter 610, RSMo, and applicable federal laws or regulations. Such rules shall relate to the collection of criminal history information from or dissemination of such information to criminal justice, noncriminal justice, and private agencies or citizens both in this and other states.

(L.1986, H.B. Nos. 873 & 874, § A (§ 4).)

43.512. Charge code manual, publication, use

The central repository, with the approval of the supreme court, shall publish and make available to criminal justice officials, a standard manual of codes for all offenses in Missouri. The manual of codes shall be known as the "Missouri Charge Code Manual". and shall be used by all criminal justice agencies for reporting information required by sections 43.500 to 43.530.

(L.1986, H.B. Nos. 873 & 874, § A (§ 5).)

43.515. Rulemaking authority, highway patrol criminal record division

The central repository, with the approval of the attorney general, shall publish regulations governing the security and privacy of criminal history record information as required by this state and by federal law or regulation.

(L.1986, H.B. Nos. 873 & 874, § A (§ 6).)

43.518. Criminal records advisory committee, established—purpose—members—meetings, quorum—minutes, distribution, filing of

1. There is hereby established within the department of public safety a "Criminal Records Advisory Committee" whose purpose is to recommend general policies with respect to the philosophy, concept and operational principles of the Missouri criminal history record information system established by sections 43.500 to 43.530, in regard to the collection, processing, storage, dissemination and use of criminal history record information maintained by the central repository.

2. The committee shall be composed of the following officials or their designees: the director of the department of public safety; the director of the department of corrections and human resources; the attorney general; the director of the Missouri office of prosecution services; the president of the Missouri prosecutors association; the president of the Missouri court clerks association; the chief clerk of the Missouri state supreme court; the director of the state courts administrator; the chairman of the state judicial record committee; the chairman of the circuit court budget committee; the presidents of the Missouri peace officers association; the Missouri sheriffs association; the Missouri police chiefs association or their successor agency; the superintendent of the Missouri highway patrol; the chiefs of police of agencies in jurisdictions with over two hundred thousand population; except that, in any county of the first class having a charter form of government, the chief executive of the county may designate another person in place of the police chief of any countywide police force, to serve on the committee; and, at the discretion of the director of public safety, as many as three other representatives of other criminal justice records systems or law enforcement agencies may be appointed by the director of public safety. The director of the department of public safety will serve as the permanent chairman of this committee.

3. The committee shall meet as determined by the director but not less than semiannually to perform its duties. A majority of the appointed members of the committee shall constitute a quorum.

4. No member of the committee shall receive any state compensation for the performance of duties associated with membership on this committee.

5. Official minutes of all committee meetings will be prepared by the director, promptly distributed to all committee members, and filed by the director for a period of at least five years.

(L.1986, H.B. Nos. 873 & 874, § A (§ 7).)

43.521. Juveniles not to be fingerprinted, exception

Sections 43.500 to 43.530 shall not require fingerprinting of juvenile offenders or reporting of information pertaining to a proceeding pursuant to the Missouri juvenile code, except in those cases where a juvenile is certified to the circuit court to stand trial as an adult.

(L.1986, H.B. Nos. 873 & 874, § A (§ 8).)

43.524. Requests for delayed compliance, how made, when

1. Records required to be filed with the central repository under the provisions of sections 43.500 to 43.530 shall be filed beginning January 1, 1988. The moneys in the fund as set forth in section 43.530 shall be subject to appropriation by the general assembly for the particular purpose for which collected. On January 1, 1987, the central repository as defined in subdivision (1) of section 43.500 shall begin to charge the fees set forth in section 43.530.

2. An agency required to comply with the provisions of sections 43.500 to 43.530 may request a delay for compliance with sections 43.500 to 43.530 on the basis of technical restraints, and shall submit with the request for delayed compliance a description of the restraint and the earliest date possible for resolution of the restraint.

3. The director of the department of public safety shall submit the request for delayed compliance to the criminal records advisory committee for review and approval within thirty days of receipt and advise the requesting agency of the committee recommendation within sixty days of the receipt of the request.

4. All such requests for delayed compliance must be submitted to the director of the department of public safety no later than October 1, 1986, and no delay may be granted which extends the date for compliance past January 1, 1989.

(L.1986, H.B. Nos. 873 & 874, § A (§ 9).)

43.527. Payment for records, exceptions

For purposes of sections 43.500 to 43.530 all federal and nonstate of Missouri agencies shall pay for criminal records checks, fingerprint searches, and any of the information as defined in subdivision (3) of section 43.500, when such information is not related to the administration of criminal justice. For purposes of sections 43.500 to 43.530 the administration of criminal justice is defined in subdivision (7) of section 43.500.

(L.1986, H.B. Nos. 873 & 874, § A (§ 10).)

43.530. Fees, method of payment—criminal record system fund, established—fund not to lapse

For each request received by the central repository, as defined in subdivision (1) of section 43.500, the requesting entity shall pay a fee of not more than five dollars per request for criminal history record information and pay a fee of not more than fourteen dollars per request for classification and search of fingerprints. Each such request shall be limited to check and search on one individual. Each request shall be accompanied by a certified check, warrant, voucher, or money order payable to the state of Missouri-criminal record system. There is hereby established by the treasurer of the state of Missouri a fund to be entitled as the "Criminal Record System Fund". Notwithstanding the provisions of section 33.080, RSMo, to the contrary, if the moneys collected and deposited into this fund are not totally expended annually for the purposes set forth in section 43.527, the unexpended moneys in said fund shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year.

(L.1986, H.B. Nos. 873 & 874, § A (§ 11).)

CRIMINAL RECORDS, CENTRAL REPOSITORY [NEW]

43.540. Criminal conviction record checks, patrol to conduct, when, procedure, information to be released, who may request

1. As used in this section, the following terms mean:

(1) **"Criminal record review"**, a request to the highway patrol for information concerning any conviction record, on file in the Missouri criminal records system, for a felony or misdemeanor;

(2) **"Patrol"**, the Missouri state highway patrol;

(3) **"Provider"**, any licensed day care home, licensed day care center, licensed child placing agency, licensed residential care facility for children, licensed group home, licensed foster family group home, or [1] licensed foster family home;

(4) "Youth services agency", any public or private agency, school, or association which provides programs, care or treatment for or which exercises supervision over minors.

2. Upon receipt of a written request from a youth service agency or a provider, the highway patrol shall conduct a criminal record review of an applicant for a paid or voluntary position with the agency or provider if such position would place the applicant in direct contact with minors.

3. Any request for information made pursuant to the provisions of this section shall be on a form provided by the highway patrol and shall be signed by the person who is the subject of the request.

4. The patrol shall respond in writing to the youth service agency or provider making a request for information under this section and shall inform such youth service agency or provider of the nature of the offense, and the date, place and court of conviction.

(L.1988, H.B. No. 1559, § A(1).)

57.103. Sheriff to fingerprint and photograph prisoners—report to highway patrol—contents of report (second class and certain first class counties)

The sheriff in each county of the first class not having a charter form of government and in each county of the second class shall take pictures of and fingerprint any person who is taken into or placed in the custody of the sheriff by virtue of a warrant charging a felony. The report shall contain the following information:

(1) The name of the person;

(2) A description of the person and any other data to identify the person;

(3) The nature of the criminal offense.

The sheriff shall send a copy of the report, including a duplicate picture and fingerprints, to the main office of the state highway patrol, in Jefferson City. The report shall be filed in the office of the highway patrol, and copies of any report shall be available to any sheriff or law enforcement official upon the request of the sheriff or law enforcement official, when necessary in the performance of his official duties.

Amended by Laws 1973, p. 140, § 1.

57.105. To fingerprint and photograph prisoners—report to highway patrol (class three and four counties)

The sheriff in each county of the third and fourth class, shall take pictures of and fingerprint any person accused of or convicted of a criminal offense when the person is taken into or placed in the custody of sheriff. The report shall contain the following information:

(1) The name of the person;

(2) A description of the person, and any other data to identify the person;

(3) The nature of the criminal offense; and

(4) Whether the person was accused or convicted.

The sheriff shall send a copy of the report, including a duplicate picture and fingerprints, to the main office of the state highway patrol, in Jefferson City. The report shall be filed in the office of the highway patrol, and copies of any report shall be available to any sheriff or law enforcement official upon the request of the sheriff or law enforcement official, when necessary in the performance of his official duties. (L.1959 H.B.No.296 § 1(1))

Public Records

109.180. Public records open to inspection—refusal to permit inspection, penalty

Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement. (L.1961 p. 548 § 1)

109.190. Right of person to photograph public records—regulations

In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any person has the right of access to the records, documents or instruments for the purpose of making photographs of them while in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The work shall be done under the supervision of the lawful custodian of the records who may adopt and enforce reasonable rules governing the work. The work shall, where possible, be done in the room where the records, documents or instruments are by law kept, but if that is impossible or impracticable, the work shall be done in another room or place as nearly adjacent to the place of custody as possible to be determined by the custodian of the records. While the work authorized herein is in progress, the lawful custodian of the records may charge the person desiring to make the photographs a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done. (L.1961 p. 548 § 2)

195.290. Records, how expunged, exception

After a period of not less than six months from the time that an offender was placed on probation by a court, such person, who at the time of the offense was twenty-one years of age or younger, may apply to the court which sentenced him for an order to expunge from all official records, except from those records maintained under the comprehensive drug abuse prevention and control act, as enacted in 1970, and all recordations of his arrest, trial and conviction. If the court determines, after a hearing and after reference to the controlled dangerous substances registry, that such person during the period of such probation and during the period of time prior to his application to the court under this section has not been guilty of any offenses, or repeated violation of the conditions of such probation, he shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied prior to such arrest and conviction. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or trial or conviction in response to any inquiry made of him for any purpose.

ARREST RECORDS

610.100. Arrest records, closed, when—expunged, when.—If any person is arrested and not charged with an offense against the law within thirty days of his arrest, official records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records except as provided in section 610.120.

(L. 1973 S. B. 1 § 6, A. L. 1981 H. B. 554)

610.105. Effect of nolle pros—dismissal—sentence suspended on record.—If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as provided in section 610.120.

(L. 1973 S. B. 1 § 7, A. L. 1981 H. B. 554)

610.106. Suspended sentence prior to September 28, 1981, procedure to close records.—Any person as to whom imposition of sentence was suspended prior to September 28, 1981, may make a motion to the court in which the action was prosecuted after his discharge from the court's jurisdiction for closure of official records pertaining to the case. If the prosecuting authority opposes the motion, an informal hearing shall be held in which technical rules of evidence shall not apply. Having regard to the nature and circumstances of the offense and the history and character of the defendant and upon a finding that the ends of justice are so served, the court may order official records pertaining to the case to be closed, except as provided in section 610.120.

(L. 1981 H. B. 554)

610.110. Failure to recite closed record excused—exceptions.—No person as to whom

such records have become closed records shall thereafter, under any provision of law, be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose, except as provided in section 491.050, RSMo, and section 610.120.

610.115. Penalty.—A person who knowingly violates any provision of sections 610.100, 610.105, 610.106, or 610.120 is guilty of a class A misdemeanor.

(L. 1973 S. B. 1 § 9, A. L. 1981 H. B. 554)

610.120. Records to be confidential—accessible to whom, purposes

Records required to be closed shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section. They shall be available only to courts, administrative agencies, and law enforcement agencies for purposes of prosecution, litigation, sentencing, and parole consideration. All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book.
Added by Laws 1981, p. 638, § 1.

MISSOURI

NONCRIMINAL JUSTICE AGENCIES ELIGIBLE TO RECEIVE CRIMINAL OFFENSE RECORDS

Agency	Reason	Statutory Reference
State Personnel Director	Merit System Qualification	36.180
Governor and Legislature	Impeachment or Removal from Office	106.020 286.020
School Boards	Termination of Teachers	168.114
Applicant Must Provide to Director of Division of Health	Employment as Ambulance Technician, Technician Apprentice, or Nursing Home Administrator	190.135 190.150 198.415
Department of Revenue	Check Eligibility for Hardship Driving Privilege	302.309
Superintendent of Insurance	Qualifications for Public Adjustor and Adjustor Solicitors	325.030
	Insurance Companies	375.141
Applicant Must Provide to Superintendent of Insurance	License as Insurance Agent	375.018
Missouri Board for Architects, Professional Engineers and Land Surveyors	Licensing Architects, Engineers, & Surveyors	327.441
Missouri Dental Board	Licensing Dentists and Dental Hygienists	332.321 332.331
State Board of Embalmers and Funeral Directors	Licensing Embalmers & Funeral Directors	333.121

Agency	Reason	Statutory Refere
State Board of Registration for the Healing Arts	Licensing Physicians & Surgeons	334.590
State Board of Optometry (certified copy of court record required)	Licensing Optometrists	336.110
Board of Pharmacy	Licensing Pharmacists	338.055
Missouri Veterinary Medical Board	Licensing Veterinarians	340.140
Board of Nursing Home Administrators	Licensing Nursing Home Administrators	344.040
Department of Health and Welfare	Licensing Hearing Aid Personnel	346.105
Boards of Directors of Savings and Loan Associations	Qualification for election to Board of Directors	369.109
Commissioner of Securities	License as Agent (applicant must provide)	409.202 409.204
U.S. Civil Service Commission, U.S. Army, U.S. Navy, U.S. Air Force	Employment or Recruitment Eligibility	Federal Laws
County Clerk (Given by Prosecuting Attorney)	Remove Names from Eligible Voter Roles	116.080 559.470 560.610 564.710

Regulations

Policy 1.1.1: The Director of the Department of Public Safety by order of the Governor of the State of Missouri shall issue policies to assure the security and privacy of criminal history record information in the state.

Policy 1.1.2: The Director of the Department of Public Safety has designated the Missouri State Highway Patrol to serve as the central repository for criminal history record information in Missouri. The Superintendent of the Missouri State Highway Patrol shall prepare and issue procedures to implement the policies approved and established by the Director of the Department of Public Safety.

Policy 1.2.1: The Department of Public Safety shall prepare a Criminal History Record Information Plan as required by the Department of Justice regulations (40 FR 49789 and 41 FR 11714).

Policy 1.3.1: The Department of Public Safety will draft legislation necessary to comply with federal laws and regulations in the privacy and security area.

Policy 1.4.1: The Missouri State Highway Patrol shall develop a system for monitoring compliance with the state criminal history record information plan and its related procedures.

Policy 1.4.2: Each criminal justice agency in Missouri which is required to comply with the federal regulations on criminal history record information shall file statements and plans for compliance with the Missouri State Highway Patrol.

Policy 1.4.3: The failure of criminal justice agencies in Missouri to comply with federal regulations on criminal history record information shall subject such agencies to a federal fine not to exceed $10,000, the termination of LEAA funds, and the loss of access to criminal history record information.

Policy 2.1.1: The official full and complete record of an offender which includes records of all NCIC criteria offenses (See Appendix VII) and dispositions will be collected, stored, and disseminated by the central site repository.

Policy 2.1.2: All criminal justice agencies in the State of Missouri shall submit fingerprint records to the Missouri State Highway Patrol on all subjects arrested for criteria offenses (as established by the NCIC uniform offense classification) for initial identification and for subsequent submission to the FBI, if required.

Policy 2.1.3: Prior to any dissemination of criminal history record information, criminal justice agencies shall query the Missouri State Highway Patrol central repository except in those cases where time is of essence and the repository is technically incapable of responding within the necessary time period.

Policy 2.2.1: The Missouri State Highway Patrol shall maintain the necessary automated data processing equipment and telecommunications and terminal facilities to provide criminal identification and criminal history record services to all criminal justice agencies in the state.

Policy 2.2.2: Criminal history record information shall include all assembled individual records which contain fingerprint identification data and notations regarding any formal criminal justice transaction involving the identified individual.

Policy 2.2.3: Procedures shall be established by all criminal justice agencies to insure that dispositions of all case transactions occurring in the state are reported to the Missouri State Highway Patrol central repository within thirty (30) days after occurrence for inclusion on arrest records available for dissemination. Each disposition reported by a criminal justice agency to the Missouri State Highway Patrol must be supported by a fingerprint impression of the right index finger.

Policy 2.2.4: All criminal justice agencies in Missouri shall adopt a common technique for assigning a unique tracking number to each arrest incident to facilitate tracking of all transactions subsequent to the arrest and to provide accurate reference to original source documents.

Policy 2.3.1: The Missouri State Highway Patrol shall develop and implement a delinquent disposition report monitoring system for criminal history record information offenses.

Policy 2.3.2: Upon finding inaccurate criminal history record information of a material nature, the disseminating agency(s) shall correct its records and notify all agencies or individuals known to have received such information.

Policy 3.1.1: Criminal justice agencies which disseminate criminal history record information shall execute user agreements with any receiving agency.

Policy 3.1.2: The Missouri State Highway Patrol shall prepare and execute user agreements with criminal justice agencies to control the access and dissemination of criminal history record information received from the central repository.

Policy 3.1.3: The Missouri State Highway Patrol shall prepare and execute user agreements with authorized non-criminal justice agencies to control the access and dissemination of criminal history record information received from the central repository.

Policy 3.2.1: Any criminal justice agency which places limitations on dissemination of conviction data or data relating to pending cases shall file with the Director of the Department of Public Safety a statement explaining and describing such limitations.

Policy 3.2.2: Juvenile records will not be disseminated in Missouri except by order of the court as referenced in Chapter 211 of the revised statutes of Missouri.

Policy 4.2.1: The Director of the Department of Public Safety shall cause an annual audit to be performed on the Missouri State Highway Patrol central repository to assess compliance with all criminal history record information laws, regulations, and policies.

Policy 4.2.2: The Missouri State Highway Patrol shall perform an annual audit of a representative sample of criminal justice agencies in the State of Missouri to assess compliance with all criminal history record information laws, regulations and policies.

Policy 5.1.1: All criminal justice agencies shall implement procedures to protect against unauthorized access to criminal history record information systems.

Policy 5.2.1: Before any dissemination of criminal history record information takes place the disseminating agency must assure that the potential recipient is an agency or individual permitted to receive information.

Policy 5.3.1: All criminal justice agencies shall implement procedures to ensure the physical security of criminal history record information.

Policy 5.4.1: The central site repository will provide training to acquaint criminal justice agencies/employees with privacy and security laws, regulations and policieis.

Policy 5.5.1: All criminal justice agencies shall adopt security standards for staff working with criminal history record information.

Policy 6.1.1: The Department of Public Safety shall develop and issue standards and procedures to insure the individual's right to access and review criminal history record information maintained at the central site repository.

Policy 6.2.1: The Director of the Department of Public Safety shall establish a procedure to provide for administrative review and the necessary correction of any claim by an individual to whom the information relates that the criminal history record information is inaccurate or incomplete.

Policy 6.2.2: All appeals for administrative review of challenged information shall be directed to the Director of the Department of Public Safety.

Policy 6.2.3: The central site repository and other agencies which disseminate criminal history record information will develop a system for notifying prior recipients of erroneous criminal history record information.

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RULES AND REGULATIONS FOR MAINTAINING THE MISSOURI CRIMINAL RECORDS REPOSITORY

PREFACE

Section 43.503, RSMo 1986, mandates all Missouri criminal justice agencies to report criminal history information to the Missouri State Highway Patrol Criminal Records Division. This division of the Highway Patrol will also be known as the Missouri Criminal Records Repository (MCRR). Regulations contained in section 43.509, RSMo 1986, authorized the Department of Public Safety to establish rules, regulations and forms for furnishing CHRI to the state repository. This authority is delegated to MCRR.

Section 43.518, RSMo 1986, established within the Department of Public Safety a "Criminal Records Advisory Committee" whose purpose is to recommend general policies with respect to the philosophy, concept and operational principles of the Missouri criminal history record information system.

The Missouri criminal records committee is comprised of the following persons:

Director of the Department of Public Safety
Director of the Department of Corrections and Human Resources
The Attorney General of Missouri
The Director of the Missouri Office of Prosecution Services
The President of the Missouri Prosecutors Association
President of Missouri Court Clerks Association
The Chief Clerk of the Missouri State Supreme Court
The Director of the State Courts Administrator
The Chairman of the State Judicial Record Committee
The Chairman of the Circuit Court Budget Committee
The President of the Missouri Peace Officers Association
The President of the Missouri Sheriffs Association
The President of the Missouri Police Chiefs Association
The Superintendent of the Missouri State Highway Patrol
The Chief of Police - St. Louis City
The Chief of Police - Kansas City
Chief of police of agency in jurisdictions with over 200,000 population, except - the chief executive of first class county with charter form of government may designate someone other than chief
Committee person at large - appointed by Director of the Department of Public Safety
Committee person at large (Same as above)
Committee person at large (Same as above)

Title 11 - DEPARTMENT OF PUBLIC SAFETY

Division 30 - Director's Office

Chapter 4 - MISSOURI CRIMINAL RECORDS REPOSITORY and PRIVACY/SECURITY INFORMATION

ADMINISTRATIVE RULES

11 CSR 30-4.010 Definitions

PURPOSE: To define terms used in the rules for maintaining the Records Repository.

(1) **Missouri Criminal Records Repository (MCRR)** - The Missouri State Highway Patrol Criminal Records Division, located at 1510 East Elm, Jefferson City, Missouri, will also be known as the Missouri Criminal Records Repository. MCRR is responsible for compiling and disseminating complete and accurate criminal history record information.

(2) **Reportable Offenses** - All offenses listed in the Missouri Charge Code Manual that are identified as being reportable to the Missouri Criminal Records Repository.

(3) **Criminal History Record Information (CHRI)** - Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release.

(4) **Final Dispositions** - The formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(5) **State Offense Cycle Number (OCN)** - A preprinted number on the state fingerprint card which is used to identify each arrest and may include multiple offenses for which a person is fingerprinted. This number will be associated with an offense from the date of arrest to the date the offender exits from the criminal justice system.

(6) **Without Undue Delay** - As soon as possible but not later than thirty (30) days after the criminal history event.

(7) **Administration of Criminal Justice** - Performance or any of the following activities: detection; apprehension; detention; pre-trial release; post-trial release; prosecution; adjudication; correctional supervision of rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage and dissemination of criminal history record information, including fingerprint searches, photographs and other indicia of identification.

(8) **Police Agency** - Each city, county and state agency having employees with peace officer powers, regardless of size.

(9) **Peace Officer** - Members of the state highway patrol, all state, county and municipal law enforcement officers possessing the duty and power of arrest for violation of the general laws of the state.

(10) **Statewide Judicial Information System (SWJIS)** - The automated information system established by the Supreme Court to collect and compile court caseload data. The system is maintained by the Office of State Courts Administrator, Jefferson City, Missouri.

11 CSR 30-4.020 Agencies and Persons Required to Furnish CHRI

PURPOSE: To establish who is required to furnish CHRI to MCRR.

(1) All police agencies, prosecuting and circuit attorneys, court clerks and the Department of Corrections and Human Resources shall furnish CHRI to MCRR without undue delay.

11 CSR 30-4.030 Police Agency Procedures for Furnishing Descriptions on Persons and Their Charges to MCRR and Prosecuting or Circuit Attorneys

PURPOSE: To establish a system for each police agency to follow when furnishing a description of a person and his/her charges to MCRR and to prosecuting or circuit attorneys.

(1) A police agency shall be responsible for completing a fingerprint card/form set supplied by MCRR on reportable offenses as instructed in the following regulations. The form set consists of a card having blocks to be filled in on both sides, and two carbon copies having blocks to be filled in only on their front side. Normally the parts of the form set will not be separated until the front side has been filled in, including a complete set of fingerprints. In any event the officer or clerk making the entries on the front of the card shall verify that the same information is readable on the carbon copies. Listed below are procedures for police agencies to follow when taking a person into custody.

(A) Two (2) or more agencies/same offense - If peace officers from two (2) or more police agencies arrest a person for the same offense(s) the agency that will forward the information to the prosecutor or make application for warrant shall be responsible for completing the fingerprint card/form set and forward the appropriate forms to the prosecuting or circuit attorney.

(B) Single agency/prosecution - When an arresting officer releases a person he has arrested to a receiving officer who routinely reports to the same prosecuting or circuit attorney, the arresting officer should complete the fingerprint card/form set and forward the forms to the prosecuting or circuit attorney.

(C) Agency turned subject over to different jurisdiction - A police agency arresting a person, with or without a warrant, and will release the person to a police agency in a different prosecutory jurisdiction for prosecution shall be responsible for completing the fingerprint/disposition form and indicate in the final disposition block #19 as turned over to (TOT) or posted bond, name and address of police agency, date and warrant number if available. The forms should be destroyed.

(D) Agency receiving subject from different jurisdiction - A police agency taking custody of a person arrested by an officer who routinely reports to a different prosecuting or circuit attorney will be responsible for completing a fingerprint card/form set and forwarding the disposition forms to the prosecuting or circuit attorney.

(E) Municipality/multiple counties - When peace officers arrest a person in reference to one of their cases, regardless of the county of prosecution, they are responsible for completing the fingerprint card/form set and forwarding the forms to the prosecuting or circuit attorney. The agency who takes custody of the offender will not refingerprint the person.

1. Example: Kansas City Police officers arrest a person in Jackson County in reference to a Kansas City case in Clay County. Kansas City Police Department would be responsible for completing the fingerprint card/form set and the submitting the disposition form set to the prosecuting attorney of Clay County. When Clay County authorities take the offender into custody, no additional fingerprints should be taken.

(F) **Probation violation subject printed on original charge** - When a peace officer arrests an individual for a probation violation and the person has been fingerprinted on the original charge, no additional fingerprints will be required. The court has agreed to include the OCN number on the warrant. If it is unknown whether the person has been fingerprinted or if additional charges are listed in conjunction with the probation violation, the fingerprint card/form set is required and forms should be forwarded to the prosecuting or circuit attorney.

(G) **Arrest without warrant** - If a peace officer makes an arrest in his jurisdiction without a warrant, he will fingerprint the individual and submit the forms to the prosecuting or circuit attorney for his action. If a warrant is issued for the person, the OCN number will be listed on the warrant. If the person is released pending issuance of the warrant he need not be fingerprinted when the arrest warrant is served unless additional charges are included.

(2) A police agency shall be ordered by the court to fingerprint and be responsible for completing a fingerprint card/form set on persons for which the court has pronounced sentence, if the court determines that the person has not been previously fingerprinted for the same case. The police agency shall forward the fingerprint card to the MCRR.

(3) The form set should be forwarded to the appropriate personnel by the arresting officer under the following conditions:

(A) A peace officer reports a reportable offense to a prosecuting or circuit attorney; and

(B) When peace officers arrest a person in reference to one of their cases, regardless of the county of prosecution, the arresting officer should complete the fingerprint card/form set and submit the form set to the prosecuting attorney or circuit attorney.

(4) The form set shall be destroyed under the following conditions:

(A) Arrested subject released, information not referred to prosecuting attorney or circuit attorney; or

(B) If the person arrested is turned over to a peace officer or posted bond for prosecution in a different jurisdiction, with the exception of (3) (B).

(5) Each side of the fingerprint card is illustrated. Figure #1 represents the front side and Figure #2 represents the back side.

(A) The card should be completed by using the typewriter. The completed fingerprint card less the disposition forms shall be forwarded to MCRR without undue delay.

(B) Instructions for completing the card are as follows:

1. Enter state assigned identification number (SID) if available;

2. Enter complete name of subject arrested;

3. Offense cycle number. Pre-printed eight digit number;

4. Enter your agency's offense cycle number is assigned;

5. Enter any known aliases the subject uses;

6. Enter arresting agency identifier (ORI), MO-------, name and address of arresting agency;

7. Leave blank (for state usage only);

8. Signature of person fingerprinted (should be signed in ink);

9. Enter subject's date of birth. If subject is a juvenile, court certification that he/she is to be tried as an adult must be attached;

10. Enter date subject was fingerprinted and the signature of the official taking the fingerprints (signature should be in ink);

11. Enter sex, race*, height, weight, hair and eye color of subject arrested;

*W White (includes Mexicans and Latins)

B Black

I (Am Indian or Alaskan Native)

A (Asian or Pacific Islander)

U Unknown

12. Enter subject's place of birth (state, territorial possessions, province or country);

13. Enter date subject arrested or received;

14. Enter your local agency case number;

15. Enter brief description of all charges, NCIC offense code, and the offense penal range. (See Missouri Charge Code Manual). If the arrest is for parole or probation violations, include original charge information. Enter any addition charges in space #33;

16. Enter FBI number of subject arrested if available;

17. Leave blank (for state usage, fingerprint classification);

18. Same as #1. Enter SID number if available;

19. Enter one of the following final dispositions if appropriate. Include warrant number if available -

A. Turned over to (TOT), name of police agency, date of disposition (use only when it is a different prosecutory jurisdiction);

B. Posted bond, name of agency who wanted the individual, date (use only when it is a different prosecutory jurisdiction); or

C. Released, information not referred to prosecuting attorney or circuit attorney.

20. Enter social security number of the person arrested;

21. Fingerprint blocks, a complete set of tenprints shall be obtained;

22. Indicate if palm prints and/or photograph are available in your file;

23. Enter arresting agency name and ORI. If your agency is the contributor of the fingerprint card and your ORI is entered in block #6, leave blank;

24. Enter county of arrest and arresting officer's badge number;

25. Enter the Missouri statute(s) violated and corresponding Missouri offense code for all charges listed in block #15 (See Missouri Charge Code Manual);

26. Enter subject's employer is available;

27. Enter occupation of subject arrested;

28. Enter residence of subject arrested;

29. Enter all scars, marks, tattoos and amputations of person arrested;

30. Enter basis for caution if appropriate;

31. Enter date of offense if different than date of arrest;

32. Additional charges information should be included in this space. If charges are indicated attach a list of these charges to the form set that is to be forwarded to the prosecuting or circuit attorney;

33. Enter the name, ORI and complete address of any agencies desiring a copy of the subject's criminal history record.

FIGURE #1

SID NO. MO M O 1.	LAST NAME NAM FIRST NAME MIDDLE NAME 2.		OFFENSE CYCLE NO. 3 91044102
LOCAL OFFENSE CYCLE NUMBER 4.	ALIASES 5.	ARRESTING AGENCY NAME & ORI 6.	7.
SIGNATURE OF PERSON FINGERPRINTED 8.			DATE OF BIRTH DOB 9.
THIS DATA MAY BE COMPUTERIZED IN LOCAL, STATE AND NATIONAL FILES DATE 10. SIGNATURE OF OFFICIAL TAKING FINGERPRINTS	DATE ARRESTED OR RECEIVED DOA 13.	SEX RACE HGT WGT EYES HAIR 11.	PLACE OF BIRTH POB 12.
OFFENSE & NCIC OFFENSE CODE OFFENSE TYPE (F) (M) (O) 1 2 15. 3 4	YOUR NO. OCA 14. FBI NO. FBI 16. SID NO. SID 18.	LEAVE BLANK CLASS. 17. REF.	
FINAL DISPOSITION WARRANT NO 19.	SOCIAL SECURITY NO. SOC 20.	NCIC CLASS FPC	

21.

1. R. THUMB	2. R. INDEX	3. R. MIDDLE	4. R. RING	5. R. LITTLE

21.

6. L. THUMB	7. L. INDEX	8. L. MIDDLE	9. L. RING	10. L. LITTLE

LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY	L. THUMB	R. THUMB	RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

FIGURE #2

FINGERPRINT CARD MISSOURI HIGHWAY PATROL, GENERAL HEADQUARTERS, P.O. BOX 568, JEFFERSON CITY, MO. 65102 TELEPHONE NO. 314 751 3313

22.
PALM PRINTS TAKEN? ☐ YES ☐ NO
PHOTO AVAILABLE? ☐ YES ☐ NO

IF AVAILABLE, PASTE PHOTO HERE NO STAPLES
SINCE PHOTOGRAPH MAY BECOME DETACHED INDICATE NAME, DATE TAKEN, FBI NUMBER, CONTRIBUTOR AND ARREST NUMBER ON REVERSE SIDE, WHETHER ATTACHED TO FINGERPRINT CARD OR SUBMITTED LATER.

CONTRIBUTING AGENCY NAME - ORI (IF OTHER THAN ARRESTING AGENCY)
23.

COUNTY OF ARREST
24.

ARRESTING OFFICER'S BADGE NO.

STATUTE RSMO-LOCAL ORDINANCE

MISSOURI CHARGE CODE

----------25.----------

EMPLOYER: NAME AND ADDRESS
26.

OCCUPATION
27.

SEND COPY OF COMPLETE CRIMINAL HISTORY RECORD TO:
33.

RESIDENCE OF PERSON FINGERPRINTED
28.

SCARS, MARKS, TATTOOS, AND AMPUTATIONS SMT
29.

BASIS FOR CAUTION ICO
30.

DATE OF OFFENSE DOO
31.

ADDITIONAL INFORMATION
32.

LEAVE BLANK

DO NOT WRITE IN THIS SPACE
FILMED
NAME SEARCH
CLASS
FP SEARCH
CODED
TERMINAL OPR
ANSWERED

SHP-108C

11 CSR 30-4.040 Prosecuting and Circuit Attorney Procedures for Furnishing CHRI to MCRR and the Courts

PURPOSE: To establish system for each prosecuting and circuit attorney to follow when furnishing CHRI to MCRR.

(1) Each prosecuting and/or circuit attorney, upon filing a reportable offense reported by a peace officer shall furnish the information to MCRR either by submitting the blue carbon copy of the disposition form set or by electronic medium. The white copy of the form set shall be furnished to the court of jurisdiction for purposes of making the OCN number available to them. When charges are not filed, the complete form set shall be destroyed. If the OCN is known at the time the information or complaint is filed by the prosecuting attorney or circuit attorney, the OCN shall be provided to the court. If the defendant is scheduled to appear in separate court divisions, the OCN shall be provided to each division. If the OCN is not known at the time of filing, the prosecuting or circuit attorney shall provide the number to the court as soon as known. When the court issues the warrant, the OCN should be listed on the warrant. The blue carbon copy is illustrated in Figure #3. The white court copy is illustrated in Figure #4. If reporting manually the following method should be followed.

(A) Entries shall be made in block 1 through 5.

(B) Complete as instructed using typewriter or hard tip pen -

1. The prosecuting attorney or circuit attorney must indicate the charges filed for the offense cycle number. All other charges reported by the arresting agency will be considered no filed by MCRR;

2. Enter prosecutor's case number if charge(s) filed;

3. Enter the originating agency identifier (ORI) number of the prosecuting or circuit attorney's office;

4. Enter date the action was taken; and

5. Signature of the prosecuting or circuit attorney taking the action.

(2) If electronic reporting is approved by the Criminal Records Committee, like information must be provided in the appropriate format.

(3) Any change(s) in the prosecuting or circuit attorney's action shall be reported to MCRR.

(A) The supplemental action form illustrated in Figure #5 will be used for reporting any changes if the blue copy of the prosecutor's action form has previously been submitted to MCRR.

(B) The form should be completed as follows:

1. Enter defendant's name;

2. Enter as least two (2) numeric identifiers (subject's date of birth, OCN number or SID number);

3. Enter charge(s), date of arrest and count number(s) for which the supplemental information pertains;

4. Enter changes in prosecutor's or circuit attorney's action;

5. Enter any comments pertaining to the case;

6. Enter reporting agency name, address and ORI;

7. Enter date of report; and

8. Signature of person completing the form.

(3) In the event a court pronounces sentence, including an order of supervision or an order of probation granted for any offense which is required by statute to be collected by MCRR, the prosecuting attorney or the circuit attorney of a city not within a county shall ask the court to order a police agency to fingerprint immediately all sentenced persons appearing before the court who have not previously been fingerprinted for the same case. The police agency shall submit such fingerprints to MCRR without undue delay.

FIGURE #3

SID NO. MO.	LAST NAME NAM . FIRST NAME MIDDLE NAME	OFFENSE CYCLE NO. 91044102
LOCAL OFFENSE CYCLE NUMBER	ALIASES	ARRESTING AGENCY NAME & ORI
SIGNATURE OF PERSON FINGERPRINTED		DATE OF BIRTH DOB
THIS DATA MAY BE COMPUTERIZED IN LOCAL, STATE AND NATIONAL FILES DATE | SIGNATURE OF OFFICIAL TAKING FINGERPRINTS	DATE ARRESTED OR RECEIVED DOA	SEX RACE HGT. WGT. EYES HAIR / PLACE OF BIRTH POB
OFFENSE & NCIC OFFENSE CODE OFFENSE TYPE (F) (M) (O) 1. 2. 3. 4.	YOUR NO. OCA FBI NO. FBI SID NO. SID SOCIAL SECURITY NO. SOC PROSECUTOR'S CASE NO. 2. PROSECUTOR'S ORI NO. 3.	ACTION TAKEN BY PROSECUTING ATTORNEY OR CIRCUIT ATTORNEY 1. 1. 2. 3. 4.
	DATE 4.	SIGNATURE 5.

THE PROSECUTING ATTORNEY OR CIRCUIT ATTORNEY SHALL NOTIFY THE MISSOURI STATE HIGHWAY PATROL CRIMINAL RECORD DIVISION OF ACTION TAKEN

FIGURE #4

SID NO. MO	LAST NAME NAM FIRST NAME MIDDLE NAME	OFFENSE CYCLE NO. 91044102
LOCAL OFFENSE CYCLE NUMBER	ALIASES	ARRESTING AGENCY NAME & ORI
SIGNATURE OF PERSON FINGERPRINTED		DATE OF BIRTH DOB
THIS DATA MAY BE COMPUTERIZED IN LOCAL, STATE AND NATIONAL FILES DATE | SIGNATURE OF OFFICIAL TAKING FINGERPRINTS	DATE ARRESTED OR RECEIVED DOA	SEX RACE HGT. WGT. EYES HAIR / PLACE OF BIRTH POB
OFFENSE & NCIC OFFENSE CODE OFFENSE TYPE (F) (M) (O) 1 2 3 4	YOUR NO. OCA FBI NO. FBI SID NO. SID SOCIAL SECURITY NO. SOC PROSECUTOR'S CASE NO. 2. PROSECUTOR'S ORI NO. 3.	ACTION TAKEN BY PROSECUTING ATTORNEY OR CIRCUIT ATTORNEY 1. 1. 2. 3. 4.
	DATE 4.	SIGNATURE 5.

THIS COPY IS TO PROVIDE OFFENSE CYCLE NUMBER AND ARREST/CHARGE INFORMATION TO THE COURT

FIGURE #5

SUPPLEMENTAL ACTION
PROSECUTING ATTORNEY/CIRCUIT ATTORNEY
& COURT ACTION

SHP-294

DEFENDANT'S NAME	LAST	FIRST	MIDDLE
	1.		

DATE OF BIRTH	OFFENSE CYCLE NUMBER (OCN)	STATE IDENT NUMBER (SID)
2.		

CHARGE(S) COUNT NUMBER(S)

3.

CHANGE(S) IN PROSECUTOR'S ACTION

4.

ADDITIONAL COURT DISPOSITION

SENTENCE REVERSED & REMANDED	COUNT NO.	DATE
PROBATION REVOKED (EXPLAIN ACTION)	COUNT NO.	DATE
EXPUNGEMENT	COUNT NO.	DATE
JUDGEMENT OF DISCHARGE	COUNT NO.	DATE
OTHER (EXPLAIN IN DETAIL)	COUNT NO.	DATE

COMMENTS:

5.

REPORTING AGENCY NAME/ORI 6.

DATE 7. SIGNATURE 8.

11 CSR 30-4.050 Court Clerk Procedures for Furnishing CHRI to MCRR and to Department of Corrections and Human Resources

PURPOSE: To establish a system for each court clerk to follow when furnishing CHRI to MCRR and to the Department of Corrections and Human Resources.

(1) The court clerk shall furnish MCRR with the final disposition of each case relating to a reportable offense filed by a prosecuting or circuit attorney, to include when such an offense is reduced. The court clerk shall report in one of the following ways:

(A) By submitting the necessary case disposition and supplemental court action data to the Statewide Judicial Information System (SWJIS); or

(B) By submitting the necessary case disposition data by electronic medium which has been approved by the Criminal Records Committee.

(2) When a change of venue is granted, the court clerk where the case was originally filed shall forward the OCN received from the prosecuting or circuit attorney together with all other original papers to the court to which the case was transferred.

(3) When the court pronounces sentence, including an order of supervision or an order of probation granted for any offense which is required by statute to be reported to MCRR and it is determined that the person(s) appearing before the court has not previously been fingerprinted for the same case upon request of the prosecuting attorney or the circuit attorney, the court shall order a law enforcement agency to fingerprint immediately all sentenced person(s). The police agency shall submit such fingerprints to MCRR without undue delay and provide the OCN to the court of jurisdiction.

(4) When the court receives a complaint or information which contains an OCN from the prosecuting attorney or circuit attorney, the OCN shall be listed on the warrant when it is issued.

(5) If a warrant is issued by the court for a probation violation on a reportable offense, the court clerk shall list the OCN from the original charges on the warrant.

(6) The court clerk shall report the original charge, including the OCN, if probation is revoked.

(7) The court clerk shall furnish the Department of Corrections and Human Resources information on all defendants convicted and sentenced to their department for custody supervision. The report shall include, but is not limited to: the name of the convicted person; state offense cycle number, if known; charge; Missouri statute number, if known; court case number; date of sentence; and length of sentence on all counts.

11 CSR 30-4.060 Department of Corrections and Human Resources Procedures for Furnishing CHRI to MCRR

PURPOSE: To establish a system for the Department of Corrections and Human Resources to follow when furnishing CHRI to MCRR.

(1) The Department of Corrections and Human Resources shall furnish MCRR with a complete description, including fingerprints, state offense cycle number, charge, state statute, Missouri state charge code, court case number, sentencing date, sentencing county and length of confinement. The CHRI for each charge for which a person is serving shall be forwarded to MCRR on a specially designed fingerprint card which will be supplied by MCRR.

(2) Each time there is a change in an individual's custody status, or if there is additional charge and sentence information added to a persons commitment record, the Department of Corrections and Human Resources shall furnish MCRR with a copy of the additional charge and sentence information. The above will be accomplished by using institution forms or by electronic medium.

11 CSR 30-4.070 Dissemination of CHRI From MCRR/User Fee When Required/CHRI for Statistical Purposes

PURPOSE: To establish a system for the dissemination of CHRI for criminal justice purposes, employment purposes, statistical purposes, licensing and for concealable weapons permit, for the review and challenge and when the information is released to criminal justice, noncriminal justice, citizens or the individual of the records and for the paying of fees when required.

(1) Criminal justice agencies shall receive complete CHRI for criminal justice purposes and criminal justice employment purposes.

(2) Criminal justice agencies shall receive the following CHRI for the issuance of a concealable firearms permit:

(A) All conviction data;

(B) All charges for which an individual is currently under the jurisdiction of the criminal justice system; and

(C) All charges resulting in an imposition of sentence being suspended (SIS) until such time as the case is finally terminated.

(D) Information regarding an arrest, if it is within thirty (30) days of the arrest and no action has been taken by the prosecuting or circuit attorney.

(3) Noncriminal justice agencies or citizens shall receive the following CHRI for employment, licensing purposes or reasons stated in the request:

(A) All conviction data;

(B) All charges for which an individual is currently under the jurisdiction of the criminal justice system; and

(C) All charges which have resulted in a imposition of sentence being suspended (SIS) until such time as case is finally terminated.

(D) Information regarding an arrest, if it is within thirty (30) days of the arrest and no action has been taken by the prosecuting or circuit attorney.

(4) Federal noncriminal justice agencies shall receive complete CHRI for such investigative purposes as authorized by law or presidential executive order.

(5) The person of an identification record may obtain a copy of his/her CHRI for review or challenge purposes by submitting a written request via U. S. mails directly to the Missouri State Highway Patrol, Criminal Records Division, P. O. Box 568, Jefferson City, Missouri 65102 or may present his/her written request in person during regular business hours to

the Missouri State Highway Patrol, Criminal Records Division, Annex Building, 1510 East Elm Street, Jefferson City, Missouri.

(A) Requests for CHRI must be accompanied by satisfactory proof of identity, which shall consist of name, date of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement agencies. The request must be accompanied by a fee of fourteen dollars ($14) in the form of a certified check, warrant, voucher or money order payable to the "State of Missouri - Criminal Record System." Any request for waiver of the fee shall accompany the original request for the CHRI and shall include a claim and proof of indigency.

(B) No fees will be charged for challenge of a previously supplied record by an individual when a person challenges his/her record. A set of fingerprints will be required if the identity of the person is in question.

(6) MCRR shall charge a fee of not more than five dollars ($5) for each name check and a fee of not more that fourteen dollars ($14) for each fingerprint processed before CHRI can be disseminated to any federal or nonstate of Missouri agency when such information is requested for a matter not related to the administration of criminal justice. The fee should be either a certified check, warrant, voucher or money order payable to the "State of Missouri - Criminal Record System." The request with the fee stapled thereto should be mailed to the Missouri State Highway Patrol, Criminal Records Division, P. O. Box 568, Jefferson City, Missouri 65102.

(7) Each request to obtain CHRI for employment or licensing purposes must be accompanied by a fee of five dollars ($5) in the form of a certified check, warrant, voucher or money order payable to the "State of Missouri - Criminal Record System." The request with check stapled thereto should be mailed to the Missouri State Highway Patrol, Criminal Records Division, P. O. Box 568, Jefferson City, Missouri 65102. Any request for waiver of the fee shall accompany the original request for the CHRI and shall include a claim and proof of indigency.

(8) MCRR shall not disseminate or publish statistical information derived from CHRI which identifies individual criminal justice agencies other than to compile or disseminate statistical information from CHRI which describe general offender characteristics and the general disposition of the criminal cases.

11 CSR 30-4.080 Reporting CHRI to MCRR via Electronic Medium

PURPOSE: To establish a procedure for prosecuting or circuit attorneys, custody agencies and court clerks to follow when such agencies and person choose to report CHRI to MCRR via electronic medium.

(1) Prosecuting or circuit attorneys, custody agencies and court clerks have the capability to develop a system of reporting CHRI via electronic medium to MCRR. Those agencies planning to implement such a system should contact the Criminal Records Division of the Missouri State Highway Patrol. Arrangements will be made for your department's personnel and personnel from the Missouri State Highway Patrol's Information Systems Division to develop the necessary interface to allow for the reporting of the required data elements.

(2) All Systems developed for the reporting of CHRI electronically must be approved by the Criminal Records Advisory Committee.

11 CSR 30-4.090 Privacy and Security Requirements

PURPOSE: To Establish a rule governing the procedures for dissemination of criminal history record information and to assure that the privacy and security of individuals have not been violated.

(1) Criminal History Record Information (CHRI)

(A) CHRI means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges, any disposition arising therefrom, sentencing, correctional supervision and release.

(B) The regulations do not apply to CHRI contained in -

1. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

2. Original records of entry, such as police blotters maintained by criminal justice agencies, complied chronologically and required by law or longstanding custom to be made public, if records are organized on a chronological basis;

3. Court records of public judicial proceedings;

4. Published court or administrative opinions or public, judicial, administrative or legislative proceedings;

5. Records of traffic offenses maintained by state departments of transportation, motor vehicles or the equivalent thereof for regulating the issuance, suspension, revocation or renewal of drivers', pilots' or other operators' licenses; and

6. Announcements of executive clemency.

(2) Completeness and Accuracy

(A) To meet accuracy and completeness requirements, the Missouri State Highway Patrol's Criminal Records Division has been designated by state law as the central repository of CHRI for the state.

(B) For the purpose of maintaining complete and accurate criminal history record information, all police officers of this state, the clerk of each court, the Department of Corrections and Human Resources, the sheriff of each county, the chief law enforcement official of a city not within a county and the prosecuting attorney of each county or the circuit attorney of a city not within a county shall submit certain criminal arrest, charge and disposition information to the central repository for filing without undue delay (within 30 days) in the form and manner required by sections 43.500 to 43.530.

(3) Dissemination

(A) Criminal justice agencies shall receive complete CHRI for criminal justice purposes and criminal justice employment purposes.

(B) Criminal justice agencies shall receive the following CHRI for the issuance of concealable firearms permit:

1. All conviction data;

2. All charges for which an individual is currently under the jurisdiction of the criminal justice system; and

3. All charges resulting in an imposition of sentence being suspended (SIS) until such time as the case is finally terminated.

4. Information regarding an arrest, if it is within thirty (30) days of the arrest and no action has been taken by the prosecuting or circuit attorney.

(C) Noncriminal justice agencies or citizens shall receive the following CHRI for employment, licensing purposes or reasons stated in the request:

1. All conviction data;

2. All charges for which an individual is currently under the jurisdiction of the criminal justice system; and

3. All charges resulting in an imposition of sentence being suspended (SIS) until such time as the case is finally terminated.

4. Information regarding an arrest, if it is within thirty (30) days of the arrest and no action has been taken by the prosecuting or circuit attorney.

(D) Federal noncriminal justice agencies shall receive complete CHRI for such investigative purposes as authorized by law or presidential executive order.

(4) Agency Audit

(A) By federal regulation every state is required to conduct biennial audits of randomly selected criminal justice agencies to assure that privacy and security regulations are being followed.

(B) To make this audit possible, agencies are required to retain appropriate records. Agencies will need to account for each dissemination in a log so that the audit can be performed. The log should contain the name of the subject on whom the record is disseminated,

the name of the recipient of the information, the agency he represents, whether the agency is criminal justice or not, the purpose for which the information is to be used, address of the agency, date and time.

(C) Criminal justice agencies may choose a manual or automated dissemination logging system. Agencies which are not automated and rely on other systems, such as the central repository for automated dissemination logging, must log all secondary dissemination. Secondary dissemination is defined as "The dissemination of any CHRI response to another criminal justice agency or to an individual within another criminal justice agency or to anyone legally entitled to receive such information who is outside the original agency." These logs shall be maintained for thirteen (13) months from the date of dissemination.

(D) The reporting of a criminal justice transaction to a state, local or federal repository is not a dissemination of information. Also agencies are not required to account for "no record" responses.

(5) Security of Criminal History Record Information

(A) Agencies providing security must be mindful of computer software and hardware, restriction of file access and safeguard policies regarding computer operation in the following areas: protection through proper storage; protection through computer programs; legitimate destruction of records; detection of unauthorized penetration of programs or files; protection of security and protection from destruction.

(B) Agencies must screen prospective employees who will have access to CHRI and be responsible for transferring or removing personnel in cases of violation.

(C) The agency must institute manual procedures for physical and data security, institute manual procedures to prevent file destruction and limit direct access to criminal history record information.

(D) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations.

(6) Access and Review

(A) Any individual shall, upon satisfactory verification of his/her identity, be entitled to review without undue burden to either the criminal justice agency or the individual any CHRI maintained about himself/herself and obtain a copy thereof when necessary for challenge or review.

(B) Employees who process, access and review inquiries must be cautious when a person asks to see his/her CHRI. Positive identification is required. A drivers license with a photo may be sufficient;

however, if identification is questionable fingerprints may be required.

(C) If a person has accessed and reviewed his/her CHRI and disagrees with the information, a challenge can follow. The challenge may be oral or written indicating that the record is inaccurate or incomplete and be accompanied by a corrected version.

(D) If it is determined that there is an error in the record the agency must make the necessary correction. At the individual's request the agency must give him/her the names of all non-criminal justice agencies to whom the data has been disseminated. Disseminations to criminal justice agencies will not be disclosed.

(E) The correcting agency shall notify all criminal justice recipients of the corrected information.

(F) The individual is not entitled to data contained in intelligence, investigatory or other related files and shall not be construed to include any other information than that defined as CHRI.

(G) When an error in a CHRI record has been detected and the correction has been made, the correcting agency shall forward corrected copies to the central repository including a copy for the Federal Bureau of Investigation.

(H) In the event an agreement cannot be reached between the individual and the agency being challenged, the individual may proceed with an administrative appeal to the Director of the Department of Public Safety, Truman Building, 8th Floor, Jefferson City, Missouri 65101.

MONTANA

Montana Code Annotated 1981

Title 44
Chapter 2

State System of Criminal Identification

44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete state system of criminal identification.

44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law enforcement officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records.

44-2-203. Repealed. Sec. 27. Ch. 525, L. 1979.

44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.

44-2-205. Withholding of salary of officer who fails to provide information. The department shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information until the information is given to the department.

44-2-206. Cooperation with FBI and other states. The department shall cooperate with identification bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

Part 1 — General Provisions

Section
44-5-101. Short title.
44-5-102. Purpose.
44-5-103. Definitions.
44-5-104. Relationship to other statutes.
44-5-105. Department of justice — powers.
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44-5-111. Court order to enforce compliance.
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Part 2 — Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information.
-202. Photographs and fingerprints.
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-211. Records — form, contents, limits on use.
-212. Record preservation.
-213. Procedures to ensure accuracy of criminal history records.
-214. Inspection or transfer of criminal history records.
-215. Challenge and correction.

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-301. Dissemination of public criminal justice information.
-302. Dissemination of criminal history record information that is not public criminal justice information.
-303. Dissemination of confidential criminal justice information.
-304. Development of statistical information — agreements as to access.
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-401. Criminal justice information system security.
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-403. Computer programming.
-404. Manual equipment.
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Part 1
General Provisions

4-5-101. Short title. This chapter may be cited as the "Montana minal Justice Information Act of 1979".

History: En. Sec. 1, Ch. 525, L. 1979.

:4-5-102. Purpose. The purpose of this chapter is to require the otographing and fingerprinting of persons under certain circumstances, to ure the accuracy and completeness of criminal history information, and to ıblish effective protection of individual privacy in criminal justice infor-tion recordkeeping.

History: En. Sec. 2, Ch. 525, L. 1979.

:4-5-103. Definitions. As used in this chapter, the following defini-ıs apply:

1) "Access" means the ability to read, change, copy, use, transfer, or dis-ıinate criminal justice information maintained by criminal justice agencies.

2) "Administration of criminal justice" means the performance of any of following activities: detection, apprehension, detention, pretrial release, ttrial release, prosecution, adjudication, correctional supervision, or reha-tation of accused persons or criminal offenders. It includes criminal iden-cation activities ' he collection, storr and dissemination of criminal tice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the division of motor vehicles, department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governmental or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information

(a) made public by law;
(b) of court records and proceedings;
(c) of convictions, deferred sentences, and deferred prosecutions;
(d) of postconviction proceedings and status;
(e) originated by a criminal justice agency, including:
(i) initial offense reports;
(ii) initial arrest records;
(iii) bail records; and
(iv) daily jail occupancy rosters;
(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or
(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

44-5-112. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposive violation of this chapter.

Part 2

Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: En. Sec. 5, Ch. 525, L. 1979.

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, in the following circumstances:

(a) ~~if--a--court-so-orders~~ upon order of the court that had jurisdiction ~~when--proceedings--against--the--individual were---dismissed---prior--to--any--conviction--or--when--the individual-was-acquitted-at-trial~~; or

(b) upon the request of the individual when he was released without the filing of charges OR WHEN THE CHARGES DID NOT RESULT IN A CONVICTION.

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for c in' ustice agencies other than th that are part of the judicial bran of vernment to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

44-5-214. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. (1) Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(a) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with 44-5-304; or

(d) the agency receiving the information is authorized by law to receive it.

(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the state bar for licensing purposes.

Section 3. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies, or to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that ~~THE MERITS OF PUBLIC DISCLOSURE CLEARLY EXCEED~~ the demands of individual privacy ~~do not clearly exceed the merits of public disclosure~~ DO NOT CLEARLY EXCEED THE MERITS OF PUBLIC DISCLOSURE. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential."

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

Part 4

System Security

44-5-401. [illegible]nal justice info[illegible]ation system security. Provisions for the rec[illegible]ng, preservation, [illegible]semination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry ref the identity of the inquirer, the date of inquiry, and the name of the files being queried.

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

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Title 2, Chapter 6

Part 1

Public Records Generally

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private.

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

Part 5
Criminal Intelligence Information Section

44-5-501. Creation of criminal intelligence information section — advisory council. (1) The department of justice may create a criminal intelligence information section.

(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The department shall provide staff and support services for the advisory council.

44-5-502. Definitions. In this part the following definitions apply:

(1) "Advisory council" means the criminal intelligence information advisory council provided for in 44-5-501.

(2) "Section" means the criminal intelligence information section provided for in 44-5-501.

44-5-503. Duties of section. The section may not initiate investigations to gather criminal intelligence information, but subject to standards and procedures provided by this part and to other limitations imposed by law, the section shall:

(1) establish and maintain liaison with participating law enforcement agencies to foster a meaningful exchange of criminal intelligence information;

(2) develop and maintain a system for collecting, reviewing, storing, referencing, indexing, and disseminating criminal intelligence information;

(3) receive and collect information from participating law enforcement agencies;

(4) develop an analytical capability to provide useful strategic and tactical intelligence reports;

(5) maintain the integrity and security of all information collected by the section; and

(6) develop methods of evaluating the effectiveness of the section in accomplishing its goals and in safeguarding the privacy of all individuals about whom the section has information.

History: En. Sec. 3, Ch. 145, L. 1985.

44-5-504. Section standards and procedures. The attorney general, in conjunction with the department of justice and after considering recommendations of the advisory council, shall adopt standards and procedures for the operation of the section. The standards and procedures must ensure compliance with this part by the section and must include safeguards of individual privacy rights as provided in this chapter.

NEBRASKA

Revised Statutes of Nebraska

ARTICLE 35
CRIMINAL HISTORY INFORMATION

Section.

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29-3502. Act; purposes.
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29-3526. Commission; powers and duties; rules and regulations.
29-3527. Violations; penalty.
29-3528. Officer or employee; violation of act; person aggrieved; remedies.

29-3501. Act, how cited. This act shall be known and may be cited as the Security, Privacy, and Dissemination of Criminal History Information Act.

29-3502. Act; purposes. The purposes of this act are (1) to control and coordinate criminal offender record-keeping within this state, (2) to establish more efficient and uniform systems of criminal offender

record-keeping, (3) to assure periodic audits of such record-keeping in order to determine compliance with this act, (4) to establish a more effective administrative structure for the protection of individual privacy in connection with such record-keeping, and (5) to preserve the principle of the public's right to know of the official actions of criminal justice agencies.

29-3503. Definitions; sections found. For the purposes of this act, unless the context otherwise requires, the definitions found in sections 29-3504 to 29-3514 shall be used.

29-3504. Administration of criminal justice, defined. Administration of criminal justice shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, pretrial diversion, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

29-3505. Commission, defined. Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

29-3506. Criminal history record information, defined. Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall not include intelligence or investigative information.

29-3507. Complete, defined. With reference to criminal history record information, complete shall mean that arrest records shall show the subsequent disposition of the case as it moves through the various stages of the criminal justice system; and accurate shall mean containing no erroneous information of a material nature.

29-3508. Criminal history record information system or system, defined. Criminal history record information system or system shall mean a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

29-3509. Criminal justice agency, defined. Criminal justice agency shall mean:

(1) Courts; and

(2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

29-3510. Direct access, defined. Direct access shall mean having the custodial authority to handle and control the actual documents or automated or computerized documentary record which constitutes the criminal history data base.

29-3511. Disposition, defined. Disposition shall mean information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also information disclosing the nature of the termination of the proceedings.

29-3512. Operator, defined. Operator shall mean the agency, person, or group of persons designated by the governing body of the jurisdiction served by a criminal history record information system to coordinate and supervise the system.

29-3513. Person, defined. Person shall mean any natural person, corporation, partnership, firm, or association.

29-3514. Person in interest, defined. Person in interest shall mean the person who is the primary subject of a criminal justice record or any representative designated by such person, except that if the subject of the record is under legal disability, person in interest shall mean the person's parent or duly appointed legal representative.

29-3515. Criminal justice agency; criminal history record information; maintain. Each criminal justice agency shall maintain complete and accurate criminal history record information with regard to the actions taken by the agency.

29-3516. Criminal justice agency; disposition of cases; report; procedure; commission; forms; rules and regulations; adopt. Each criminal justice agency in this state shall report the disposition of cases which enter its area in the administration of criminal justice. As to cases in which fingerprint records must be reported to the Nebraska State Patrol under section 29-209, such disposition reports shall be made to the patrol. In all other cases when a centralized criminal history record information system is maintained by local units of government, dispositions made within the jurisdiction covered by such system shall be reported to the operator of that system or to the arresting agency in a noncentralized criminal history record information system. All dispositions shall be reported as promptly as feasible but not later than fifteen days after the happening of an event which constitutes a disposition. In order to achieve uniformity in reporting procedures, the commission shall prescribe the form to be used in reporting dispositions and may adopt rules and regulations to achieve efficiency and which will promote the ultimate purpose of insuring that each criminal justice information system maintained in this state shall contain complete and accurate criminal history information. All forms and rules and regulations relating to reports of dispositions by courts shall be approved by the Supreme Court of Nebraska.

29-3517. Criminal justice agency; criminal history record information; process; assure accuracy. Each criminal justice agency shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify each criminal justice agency known to have received such information. Each criminal justice agency shall (1) maintain a listing of the individuals or agencies both in and outside of the state to which criminal history record information was released, a record of what information was released, and the date such information was released, (2) establish a delinquent disposition monitoring system, and (3) verify all record entries.

29-3518. Criminal history record information; access; restrictions; requirements. Direct access to criminal history record information system facilities, system operating environments, data file contents, and system documentation shall be restricted to authorized organizations and persons. Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system: (1) May determine for legitimate security purposes which personnel may work in a defined area where such information is stored, collected, or disseminated; (2) shall select and supervise all personnel authorized to have direct access to such information; (3) shall assure that an individual or agency authorized direct access is administratively held responsible for (a) the physical security of criminal history record information under its control or in its custody, and (b) the protection of such information from unauthorized access, disclosure, or dissemination; (4) shall institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters; (5) shall provide that each employee working with or having access to criminal history record information is to be made familiar with this act and of any rules and regulations promulgated under such act; and (6) shall require that direct access to criminal history record information shall be made available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system. This section shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of this act, including both review of original records and the right to have copies made of records when not prohibited.

29-3519. Criminal justice information systems; computerized; access; limitations; security; conditions. Whenever computerized data processing is employed, effective and technologically advanced software and hardware designs shall be instituted to prevent unauthorized access to such information. Computer operations which support criminal justice information systems shall operate in accordance with procedures approved by the participating criminal justice agencies and assure that (1) criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by noncriminal justice terminals, (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records from any terminal other than criminal justice system terminals which are so designated, (3) destruction of records is limited to

designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information, (4) operational programs are used to detect and store, for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program, or file, (5) the programs specified in subdivisions (2) and (4) of this section are known only to criminal justice agency employees responsible for criminal history record information control, or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and that the programs are kept continuously under maximum security conditions, and (6) a criminal justice agency may audit, monitor, and inspect procedures established in this section.

29-3520. Criminal history record information; public record; criminal justice agencies; regulations; adopt. Complete criminal history record information maintained by a criminal justice agency shall be a public record open to inspection and copying by any person during normal business hours and at such other times as may be established by the agency maintaining the record. Criminal justice agencies may adopt such regulations with regard to inspection and copying of records as are reasonably necessary for the physical protection of the records and the prevention of unnecessary interference with the discharge of the duties of the agency.

29-3521. Information; considered public record; classifications. In addition to public records under section 29-3520, information consisting of the following classifications shall be considered public record for purposes of dissemination: (1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person; (2) original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies; (3) court records of any judicial proceeding; and (4) records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's or other operator's licenses.

29-3522. Criminal justice agency records; application to inspect; unavailable; procedure to provide records. If the requested criminal justice history record or other public record, as defined in section 29-3521, of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall immediately notify the applicant of this fact. Such notification shall be in writing if requested by the applicant and shall state the agency, if

known, which has custody or control of the record in question. If the requested criminal history record or other public record of a criminal justice agency is in the custody and control of the person to whom application is made but is not available at the time an applicant asks to examine it, the custodian shall immediately notify the applicant of such fact, in writing, if requested by the applicant. When requested by the applicant, the custodian shall set a date and hour within three working days at which time the record shall be available for inspection.

29-3523. Criminal history record information; notation of an arrest; dissemination; limitations. That part of criminal history record information consisting of a notation of an arrest, when after an interval of one year active prosecution is neither completed nor pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record:

(1) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(2) Is currently an announced candidate for or holder of public office;

(3) Has made a notarized request for the release of such record to a specific person; or

(4) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (a) dates of arrests, (b) reasons for arrests, and (c) the nature of the dispositions, including but not limited to reasons for not prosecuting the case or cases.

29-3524. Criminal justice agencies; fees; assessment. Criminal justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply. All fees collected by the Nebraska State Patrol pursuant to this section shall be deposited in the Nebraska State Patrol Cash Fund.

29-3525. Criminal history record information; review by person in interest; identity; verification. Any person in interest, who asserts that he or she has reason to believe that criminal history information relating to him or her or the person in whose interest he or she acts is maintained by any system in this state, shall be entitled to review and receive a copy of such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfac-

tory verification of the subject's identity, which shall include name, date, and place of birth, and, when identification is doubtful, a set of fingerprint impressions may be taken upon fingerprint cards or forms commonly used for law enforcement purposes by law enforcement agencies. The review authorized by this section shall be limited to a review of criminal history record information.

29-3526. Commission; powers and duties; rules and regulations. The commission may by rule authorize a fee for each application for review under section 29-3525, and may charge for making copies or printouts as provided in section 29-3524. The commission shall implement section 29-3525 by rule and regulation, including but not limited to provisions for (1) administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete, (2) administrative appeal when a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates, (3) supplying to an individual whose record has been corrected, upon his or her request, the names of all noncriminal justice agencies and individuals to which the data has been given, and (4) requiring the correcting agency to notify all criminal justice recipients of corrected information.

29-3527. Violations; penalty. Any person who (1) permits unauthorized direct access to criminal history record information, (2) knowingly fails to disseminate or make public criminal history record information of official acts as required under this act, or (3) knowingly disseminates nondisclosable criminal history record information in violation of this act, shall be guilty of a Class IV misdemeanor.

29-3528. Officer or employee; violation of act; person aggrieved; remedies. Whenever any officer or employee of the state, its agencies, or its political subdivisions, or whenever any state agency or any political subdivision or its agencies fails to comply with the requirements of this act or of regulations lawfully adopted to implement this act, any person aggrieved may bring an action, including but not limited to an action for mandamus, to compel compliance and such action may be brought in the district court of any district in which the records involved are located or in the district court of Lancaster County. The commission may request the Attorney General to bring such action.

Criminal Identification

29-209. Fingerprints and descriptions: to be furnished State Patrol by sheriffs, peace officers, and state agencies; FBI; copy. It is hereby made the duty of the sheriffs of the several counties of the State of Nebraska, the chiefs of police of incorporated cities therein, marshals of incorporated cities and towns therein, and agencies of state government having powers of arrest to furnish the Nebraska State Patrol two copies of fingerprints on forms provided by the Nebraska State Patrol and the Federal Bureau of Investigation, and descriptions of all persons who are arrested by them (1) for any felony or (2) as felony fugitives from the criminal justice system of another jurisdiction. This section is not intended to include violators of city ordinances or of persons arrested for other trifling offenses. The Nebraska State Patrol shall in all appropriate cases forward one copy of such fingerprints and other necessary indentifying data and information to the system maintained by the Federal Bureau of Investigation.

29-210. Nebraska State Patrol; records; system of cards; information; powers. The Nebraska State Patrol is hereby authorized (1) to keep a complete record of all reports filed of all personal property stolen, lost, found, pledged or pawned, in any city or county of this state; (2) to provide for the installation of a proper system and file, and cause to be filed therein cards containing an outline of the methods of operation employed by criminals; (3) to use any system of identification it deems advisable, or that may be adopted in any of the penal institutions of the state; (4) to keep a record consisting of duplicates of measurements, processes, operations, plates, photographs, measurements and descriptions of all persons confined in penal institutions of this state; (5) to procure and maintain, so far as practicable, plates, photographs, descriptions and information concerning all persons who shall hereafter be convicted of felony or imprisoned for violating the military, naval or criminal laws of the United States, and of well-known and habitual criminals from whatever source procurable; (6) to furnish any criminal justice agency with any information, material, records, or means of identification which may properly be disseminated and that it may desire in the proper administration of criminal justice; (7) to upgrade, when feasible, the existing law enforcement communications network; and (8) to establish and maintain an improved system or systems by which relevant information may be collected, coordinated, and made readily available to serve qualified persons or agencies concerned with the administration of criminal justice.

NEBRASKA

Article 71

Public Records

84-712. Public records; free examination; memorandum and abstracts. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

84-712.01. Public records; right of citizens; full access. (1) Except where any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt or other record of receipt, cash or expenditure involving public funds is involved in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

84-712.02. Public records; claimants before federal veterans agencies; certified copies free of charge. When it shall be requested by any claimant before the United States Veterans' Bureau or any claimant before the United States Bureau of Pensions, his or her agent or attorney, that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such bureau,

the officer in charge of such public records shall furnish or cause to be furnished such claimant, his or her agent or attorney, a certified copy thereof free of charge.

84-712.03. Public records; denial of rights; remedies. Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to (1) file for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of said public record can be served or (2) petition the Attorney General to review the record to determine whether it may be withheld from public inspection. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld, the public body shall be ordered to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

84-712.04. Public records; denial of rights; public body; provide information. (1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlated to specific reasons for the denial, correlated to specific portions of the records, including citations to the particular exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.08.

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

84-712.05. Records which may be withheld from the public; enumerated. The following records, unless publicly disclosed in an open court, open administrative proceeding or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any tax-supported educational institution maintaining such records, other than routine directory information;

(2) Medical records, other than records of births and deaths, in any form concerning any person, and also records of elections filed under section 44-2821;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body, or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, the investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training;

(6) Appraisals or appraisal information and negotiation records, concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the physical security of public property such as guard schedules or lock combinations; and

(9) Personally identified private citizen account payment information held by public utilities.

84-712.06. Public record; portion provided; when. Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

84-712.07. Public records; public access; equitable relief; attorney fees; costs. The provisions of this act pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

84-712.08. Records; federal government; exception. If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of this act would cause the denial of any funds, services, or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

84-712.09. Violation; penalty. Any official who shall violate the provisions of sections 1 to 8 of this act shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

CHAPTER 179A

RECORDS OF CRIMINAL HISTORY

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179A.060 RECORDS OF CRIMINAL HISTORY

GENERAL PROVISIONS

179A.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 179A.020 to 179A.073, inclusive, have the meanings ascribed to them in those sections.
(Added to NRS by 1979, 1850; A 1987, 1764)

179A.020 "Administration of criminal justice" defined. "Administration of criminal justice" means detection, apprehension, detention, release pending trial or after trial, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders, and includes criminal identification activities and the collection, storage and dissemination of records of criminal history.
(Added to NRS by 1979, 1850)

179A.030 "Agency of criminal justice" defined. "Agency of criminal justice" means:
1. Any court; and
2. Any governmental agency which performs a function in the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its budget to a function in the administration of criminal justice.
(Added to NRS by 1979, 1850)

179A.045 "Central repository" defined. "Central repository" means the central repository for Nevada records of criminal history.
(Added to NRS by 1985, 912)

179A.047 "Child" defined. "Child" means a person under the age of 16 years.
(Added to NRS by 1987, 1760)

179A.049 "Department" defined. "Department" means the department of motor vehicles and public safety.
(Added to NRS by 1987, 1760)

179A.050 "Disposition" defined. "Disposition" means the formal conclusion of a criminal proceeding at any point in the administration of criminal justice which shows the nature of the conclusion.
(Added to NRS by 1979, 1850)

179A.060 "Dissemination" defined. "Dissemination" means disclosing records of criminal history or the absence of records of criminal

history to a person or agency outside the organization which has control of the information.

(Added to NRS by 1979, 1850; A 1985, 912)

179A.065 "Information relating to sexual offenses" defined. "Information relating to sexual offenses" means information contained in or concerning a record of criminal history, or the records of criminal history of the United States or another state, relating in any way to a sexual offense.

(Added to NRS by 1987, 1760)

179A.070 "Record of criminal history" defined.

1. "Record of criminal history" means information contained in records collected and maintained by agencies of criminal justice, the subject of which is a natural person, consisting of descriptions which identify the subject and notations of arrests, detention, indictments, informations or other formal criminal charges and dispositions of charges, including dismissals, acquittals, convictions, sentences, correctional supervision and release, occurring in Nevada. The term includes only information contained in memoranda of formal transactions between a person and an agency of criminal justice in this state. The term is intended to be equivalent to the phrase "criminal history record information" as used in federal regulations.

2. "Record of criminal history" does not include:

(a) Investigative or intelligence information, reports of crime or other information concerning specific persons collected in the course of the enforcement of criminal laws.

(b) Information concerning juveniles.

(c) Posters, announcements or lists intended to identify fugitives or wanted persons and aid in their apprehension.

(d) Original records of entry maintained by agencies of criminal justice if the records are chronological and not cross-indexed in any other way.

(e) Records of application for and issuance, suspension, revocation or renewal of occupational licenses, including permits to work in the gaming industry.

(f) Court indices and records of public judicial proceedings, court decisions and opinions, and information disclosed during public judicial proceedings.

(g) Records of traffic violations constituting misdemeanors.

(h) Records of traffic offenses maintained by the department to regulate the issuance, suspension, revocation or renewal of drivers' or other operators' licenses.

(i) Announcements of actions by the state board of pardons commissioners and the state board of parole commissioners.

(j) Records which originated in an agency other than an agency of criminal justice in this state.

179A.075 RECORDS OF CRIMINAL HISTORY

(Added to NRS by 1979, 1850; A 1985, 1977; 1987, 1764)

179A.073 "Sexual offense" defined.

1. "Sexual offense" includes acts upon a child constituting:

(a) Sexual assault under NRS 200.366;

(b) Statutory sexual seduction under NRS 200.368;

(c) Use of a minor in producing pornography under NRS 200.710;

(d) Promotion of a sexual performance of a minor under NRS 200.720;

(e) Possession of a visual presentation depicting the sexual conduct of a child under NRS 200.730;

(f) Incest under NRS 201.180;

(g) Solicitation of a minor to engage in the infamous crime against nature under NRS 201.195;

(h) Lewdness with a child under NRS 201.230; or

(i) Annoyance or molestation of a minor under NRS 207.260.

2. "Sexual offense" also includes acts committed outside the state that would constitute any of the offenses in subsection 1 if committed in the state, and the aiding, abetting, attempting or conspiring to engage in any of the offenses in subsection 1.

(Added to NRS by 1957, 1760)

CENTRAL REPOSITORY FOR NEVADA RECORDS OF CRIMINAL HISTORY

179A.075 Creation; submission of record required; duties and powers of Nevada highway patrol division.

1. The central repository for Nevada records of criminal history is hereby created within the Nevada highway patrol division of the department.

2. Each agency of criminal justice shall submit the information relating to sexual offenses and other records of criminal history it collects to the division in the manner prescribed by the director of the department. A report of disposition must be submitted to the division through an electronic network or on a media of magnetic storage within 30 days after the date of disposition. If an agency has submitted a record regarding the arrest of a person who is later determined by the agency not to be the person who committed the particular crime, the agency shall, immediately upon making that determination, so notify the division. The division shall delete all references in the central repository relating to that particular arrest.

3. The division shall:

(a) Collect, maintain and arrange all information relating to sexual offenses and other records of criminal history submitted to it; and

(b) Use a record of the subject's fingerprints as the basis for any records maintained regarding him.

4. The division may:

(a) Disseminate any information which is contained in the central repository to any other agency of criminal justice; and

(b) Enter into cooperative agreements with federal and state repositories to facilitate exchanges of such information.

(Added to NRS by 1985, 912; A 1987, 666, 1765)

179A.080 Duties of director of department. The director of the department is responsible for administering this chapter and may adopt regulations for that purpose. The director shall:

1. Adopt regulations for the security of the central repository so that it is adequately protected from fire, theft, loss, destruction, other hazards and unauthorized access.

2. Adopt regulations and standards for personnel employed by agencies of criminal justice in positions of responsibility for maintenance and dissemination of information relating to sexual offenses and other records of criminal history.

3. Provide for audits of informational systems by qualified public or private agencies, organizations or persons.

(Added to NRS by 1979, 1854; A 1981, 2010; 1985, 913, 1978; 1987, 1765)

179A.090 Prerequisite to dissemination of records; exceptions. No agency of criminal justice in Nevada may disseminate any record of criminal history which includes information about a felony or a gross misdemeanor without first making inquiry of the central repository, to obtain the most current and complete information available, unless:

1. The information is needed for a purpose in the administration of criminal justice for which time is essential, and the central repository is not able to respond within the required time;

2. The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of an officer, agent or employee of the agency which disseminates the information;

3. The full information requested and to be disseminated was received as part of a summary of records of criminal history from the central repository within 30 days before the information is disseminated;

4. The statute, executive order, court rule or court order under which the information is to be disseminated refers only to information which is in the files of the agency which makes the dissemination;

5. The information requested and to be disseminated is for the express purpose of research, evaluation or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is sought; or

6. The information is requested by a compensation officer of the state board of examiners pursuant to NRS 217.090.

(Added to NRS by 1979, 1851; A 1981, 1673; 1985, 913)

179A.100 Records which may be disseminated without restriction; persons to whom records must be disseminated upon request; permission required for dissemination of information relating to sexual offenses.

1. The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

(a) Any which reflect records of conviction only; and

(b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

2. Without any restriction pursuant to this chapter, a record of criminal history or the absence of such a record may be:

(a) Disclosed among agencies which maintain a system for the mutual exchange of criminal records.

(b) Furnished by one agency to another to administer the system of criminal justice, including the furnishing of information by a police department to a district attorney.

(c) Reported to the central repository

3. An agency of criminal justice shall disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the prospective employee is currently within the system of criminal justice, including parole or probation.

4. The central repository shall disseminate to a prospective or current employer, upon request, information relating to sexual offenses concerning an employee or prospective employee who gives his written consent to the release of that information.

5. Records of criminal history must be disseminated by an agency of criminal justice upon request, to the following persons or governmental entities for the following purposes:

(a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.

(b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial, administrative, licensing, disciplinary or other proceeding to which the information is relevant.

(c) The gaming control board.

(d) Any agency of criminal justice of the United States or of another state or the District of Columbia.

(e) Any public utility subject to the jurisdiction of the public service commission of Nevada when the information is necessary to conduct a

security investigation of an employee or prospective employee, or to protect the public health, safety or welfare.

(f) Persons and agencies authorized by statute, ordinance, executive order, court rule, court decision or court order as construed by appropriate state or local officers or agencies.

(g) Any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice relating to the administration of criminal justice, if authorized by the contract, and if the contract also specifies that the information will be used only for stated purposes and that it will be otherwise confidential in accordance with state and federal law and regulation.

(h) Any reporter for the electronic or printed media in his professional capacity for communication to the public.

(i) Prospective employers if the person who is the subject of the information has given written consent to the release of that information by the agency which maintains it.

(j) For the express purpose of research, evaluative or statistical programs pursuant to an agreement with an agency of criminal justice.

6. Agencies of criminal justice in this state which receive information from sources outside the state concerning transactions involving criminal justice which occur outside Nevada shall treat the information as confidentially as is required by the laws of the state or other jurisdiction from which the information was received.

(Added to NRS by 1979, 1852; A 1985, 913; 1987, 1765)

179A.110 Further dissemination of information or records. No person who receives information relating to sexual offenses or other records of criminal history pursuant to this chapter may disseminate it further without express authority of law or in accordance with a court order. This section does not prohibit the dissemination of material by an employee of the electronic or printed media in his professional capacity for communication to the public.

(Added to NRS by 1979, 1853; A 1987, 1767)

179A.120 Disclosures to victims of crime.

1. Agencies of criminal justice may disclose to victims of a crime, members of their families or their guardians the identity of persons suspected of being responsible for the crime, including juveniles who have been certified to stand trial as adults, together with information, including dispositions, which may be of assistance to the victim in obtaining redress for his injury or loss in a civil action. This disclosure may be made regardless of whether charges have been filed, and even if a prosecuting attorney has declined to file charges or the charge has been dismissed.

2. Disclosure of investigative information pursuant to this section does not establish a duty to disclose any additional information concerning the same incident or make any disclosure of information obtained by an investigation, except as compelled by legal process.

(Added to NRS by 1979, 1853; A 1981, 2025)

179A.130 Log of dissemination of information or records. Each agency of criminal justice which maintains and disseminates information relating to sexual offenses or other records of criminal history must maintain a log of each dissemination of that information other than a dissemination of the fact that the agency has no record relating to a certain person. The log must be maintained for at least 1 year after the information is disseminated, and must contain:

1. An entry showing to what agency or person the information relating to sexual offenses or other records of criminal history were provided;
2. The date on which the information was provided;
3. The person who is the subject of the information; and
4. A brief description of the information provided.

(Added to NRS by 1979, 1853; A 1987, 1767)

179A.140 Fee for furnishing information or records; use of money collected.

1. Agencies of criminal justice may charge a reasonable fee for any information relating to sexual offenses or other records of criminal history furnished to any person or governmental entity except another agency of criminal justice.

2. All money received or collected by the department pursuant to this section must be used to defray the cost of operating the central repository.

(Added to NRS by 1979, 1855; A 1985, 915; 1987, 1767)

179A.150 Inspection and correction of information or records.

1. The central repository and each state, municipal, county or metropolitan police agency shall permit a person, who is or believes he may be the subject of information relating to sexual offenses or other records of criminal history maintained by that agency, to appear in person during normal business hours of the agency and inspect any recorded information held by that agency pertaining to him. This right of access does not extend to data contained in intelligence, investigative or other related files, and does not include any information other than that defined as information relating to sexual offenses or a record of criminal history.

2. Each such agency shall adopt regulations and make available necessary forms to permit inspection and review of information relating to sexual offenses or other records of criminal history by those persons who are the subjects thereof. The regulations must specify:

(a) The reasonable periods during which the records are available for inspection;

(b) The requirements for proper identification of the persons seeking access to the records; and

(c) The reasonable charges or fees, if any, for inspecting records.

3. Each such agency shall procure for and furnish to any person who requests it and pays a reasonable fee therefor, all of the information contained in the central repository which pertains to the person making the request.

4. The director of the department shall adopt regulations governing:

(a) All challenges to the accuracy or sufficiency of information relating to sexual offenses or other records of criminal history by the person who is the subject of the allegedly inaccurate or insufficient record;

(b) The correction of any information relating to sexual offenses or other record of criminal history found by the director to be inaccurate, insufficient or incomplete in any material respect;

(c) The dissemination of corrected information to those persons or agencies which have previously received inaccurate or incomplete information; and

(d) A time limit of not more than 90 days within which inaccurate or insufficient information relating to sexual offenses or other records of criminal history must be corrected and the corrected information disseminated. The corrected information must be sent to each person who requested the information in the 12 months preceding the date on which the correction was made, and notice of the correction must be sent to each person entitled thereto pursuant to NRS 179A.210, to the address given by each person who requested the information when the request was made.

(Added to NRS by 1979, 1854; A 1981, 2010; 1985, 915, 1978; 1987, 1767)

179A.160 Removal of certain records where disposition of case favorable to accused. At any time after a date 5 years after the arrest of a person, or after 5 years after the date of issuance of a citation or warrant, for an offense for which the person was acquitted or which ended in a disposition favorable to the person, the person who is the subject of a record of criminal history relating to the arrest, citation or warrant may apply in writing to the central repository and the agency which maintains the record to have it removed from the files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a person. The central repository and the agency shall remove the record unless:

1. The defendant is a fugitive.

2. The case is under active prosecution according to a current certificate of a prosecuting attorney.

3. The disposition of the case was a deferred prosecution, plea bargain or other similar disposition.

4. The person who is the subject of the record has a prior conviction for a felony or gross misdemeanor in any jurisdiction in the United States.

5. The person who is the subject of the record has been arrested for or charged with another crime, other than a minor traffic violation, during the 5 years since the arrest, citation or warrant which he seeks to have removed from the record.

This section does not restrict the authority of a court to order the deletion or modification of a record in a particular cause or concerning a particular person or event.

(Added to NRS by 1979, 1853; A 1985, 916)

179A.170 Unlawful acts. Replaced in revision by NRS 179A.300.

INFORMATION RELATING TO SEXUAL OFFENSES

179A.180 Definitions. As used in NRS 179A.190 to 179A.240, inclusive, unless the context otherwise requires:

1. "Employee" means a person who renders time and services to an employer, and whose regular course of duties places that person in a position to:

(a) Exercise supervisory or disciplinary control over children;

(b) Have direct access to or contact with children served by the employer; or

(c) Have access to information or records maintained by the employer relating to identifiable children served by the employer.

and includes a volunteer, prospective employee and prospective volunteer; and

2. "Employer" means a person, or a governmental agency or political subdivision of this state that is not an agency of criminal justice, whose employees regularly render services to children, including without limitation care, treatment, transportation, instruction, companionship, entertainment and custody.

(Added to NRS by 1987, 1760)

179A.190 Notice of information may be disseminated to employers; use by employer; employer not liable for discrimination; other dissemination or release.

1. Notice of information relating to sexual offenses may be disseminated to employers pursuant to NRS 179A.190 to 179A.240, inclusive.

2. An employer may consider such a notice of information concerning an employee when making a decision to hire, retain, suspend or discharge the

employee, and is not liable in an action alleging discrimination based upon consideration of information obtained pursuant to NRS 179A.190 to 179A.240, inclusive.

3. The provisions of NRS 179A.190 to 179A.240, inclusive, do not limit or restrict any other statute specifically permitting the dissemination or release of information relating to sexual offenses.

(Added to NRS by 1987, 1761)

179A.200 Employer may request notice of information.

1. An employer may request from the central repository notice of information relating to sexual offenses concerning an employee.

2. A request for notice of information relating to sexual offenses from an employer must conform to the requirements of the central repository. The request must include:

(a) The name and address of the employer, and the name and signature of the person requesting the notice on behalf of the employer;

(b) The name and address of the employer's facility in which the employee is employed or seeking to become employed;

(c) The name, fingerprints and other identifying information of the employee;

(d) Signed consent by the employee to a search of information relating to sexual offenses concerning him, and for the release of a notice concerning that information;

(e) The mailing address of the employee or a signed waiver of the right of the employee to be sent a copy of the information disseminated to the employer as a result of the search of the records of criminal history; and

(f) The signature of the employee indicating that he has been notified of:

(1) The types of information for which notice is subject to dissemination pursuant to NRS 179A.210, or a description of the information;

(2) The employer's right to require a check of the records of criminal history as a condition of employment; and

(3) The employee's right, pursuant to NRS 179A.150, to challenge the accuracy or sufficiency of any information disseminated to the employer.

(Added to NRS by 1987, 1761)

179A.210 Request by employer for notice of information; search by central repository; dissemination of notice; written report required; correction of information; receipt of new information.

1. Upon receipt of a request from an employer for notice of information relating to sexual offenses, the central repository shall undertake a search for the information, unless the request does not conform to the requirements of the repository. The search must be based on the employee's fingerprints, or on a number furnished to the employee for identification pursuant to a previous search, as provided by the employer, and must include:

(a) Identifying any information relating to sexual offenses concerning the employee in the central repository;

(b) Requesting information relating to sexual offenses concerning the employee from federal repositories and repositories of other states, if authorized by federal law or an agreement entered into pursuant to NRS 179A.075;

(c) If the information pertains to an arrest for which no disposition has been reported, contacting appropriate officers in the local jurisdiction where the arrest or prosecution occurred to verify and update the information; and

(d) Determining whether the information relating to sexual offenses is the type of information for which notice is subject to dissemination pursuant to this section.

2. Notice of information relating to sexual offenses may be disseminated to an employer who has requested it only if a check of the pertinent records indicates:

(a) A conviction for a sexual offense, or a conviction based on an arrest or on an initial charge for a sexual offense;

(b) An arrest or an initial charge for a sexual offense pending at the time of the request; or

(c) Two or more incidents resulting in arrest or initial charge for a sexual offense that have not resulted in a conviction.

3. Within 30 days after receipt of a request by an employer for notice of information relating to sexual offenses, the central repository shall send a written report of the results of the search to the employer and to the employee, except that if the employee has waived his right to receive the results of the search, the report must be sent only to the employer. If the search revealed:

(a) No information for which notice is subject to release, the report must include a statement to that effect; or

(b) Information about the employee for which notice is subject to release, the report must include a notice of the type of information, limited to the descriptions set forth in subsection 2, revealed by the search. The notice must not include any further facts or details concerning the information. A statement of the purpose for which the notice is being disseminated, and the procedures by which the employee might challenge the accuracy and sufficiency of the information, must also be included with the report.

4. Upon receipt of corrected information relating to sexual offenses for which notice was disseminated under this section, the central repository shall send written notice of the correction to:

(a) The employee who was the subject of the search, unless the employee has waived his right to receive such a notice;

(b) All employers to whom notice of the results of the search were disseminated within 3 months before the correction; and

(c) Upon request of the employee, any other employers who previously received the information.

5. Upon receipt of new information relating to sexual offenses concerning an employee who was the subject of a search within the previous 3 months, for which notice is subject to dissemination under this section, the central repository shall send written notice of the information to:

(a) The employee who was the subject of the search, unless the employee has waived his right to receive such a notice;

(b) All employers to whom a report of the results of the search were disseminated within 3 months before the correction; and

(c) Upon request of the employee, any other employers who previously received a report of the results of the search.

(Added to NRS by 1987, 1761)

179A.220 Hearings. All hearings arising under NRS 179A.190 to 179A.240, inclusive, must be held as provided in NRS 233B.121 to 233B.150, inclusive.

(Added to NRS by 1987, 1763)

179A.230 Actions for damages: Person who is subject of request for notice of information; child who is victim of sexual offense committed by employee; amount of damages; period of limitation.

1. A person who is the subject of a request for notice of information relating to sexual offenses pursuant to NRS 179A.190 to 179A.240, inclusive, may recover his actual damages in a civil action against:

(a) The central repository for an intentional or grossly negligent:

(1) Dissemination of information relating to sexual offenses not authorized for dissemination; or

(2) Release of information relating to sexual offenses to a person not authorized to receive the information;

(b) The central repository for an intentional or grossly negligent failure to correct any notice of information relating to sexual offenses which was disseminated pursuant to NRS 179A.190 to 179A.240, inclusive; or

(c) An employer, representative of an employer or employee for an intentional or grossly negligent violation of NRS 179A.110. Punitive damages may be awarded against an employer, representative of an employer or employee whose violation of NRS 179A.110 is malicious.

2. An employer, except an employer who is a voluntary organization consisting primarily of persons who provide their services for no remuneration other than reimbursement for actual expenses incurred, is liable to a child served by the employer for damages suffered by the child as a result of a sexual offense committed against the child by an employee hired on or after January 1, 1988, if, at the time the employer hired the employee, the employee was the subject of information relating to sexual offenses for which notice was available for dissemination to the employer and the employer:

(a) Failed, without good cause, to request notice of the information pursuant to NRS 179A.190 to 179A.240, inclusive; or

(b) Was unable to obtain the information because the employee refused to consent to the search and release of the information, and the employer hired or retained the employee despite this refusal.

The amount of damages for which an employer is liable pursuant to this subsection must be reduced by the amount of damages recovered by the child in an action against the employee for damages sustained as a result of the sexual offense.

3. An action pursuant to this section must be brought within 3 years after:

(a) The occurrence upon which the action is based; or

(b) The date upon which the party bringing the action became aware or reasonably should have become aware of the occurrence, whichever was earlier, if he was not aware of the occurrence at the time of the occurrence.

4. This section does not limit or affect any other rights, claims or causes of action arising by statute or common law.

(Added to NRS by 1987, 1763)

179A.240 Unlawful acts. A person who knowingly and willfully:

1. Uses NRS 179A.190 to 179A.240, inclusive, to obtain or seek to obtain information relating to sexual offenses under false pretenses;

2. Disseminates or attempts to disseminate information relating to sexual offenses that he knows was not received in accordance with the provisions of this chapter; or

3. Disseminates or attempts to disseminate information relating to sexual offenses that he knows is false, inaccurate or incomplete,

is guilty of a misdemeanor.

(Added to NRS by 1957, 1764)

PENALTIES

179A.300 Unlawful acts. Any person who:

1. Willfully requests, obtains or seeks to obtain records of criminal history under false pretenses;

2. Willfully communicates or seeks to communicate records of criminal history to any agency or person except pursuant to this chapter; or

3. Willfully falsifies any record of criminal history or any record relating to records of criminal history,

is guilty of a misdemeanor.

(Added to NRS by 1979, 1855)--(Substituted in revision for NRS 179A.170)

Sealing Records

Sec. 32. NRS 179.245 is hereby amended to read as follows:

179.245 1. A person who has been convicted of **[**any**]** *:*

(a) Any **felony may, after 15 years from the date of his conviction or, if he is imprisoned, from the date of his release from actual custody [, a person who has been convicted of a] ;**

(b) Any **gross misdemeanor may, after 10 years from the date of his conviction or release from custody [, and a person who has been convicted of a] ;**

(c) A violation of NRS 484.379 other than a felony may, after 7 years from the date of his conviction or release from custody; or

(d) Any other **misdemeanor may, after 5 years from the date of his conviction or release from custody,**

petition the court in which the conviction was obtained for the sealing of all records relating to [such] *the* conviction.

2. The court shall notify the district attorney of the county in which the conviction was obtained, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after hearing the court finds that, in the [15 years preceding the filing of the petition if the conviction was for a felony, in the 10 years preceding the filing of the petition if the conviction was for a gross misdemeanor, or in the 5 years preceding the filing of the petition, if the conviction was for a misdemeanor,] *period prescribed in subsection 1*, the petitioner has not been arrested, except for minor moving or standing traffic violations, the court may order sealed all records of [such] *the* conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, but not limited to, the Federal Bureau of Investigation, the California identification and investigation bureau, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

179.255 Sealing record after dismissal, acquittal: Petition; notice; hearing; order.

1. A person who has been arrested for alleged criminal conduct, where the charges were dismissed or such person was acquitted of the charge, may after 30 days from the date the charges were dismissed or from the date of the acquittal petition the court in and for the county where such arrest was made for the sealing of all records relating to the arrest.

2. The court shall notify the district attorney of the county in which the arrest was made, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after hearing the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

(Added to NRS by 1971, 955)

179.265 Rehearings after denial of petition: Time for; number.

1. A person whose petition is denied under NRS 179.245 or 179.255 may petition for a rehearing not sooner than 2 years after the denial of the previous petition.

2. No person may petition for more than two rehearings.

(Added to NRS by 1971, 956)

179.275 Order sealing record: Distribution; compliance. Where the court orders the sealing of any record pursuant to NRS 179.245 or 179.255, a copy of the order shall be sent to each public or private company, agency or official named in the order, and such organization or individual shall seal the records in its custody which relate to the matters contained in the order, shall advise the court of its compliance, and shall then seal the order.

(Added to NRS by 1971, 956)

179.285 Order sealing records: Effect. Except as provided in NRS 179.301, if the court orders the records sealed pursuant to NRS 179.245 or 179.255, all proceedings recounted in the record are deemed never to have occurred, and such person may properly answer accordingly to any inquiry concerning the arrest, conviction or acquittal and the events and proceedings relating to the arrest, conviction or acquittal.

(Added to NRS by 1971, 956; A 1981, 1105)

179.295 Reopening of sealed records.

1. The person who is the subject of the records which are sealed pursuant to NRS 179.245 or 179.255 may petition the district court to permit inspection of the records by a person named in the petition, and the district court may order such inspection. Except as provided in subsection 2 and NRS 179.301, the court may not order the inspection of the records under any other circumstances.

2. Where a person has been arrested and the charges dismissed and the records of the arrest have been sealed, the court may order the inspection of the record by the district attorney upon a showing that as a result of newly discovered evidence, the person has been arrested for the same or similar offense and that there is sufficient evidence reasonably to conclude that he will stand trial for the offense.

3. The court may, upon the application of a district attorney or an attorney representing a defendant in a criminal action, order an inspection of such records for the purpose of obtaining information relating to persons who were involved in the incident recorded.

(Added to NRS by 1971, 956; A 1981, 1105)

179.301 Inspection of sealed records by state gaming control board and Nevada gaming commission. The state gaming control board and Nevada gaming commission and their employees, agents and representatives may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255, if the event or conviction was related to gaming, for purposes of determining the suitability or qualifications of any person to hold a state gaming license, manufacturer's, seller's or distributor's license or gaming work permit pursuant to chapter 463 of NRS. Events and convictions, if any, which are the subject of an order sealing records may form the basis for recommendation, denial or revocation of those licenses or work permits.

(Added to NRS by 1981, 1105)

* * *

453.336 Unlawful possession not for purpose of sale; penalties.

1. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a physician, dentist, podiatrist or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.551, inclusive.

2. Except as provided in subsections 3 and 4, any person who violates this section shall be punished:

(a) For the first offense, if the controlled substance is listed in schedule I, II, III or IV, by imprisonment in the state prison for not less

than 1 year nor more than 6 years, and may be further punished by a fine of not more than $5,000.

(b) For a second offense, if the controlled substance is listed in schedule I, II, III or IV, or if, in case of a first conviction of violation of this section, the offender has previously been convicted of any violation of the laws of the United States or of any state, territory or district relating to a controlled substance, the offender shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years and may be further punished by a fine of not more than $10,000.

(c) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, the offender shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years and may be further punished by a fine of not more than $20,000.

(d) For the first offense, if the controlled substance is listed in schedule V, by imprisonment in the county jail for not more than 1 year, and may be further punished by a fine of not more than $1,000.

(e) For a second or subsequent offense, if the controlled substance is listed in schedule V, by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than $5,000.

3. Any person who is under 21 years of age and is convicted of the possession of less than 1 ounce of marihuana:

(a) For the first offense:

(1) Shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than $2,000; or

(2) Shall be punished by imprisonment in the county jail for not more than 1 year, and may be further punished by a fine of not more than $1,000, and may have his driver's license suspended for not more than 6 months.

(b) For the second offense shall be punished in the manner prescribed by subsection 2 for a first offense.

(c) For a third or subsequent offense, shall be punished in the manner prescribed by subsection 2 for a second offense.

4. Before sentencing under the provisions of subsection 3, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176.195. After the report is received but before sentence is pronounced the court shall:

(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and

(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information received as to whether the person convicted of the offense shall be adjudged to have committed a felony or to have committed a gross misdemeanor.

5. Three years after the person has been convicted and sentenced under the provisions of subsection 3, the court may order sealed all records, papers and exhibits in such person's record, minute book entries and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the court's order, if:

(a) The person fulfilled all the terms and conditions imposed by the court and by the parole and probation officer; and

(b) The court, after hearing, is satisfied that the rehabilitation has been attained.

6. Whenever any person who has not previously been convicted of any offense under the provisions of NRS 453.011 to 453.551, inclusive, or under any statute of the United States or of any state relating to narcotic drugs, marihuana or stimulant, depressant or hallucinogenic drugs pleads guilty to or is found guilty under this section of possession of a controlled substance not for the purpose of sale, the court, with the consent of the accused, may impose sentence, including a fine, suspend imprisonment, seal the record and place him on probation upon terms and conditions.

7. The record of a person sentenced under subsection 6 which has been sealed by the court may remain sealed until:

(a) The defendant fulfills all of the terms and conditions imposed by the court and by his probation officer, when the record may be expunged; or

(b) His probation is revoked and the sentence is executed.

8. There may be only one suspension of sentence under subsection 6 with respect to any person.

(Added to NRS by 1971, 2019; A 1973, 1214; 1977, 1413; 1979, 1473; 1981, 740, 1210, 1962)

* * *

Public Records

239.010 Public books, records open to inspection; penalty.

1. All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

[1:149:1911; RL § 3232; NCL § 5620]—(NRS A 1963, 26; 1965, 69)

239.030 Furnishing of certified copies of public records. Every officer having custody of public records, the contents of which are not declared by law to be confidential, shall furnish copies certified to be correct to any person who requests them and pays or tenders such fees as may be prescribed for the service of copying and certifying.

[1:73:1909; RL § 2045; NCL § 2976]—(NRS A 1973, 353)

CHAPTER 106-B

THE STATE POLICE

106-B: 11 Cooperation with Other Police Forces. The director and employees shall cooperate and exchange information with any other law enforcement agency both within and without this state, including federal authorities, for the purpose of preventing and detecting crime and apprehending criminals and detecting and stopping vehicles transporting hazardous materials contrary to the rules promulgated by the commissioner of safety and pursuant to RSA 106-B: 15. With the approval of the commissioner of safety, the director may, on the request of any responsible official of any such agency, assist such official by detailing to him such police employees, for such length of time and under such conditions as the director may deem proper. The director may designate for liaison with the offices of the respective county attorneys or sheriff such number of state police employees as he may deem advisable for each county.

106-B: 13 Power to Take Identification Data. The employees shall have authority to take fingerprints and, in addition thereto, such identification data as shall be prescribed by the director of all persons taken into custody by them in the discharge of their duties.

106-B: 14 Criminal Records, Reports.

I. With the approval of the commissioner of safety, the director shall make such rules and regulations as may be necessary to secure records and other information relative to persons who have been convicted of a felony or an attempt to commit a felony within the state, or who are known to be habitual criminals, or who have been placed under arrest in criminal proceedings. Such records and information shall not be open to the inspection of any person except those who may be authorized to inspect the same by the director. The clerks of the superior and municipal courts, or if there is no clerk the justice thereof, sheriffs, deputy sheriffs, police officers, jailers, and superintendents of houses of correction shall secure and forward to the director all such information as he may direct relative to persons brought before said courts or arrested or in the custody of such officers. Any person violating the provisions of this section or any rule or regulation made hereunder shall be guilty of a violation, for each offense.

II. The director shall submit an annual report to the general court relative to domestic assaults based on the records and information acquired pursuant to RSA 106-B: 14, I. The report shall be a compilation of the number of assaults on family or household members and other such data as the director may deem appropriate.

* * *

106-B:14-a Intrastate Misdemeanors Recorded. The division of state police shall record and update on its computer system on a daily basis the names of all persons for whom there are outstanding arrest warrants for misdemeanors in this state, along with a statement of all arrest warrants for misdemeanors each person has pending. The information recorded shall be made available upon request to all local and state law enforcement agencies and officers. The department of safety and its employees and agents shall not be held liable for errors of omission or commission in the recording and maintenance of this information unless the error is shown to be the result of gross negligence or an intentional act.

651:5 Disposition of Certain Records.

I. If a person who has been sentenced to probation, conditional discharge, or a fine has complied with the conditions of his sentence, he may, at any time after one year following completion of the terms of his sentence, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

II. If a person who has been sentenced to unconditional discharge has been convicted of no other crime except a traffic offense during a 2-year period following such sentence, he may, at any time after such 2-year period, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

III. If a person has been sentenced to a suspended sentence and has not been imprisoned under that sentence and has been convicted of no other crime except a traffic offense during a 5-year period following the completion of his suspended sentence, he may at any time after such 5-year period apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

IV. If a person under 21 years of age at the time of his criminal act is sentenced to imprisonment and in any 3-year period following his release has been convicted of no other offense except a traffic offense, he may, at any time after such 3-year period, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

V. When an application has been made under paragraph I, II, III, or IV, the court shall require the department of corrections or district court probation officer to report to it concerning any state or federal convictions, arrests or prosecutions of the applicant during the periods specified in those paragraphs and any other information such as the applicant's employment record or the applicant's addresses during the period after his conviction which may aid the court in making a determination on the application.

VI. Notwithstanding the provisions of paragraph I, II, III, or IV, no person who has had more than one conviction within a 3-year period of time following completion of a sentence may apply for an annulment until 7 years after completion of the terms of his sentence for his last conviction during that 3-year period.

VII. The court shall enter the order applied for under paragraph I, II, III or IV if in the court's opinion the order will assist in the applicant's rehabilitation and will be consistent with the public welfare. Upon entry of the order, the applicant shall be treated in all respects as if he had never been convicted and sentenced, except that, upon conviction of any crime committed after the order of annulment has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed.

VIII. Procedures governing application for an entry of an order annulling a conviction shall be established by rule of court. The application, however, may be made through an attorney or by the department of corrections or district court probation officer if the applicant gives the department written authorization.

IX. Prior to ordering an annulment, the court shall notify the arresting law enforcement agency and permit them to be heard and present any information regarding the interest of justice or the rehabilitative value in support of or in opposition to the petition for annulment.

X. Upon entry of the order of annulment of conviction, the court shall issue to the applicant a certificate stating that his behavior after the conviction has warranted the issuance of the order, and that its effect is to annul the record of conviction and sentence, and shall forthwith notify the state police criminal records unit and the arresting agency.

XI. In any application for employment, license, or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

XII. Nothing in this section shall affect any right of the applicant to appeal from his conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense, or the right of law enforcement officers to communicate information regarding the prior conviction or arrest to other law enforcement officers for legitimate investigative purposes, in which case such information shall not be disclosed to any other persons.

XIII. Any person whose arrest results in a finding of not guilty, dismissal, or whose case was not prosecuted may at any time apply for an annulment of the arrest record in accordance with the provisions of this section.

XIV. A person is guilty of a misdemeanor if, during the life of another who has had a record of conviction annulled pursuant to this section, he discloses or communicates the existence of such record.

XV. No court shall, until 7 years after the date of conviction, order an annulment pursuant to this section of any record of conviction for an offense under RSA 639:2, 639:3, III, or RSA 649-A, for a felony under RSA 318-B, or for an offense against a person under the age of 13 under RSA 632-A. No court shall order an annulment pursuant to this section of any record of conviction which may be counted toward habitual offender status, as defined in RSA 259:39, until 7 years after the date of such conviction. [Amended 1988, 238:6, eff. Jan. 1, 1989.]

318-B:28-a **Annulments of Criminal Records.** No court shall order an annulment, pursuant to RSA 651:5 or any other provision of law, of any record of conviction for a felony under RSA 318-B until 7 years after the date of conviction.

91-A: 4 Minutes and Records Available for Public Inspection. Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda abstracts, photographic or photostatic copies, of the records or minutes so inspected, except as otherwise prohibited by statute or section 5 of this chapter.

91-A: 5 Exemptions. The records of the following bodies are exempted from the provisions of this chapter:

I. Grand and petit juries.

II. Parole and pardon boards.

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected. [Amended 1990, 134:1, eff. June 18, 1990.]

CHAPTER 7-A

INFORMATION PRACTICES ACT

7-A: 1 Definitions.
7-A: 2 File with Secretary of State.
7-A: 3 Changes in Purposes, Uses, etc.
7-A: 4 Public Record.
7-A: 5 Report to General Court.

7-A: 1 Definitions. In this chapter:

I. "Agency" means each state board, commission, department, institution, officer or other state official or group other than the legislature or the courts.

II. "File" means the point of collection of personal identifiable information.

III. "Machine-accessible" means recorded on magnetic tape, magnetic disk, magnetic drum, punched card, optically scannable paper or film, punched paper tape or any other medium by means of which information can be communicated to data processing machines.

IV. "Personal information" means any information that by some specific means of identification, including but not limited to any name, number, description, and including any combination of such characters, it is possible to identify with reasonable certainty the person to whom such information pertains.

V. "Personal information system" means any method by which personal information is collected, stored or disseminated by any agency of the state.

VI. "Responsible authority" means the head of any governmental

agency which is responsible for the collection and use of any data on persons or summary data.

7-A: 2 **File with Secretary or State.** On or before July 1, 1976, all state agencies shall file with the secretary of state the following information with respect to all personal information systems, except those consisting of criminal investigation files, maintained by said agency:

I. The name of the system.

II. The purpose of the system.

III. The number of persons on whom personal information is maintained in the system.

IV. Categories of personal information maintained in the system.

V. Categories of the sources of the personal information in the system.

VI. Descriptions of the uses made of the personal information.

VII. Categories of users of the personal information.

VIII. Practices regarding the place and method of personal information storage in the system including but not limited to whether or not the personal information is machine-accessible.

IX. Length of time of retention of personal information in the system.

X. Method of disposal of personal information in the system.

XI. Names and positions of the personnel responsible for maintaining the system.

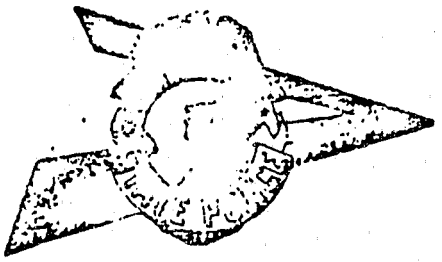
XII. Persons or agencies having a right of access to the personal information in the system.

7-A: 3 **Changes in Purposes, Uses, etc.** The agency shall immediately file with the secretary of state any changes in the information required to be filed with the secretary of state by RSA 7-A: 2, except RSA 7-A: 2, III, and the secretary of state shall annex said changes to the original filing and preserve all filings. Any changes in the information required by RSA 7-A: 2, III shall be filed with the secretary of state no less often than annually.

7-A: 4 **Public Record.** All information filed with the secretary of state pursuant to the provisions of this chapter shall be deemed public records.

7-A: 5 **Report to General Court.** The secretary of state shall provide to the president of the senate and speaker of the house on October first of each even-numbered year a list of all state agencies that have filed information with him pursuant to RSA 7-A.

* * *



COLONEL PAUL A. DOYON
DIRECTOR

State of New Hampshire

DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE
HEADQUARTERS CONCORD, N.H. 03301

EFFECTIVE DATE	NUMBER

SUBJECT
NEW HAMPSHIRE STATE POLICE
BUREAU OF CRIMINAL
INVESTIGATION

SOP

SOP State Police, Bureau of Criminal Identification

I. PURPOSE: The purpose of this SOP is to establish operating instructions for the Department of Safety, Division of State Police, State Bureau of Criminal Identification (hereinafter referred to as the BCI), which operates under the supervision of the Supervisor, Records and Reports Unit.

II. SCOPE: This SOP establishes the administrative and unique central repository requirements of the BCI.

1. Physical Security

A. The criminal history record information manual files are housed in the Bureau of Criminal Identification at the Department of Safety, Division of State Police. As such, they are under constant police supervision and control 24 hours a day. The records section is staffed during the day by the personnel actually working on the records. At night, at other times when the bureau is not staffed, the coded records, in locked filing cabinets, are monitored by Communications personnel in the next room.

B. The physically secure building housing the Department of Safety and the Department of Public Works and Highways is surrounded by perimeter lighting at night and manned at all times by a uniformed officer, utilizing television cameras and identification logs. The building itself is constructed with protective, non-combustible material, and is in compliance with both the Life Safety Code and the National Building Code. The actual location in the interior of the building precludes damage from acts of nature. A new office building being constructed for the Department

of Safety with occupancy scheduled for January 1977, will provide security in excess of that enumerated above.

C. Access to our manual files are limited to personnel of the records section.

D. There are no back-up files.

2. Personnel Selection

A. The BCI is staffed by both uniformed and civilian members of the State Police. The over all responsibility for the administration of this operation falls to the Supervisor of the Records and Reports Unit - a uniformed officer. He is, in turn, responsible to the Commander of the Detective Bureau.

B. Civilian personnel who work with criminal records are employees of the State Police. These classified employees are hired by the Division after passing entrance examinations conducted by the Department of Personnel and after successful completion of an extensive background check designed to assess prior work habits, honesty, and suitability for this sensitive position. In actual practice, most employees in this section are prior employees of the Department of Safety who have transfered to the Division of State Police.

C. After hiring, personnel are further cautioned as to the critical nature of their functions and as to the sanctions applied for malfeasance, in addition to procedures for dismissal promulgated by the Department of Personnel. During the initial days of their employment, probationary clerks are closely monitored by the uniformed supervisor and a senior clerk. Throughout the remainder of their probation p (6 months), they are closely checked by the senior clerk.

D. All employees are required to sign a memorandum from the Director concerning the security and privacy of criminal history record information. This memorandum advises them of their responsibilities and requires compliance of the regulations designed to prevent intentional violations of this data. A copy of this memorandum is attached.

3. Limits on Dissemination

A. The BCI recognizes three classes of criminal history record information;

1. All data available at the Central repository including, but not limited to, raw arrest data, data containing not guilty and nol prossed findings, incomplete data, data regarding dispositions (supported or unsupported by arrest date), date regarding juvenile arrests and/or dispositions, and acknowledgement that a criminal record does not exist.

2. All of #1 above with the exception of juvenile date.

3. Data containing documented arrests with guilty dispositions, and data containing guilty dispositions only, as well as the acknowledgement that a record does not exist.

B. Dissemination of the above classes of data are limited to the following:

1. Police departments - class 2

2. Other criminal justice agencies - class 3

3. Non-criminal justice agencies with statutory requirements or an executive order allowing access - class 3.

4. Agencies approved by the Director, Division of State Police, under his statutory authority - class 3.

5. Individuals and agencies pursuant of a specific agreement with the State Police to provide services required for the adminstration of criminal justice pursuant to that agreement. The agreement specifically authorizes access to data, limits the use of data to purposes for which given, insures the security and confidentiality of the data consistent with these regulations and provides sanctions for violation thereof - class 1.

6. Individuals and agencies whether authorized by court order or court rule - class 1.

7. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with the SAC, said agreement simi-

lar to agreement under B5 above and conforming to section 524(a) of the act - class 1.

8. Any person, agency, or institution approved for dissemination by the Director under his statutory authority who has written authorization from the person whose record they are interested in obtaining - class 2.

9. Any individual may obtain his own record upon satisfactory identification - class 1.

C. Dissemination

1. Dissemination of criminal history record information to criminal justice agencies will require that the agencies have a certification form of file at the BCI. This certificate form will have to be on file before information can be given out. Once a form is on file, no further certification form will be required for these criminal justice agencies.

2. Non-criminal justice agencies approved for dissemination by the Director under his statutory authority, or those authorized by statute, will be required to complete a certification on a yearly basis.

3. Individuals, after executing a Right to Access form, will be allowed to view their record and receive a copy of that portion they desire to challenge.Completed access forms will be kept on file at the BCI.

a. When a copy is given to an individual, it will include the notation, "For review and challenge only and any other use thereof will be in violation of 42 USC, page 3771," or a similar warning.

4. Dissemination logs will be maintained on all copies of records given to qualified recipients. These logs will be kept in the individual jacket along with the individual master rap sheet.

5. All copies of records given out above, will include the notation to the effect that the information is given for a specified use only and that sanctions will be applied for misuse.

D. In order to insure that under no conditions will an annulled or expun-

record be disseminated, all such information will be destroyed by the Supervisor of the records and upon receipt of a court order to do same. In addition, all court orders sealed records will be carried out by the Supervisor.

4. Audit and Quality Control

A. In order to insure the accuracy of the criminal history record information at the BCI, the following source documents will be the only ones utilized as a vehicle to post information to an individual's rap sheet. (Specific clerical instructions will be promulgated by the Supervisor)

1. All notations of an arrest must be documented by a fingerprint card submitted by the arresting agency. These fingerprint cards must be classified or verified before entering the data onto the record.Fingerprint cards to support every arrest after the effective date of this SOP will be kept on file at the BCI. Only arrest records of misdemeanors and felonies of a criminal nature will be posted to an individual's criminal record.

2. All notations as to the disposition of an arrest must be supported by a court abstract. These abstracts will be cross matched, to the maximum extent feasible, to a corresponding arrest. All dispositions (guilty, not guilty, nol prossed, continued for sentence) will be entered. The Supervisor of the Records and Reports Unit will maintain an active list of those offenses not allowed on a rap sheet (e.g. intoxication, vagrancy, motor vehicle violations, Fish & Game violations, etc). All abstracts entered on a rap sheet will be maintained in the individual's jacket.

3. Strict adherence to the above requirements for posting and filing will insure the reliability of the audit trail.

B. The completeness of the criminal history record information will be insured by limiting the dissemination of arrests for which there is no disposition (class 1 and 2) to police agencies only. Arrests which show no disposition after 90 days will require a query to the police department or the corresponding court, if

it appears that a disposition will be forthcoming, prior to the dissemination of this information.

5. Annual Audits

A. The BCI will undergo a yearly audit by the Security and Privacy Committee in order to insure compliance with this SOP and the New Hampshire State Security and Privacy Plan. All resources and files of the BCI will be open to the Security and Privacy Committee at this time.

B. The Supervisor of the Records and Reports Unit or his designated representative will conduct annual audits of a representative sample of local and county law enforcement agencies. Departments to be reviewed will be selected by the Security and Privacy Staff of the SAC. Areas of consideration for this annual audit will be those suggested by the S and P staff.

6. Certification with the BCI

A. Every agency or individual who maintains or receives criminal history record information will certify with the BCI that the information is secure and dissemination is limited to a need to know basis.

B. These certifications will be kept on permanent file at the BCI. If another CJA is in doubt as to the certification of an agency or individual, they may query the BCI for certification status.

C. Violations of security and privacy of criminal history record information will result in immediate removal from the certification list of agencies or individuals pending review of the Director.

7. Individual Review and Appeal

A. Upon the receipt of a Right to Access form, the Supervisor will verify the identity of the requester and allow him to view the rap sheet. A copy of challenged entries will be provided with the proper notations.

B. When the individual challenges an entry, the determination of whether

or not to change the entry will be made by the Supervisor with the advice and consent of the Director.

C. Appeals from the BCI decision will be directed to the Security and Privacy Appeal Body.

D. Appeals from the decision of other criminal justice agencies will be given to the BCI who will investigate the complaint and forward a report to the Appeal Body.

New Jersey Statutes Annotated

Chapter 1
Article 3
State Bureau of Identification

53:1-12. Bureau continued; superintendent to control; appointment of supervisor and other personnel; equipment; civil service rights; titles established

The State Bureau of Identification created by an act entitled "An act to create a State Bureau of Identification within the Department of State Police and requiring peace officers, persons in charge of certain State institutions and others to make reports respecting criminals to such bureau, and to provide a penalty for violation of the provisions thereof," approved April third, one thousand nine hundred and thirty (L.1930, c. 65, p. 279),[1] is continued. The State Bureau of Identification shall be within the Department of State Police [2] and under the supervision and control of the Superintendent of State Police. The superintendent shall appoint a supervisor of the State Bureau of Identification, with the rank and pay of a lieutenant in the State Police, and such other personnel, with the equivalent rank and pay of their positions in the State Police, and such civilian personnel as he may deem necessary to carry out the provisions of this article.

The nucleus of such bureau shall be the fingerprints and photographs heretofore on file in the central bureau of identification in the Department of State Police which will be added to as provided by the provisions of this article.

The superintendent shall supply such bureau with the necessary apparatus and materials for collecting, filing, preserving and distributing criminal records.

For the purpose of establishing civil service rights for full-time civilian employees, there are hereby established in the State Bureau of Identification the following titles: Principal clerk, principal clerk-stenographer, senior clerk-stenographer, assistant photographer, senior fingerprint operators, fingerprint operators, senior identification clerk, identification clerks, chemist criminal laboratory.

The present civilian employees of the State Bureau of Identification shall be placed by the Civil Service Commission in the classified service and shall hold and retain their present title, pursuant to the provisions of Title 11, subtitle two, of the Revised Statutes. As amended L.1940, c. 103, p. 241, § 1.

[1] This section and §§ 53:1-13 to 53:1-20.

[2] Now Division of State Police in Department of Law and Public Safety. See §§ 52:17B-6, 52:17B-51.

53:1-13. Fingerprints and other records filed; information furnished by state institutions

The supervisor of the state bureau of identification shall procure and file for record, fingerprints, plates, photographs, pictures, descriptions, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of an indictable offense within the state, and also of all well known and habitual criminals wheresoever the same may be procured.

The person in charge of any state institution shall furnish any such information to the supervisor of the state bureau of identification upon request of the superintendent of state police.

53:1-14. Record of fingerprints, etc., of persons confined in penal institutions; penal institutions to furnish

The supervisor of the state bureau of identification may procure and file for record, fingerprints, photographs and other identification data of all persons confined in any workhouse, jail, reformatory, penitentiary or other penal institution and shall file for record such other information as he may receive from the law enforcement officers of the state and its subdivisions.

The wardens, jailers or keepers of workhouses, jails, reformatories, penitentiaries or other penal institutions shall furnish the state bureau of identification with fingerprints and photographs of all prisoners who are or may be confined in the respective institutions, and shall also furnish such other information respecting such prisoners as may be requested.

53:1–15. Fingerprinting; forwarding copies

The sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers, shall immediately upon the arrest of any person for an indictable offense, or of any person believed to be wanted for an indictable offense, or believed to be an habitual criminal, or within a reasonable time after the filing of a complaint by a law enforcement officer charging any person with an indictable offense, or upon the arrest of any person for shoplifting pursuant to N.J.S. 2C:20–11, or the conviction of any other person charged with a nonindictable offense where the identity of the person charged is in question, take the fingerprints of such person according to the fingerprint system of identification established by the Superintendent of State Police and on the forms prescribed, and forward without delay two copies or more of the same, together with photographs and such other descriptions as may be required and with a history of the offense committed, to the State Bureau of Identification.

Such sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers shall also take the fingerprints, descriptions and

such other information as may be required, of unknown dead persons and forward same to the State Bureau of Identification.

Any person charged in a complaint filed by a law enforcement officer with an indictable offense who has not been arrested, or any person charged in an indictment who has not been arrested, shall submit himself to the identification procedures provided herein either on the date of any court appearance or upon written request of the appropriate law enforcement agency within a reasonable time after the filing of the complaint. Any person who refuses to submit to such identification procedures shall be a disorderly person.

53:1-16. Comparison of all records received

The supervisor of the state bureau of identification shall compare all records received with those already on file in such bureau, and whether or not he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the requesting agency or arresting officer of such fact.

53:1-17. Supervisor to instruct, assist and co-operate with local police officials

The supervisor of the state bureau of identification shall co-operate with, afford instruction and offer assistance to sheriffs, chiefs of police and other law enforcement officers in the establishment and operation of their local systems of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a complaint of an indictable offense, to assure co-ordination with the system of identification conducted by the state bureau. The superintendent of state police shall arrange for such co-operation, instruction and assistance by the supervisor.

53:1-18. Report of criminal charges or disorderly offenses; duty of clerks of courts

For the purpose of submitting to the Governor and the Legislature a report of statistics on crime conditions in the annual report of the ~~department~~ Division of State Police, the clerk of every court before which a ~~prisoner is arraigned~~ person appears on ~~an indictable offense~~ any criminal charge or disorderly persons offense shall ~~promptly~~ within 30 days report to the State Bureau of Identification the sentence of the court or other disposition of the case.

Amended by L.1967, c. 234, § 1, eff. Jan. 22, 1968.

53:1-18a. Report of statistics on crime conditions; duty of prosecutors

For the purpose of submitting to the Governor and the Legislature a report of statistics on crime conditions in the annual report of the Division of State Police, the prosecutor of every county shall within 30 days report to the State Bureau of Identification, on forms prescribed by the superintendent of State Police, such information as he shall require for the aforesaid purpose.

L.1967, c. 234, § 2, supplementing Title 53, Ch. 1, eff. Jan. 23, 1968.

53:1-18.1 Fingerprints of persons arrested for narcotic or dangerous drug offenses

Every law enforcement officer designated in section 53:1-15 of the Revised Statutes shall, immediately upon the arrest of any person for any offense against the laws of the United States, or any offense against the laws of this State, relating to narcotic or dangerous drugs, whether the same shall be indictable or otherwise, take the fingerprints of such person and forward copies thereof together with photographs and such other description and information as is required by such section in the case of the arrest of persons for any offense indictable under the laws of this State.
Amended by L.1967, c. 298, § 3, eff. Feb. 15, 1968.

53:1-18.2 Reports on narcotic or dangerous drug cases; duty of clerks of court

The clerk of every court of this State in which any person is prosecuted for an offense under the laws of this State relating to narcotic or dangerous drugs, whether the same be indictable or otherwise, shall promptly report to the State Bureau of Identification the sentence of the court or other disposition of the case.
Amended by L.1967, c. 298, § 4, eff. Feb. 15, 1968.

53:1-18.3 Compilation of results of reports on narcotic or dangerous drug cases; information for controlled dangerous substances registry

It shall be the duty of the Superintendent of the State Police:

a. To compile and report annually to the Governor and to the Legislature the results of the reports of the arrests of all persons and the disposition of all cases involving offenses relating to narcotic or dangerous drugs, substances or compounds within the preceding year and to furnish quarterly reports of a like nature during the interim periods.

b. To provide on a continuing basis to the Division of Narcotic and Drug Abuse Control of the State Department of Health such information as the director thereof shall require from time to time on forms prescribed by the State Department of Health for use in connection with the registry established by this act.

Amended by L.1967, c. 298, § 5, eff. Feb. 15, 1968; L.1970, c. 227, § 6, eff. Oct. 19, 1970.

53:1-18.5. "Dangerous drugs" defined

As used in this act of which this act is amendatory and supplementary "dangerous drugs, substances or compounds" means and includes any of the following in any form: any depressant, or stimulant or hallucinogenic drug, substance or compound as defined pursuant to section 1 of chapter 314 of the laws of 1966 (C. 24:6C-1) or the New Jersey Controlled Dangerous Substances Act or any other prescription legend drug which is not a narcotic drug within the meaning of chapter 18 of Title 24 of the Revised Statutes or the New Jersey Controlled Dangerous Substances Act, unless obtained from, or on a valid prescription of, and used as prescribed by, a duly licensed physician, veterinarian or dentist.

Added by L.1967, c. 298, § 2, eff. Feb. 15, 1968. Amended by L.1970, c. 227, § 7, eff. Oct. 19, 1970.

53:1-20.1 Criminal records for centralization of information; forms

To the end that there may be a centralization of information with regard to crime in this State, it shall be the duty of the

county bureau of identification in each county and of the bureau of identification in the Department of the State Police [1] to obtain and to keep on file all facts pertaining to criminal records, on forms substantially as follows:

File No. Year Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec.

Offense	Location	Precinct
Victim	Address	
Arrest	Arraigned / Court	Disposition / Bail: Amount ——— Bondsman ———
Accused	Residence	Occupation / Age / Nat.

(Record on Other Side)

Indicted	Docket No.	Arraigned / Court	Sentence
Continuances	To Trial / A. D. A. Det. Judge	Plea ——— Verdict ——— Appeals ———	To Prison

L.1939, c. 78, p. 129, § 1.

[1] Now Division of State Police in Department of Law and Public Safety. See §§ 52:17B–6, 52:17B–51.

53:1–20.2 Duty of law enforcement officers and public officers and employees to supply information; County Bureau of Identification defined

To the end that the county bureaus of identification in each of the counties of this State and the bureau of identification of the Department of the State Police [1] may have available the requisite information for the keeping of such records, it shall be the duty of sheriffs, members of the State Police, county detectives, chiefs of police and other law enforcement officers, immediately upon the receipt of a complaint that an indictable offense has been committed, to forward to the county bureau of identification and the bureau of identification of the State Police Department all of such information which can at that time be obtained, on forms to be provided for that purpose by the head of the office in which such county bureau of identification is established.

It shall also be the duty of such officers, from time to time, upon receipt of additional information, to forward the same to the county bureau of identification and to the bureau of identi-

fication of the State Police Department, on forms to be provided for that purpose by the head of the office in which such county bureau of identification is established.

It shall also be the duty of the prosecutor of the pleas, the county clerks, and the probation office in the various counties of this State to supply to the county bureau of identification and to the bureau of identification in the Department of State Police all information on record in their respective offices which may be necessary to complete the records in the prescribed form, as set forth in section one hereof.

The duties herein prescribed to be performed by the public officers and employees herein referred to shall be additional to the duties now prescribed by law to be performed by such public officers and employees.

The words "The County Bureau of Identification," as used in this act, shall be taken to mean the bureau of identification as now established in the office of the sheriff or in the office of the prosecutors of the pleas in the respective counties in this State. L.1939, c. 78, p. 131, § 2.

[1] Now Division of State Police in Department of Law and Public Safety.

53:1–20.3. Release of prisoners from penal or other institutions; notice to bureau; photographs

It shall be the duty of the wardens of the county jail in the various counties, of the wardens of the county penitentiaries and workhouses in the various counties of the State and of the Principal Keeper of the State Prison and of the wardens or superintendents of the other State institutions to which prisoners are or may be committed upon the release of any prisoner in their respective charges to notify the Bureau of Identification of the county from which that prisoner was committed and the Bureau of Identification of the State Police of the fact of such prisoner's release and the date of such release.

In the case of any such prisoner who was committed for a term of 5 years or more, it shall also be the duty of the Principal Keeper of the State Prison to forward to the Bureau of Identification of the county from which the prisoner was committed and to the Bureau of Identification of the State Police, at the time of giving the said notification, a photograph of the said prisoner taken within the 30-day period immediately preceding his release.

Amended by L.1956, c. 45, p. 93, § 1.

53:1–20.4 Department originally arresting prisoner to be notified of his release

It shall be the duty of the County Bureau of Identification in the several counties of the State immediately upon receipt of such information concerning the release of a prisoner to notify the head of the police department or other law enforcement department which made the original arrest of said prisoner that the said prisoner has been released and the date of his release. L. 1940, c. 65, § 2.

CHAPTER 52

EXPUNGEMENT OF RECORDS

Section

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2C:52–32. Construction.

2C:52-1. Definition of Expungement

a. Except as otherwise provided in this chapter, expungement shall mean the extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.

b. Expunged records shall include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, "rap sheets" and judicial docket records.
L.1979, c. 178, § 108, eff. Sept. 1, 1979.

2C:52-2. Indictable Offenses

a. In all cases, except as herein provided, wherein a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and has not been adjudged a disorderly person or petty disorderly person on more than two occasions may, after the expiration of a period of 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52-7 to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.

Although subsequent convictions for no more than two disorderly or petty disorderly offenses shall not be an absolute bar to relief, the nature of those conviction or convictions and the circumstances surrounding them shall be considered by the court and may be a basis for denial of relief if they or either of them constitute a continuation of the type of unlawful activity embodied in the criminal conviction for which expungement is sought.

b. Records of conviction pursuant to statutes repealed by this Code for the crimes of murder, manslaughter, treason, anarchy, kidnapping, rape, forcible sodomy, arson, perjury, false swearing, robbery, embracery, or a conspiracy or any attempt to commit any of the foregoing, or aiding, assisting or concealing persons accused of the foregoing crimes, shall not be expunged.

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: Section 2C:11–1 et seq. (Criminal Homicide), except death by auto as specified in section 2C:11–5; section 2C:13–1 (Kidnapping); sections 2C:14–2 (Aggravated Sexual Assault); section 2C:15–1 (Robbery); section 2C:17–1 (Arson and Related Offenses); section 2C:28–1 (Perjury); section 2C:28–2 (False Swearing) and conspiracies or attempts to commit such crimes.

c. In the case of conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell, expungement shall be denied except where the crimes relate to:

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was 25 grams or less, or

(2) Hashish, where the total quantity sold, distributed or possessed with intent to sell was 5 grams or less.

L.1979, c. 178, § 109, eff. Sept. 1, 1979.

2C:52-3. Disorderly persons offenses and petty disorderly persons offenses

Any person convicted of a disorderly persons offense or petty disorderly persons offense under the law of this State who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, or of another three disorderly persons or petty disorderly persons offenses, may, after the expiration of a period of 5 years from the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52–7 hereof to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.

L.1979, c. 178, § 110, eff. Sept. 1, 1979. Amended by L.1981, c. 290, § 43, eff. Sept. 24, 1981.

2C:52-4. Ordinances

In all cases wherein a person has been found guilty of violating a municipal ordinance of any governmental entity of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and who has not been adjudged a disorderly person or petty disorderly person on more than two occasions, may, after the expiration of a period of 2 years from the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52–7 herein to the Superior Court in the county in which the violation occurred praying that such conviction and all records and information pertaining thereto be expunged.

L.1979, c. 178, § 111, eff. Sept. 1, 1979.

2C:52-4.1. Juvenile delinquent; expungement of adjudications and charges

1. a. Any person adjudged a juvenile delinquent may have such adjudication expunged as follows:

(1) Pursuant to N.J.S. 2C:52–2, if the act committed by the juvenile would have constituted a crime if committed by an adult;

(2) Pursuant to N.J.S. 2C:52–3, if the act committed by the juvenile would have constituted a disorderly or petty disorderly persons offense if committed by an adult; or

(3) Pursuant to N.J.S. 2C:52–4, if the act committed by the juvenile would have constituted an ordinance violation if committed by an adult.

For purposes of expungement, any act which resulted in a juvenile being adjudged a delinquent shall be classified as if that act had been committed by an adult.

b. Additionally, any person who has been adjudged a juvenile delinquent may have his entire record of delinquency adjudications expunged if:

(1) Five years have elapsed since the final discharge of the person from legal custody or supervision or 5 years have elapsed after the entry of any other court order not involving custody or supervision;

(2) He has not been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the 5 years prior to the filing of the petition, and no proceeding or complaint is pending seeking such a conviction or adjudication;

(3) He was never adjudged a juvenile delinquent on the basis of an act which if committed by an adult would constitute a crime not subject to expungement under N.J.S. 2C:52–2;

(4) He has never had an adult conviction expunged; and

(5) He has never had adult criminal charges dismissed following completion of a supervisory treatment or other diversion program.

c. Any person who has been charged with an act of delinquency and against whom proceedings were dismissed may have the filing of those charges expunged pursuant to the provisions of N.J.S. 2C:52–6.

L.1980, c. 163, § 1. Amended by L.1981, c. 290, § 44, eff. Sept. 24, 1981.

2C:52-5. Expungement of records of young drug offenders

Notwithstanding the provisions of sections 2C:52-2 and 2C:52-3, after a period of not less than 1 year following conviction, termination of probation or parole or discharge from custody, whichever is later, any person convicted of an offense under Title 24 of the New Jersey Statutes for the possession or use of a controlled dangerous substance, convicted of violating P.L.1955, c. 277, § 3 (C. 2A:170-77.5), or convicted of violating P.L.1962, c. 113, § 1 (C. 2A:170-77.8), and who at the time of the offense was 21 years of age or younger, may apply to the Superior Court in the county wherein the matter was disposed of for the expungement of such person's conviction and all records pertaining thereto. The relief of expungement under this section shall be granted only if said person has not, prior to the time of hearing, violated any of the conditions of his probation or parole, albeit subsequent to discharge from probation or parole, has not been convicted of any previous or subsequent criminal act or any subsequent or previous violation of Title 24 or of P.L.1955, c. 277, § 3 (C. 2A:170-77.5) or of P.L.1962, c. 113, § 1 (C. 2A:170-77.8), or who has not had a prior or subsequent criminal matter dismissed because of acceptance into a supervisory treatment or other diversion program.

This section shall not apply to any person who has been convicted of the sale or distribution of a controlled dangerous substance or possession with the intent to sell any controlled dangerous substance except:

(1) Marijuana, where the total amount sold, distributed or possessed with intent to sell was 25 grams or less, or

(2) Hashish, where the total amount sold, distributed or possessed with intent to sell was 5 grams or less.

L.1979, c. 178, § 112, eff. Sept. 1, 1979.

2C:52-6. Arrests not resulting in conviction

a. In all cases, except as herein provided, wherein a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense or municipal ordinance violation under the laws of this State or of any governmental entity thereof and against whom proceedings were dismissed, or who was acquitted, or who was discharged without a conviction or finding of guilt, may at any time following the disposition of proceedings, present a duly verified petition as provided in section 2C:52–7 to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged.

b. Any person who has had charges dismissed against him pursuant to P.L.1970, c. 226, § 27 (C. 24:21–27) or pursuant to a program of supervisory treatment, shall be barred from the relief provided in this section until 6 months after the entry of the order of dismissal.

c. Any person who has been arrested or held to answer for a crime shall be barred from the relief provided in this section where the dismissal, discharge, or acquittal resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged.

L.1979, c. 178, § 113, eff. Sept. 1, 1979.

2C:52-7. Petition for Expungement

Every petition for expungement filed pursuant to this chapter shall be verified and include:

a. Petitioner's date of birth.

b. Petitioner's date of arrest.

c. The statute or statutes and offense or offenses for which petitioner was arrested and of which petitioner was convicted.

d. The original indictment, summons or complaint number.

e. Petitioner's date of conviction, or date of disposition of the matter if no conviction resulted.

f. The court's disposition of the matter and the punishment imposed, if any.

L.1979, c. 178, § 114, eff. Sept. 1, 1979.

2C:52-8. Statements to Accompany Petition

There shall be attached to a petition for expungement:

a. A statement with the affidavit or verification that there are no disorderly persons, petty disorderly persons or criminal charges pending against the petitioner at the time of filing of the petition for expungement.

b. In those instances where the petitioner is seeking the expungement of a criminal conviction, a statement with affidavit or verification that he has never been granted expungement, sealing or similar relief regarding a criminal conviction by any court in this State or other state or by any Federal court. "Sealing" refers to the relief previously granted pursuant to P.L. 1973, c. 191 (C. 2A:85–15 et seq.).

c. In those instances where a person has received a dismissal of a criminal charge because of acceptance into a supervisory treatment or any other diversion program, a statement with affidavit or verification setting forth the nature of the original charge, the court of disposition and date of disposition.
L.1979, c. 178, § 115, eff. Sept. 1, 1979.

2C:52-9. Order Fixing Time for Hearing

Upon the filing of a petition for relief pursuant to this chapter, the court shall, by order, fix a time not less than 35 nor more than 60 days thereafter for hearing of the matter.
L.1979, c. 178, § 116, eff. Sept. 1, 1979.

2C:52-10. Service of Petition and Documents

A copy of each petition, together with a copy of all supporting documents, shall be served pursuant to the rules of court upon the Superintendent of State Police; the Attorney General; the county prosecutor of the county wherein the court is located; the chief of police or other executive head of the police department of the municipality wherein the offense was committed; the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest of the individual: the superintendent or warden of any institution in which the petitioner was confined; and, if a disposition was made by a municipal court, upon the magistrate of that court. Service shall be made within 5 days from the date of the order setting the date for the hearing upon the matter.
L.1979, c. 178, § 117, eff. Sept. 1, 1979.

2C:52-11. Order Expungement Where No Objection Prior to Hearing

If, prior to the hearing, there is no objection from those law enforcement agencies notified or from those offices or agencies which are required to be served under 2C:52–10, and no reason, as provided in section 2C:52–14, appears to the contrary, the court may, without a hearing, grant an order directing the clerk of the court and all relevant criminal justice and law enforcement agencies to expunge records of said disposition including evidence of arrest, detention, conviction and proceedings related thereto.
L.1979, c. 178 § 118, eff. Sept. 1, 1979.

2C:52-12. Denial of Relief Although No Objection Entered

In the event that none of the persons or agencies required to be noticed under 2C:52–10 has entered any objection to the relief being sought, the court may nevertheless deny the relief sought if it concludes that petitioner is not entitled to relief for the reasons provided in section 2C:52–14.
L.1979, c. 178, § 119, eff. Sept. 1, 1979.

2C:52-13. When Hearing on Petition for Expungement Shall Not Be Held

No petition for relief made pursuant to this section shall be heard by any court if the petitioner, at the time of filing or date of hearing, has a charge or charges pending against him which allege the commission of a crime, disorderly persons offense or petty disorderly persons offense. Such petition shall not be heard until such times as all pending criminal and or disorderly persons charges are adjudicated to finality.
L.1979, c. 178, § 120, eff. Sept. 1, 1979.

2C:52-14. Grounds for Denial of Relief

A petition for expungement filed pursuant to this chapter shall be denied when:

a. Any statutory prerequisite, including any provision of this chapter, is not fulfilled or there is any other statutory basis for denying relief.

b. The need for the availability of the records outweighs the desirability of having a person freed from any disabilities as otherwise provided in this chapter. An application may be denied under this subsection only following objection of a party given notice pursuant to 2C:52–10 and the burden of asserting such grounds shall be on the objector.

c. In connection with a petition under section 2C:52–6, the acquittal, discharge or dismissal of charges resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged.

d. The arrest or conviction sought to be expunged is, at the time of hearing, the subject matter of civil litigation between the petitioner or his legal representative and the State, any governmental entity thereof or any State agency and the representatives or employees of any such body.

e. A person has had a previous criminal conviction expunged regardless of the lapse of time between the prior expungement, or sealing under prior law, and the present petition. This provision shall not apply:

(1) When the person is seeking the expungement of a municipal ordinance violation or,

(2) When the person is seeking the expungement of records pursuant to section 2C:52–6.

f. The person seeking the relief of expungement of a conviction for a disorderly persons, petty disorderly persons, or criminal offense has prior to or subsequent to said conviction been granted the dismissal of criminal charges following completion of a supervisory treatment or other diversion program.
L.1979, c. 178, § 121, eff. Sept. 1, 1979.

2C:52-15. Records to Be Removed; Control

If an order of expungement of records of arrest or conviction under this chapter is granted by the court, all the records specified in said order shall be removed from the files of the agencies which have been noticed of the pendency of petitioner's motion and which are, by the provisions of this chapter, entitled to notice, and shall be placed in the control of a person who has been designated by the head of each such agency which, at the time of the hearing, possesses said records. That designated person shall, except as otherwise provided in this chapter, insure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose. In response to requests for information or records of the person who was arrested or convicted, all noticed officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information.
L.1979, c. 178, § 122, eff. Sept. 1, 1979.

2C:52-16. Expunged Record Including Names of Persons Other Than Petitioner

Any record or file which is maintained by a judicial or law enforcement agency, or agency in the criminal justice system, which is the subject of an order of expungement which includes the name or names of persons other than that of the petitioner need not be isolated from the general files of the agency retaining same if the other persons named in said record or file have not been granted an order of expungement of said record, provided that a copy of the record shall be given to the person designated in 2C:52–15 and the original shall remain in the agency's general files with the petitioner's name and other personal identifiers obliterated and deleted.

L.1979, c. 178, § 123, eff. Sept. 1, 1979.

2C:52-17. Use of Expunged Records by Agencies on Pending Petition for Expungement

Expunged records may be used by the agencies that possess same to ascertain whether a person has had prior conviction expunged, or sealed under prior law, when the agency possessing the record is noticed of a pending petition for the expungement of a conviction. Any such agency may supply information to the court wherein the motion is pending and to the other parties who are entitled to notice pursuant to 2C:52–10.

L.1979, c. 178, § 124, eff. Sept. 1, 1979.

2C:52-18. Supplying Information to Violent Crimes Compensation Board

Information contained in expunged records may be supplied to the Violent Crimes Compensation Board, in conjunction with any claim which has been filed with said board.

L.1979, c. 178, § 125, eff. Sept. 1, 1979.

2C:52-19. Order of Superior Court Permitting Inspection of Records or Release of Information; Limitations

Inspection of the files and records, or release of the information contained therein, which are the subject of an order of expungement, or sealing under prior law, may be permitted by the Superior Court upon motion for good cause shown and compelling need based on specific facts. The motion or any order granted pursuant thereto shall specify the person or persons to whom the records and information are to be shown and the

purpose for which they are to be utilized. Leave to inspect shall be granted by the court only in those instances where the subject matter of the records of arrest or conviction is the object of litigation or judicial proceedings. Such records may not be inspected or utilized in any subsequent civil or criminal proceeding for the purposes of impeachment or otherwise but may be used for purposes of sentencing on a subsequent offense after guilt has been established.

L.1979, c. 178, § 126, eff. Sept. 1, 1979.

2C:52-20. Use of Expunged Records in Conjunction with Supervisory Treatment or Diversion Programs

Expunged records may be used by any judge in determining whether to grant or deny the person's application for acceptance into a supervisory treatment or diversion program for subsequent charges. Any expunged records which are possessed by any law enforcement agency may be supplied to the Attorney General, any county prosecutor or judge of this State when same are requested and are to be used for the purpose of determining whether or not to accept a person into a supervisory treatment or diversion program for subsequent charges.

L.1979, c. 178, § 127, eff. Sept. 1, 1979.

2C:52-21. Use of Expunged Records in Conjunction with Setting Bail, Presentence Report or Sentencing

Expunged records, or sealed records under prior law, of prior arrests or convictions shall be provided to any judge, county prosecutor, probation department or the Attorney General when same are requested for use in conjunction with a bail hearing or for the preparation of a presentence report or for purpose of sentencing.

L.1979, c. 178, § 128, eff. Sept. 1, 1979.

2C:52-22. Use of Expunged Records by Parole Board

Expunged records, or sealed records under prior law, of prior disorderly persons, petty disorderly persons and criminal convictions shall be provided to the Parole Board when same are requested for the purpose of evaluating the granting of parole to the person who is the subject of said records. Such sealed or expunged records may be used by the Parole Board in the same manner and given the same weight in its considerations as if the records had not been expunged or sealed.

L.1979, c. 178, § 129, eff. Sept. 1, 1979.

2C:52-23. Use of Expunged Records by Department of Corrections

Expunged records, and records sealed under prior law, shall be provided to the Department of Corrections for its use solely in the classification, evaluation and assignment to correctional and penal institutions of persons placed in its custody.
L.1979, c. 178, § 130, eff. Sept. 1, 1979.

2C:52-24. County Prosecutor's Obligation to Ascertain Propriety of Petition

Notwithstanding the notice requirements provided herein, it shall be the obligation of the county prosecutor of the county wherein any petition for expungement is filed to verify the accuracy of the allegations contained in the petition for expungement and to bring to the court's attention any facts which may be a bar to, or which may make inappropriate the granting of, such relief. If no disabling, adverse or relevant information is ascertained other than that as included in the petitioner's affidavit, such facts shall be communicated by the prosecutor to the hearing judge.
L.1979, c. 178, § 131, eff. Sept. 1, 1979.

2C:52-25. Retroactive Application

This chapter shall apply to arrests and convictions which occurred prior to, and which occur subsequent to, the effective date of this act.
L.1979, c. 178, § 132, eff. Sept. 1, 1979.

2C:52-26. Vacating of Orders of Sealing; Time; Basis

If, within 5 years of the entry of an expungement order, any party to whom notice is required to be given pursuant to section 2C:52-10 notifies the court which issued the order that at the time of the petition or hearing there were criminal, disorderly persons or petty disorderly persons charges pending against the person to whom the court granted such order, which charges were not revealed to the court at the time of hearing of the original motion or that there was some other statutory disqualification, said court shall vacate the expungement order in question and reconsider the original motion in conjunction with the previously undisclosed information.
L.1979, c. 178, § 133, eff. Sept. 1, 1979.

2C:52-27. Effect of expungement

Unless otherwise provided by law, if an order of expungement is granted, the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the peti-

tioner may answer any questions relating to their occurrence accordingly, except as follows:

a. The fact of an expungement, sealing or similar relief shall be disclosed as provided in section 2C:52–8b.

b. The fact of an expungement of prior charges which were dismissed because of the person's acceptance into and successful completion of a supervisory treatment or other diversion program shall be disclosed by said person to any judge who is determining the propriety of accepting said person into a supervisory treatment or other diversion program for subsequent criminal charges; and

c. Information divulged on expunged records shall be revealed by a petitioner seeking employment within the judicial branch or with a law enforcement or corrections agency and such information shall continue to provide a disability as otherwise provided by law.

L.1979, c. 178, § 134, eff. Sept. 1, 1979. Amended by L.1981, c. 290, § 45, eff. Sept. 24, 1981.

2C:52–28. Motor Vehicle Offenses

Nothing contained in this chapter shall apply to arrests or conviction for motor vehicle offenses contained in Title 39.

L.1979, c. 178, § 135, eff. Sept. 1, 1979.

2C:52–29. Fee

Any person who files an application pursuant to this chapter shall pay to the State Treasurer a fee of $30.00 to defer administrative costs in processing an application hereunder.

L.1979, c. 178, § 136, eff. Sept. 1, 1979.

2C:52–30. Disclosure of Expungement Order

Except as otherwise provided in this chapter, any person who reveals to another the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining thereto have been expunged or sealed is

a disorderly person. Notwithstanding the provisions of section 2C:43–3, the maximum fine which can be imposed for violation of this section is $200.00.

L.1979, c. 178, § 137, eff. Sept. 1, 1979.

2C:52–31. Limitation

Nothing provided in this chapter shall be interpreted to permit the expungement of records contained in the Controlled Dangerous Substances Registry created pursuant to P.L.1970, c. 227 (C. 26:2G–17 et seq.), or the registry created by the Administrative Office of the Courts pursuant to section 2C:43–21.

L.1979, c. 178, § 138, eff. Sept. 1, 1979.

2C:52–32. Construction

This chapter shall be construed with the primary objective of providing relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby periodic violators of the law or those who associate themselves with criminal activity have a regular means of expunging their police and criminal records.

L.1979, c. 178, § 139, eff. Sept. 1, 1979.

* * *

24:21–27. Conditional discharge for certain first offenses; expunging of records

a. Whenever any person who has not previously been convicted of any offense under the provisions of this act or, subsequent to the effective date of this act, under any law of the United States, this State or of any other state, relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any offense under section 20 (C. 24:21–20), the court, upon notice to the prosecutor and subject to subsection c. of this section 20, may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of such person after reference to the Controlled Dangerous Substances Registry, as established and defined in the Controlled Dangerous Substances Registry Act of 1970,[1] place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilty or finding of guilt, and without entering a judgment of conviction, and with the consent of such person after proper reference to the Controlled Dangerous Substances Registry as established and defined in the Controlled Dangerous Substances Registry Act of 1970, place him on supervisory treatment upon such reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of 3 years. Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilty or finding of guilty, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court pursuant to the Controlled Dangerous Substances Registry Act. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 (C. 24:21–29) of this act or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

(1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or

(2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest.

L.1970, c. 226, § 27. Amended by L.1971, c. 3, § 11; L.1979, c. 86, § 10, eff. May 15, 1979; L.1980, c. 105, § 4, eff. Sept. 11, 1980.

[1] Sections 26:2G–17 to 26:2G–20.

* * *

CHAPTER 1A. EXAMINATION AND COPIES OF PUBLIC RECORDS [NEW]

Sec.

47:1A–1. Legislative findings.

47:1A–2. Public records; right of inspection; copies; fees.

47:1A–3. Records of investigations in progress.

47:1A–4. Proceedings to enforce right to inspect or copy.

47:1A–1. Legislative findings

The Legislature finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State, with certain exceptions, for the protection of the public interest. L.1963, c. 73, § 1.

47:1A–2. Public records; right of inspection; copies; fees

Except as otherwise provided in this act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of

the Governor, all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or of any political subdivision thereof or by any public board, body, commission or authority created pursuant to law by the State or any of its political subdivisions, or by any official acting for or on behalf thereof (each of which is hereinafter referred to as the "custodian" thereof) shall, for the purposes of this act, be deemed to be public records. Every citizen of this State, during the regular business hours maintained by the custodian of any such records, shall have the right to inspect such records. Every citizen of this State shall also have the right, during such regular business hours and under the supervision of a representative of the custodian, to copy such records by hand, and shall also have the right to purchase copies of such records. Copies of records shall be made available upon the payment of such price as shall be established by law. If a price has not been established by law for copies of any records, the custodian of such records shall make and supply copies of such records upon the payment of the following fees which shall be based upon the total number of pages or parts thereof to be purchased without regard to the number of records being copied:

First page to tenth page	$0.50 per page,
Eleventh page to twentieth page	0.25 per page,
All pages over 20	0.10 per page,

If the custodian of any such records shall find that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business therein, he may permit any citizen who is seeking to copy more than 100 pages of records to use his own photographic process, approved by the custodian, upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the custodian of not less than $5.00 or more than $25.00 per day. L.1963, c. 73, § 2.

47:1A–3. Records of investigations in progress

Notwithstanding the provisions of this act, where it shall appear that the record or records which are sought to be examined shall pertain to an investigation in progress by any such body, agency, commission, board, authority or official, the right of examination herein provided for may be denied if the inspection, copying or publication of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to prohibit any such body, agency, commission, board, authority or official from opening such record or records for public examination if not otherwise prohibited by law. L.1963, c. 73, § 3.

47:1A–4. Proceedings to enforce right to inspect or copy; award of costs and attorney's fee

Any such citizen of this State who has been or shall have been denied for any reason the right to inspect, copy or obtain a copy of any such record as provided in this act may apply to the Superior Court of New Jersey by a proceeding in lieu of prerogative writ for an order requiring the custodian of the record to afford inspection, the right to copy or to obtain a copy thereof, as provided in this act. A plaintiff in whose favor such an order issues shall be entitled to taxed costs and may be awarded a reasonable attorney's fee not to exceed $500.00. A defendant who prevails in preventing the issuance of such an order shall be entitled to taxed costs.

L.1963, c. 73, § 4. Amended by L.1981, c. 338, § 1, eff. Dec. 16, 1981.

* * *

APPENDIX D

STATE OF NEW JERSEY

EXECUTIVE DEPARTMENT

TRENTON

E X E C U T I V E O R D E R N O.

By The Governor

WHEREAS, the Constitutions of the State of New Jersey and the United States of America have declared safeguards for individual privacy and the protection of the public safety as set forth in Article IV; and

WHEREAS, criminal justice agencies in their daily operations relating to the protection of citizens and property request information to be collected on offenders; and

WHEREAS, an individual's privacy is directly affected by the collection, maintenance, use and dissemination of criminal history information; and

WHEREAS, the increasing use of computers and sophisticated communications and technology magnify the potential risks associated with the protection of individual rights or privacy; and

WHEREAS, an individual's opportunities to secure employment, insurance, credit, his right to due process and other legal protections are affected by criminal record information systems, both automated and non-automated; and

WHEREAS, in order to preserve the rights of individual citizens and with due regard for the public safety in a free society, action is necessary to establish and insure procedures to govern information systems, including those containing criminal history records on individuals; and

WHEREAS, the United States Department of Justice, under the authority of the Attorney General and the Law Enforcement Assistance Administration, issued regulations governing access to and dissemination of criminal history record information and require a State Plan to implement such regulations; and

WHEREAS, a variety of acts by the State are necessary and proper to realize the objectives of the foregoing federal regulation and other relevant policies promulgated by the Law Enforcement Assistance Administration; and

WHEREAS, the State Law Enforcement Planning Agency, created by Executive Order No. 45 on the thirteenth day of August, 1968, has been designated as the State Planning Agency for the State of New Jersey; and

WHEREAS, it is the policy of the executive branch of government to encourage, by positive measures, maximum administrative support and management of the procedures outlined in the required plan and approved by the Governor; and

In further commitment on behalf of the Governor to the principal of strengthening the criminal justice information system in New Jersey and to insure the citizens' right to privacy.

NOW, THEREFORE, I, BRENDAN T. BYRNE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of New Jersey, do hereby issue, the following Executive Order:

There is hereby created, within the Office of the Governor, and reporting directly to the Governor, the Criminal Justice Privacy and Security Council (Council).

The Council is hereby designated as the entity within State government responsible for reviewing requests for access to criminal history information by non-criminal justice agencies or individuals, reviewing preliminary appeals related to individual challenges to criminal history records of said individuals, and

conducting initial reviews for access to sealed criminal history records, except such records sealed by the Court. The composition will be determined by the Governor upon the recommendation of the Attorney General.

All Council members who are appointed by the Governor because of the position they occupy with a state agency or local unit of government, shall be members of this Council so long as they hold that office. Private citizens, if any, shall be appointed by the following terms (1 member) one year; (two members) two years and (two members) three years.

The Council shall conduct regular monthly meetings, and any other sessions at the discretion of the Chairman. Records shall be kept of all meetings.

The Council shall be directed by an Executive Director who shall be an Ex-officio member and Chairman of the Council. The Executive Director shall be directly responsible to, and appointed by, the Governor. The Executive Director is hereby empowered to take all necessary and proper actions to implement all provisions of the aforesaid state plan and federal regulations upon approval by the Governor. The Executive Director is hereby designated as the appointing authority for civil service commission purposes.

The Executive Director and the Civil Service Commission shall take the necessary actions to place all positions of the Agency under Civil Service coverage, effective July 1, 1976, with the following exceptions: (1) part-time professional personnel, (2) student interns, and (3) janitors.

All members of the Council shall be citizens of the State and be appointed by the Governor. Members of the Council shall serve at the will and the pleasure of the Governor. All members shall serve without pay, but may be reimbursed for actual and necessary travel expenses for travel to and from Council meetings and when performing other functions in furthering the work of the Council, said expenditures to be in line with the travel rules and regulations adopted by this State.

ARTICLE 3

Identification of Criminals

Sec.
29-3-1. New Mexico state police; identification and information.
29-3-2. New Mexico state police; cooperation; local and state.
29-3-3. New Mexico state police; cooperation; federal.
Sec.
29-3-4. State agencies; cooperation.
29-3-5 to 29-3-7. Repealed.
29-3-8. Fingerprinting of persons arrested; disposition.
29-3-9. Instruction.

29-3-1. New Mexico state police; identification and information.

A. It shall be the duty of the New Mexico state police to install and maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The New Mexico state police shall obtain from whatever source procurable, and shall file and preserve for record, such plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and such other information about, concerning and relating to any and all persons who have been or who shall hereafter be convicted of a felony or who shall attempt to commit a felony within this state, or who are well-known and habitual criminals, or who have been convicted of any of the following felonies or misdemeanors: illegally carrying, concealing or possessing a pistol or any other dangerous weapon; buying or receiving stolen property; unlawful entry of a building; escaping or aiding an escape from prison; making or possessing a fraudulent or forged check or draft; petit larceny; and unlawfully possessing or distributing habit-forming narcotic drugs.

B. The New Mexico state police may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States, or who have been convicted of a crime in any other state, country, district or province, which, if committed within this state, would be a felony.

C. The New Mexico state police shall make a complete and systematic record and index [of] all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison.

29-3-2. New Mexico state police; cooperation; local and state.

The New Mexico state police shall cooperate with the respective sheriffs, constables, marshals, police and other peace officers of this state in the detection of crime and the apprehension of criminals throughout the state and shall, on the direction of the chief of the New Mexico state police, governor or attorney general, conduct such investigations as may be deemed necessary to obtain and secure evidence which may be considered necessary or essential for the conviction of alleged violators of the criminal laws of this state, and the

chief is hereby authorized to assist any prosecuting attorney in the prosecution of any criminal case which may in his judgment require such cooperation. All expenses such as travel, meals and lodging involved in such assistance shall be paid from the court fund of the county in which the trial is held or to be held.

29-3-3. New Mexico state police; cooperation; federal.

It shall be the duty of the New Mexico state police and it is hereby granted the power to cooperate with agencies of other states and of the United States having similar powers to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and also to furnish upon request any information in their possession concerning any person charged with crime to any court, district attorney or police officer or any peace officer of this state, or of any other state or the United States.

29-3-4. State agencies; cooperation.

It shall be the duty of the university of New Mexico, the human services department, the health and environment department and all other state departments, bureaus, boards, commissions, institutions and officials, free of charge or reward, to cooperate with the law enforcement officers of the state and the New Mexico state police, and to render to them such services and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and all other sciences and matters relating to or that would aid in controlling crime and the detection, apprehension, identification and prosecution of criminals.

29-3-5 to 29-3-7. Repealed.

Repeal. — Laws 1979, ch. 202, § 53, repeals 29-3-5 to 29-3-7 NMSA 1978, relating to supplies, quarters and reports of the technical services bureau of the criminal justice support division, criminal justice department, effective July 1, 1979.

29-3-8. Fingerprinting of persons arrested; disposition.

A. Any person arrested for the commission of any criminal offense amounting to a felony under the laws of this state or any other jurisdiction shall be required by the arresting peace officer to make fingerprint impressions.

B. Any person arrested for the commission of any criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of this state or any political subdivision shall be required to make fingerprint impressions.

C. Fingerprint impressions shall be made pursuant to rules adopted by the New Mexico state police board, and all felony arrest fingerprints shall be made in duplicate, one copy shall be forwarded to the New Mexico state police and one copy shall be forwarded to the federal bureau of investigation in Washington, D.C.

D. One copy of the fingerprint impressions of each person arrested under the provisions of Subsection B of this section shall be forwarded to the New Mexico state police. A copy may be sent to the FBI in Washington, D.C., if:

(1) there is a question of identity;

(2) a check of FBI files is considered necessary for investigative purposes; or

(3) the individual is suspected of being a fugitive.

29-3-9. Instruction.

The governor or the chief of the New Mexico state police may, when deemed necessary or advisable, detail and commission any member or members of the New Mexico state police to attend as a student any school of instruction, now or which may hereafter be established and operated by the United States or any of its agencies, having for its purpose the instruction and training of operators in crime detection and identification, investigation and apprehension of criminals. Such person or persons so detailed and commissioned shall, when they are members of the New Mexico state police, draw the same salaries and allowances as when on duty in this state and shall be deemed to be on leave of absence for such purpose. All other persons so detailed and commissioned for such purpose shall be paid such compensation and allowance as may be provided by law.

ARTICLE 10

Arrest Record Information Act

Sec.
29-10-1. Short title.
29-10-2. Purpose of act.
29-10-3. Definitions.
29-10-4. Confidentiality of arrest records.
29-10-5. Exchange of information.
29-10-6. Access by individuals.
29-10-7. Application.
29-10-8. Review of arrest record information.

29-10-1. Short title.

This act [29-10-1 to 29-10-8 NMSA 1978] may be cited as the "Arrest Record Information Act."

29-10-2. Purpose of act.

The legislature finds and declares that the responsible exchange of complete and accurate information among law enforcement agencies is recognized as necessary and indispensable to effective law enforcement. Individual rights, however, may be infringed if information is inaccurate, incomplete or is disseminated irresponsibly. The Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] is for the purpose of protecting those rights.

29-10-3. Definitions.

As used in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978]:

A. "arrest record information" means notations of the arrest or detention, or indictment or filing of information or other formal criminal charge against an individual made by a law enforcement agency which resulted in a negative disposition; and

B. "negative disposition" means that:

(1) criminal proceedings have been concluded and the defendant was found not guilty;

(2) a prosecutor has elected not to refer a matter for prosecution; or

(3) criminal proceedings have been indefinitely postponed, and includes but is not limited to acquittal, case continued without finding, charge dismissed, charge dismissed due to insanity or mental incompetence, charge still pending due to insanity or mental incompetence, nolle prosequi, deceased, deferred disposition, pardoned, extradition proceedings have been concluded and mistrial-defendant discharged.

29-10-4. Confidentiality of arrest records.

The arrest record information maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime shall be confidential and dissemination or the revealing the contents thereof, except as provided in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978], is unlawful.

29-10-5. Exchange of information.

A law enforcement agency may disseminate arrest record information to a federal, state or local government law enforcement agency, provided that when the arrest record information is disseminated to a law enforcement agency situated outside this state, the information shall be accompanied by a statement substantially embodying the intent set forth in Section 29-10-4 NMSA 1078. Nothing in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] prohibits direct access by the attorney general, the district attorney, the crime victims reparation commission or the courts to such information where it is deemed necessary in the performance of their functions under law. Nothing in that act prohibits direct access by a law enforcement agency to automated wanted information pertaining to a person or to stolen property information.

29-10-6. Access by individuals.

A. Upon satisfactory verification of his identity, any individual may inspect, in person, through counsel or through his authorized agent, arrest record information maintained by [a] law enforcement agency concerning him.

B. Personnel assigned to contractual research for a state or federally approved criminal justice project shall be permitted access to arrest record information. Approval personnel shall not further disseminate such information except as statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

29-10-7. Application.

A. The provisions of the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] do not apply to criminal history record information contained in:

(1) posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

(2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are organized on a chronological basis;

(3) court records of public judicial proceedings;

(4) published court or administrative opinions or public judicial, administrative or legislative proceedings;

(5) records of traffic offenses and accident reports;

(6) announcements of executive clemency; and

(7) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

B. Nothing in this act [29-10-1 to 29-10-8 NMSA 1978] prevents a law enforcement agency from disclosing to the public arrest record information related to the offense for which an adult individual is currently within the criminal justice system. Nor is a law enforcement agency prohibited from confirming prior arrest record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted or whether an information or other formal charge was filed, on a specified date, if the arrest record information disclosed is based on data enumerated by Subsection A of this section.

29-10-8. Review of arrest record information.

A person who believes that arrest record information concerning him is inaccurate or incomplete shall, upon satisfactory verification of his identity, be entitled to review such information and obtain a copy of it for the purpose of challenge or correction. In the event a law enforcement agency refuses to correct challenged information to the satisfaction of the person to whom the inaccurate or incorrect information relates, the person shall be entitled to petition the district court to correct such information.

Chapter 28

ARTICLE 2

Criminal Offender Employment Act

Sec.
28-2-1. Short title.
28-2-2. Purpose of act.
28-2-3. Employment eligibility determination.
28-2-4. Power to refuse, renew, suspend or revoke public employment or license.
28-2-5. Nonapplicability to law enforcement agencies.
28-2-6. Applicability.

28-2-1. Short title.

Sections 1 through 6 [28-2-1 to 28-2-6 NMSA 1978] of this act may be cited as the "Criminal Offender Employment Act."

28-2-2. Purpose of act.

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

28-2-3. Employment eligibility determination.

A. Subject to the provisions of Subsection B of this section and Sections 3 [4] and 4 [5] [28-2-4, 28-2-5 NMSA 1978] of the Criminal Offender Employment Act, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration the conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

(1) records of arrest not followed by a valid conviction; and

(2) misdemeanor convictions not involving moral turpitude.

28-2-4. Power to refuse, renew, suspend or revoke public employment or license.

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew, or may suspend or revoke, any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession; or

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines, after investigation, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession, if the decision is based in whole or part on conviction of any crime described in Paragraph (1) of Subsection A of this section. Completion of probation or parole supervision, or of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction, shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.

28-2-5. Nonapplicability to law enforcement agencies.

The Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

28-2-6. Applicability.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

Chapter 14

ARTICLE 2
Inspection of Public Records

14-2-1. Right to inspect public records; exceptions.

Every citizen of this state has a right to inspect any public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;

B. letters of reference concerning employment, licensing or permits;

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

D. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978]; and

E. as otherwise provided by law.

14-2-2. [Officers to provide opportunity and facilities for inspection.]

All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose.

14-2-3. [Penalties for violation of act.]

If any officer having the custody of any state, county, school, city or town records in this state shall refuse to any citizen of this state the right to inspect any public records of this state, as provided in this act [14-2-1 to 14-2-3 NMSA 1978], such officer shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than two hundred and fifty dollars ($250.00) nor more than five hundred dollars ($500.00), or be sentenced to not less than sixty (60) days nor more than six (6) months in jail, or both such fine and imprisonment for each separate violation.

ARTICLE 3

Public Records

Sec.
14-3-1. Short title.
14-3-2. Definitions.
14-3-3. State commission of public records; creation.
14-3-4. Duties and powers of commission.
14-3-5. Gifts, donations and loans.
14-3-6. Administrator; duties.
14-3-7. Inspection and survey of public records.
14-3-8. Records center.
14-3-9. Disposition of public records.
14-3-10. Disagreement as to value of records.
14-3-11. Destruction of records.
14-3-12. Transfer of records upon termination of state agencies.
14-3-13. Protection of records.
14-3-14. Advisory groups.
14-3-15. Reproduction on film; evidence; review, inventory and approval of systems.
14-3-16. Attorney general may replevin state records.
14-3-17. Approval of existing state agency systems.
14-3-18. County and municipal records.
14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state records commission for resale.
14-3-20. Interstate compacts; filing; index.
14-3-21. State publications; manuals of procedure; rules; reports; uniform style and form.
14-3-22. Public policy on certain publications; state commission of public records duties.
14-3-23. Manuals of procedure; preparation by state agencies; review by state records administrator; publication.
14-3-24. State publications for sale or issue by state agencies; listing by state records administrator.
14-3-25. Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.

14-3-1. Short title.

This act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978] may be cited as the "Public Records Act."

14-3-2. Definitions.

As used in the Public Records Act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978]:

A. "commission" means the state commission of public records;

B. "administrator" means the state records administrator;

C. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

D. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;

E. "records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies, or materials obtained from other sources; and

F. "microphotography system" means all microphotography equipment, services and supplies.

30-31-28. Conditional discharge for possession as first offense.

A. If any person who has not previously been convicted of violating the laws of any state or any laws of the United States relating to narcotic drugs, marijuana, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Section 23 [30-31-23 NMSA 1978], after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge him from probation before the expiration of the maximum period prescribed from the person's probation.

C. If during the period of his probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record shall be retained by the attorney general solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this section. A discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under this section for second or subsequent convictions or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

D. Upon the dismissal of a person and discharge of the proceedings against him under this section, a person, if he was not over eighteen years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, trial, finding or plea of guilty, and dismissal and discharge pursuant to this section except nonpublic records filed with the attorney general. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged and that he was not over eighteen years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

Executive Law

ARTICLE 35—DIVISION OF CRIMINAL JUSTICE SERVICES

Sec.

835. Definitions.
836. Division of criminal justice services; commissioner, organization and employees.
837. Functions, powers and duties of division.
837–a. Additional functions, powers and duties of the division.
837–b. Duties of courts and peace officers.
837–c. Processing requests submitted by police departments.

§ 835. Definitions

1. "Division" means the division of criminal justice services.

2. "Board" means the crime control planning board.

3. "Commissioner" means the commissioner of the division of criminal justice services.

4. "Council" means the municipal police training council.

5. "Federal acts" means the federal omnibus crime control and safe streets act of nineteen hundred sixty-eight,[1] the federal juvenile delinquency prevention and control act of nineteen hundred sixty-eight,[2] and any act or acts amendatory or supplemental thereto.

6. "Municipality" means any county, city, town, park commission, village, or police district in the state.

7. "Police officer" means a member of a police force or other organization of a municipality who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but shall not include any person serving as such solely by virtue of his occupying any other office or position, nor shall such term include a sheriff, under-sheriff, commissioner of police, deputy or assistant commissioner of police, chief of police, deputy or assistant chief of police or any person having an equivalent title who is appointed or employed by a municipality to exercise equivalent supervisory authority.

7–a. "Police officer," for the purpose of the central state registry, means a person designated as such in subdivision thirty-four of section 1.20 of the criminal procedure law.

7–b. "Peace officer" means a person designated as such in section 2.10 of the criminal procedure law.

8. "Police agency" means any agency or department of any municipality, commission, authority or other public benefit cor-

poration having responsibility for enforcing the criminal laws of the state.

9. "Qualified agencies" means courts in the unified court system, the administrative board of the judicial conference, probation departments, sheriffs' offices, district attorneys' offices, the state department of correctional services, the state division of probation, the department of correction of any municipality, the insurance frauds bureau of the state department of insurance, the temporary state commission of investigation and police forces and departments having responsibility for enforcement of the general criminal laws of the state.

10. "Criminal justice function" means the prevention, detection and investigation of the commission of an offense, the apprehension of a person for the alleged commission of an offense, the detention, release on recognizance or bail of a person charged with an offense prior to disposition of the charge, the prosecution and defense of a person charged with an offense, the detention, release on recognizance or bail of a person convicted of an offense prior to sentencing, the sentencing of offenders, probation, incarceration, parole, and proceedings in a court subsequent to a judgment of conviction relating thereto.

Formerly § 820, added L.1972, c. 399, § 1; renumbered § 835, and amended L.1973, c. 603, §§ 13, 14; L.1975, c. 839, § 1; L.1977, c. 306, § 1; L.1979, c. 482, § 2; L.1980, c. 843, § 3; L.1981, c. 720, § 2.

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 3801 et seq.

§ 836. Division of criminal justice services; commissioner, organization and employees

1. There shall be in the executive department a division of criminal justice services.

2. The head of the division shall be a commissioner, who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office at the pleasure of the governor by whom he was appointed and until his successor is appointed and qualified. The commissioner shall be the chief executive officer of and in sole charge of the administration of the division. The commissioner shall receive an annual salary to be fixed by the governor within the amount available therefor by appropriation; and he shall be entitled to receive reimbursement for expenses actually and necessarily incurred by him in the performance of his duties.

3. The commissioner may, from time to time, create, abolish, transfer and consolidate bureaus and other units within the division not expressly established by law as he may determine necessary for the efficient operation of the division, subject to the approval of the director of the budget.

4. The commissioner may appoint such deputies, directors, assistants and other officers and employees, committees and consultants as he may deem necessary, prescribe their powers and duties, fix their compensation and provide for reimbursement of their expenses within the amounts appropriated therefor.

5. The commissioner may request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information and data as will enable the division properly to carry out its functions, powers and duties.

6. The principal office of the division shall be in the county of Albany.

Formerly § 822, added L.1972, c. 399, § 1; renumbered § 836, L.1973, c. 603, § 13.

§ 837. Functions, powers and duties of division

The division shall have the following functions, powers and duties:

1. Advise and assist the governor in developing policies, plans and programs for improving the coordination, administration and effectiveness of the criminal justice system;

2. Make recommendations to agencies in the criminal justice system for improving their administration and effectiveness:

3. Act as the official state planning agency pursuant to the federal acts; in accordance therewith, prepare, evaluate and revise statewide crime control and juvenile delinquency prevention and control plans; receive and disburse funds from the federal government, for and on behalf of the board; and perform all necessary and appropriate staff services required by the board.

4. In cooperation with the state administrator of the unified court system as well as any other public or private agency,

(a) through the central data facility collect, analyze, evaluate and disseminate statistical and other information and data; and

(b) undertake research, studies and analyses and act as a central repository, clearinghouse and disseminator of research studies, in respect to criminal justice functions and any agency responsible for a criminal justice function, with specific attention to the effectiveness of existing programs and procedures for the efficient and just processing and disposition of criminal cases; and

(c) collect and analyze statistical and other information and data with respect to the number of crimes reported or known to police officers or peace officers, the number of persons arrested for the commission of offense, the offense for which the person was arrested, the county within which the arrest was made and the accusatory instrument filed, the disposition of the accusatory instrument including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pled guilty, the offense the defendant was convicted of after trial, and the sentence.

(d) Supply data, upon request, to federal bureaus or departments engaged in collecting national criminal statistics.

(e) Accomplish all of the functions, powers and duties set forth in paragraphs (a), (b), (c) and (d) of this subdivision with respect to the processing and disposition of cases involving violent felony offenses specified in subdivision one of section 70.02 of the penal law.

4-a. In cooperation with the state administrator of the unified court system as well as any other public or private agency, collect and analyze statistical and all other information and data with respect to the number of environmental crimes and offenses in violation of articles twenty-seven, thirty-seven and forty, and titles twenty-seven and thirty-seven of article seventy-one of the environmental conservation law reported or known to the department of environmental conservation, the division of state police, and all other police or peace officers, the number of persons arrested for the commission of said violation, the offense for which the person was arrested, the county within which the arrest was made and the accusatory instrument filed, the disposition of the accusatory instrument filed, including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pled guilty, the offense the defendant was convicted of after trial, and the sentence or monetary penalty levied, or the civil disposition of the offense if such offense was adjudicated by civil means.

4-b. In cooperation with any public or private agency or entity, collect and analyze statistical data and all other information and data with respect to the number of crimes and offenses committed against employees of the city of New York responsible for enforcing certain regulations in such city, while such employees were enforcing or attempting to enforce such regulations and reported or known to any law enforcement agency, the number of persons arrested for the commission of said offenses, the offense for which the person was arrested, the county within which the arrest was made and the accusatory instrument filed, the disposition of the accusatory instrument filed, including but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pled guilty, the offense the defendant was convicted of after trial, and the sentence or other penalty levied. For the purposes of this subdivision, an employee of the city of New York responsible for enforcing certain regulations in such city shall mean a traffic enforcement agent or an employee of the department of sanitation who is authorized to issue notices of violation, summons or appearance tickets.

5. Conduct studies and analyses of the administration or operations of any criminal justice agency when requested by the head of such agency, and make the results thereof available for the benefit of such agency;

5-a. Undertake to furnish or make available to the district attorneys of the state such supportive services and technical assistance as the commissioner and any one or more of the district attorneys shall agree are appropriate to promote the effective performance of his or their prosecutorial functions.

6. Establish, through electronic data processing and related procedures, a central data facility with a communication network serving qualified agencies anywhere in the state, so that they may, upon such terms and conditions as the commissioner and the appropriate officials of such qualified agencies shall agree, contribute information and have access to information contained in the central data facility, which shall include but not

be limited to such information as criminal record, personal appearance data, fingerprints, photographs, and handwriting samples;

7. Receive, process and file fingerprints, photographs and other descriptive data for the purpose of establishing identity and previous criminal record;

8. Adopt appropriate measures to assure the security and privacy of identification and information data;

8-a. Charge a fee when, pursuant to statute or the regulations of the division, it conducts a search of its criminal history records and returns a report thereon in connection with an application for employment or for a license or permit. The division shall adopt and may, from time to time, amend a schedule of such fees which shall be in amounts determined by the division to be reasonably related to the cost of conducting such searches and returning reports thereon but, in no event, shall any such fee exceed fourteen dollars. Except as provided in section three hundred fifty-nine-e of the general business law, the fee shall be paid to the division by the applicant and shall accompany the applicant's fingerprint card or application form upon which the search request is predicated.

9. Accept, agree to accept and contract as agent of the state and for and on behalf of the board, with the approval of the governor, any grant, including federal grants, or any gift for any of the purposes of this article;

10. Accept, with the approval of the governor, as agent of the state, any gift, grant, devise or bequest, whether conditional or unconditional (notwithstanding the provisions of section eleven of the state finance law), including federal grants, for any of the purposes of this article. Any monies so received may be expended by the division to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state monies appropriated for the purposes of this article;

11. Enter into contracts with any person, firm, corporation, municipality, or governmental agency;

12. Make an annual report to the governor and legislature concerning its work during the preceding year, and such further interim reports to the governor, or to the governor and legislature, as it shall deem advisable, or as shall be required by the governor;

13. Adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the division;

14. Do all other things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article.

Formerly § 824, added L.1972, c. 399, § 1; renumbered § 837, and amended L.1973, c. 603, §§ 13, 16; L.1974, c. 654, § 3; L.1975, c. 831, § 1; L.1976, c. 548, § 1; L.1978, c. 481, § 20; L.1980, c. 843, § 64; L.1981, c. 193, § 125.

§ 837. Functions, powers and duties of division

The division shall have the following functions, powers and duties:

1. Advise and assist the governor in developing policies, plans and programs for improving the coordination, administration and effectiveness of the criminal justice system;

2. Make recommendations to agencies in the criminal justice system for improving their administration and effectiveness:

3. Act as the official state planning agency pursuant to the federal acts; in accordance therewith, prepare, evaluate and revise statewide crime control and juvenile delinquency prevention and control plans; receive and disburse funds from the federal government, for and on behalf of the board; and perform all necessary and appropriate staff services required by the board.

4. In cooperation with the state administrator of the unified court system as well as any other public or private agency,

(a) through the central data facility collect, analyze, evaluate and disseminate statistical and other information and data; and

(b) undertake research, studies and analyses and act as a central repository, clearinghouse and disseminator of research studies, in respect to criminal justice functions and any agency responsible for a criminal justice function, with specific attention to the effectiveness of existing programs and procedures for the efficient and just processing and disposition of criminal cases; and

(c) collect and analyze statistical and other information and data with respect to the number of crimes reported or known to police officers or peace officers, the number of persons arrested for the commission of offense, the offense for which the person was arrested, the county within which the arrest was made and the accusatory instrument filed, the disposition of the accusatory instrument including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pled guilty, the offense the defendant was convicted of after trial, and the sentence.

(d) Supply data, upon request, to federal bureaus or departments engaged in collecting national criminal statistics.

(e) Accomplish all of the functions, powers and duties set forth in paragraphs (a), (b), (c) and (d) of this subdivision with respect to the processing and disposition of cases involving violent felony offenses specified in subdivision one of section 70.02 of the penal law.

5. Conduct studies and analyses of the administration or operations of any criminal justice agency when requested by the head of such agency, and make the results thereof available for the benefit of such agency;

5-a. Undertake to furnish or make available to the district attorneys of the state such supportive services and technical assistance as the commissioner and any one or more of the district attorneys shall agree are appropriate to promote the effective performance of his or their prosecutorial functions.

6. Establish, through electronic data processing and related procedures, a central data facility with a communication network serving qualified agencies anywhere in the state, so that they may, upon such terms and conditions as the commissioner, and the appropriate officials of such qualified agencies shall agree, contribute information and have access to information contained in the central data facility, which shall include but not be limited to such information as criminal record, personal appearance data, fingerprints, photographs, and handwriting samples;

7. Receive, process and file fingerprints, photographs and other descriptive data for the purpose of establishing identity and previous criminal record;

8. Adopt appropriate measures to assure the security and privacy of identification and information data;

8-a. Charge a fee when, pursuant to statute or the regulations of the division, it conducts a search of its criminal history records and returns a report thereon in connection with an application for employment or for a license or permit. The division shall adopt and may, from time to time, amend a schedule of such fees which shall be in amounts determined by the division to be reasonably related to the cost of conducting such searches and returning reports thereon but, in no event, shall any such fee exceed fourteen dollars. Except as provided in section three hundred fifty-nine-e of the general business law, the fee shall be paid to the division by the applicant and shall accompany the applicant's fingerprint card or application form upon which the search request is predicated.

9. Accept, agree to accept and contract as agent of the state and for and on behalf of the board, with the approval of the governor, any grant, including federal grants, or any gift for any of the purposes of this article;

10. Accept, with the approval of the governor, as agent of the state, any gift, grant, devise or bequest, whether conditional or unconditional (notwithstanding the provisions of section eleven of the state finance law), including federal grants, for any of the purposes of this article. Any monies so received may be expended by the division to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state monies appropriated for the purposes of this article;

11. Enter into contracts with any person, firm, corporation, municipality, or governmental agency;

12. Make an annual report to the governor and legislature concerning its work during the preceding year, and such further interim reports to the governor, or to the governor and legislature, as it shall deem advisable, or as shall be required by the governor;

13. Adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the division;

14. Do all other things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article.

§ 837-a. Additional functions, powers and duties of the division.

In addition to the functions, powers and duties otherwise provided by this article, the division shall:

*1. Collect and analyze statistical and other information and data with respect to the number of persons charged with the commission of a felony by indictment or the filing of a superior court information, the felony with which the person was charged therein, the county within which the indictment or superior court information was filed, the disposition thereof including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pleaded guilty, the offense the defendant was convicted of after trial, and the sentence.

* NB Effective until 87/11/01

*1. Collect and analyze statistical and other information and data with respect to the number of persons charged with the commission of a felony, including, but not limited to, the felony provisions of articles twenty-seven, thirty-seven and forty, and titles twenty-seven and thirty-seven of article seventy-one of the environmental conservation law, by indictment or the filing of a superior court information, the felony with which the person was charged therein, the county within which the indictment or superior court information was filed, the disposition thereof including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pleaded guilty, the offense the defendant was convicted of after trial, and the sentence.

* NB Effective 87/11/01

2. Present to the governor, temporary president of the senate, minority leader of the senate, speaker of the assembly and the minority leader of the assembly a quarterly report containing the statistics and other information required by subdivision one hereof. The initial report required by this paragraph shall be for the period beginning September first, nineteen hundred seventy-three and ending December thirty-first, nineteen hundred seventy-three and shall be presented no later than January fifteen, nineteen hundred seventy-four. Thereafter each quarterly report shall be presented no later than thirty days after the close of each quarter.

3. Present to the governor, temporary president of the senate, minority leader of the senate, speaker of the assembly, and the minority leader of the assembly a semi-annual report analyzing the processing and disposition of cases covered by the provisions of a chapter of the laws of nineteen hundred seventy-eight relating to the imposition of mandatory sentences of imprisonment and plea bargaining restrictions upon violent felony offenders, second violent felony offenders and persistent violent felony offenders. The report shall assess the effect of such law on the ability of the criminal justice system to deal with violent crime, and its impact on the resources of the criminal justice system, and shall make recommendations for any changes in such law which may be necessary to accomplish its objectives. The initial report required by this subdivision shall be for the period beginning September first, nineteen hundred seventy-eight and ending February twenty-eight, nineteen hundred seventy-nine and shall be presented no later than April first, nineteen hundred seventy-nine. Thereafter, each semi-annual report shall be presented no later than thirty days after the close of the six-month period.

4. Collect, analyze and maintain all reports, statements and transcripts forwarded to the division concerning the reasons for imposition of a sentence other than an indeterminate sentence of imprisonment upon an armed felony offender as defined in subdivision forty-

one of section 1.20 of the criminal procedure law; the reasons for the removal of an action involving a juvenile offender, as defined in subdivision forty-two of section 1.20 of the criminal procedure law, to the family court; and the reasons for a finding that a youth who has been convicted of an armed felony offense is to be treated as a youthful offender. Such reports, statements and transcripts shall be made available for public inspection except that in the case of a juvenile offender or a youthful offender, those portions which identify the offender shall be deleted. The commissioner may promulgate such rules and regulations with respect to the form of such reports, statements and transcripts.

5. Make certain that such statistical information relating to the commission of offenses in violation of article twenty-seven, thirty-seven or forty, or title twenty-seven or thirty-seven of article seventy-one of the environmental conservation law is included and becomes a part of any and all published statistical studies on the occurrence of crime in this state or crime dispositions by the courts of this state or incarcerations in the correctional facilities of this state.

6. Present to the governor, temporary president of the senate, minority leader of the senate, speaker of the assembly and the minority leader of the assembly an annual report analyzing the disposal of property forfeited pursuant to the provisions of article thirteen-A of the civil practice law and rules and article four hundred eighty of the penal law. The initial report required by this subdivision shall be for the period beginning November first, nineteen hundred ninety and ending May thirty-first, nineteen hundred ninety-one and shall be presented no later than July first, nineteen hundred ninety-one. Thereafter, each annual report shall be presented no later than February first. The commissioner may promulgate rules and regulations with respect to the form of such report.

(As amended L.1987, c. 631, §§ 2, 3; L.1990, c. 655, § 17.)

§ 837-b. Duties of courts and peace officers

1. It is hereby made the duty of the state administrator of the unified court system; and of every sheriff, county or city commissioner of correction and head of every police department, state, county, or local, and also railroad, steamship, park, aqueduct and tunnel police and town constables, of every district attorney, of every probation agency; and of head of every institution or department, state, county and local, dealing with criminals and of every other officer, person or agency, dealing with crimes or criminals or with delinquency or delinquents, to transmit to the commissioner not later than the fifteenth day of each calendar month, or at such times as provided in the rules and regulations adopted by the commissioner, such information as may be necessary to enable him to comply with subdivision four of section eight hundred thirty-seven. Such reports shall be made upon forms which shall be supplied by the commissioner.

2. Such officers and agencies shall install and maintain records needed for reporting data required by the commissioner and shall give him or his accredited agents access to records for the purpose of inspection.

3. For every neglect to comply with the requirements of this section, the commissioner may apply to the supreme court for an order directed to such person responsible requiring compliance. Upon such application the court may issue such order as may be just, and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

Added L.1974, c. 654, § 5; amended L.1974, c. 655, § 1; L.1975, c. 459, § 2.

§ 837-c. Proceeding requests submitted by police departments

a. As used in this section, the term "police department" means any police department or sheriff's office of this state or any of its political subdivisions.

b. The police department may forward and the division shall receive, process and, subject to subdivision e of this section, retain fingerprints and such descriptive data as the division may require of persons applying for employment with such department.

c. It shall be the duty of the division to forward to the police department any arrest record involving any person described in subdivision b of this section.

d. It shall be the duty of the police department to notify the division if an applicant for employment by the police department has not been hired, or an employee has died, resigned, retired or been dismissed.

e. Upon receiving notification in accordance with subdivision d of this section, the division shall either return to the police department or destroy all documents forwarded to it pursuant to subdivision b of this section.

Added L.1977, c. 482, § 1.

* * *

Criminal Procedure Law (CPL)

ARTICLE 160—FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANT AFTER ARREST—CRIMINAL IDENTIFICATION RECORDS AND STATISTICS

Sec.

160.10 Fingerprinting; duties of police with respect thereto.
160.20 Fingerprinting; forwarding of fingerprints.
160.30 Fingerprinting; duties of division of criminal justice services.
160.40 Fingerprinting; transmission of report received by police.
160.50 Order upon termination of criminal action in favor of the accused.

160.55 Order upon termination of criminal action by conviction for noncriminal offense.
160.60 Effect of termination of criminal actions in favor of the accused.

§ 160.10 Fingerprinting; duties of police with respect thereto

1. Following an arrest, or following the arraignment upon a local criminal court accusatory instrument of a defendant whose court attendance has been secured by a summons or an appearance ticket under circumstances described in sections 130.60 and 150.70, the arresting or other appropriate police officer or agency must take or cause to be taken fingerprints of the arrested person or defendant if an offense which is the subject of the arrest or which is charged in the accusatory instrument filed is:

(a) A felony; or

(b) A misdemeanor defined in the penal law; or

(c) A misdemeanor defined outside the penal law which would constitute a felony if such person had a previous judgment of conviction for a crime; or

(d) Loitering, as defined in subdivision three of section 240.35 of the penal law; or

(e) Loitering for the purpose of engaging in a prostitution offense as defined in subdivision two of section 240.37 of the penal law.

2. In addition, a police officer who makes an arrest for any offense, either with or without a warrant, may take or cause to be taken the fingerprints of the arrested person if such police officer:

(a) Is unable to ascertain such person's identity; or

(b) Reasonably suspects that the identification given by such person is not accurate; or

(c) Reasonably suspects that such person is being sought by law enforcement officials for the commission of some other offense.

3. Whenever fingerprints are required to be taken pursuant to subdivision one or permitted to be taken pursuant to subdivision two, the photograph and palmprints of the arrested person or the defendant, as the case may be, may also be taken.

4. The taking of fingerprints as prescribed in this section and the submission of available information concerning the arrested person or the defendant and the facts and circumstances of the crime charged must be in accordance with the standards established by the commissioner of the division of criminal justice services.

L.1970, c. 996, § 1; amended L.1971, c. 762, § 7; L.1972, c. 399, § 17; L.1976, c. 344, § 3.

§ 160.20 Fingerprinting; forwarding of fingerprints

Upon the taking of fingerprints of an arrested person or defendant as prescribed in section 160.10, the appropriate police officer or agency must without unnecessary delay forward two copies of such fingerprints to the division of criminal justice services.

L.1970, c. 996, § 1; amended L.1971, c. 762, § 8; L.1972, c. 399, § 18; L.1973, c. 108, § 1.

§ 160.30 Fingerprinting; duties of division of criminal justice services

1. Upon receiving fingerprints from a police officer or agency pursuant to section 160.20 of this chapter, the division of criminal justice services must, except as provided in subdivision two of this section, classify them and search its records for information concerning a previous record of the defendant, including any adjudication as a juvenile delinquent pursuant to article seven of the family court act, or as a youthful offender pursuant to article seven hundred twenty of this chapter, and promptly transmit to such forwarding police officer or agency a report containing all information on file with respect to such defendant's previous record, if any, or stating that the defendant has no previous record according to its files. Such a report, if certified, constitutes presumptive evidence of the facts so certified.

2. If the fingerprints so received are not sufficiently legible to permit accurate and complete classification, they must be returned to the forwarding police officer or agency with an explanation of the defects and a request that the defendant's fingerprints be retaken if possible.

L.1970, c. 996, § 1; amended L.1971, c. 762, § 9; L.1972, c. 399, § 19; L.1977, c. 447, § 5.

§ 160.40 Fingerprinting; transmission of report received by police

1. Upon receipt of a report of the division of criminal justice services as provided in section 160.30, the recipient police officer or agency must promptly transmit such report or a copy thereof to the district attorney of the county and two copies thereof to the court in which the action is pending.

2. Upon receipt of such report the court shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

L.1970, c. 996, § 1; amended L.1971, c. 762, § 10; L.1972, c. 399, § 20; L.1975, c. 531, § 1.

§ 160.50 Order upon termination of criminal action in favor of the accused

1. Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of this section, unless the district attorney upon motion with not less than five days notice to such person or his attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the court wherein such criminal action or proceeding was terminated shall enter an order, which shall immediately be served by the clerk of the court upon the commissioner of the division of criminal justice services and upon the heads of all police departments and other law enforcement agencies having copies thereof, directing that:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, except a dismissal pursuant to section 170.56 or 210.46 of this chapter, and all duplicates and copies thereof, shall forthwith be returned to such person, or to the attorney who represented him at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprint or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, including those relating to actions or proceedings which were dismissed pursuant to section 170.56 or 210.46 of this chapter, shall forthwith formally request in writing that all such copies be returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall return them as provided herein, except that those relating to dismissals pursuant to section 170.56 or 210.46 of this chapter shall not be returned by such department or agency;

(c) all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office be sealed and not made available to any person or public or private agency; and

(d) such records shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state division of parole when the accused is on parole supervision as a result of conditional release or parole release granted by the New York state board of parole, and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision or (v) any prospective * employer of a police officer or peace officer as those terms are defined in * subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in * relation to an application for employment as a police officer or peace * officer; provided however, that every person who is an applicant for the * position of police officer or peace officer shall be furnished with a copy of * all records obtained under this paragraph and afforded an opportunity to make * an explanation thereto, or (vi) the probation department responsible for * supervision of the accused when the arrest which is the subject of the * inquiry is one which occurred while the accused was under such supervision. *

* Material added since 1984.

2. For the purposes of subdivision one of this section, a criminal action or proceeding against a person shall be considered terminated in favor of such person where:

(a) an order dismissing the entire accusatory instrument against such person pursuant to article four hundred seventy was entered; or

(b) an order to dismiss the entire accusatory instrument against such person pursuant to section 170.30, 170.50, 170.55, 170.56, 170.75, 180.70, 210.20 or 210.46 of this chapter or section 81.25 of the mental hygiene law was entered or deemed entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(c) a verdict of complete acquittal was made pursuant to section 330.10 of this chapter; or

(d) a trial order of dismissal of the entire accusatory instrument against such person pursuant to section 290.10 or 360.40 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(e) an order setting aside a verdict pursuant to section 330.30 or 370.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people and no new trial has been ordered; or

(f) an order vacating a judgment pursuant to section 440.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people, and no new trial has been ordered; or

(g) an order of discharge pursuant to article seventy of the civil practice law and rules was entered on a ground which invalidates the conviction and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(h) where all charges against such person are dismissed pursuant to section 190.75 of this chapter. In such event, the clerk of the court which empaneled the grand jury shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one; or

(i) prior to the filing of an accusatory instrument in a local criminal court against such person, the prosecutor elects not to prosecute such person. In such event, the prosecutor shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(j) following the arrest of such person, the arresting police agency, prior to the filing of an accusatory instrument in a local criminal court but subsequent to the forwarding of a copy of the fingerprints of such person to the division of criminal justice services, elects not to proceed further. In such event, the head of the arresting police agency shall serve a certification of such disposition upon the division of criminal justice services which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

(k)(i) The accusatory instrument alleged a violation of article two hundred twenty or section 240.36 of the penal law, prior to the taking effect of article two hundred twenty-one of the penal law, or a violation of article two hundred twenty-one of the penal law; (ii) the sole controlled substance involved is marijuana; (iii) the conviction was only for a violation or violations; and (iv) at least three years have passed since the offense occurred.

(*l*) An order dismissing an action pursuant to section 215.40 of this chapter was entered.

3. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (a) through (h) of subdivision two of this section, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise. A person in whose favor a criminal action or proceeding was terminated, as defined in paragraph (i) or (j) of subdivision two of this section, prior to the effective date of this section, may apply to the appropriate prosecutor or police agency for a certification as described in said paragraph (i) or (j) granting to such person the relief set forth therein, and such certification shall be granted by such prosecutor or police agency.

Added L.1976, c. 877, § 1; amended L.1977, c. 835, §§ 1, 2; L.1977, c. 905, § 1; L.1980, c. 192, § 2; L.1981, c. 122, § 1.

§ 160.55 Order upon termination of criminal action by conviction for noncriminal offense

1. Upon the termination of a criminal action or proceeding against a person by the conviction of such person of a traffic infraction or a violation, other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, unless the district attorney upon motion with not less than five days notice to such person or his attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the court wherein such criminal action or proceeding was terminated shall enter an order, which shall immediately be served by the clerk of the court upon the commissioner of the division of criminal justice services and upon the heads of all police departments and other law enforcement agencies having copies thereof, directing that:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, and all duplicates and copies thereof, shall forthwith be returned to such person, or to the attorney who represented him at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprints or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints, shall forthwith formally request in writing that all such copies be returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall return them as provided herein;

(c) all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services shall be sealed and not made available to any person or public or private agency; and

(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state division of parole when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) the probation department responsible for supervision of * the accused when the arrest which is the subject of the inquiry is one which * occurred while the accused was under such supervision. *

* Material added since 1984.

2. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

3. This section shall not apply to an action terminated in a manner described in paragraph (k) of subdivision two of section 160.50 of this chapter.

Added L.1980, c. 192, § 1; amended L.1981, c. 249, §§ 1, 2.

§ 160.60 Effect of termination of criminal actions in favor of the accused

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.

Added L.1976, c. 877, § 2.

Article 170

§ 170.56 Adjournment in contemplation of dismissal in cases involving marihuana

1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of section 221.05, 221.10, 221.15, 221.35 or 221.40 of the penal law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent.

2. Upon ordering the action adjourned in contemplation of dismissal, the court must set and specify such conditions for the adjournment as may be appropriate, and such conditions may include placing the defendant under the supervision of any public or private agency. At any time prior to dismissal the court may modify the conditions or extend or reduce the term of the adjournment, except that the total period of adjournment shall not exceed twelve months. Upon violation of any condition fixed by the court, the court may revoke its order and restore the case to the calendar and the prosecution thereupon must proceed. If the case is not so restored to the calendar during the period fixed by the court, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed in the furtherance of justice.

3. Upon or after dismissal of such charges against a defendant not previously convicted of a crime, the court shall order that all official records and papers, relating to the defendant's arrest and prosecution, whether on file with the court, a police agency, or the New York state division of criminal justice services, be sealed and, except as otherwise provided in paragraph (d) of subdivision one of section 160.50 of this chapter, not made available to any person or public or private agency; except, such records shall be made available under order of a court for the purpose of determining whether, in subsequent proceedings, such person qualifies under this section for a dismissal or adjournment in contemplation of dismissal of the accusatory instrument.

4. Upon the granting of an order pursuant to subdivision three, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution.

Added L.1971, c. 1042; amended L.1973, c. 276, § 22; L.1977, c. 360, § 9; L.1977, c. 905, § 2.

* * *

Correction Law

§ 29. Department statistics

1. The department shall continue to collect, maintain, and analyze statistical and other information and data with respect to persons subject to the jurisdiction of the department, including but not limited to: (a) the number of such persons: placed in the custody of the department, assigned to a specific department program, accorded temporary release, paroled or conditionally released, paroled or conditionally released and declared delinquent, recommitted to a state correctional institution upon revocation of parole or conditional release, or discharge upon maximum expiration of sentence; (b) the criminal history of such persons; (c) the social, educational, and vocational circumstances of any such persons; and, (d) the institutional, parole and conditional release programs and behavior of such persons.

2. The commissioner of correctional services shall make rules as to the privacy of records, statistics and other information collected, obtained and maintained by the department, its institutions or the board of parole and information obtained in an official capacity by officers, employees or members thereof.

3. The commissioner of correctional services shall have access to records and criminal statistics collected by the division of criminal justice services and the commissioner of criminal justice services shall have

access to records and criminal statistics collected by the department of correctional services, as the commissioners of correctional services and criminal justice services shall mutually determine.
Added L.1974, c. 654, § 1.

Effective Date. L.1974, c. 654, § 16, provided in part that this section shall take effect May 30, 1974.

* * *

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or

(2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.
Added L.1976, c. 931, § 5.

Effective Date. Section effective Jan. 1, 1977 pursuant to L.1976, c. 931, § 7.

§ 753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall cre-

ate a presumption of rehabilitation in regard to the offense or offenses specified therein.
Added L.1976, c. 931, § 5.

Effective Date. Section effective Jan. 1, 1977 pursuant to L.1976, c. 931, § 7.

§ 754. Written statement upon denial of license or employment

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.
Added L.1976, c. 931, § 5.

Effective Date. Section effective Jan. 1, 1977 pursuant to L.1976, c. 931, § 7.

§ 755. Enforcement

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.
Added L.1976, c. 931, § 5.

* * *

Social Services Law

§ 378-a. Access to conviction records by authorized agencies

Subject to rules and regulations of the division of criminal justice services, an authorized agency shall have access to conviction records maintained by state law enforcement agencies pertaining to persons who have applied for and are under active consideration for employment by such authorized agency in positions where such persons will be engaged directly in the care and supervision of children.
Added L.1976, c. 916, § 1.

Effective Date. Section effective July 27, 1976, pursuant to L.1976, c. 916, § 2.

* * *

Public Officers Law
Article 6
Public Access to Records

§ 87. Access to agency records

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

i. the times and places such records are available;

ii. the persons from whom such records may be obtained, and

iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by statute.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) are compiled for law enforcement purposes and which, if disclosed, would:

i. interfere with law enforcement investigations or judicial proceedings;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed would endanger the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not:

i. statistical or factual tabulations or data;

ii. instructions to staff that affect the public;

iii. final agency policy or determinations; or

iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or

(h) are examination questions or answers which are requested prior to the final administration of such questions.

(i) are computer access codes.

3. Each agency shall maintain:

(a) a record of the final vote of each member in every agency proceeding in which the member votes;

(b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and

(c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

4. (a) Each state agency which maintains records containing trade secrets, to which access may be denied pursuant to paragraph (d) of subdivision two of this section, shall promulgate regulations in conformity with the provisions of subdivision five of section eighty-nine of this article pertaining to such records, including, but not limited to the following:

(1) the manner of identifying the records or parts;

(2) the manner of identifying persons within the agency to whose custody the records or parts will be charged and for whose inspection and study the records will be made available;

(3) the manner of safeguarding against any unauthorized access to the records.

(b) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council

or office and any public corporation the majority of whose members are appointed by the governor.

(Added L.1977, c. 933, § 1; amended L.1981, c. 890, § 1; L.1982, c. 73, § 1; L.1983, c. 80, § 1; L.1984, c. 283, § 1; L.1987, c. 814, § 12.)

§ 88. Access to state legislative records

1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:

(a) the times and places such records are available;

(b) the persons from whom such records may be obtained;

(c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:

(a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;

(b) messages received from the governor or the other house of the legislature, and home rule messages;

(c) legislative notification of the proposed adoption of rules by an agency;

(d) [Eff. until Jan. 1, 1989. See, also, par. (d) below.] members' code of ethics statements;

(d) [Eff. Jan. 1, 1989. See, also, par. (d) above.] transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;

(e) [Eff. until Jan. 1, 1989. See, also, par. (e) below.] transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;

(e) [Eff. Jan. 1, 1989. See, also, par. (e) above.] internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;

(f) [Eff. until Jan. 1, 1989. See, also, par. (f) below.] internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;

(f) [Eff. Jan. 1, 1989. See, also, par. (f) above.] administrative staff manuals and instructions to staff that affect members of the public;

(g) [Eff. until Jan. 1, 1989. See, also, par. (g) below.] administrative staff manuals and instructions to staff that affect members of the public;

(g) [Eff. Jan. 1, 1989. See, also, par. (g) above.] final reports and formal opinions submitted to the legislature;

(h) [Eff. until Jan. 1, 1989. See, also, par. (h) below.] final reports and formal opinions submitted to the legislature;

(h) [Eff. Jan. 1, 1989. See, also, par. (h) above.] final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;

(i) [Eff. until Jan. 1, 1989. See, also, par. (i) below.] final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;

(i) [Eff. Jan. 1, 1989. See, also, par. (i) above.] any other files, records, papers or documents required by law to be made available for public inspection and copying.

(j) [Repealed eff. Jan. 1, 1994] external audits conducted pursuant to section ninety-two of the legislative law and schedules issued pursuant to subdivision two of section ninety of the legislative law;

(k) [Eff. until Jan. 1, 1994] any other files, records, papers or documents required by law to be made available for public inspection and copying.

3. Each house shall maintain and make available for public inspection and copying: (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;

(b) a record setting forth the name, public office address, title, and salary of every officer or employee; and

(c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

(Added L.1977, c. 933, § 1; amended L.1987, c. 813, § 6; L.1987, c. 814, § 13.)

§ 89. General provisions relating to access to records; certain cases

The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and seven other persons, none of whom shall hold any other state or local public office except the representative of local governments as set forth herein, to be appointed as follows: five by the governor, at least two of whom are or have been representatives of the news media, one of whom shall be a representative of local government who, at the time of appointment, is serving as a duly elected officer of a local government, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of

the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The member representing local government shall be appointed for a term of four years, so long as such member shall remain a duly elected officer of a local government. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;

ii. furnish to any person advisory opinions or other appropriate information regarding this article;

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;

iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and

v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

i. disclosure of employment, medical or credit histories or personal references of applicants for employment;

ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;

iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

i. when identifying details are deleted;

ii. when the person to whom a record pertains consents in writing to disclosure;

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such

record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Except as provided in subdivision five of this section, any person denied access to a record may within thiry days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

(c) The court in such a proceeding may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, provided, that such attorney's fees and litigation costs may be recovered only where the court finds that:

i. the record involved was, in fact, of clearly significant interest to the general public; and

ii. the agency lacked a reasonable basis in law for withholding the record.

5. (a)(1) A person acting pursuant to law or regulation who, subsequent to the effective date of this subdivision, submits any information to any state agency may, at the time of submission, request that the agency except such information from disclosure under paragraph (d) of subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(2) The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure.

(3) Information submitted as provided in subparagraph one of this paragraph shall be excepted from disclosure and be maintained apart by the agency from all other records until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(b) On the initiative of the agency at any time, or upon the request of any person for a record excepted from disclosure pursuant to this subdivision, the agency shall:

(1) inform the person who requested the exception of the agency's intention to determine whether such exception should be granted or continued;

(2) permit the person who requested the exception, within ten business days of receipt of notifiction from the agency, to submit a written statement of the necessity for the granting or continuation of such exception;

(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person,

if any, requesting the record, the person who requested the exception, and the committee on public access to records.

(c) A denial of an exception from disclosure under paragraph (b) of this subdivision may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting the record in accordance with this subdivision:

(1) Within seven business days of receipt of written notice denying the request, the person may file a written appeal from the determination of the agency with the head of the agency, the chief executive officer or governing body or their designated representatives.

(2) The appeal shall be determined within ten business days of the receipt of the appeal. Written notice of the determination shall be served upon the person, if any, requesting the record, the person who requested the exception and the committee on public access to records. The notice shall contain a statement of the reasons for the determination.

(d) A proceeding to review an adverse determination pursuant to paragraph (c) of this subdivision may be commenced pursuant to article seventy-eight of the civil practice law and rules. Such proceeding must be commenced within fifteen days of the service of the written notice containing the adverse determination provided for in subparagraph two of paragraph (c) of this subdivision.

(e) The person requesting an exception from disclosure pursuant to this subdivision shall in all proceedings have the burden of proving entitlement to the exception.

(f) Where the agency denies access to a record pursuant to paragraph (d) of subdivision two of section eighty-seven of this article, the agency shall have the burden of proving that the record falls within the provisions of such exception.

(g) Nothing in this subdivision shall be construed to deny any person access, pursuant to the remaining provisions of this article, to any record or part excepted from disclosure upon the express written consent of the person who had requested the exception.

(h) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

6. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

Added L.1977, c. 933, § 1; amended L.1981, c. 890, §§ 2, 3; L.1981, c. 975, § 1; L.1982, c. 73, § 2.

* * *

Exhibit 1
New York State Vehicle and Traffic Law Section 509d

§ 509-d. Qualification procedures for bus drivers, maintenance of files and availability to subsequent employers. (1) Before employing a new bus driver a motor carrier shall:

(i) require such person to pass a medical examination to drive a bus as provided in section five hundred nine-g of this article;

(ii) make an inquiry to the appropriate agency in every state in which the person resided or worked and/or held a driver's license or learner's permit during the preceding three years, for such person's motor vehicle driving record;

(iii) investigate the person's employment record during the preceding three years.

(2) Investigations and inquiries of drivers of school buses; maintenance of file; availability to subsequent employer. (a) A motor carrier shall request the department to initiate a criminal history check for persons employed as drivers of school buses, as defined in paragraph (a) of subdivision one of section five hundred nine-a of this chapter, on September fourteenth, nineteen hundred eighty-five by such motor carrier, in accordance with regulations of the commissioner by requiring such school bus drivers to submit to the mandated fingerprinting procedure . The department of motor vehicles at the request of the motor carrier shall initiate a criminal history check of all current school bus drivers of such motor carrier as well as those hired on or after September fifteenth, nineteen hundred eighty-five by requiring such drivers and applicants to submit to the mandated fingerprinting procedure as part of the school bus driver qualification procedure. Such fingerprinting procedure and the related fee as well as a procedure for the return of such fingerprints upon application of a person who has terminated employment as a school bus driver shall be established in accordance with regulations of the commissioner in consultation with the commissioner of the division of criminal justice services. The fee to be paid by or on behalf of the school bus driver or applicant shall be no more than five dollars over the cost to the commissioner for the criminal history check. No cause of action against the department, the division of criminal justice services, a motor carrier or political subdivision for damages related to the dissemination of criminal history records pursuant to this section shall exist when such department, division, motor carrier or political subdivision has reasonably and in good faith relied upon the accuracy and completeness of criminal history information furnished to it by qualified agencies.

Exhibit 1 (Cont.)
New York State Vehicle and Traffic Law Section 509d

(b) After a motor carrier has completed the procedures set forth in paragraph (a) of this subdivision, it shall designate each new school bus driver as a conditional school bus driver as defined in section five hundred nine-h of this article, until the carrier is in receipt of information of the new school bus driver's qualification from the department and the required driving records from each appropriate state agency. If the information received indicates that there is a pending criminal offense or driving violation that would require disqualification of a school bus driver under this article, the motor carrier shall require the applicant to provide documentation evidencing the disposition of such offense or violation in accordance with regulations established by the commissioner. The department, upon notice of disqualification to an applicant, shall include in such notice information regarding the applicant's right to obtain, examine, inspect and copy any information used by the department in support of its determination of disqualification. In the event the applicant contests the existence of a criminal conviction in his or her name, such applicant may provide documentation evidencing the disposition of such offense or violation in accordance with regulations established by the commissioner.

(3) Each motor carrier shall retain the following records in each driver's file for a period of three years, in accordance with regulations established by the commissioner:

(i) a driver abstract of operating record provided by the department and the written information provided by the appropriate agency of another state for each twelve month period;

(ii) replies from the department regarding the driver's qualifications, as well as, any subsequent information concerning any pending criminal charges against such driver;

(iii) the initial qualifying medical examination form and the biennial medical examination form completed by the carrier's physician;

(iv) the annual defensive driving review forms completed pursuant to section five hundred nine-g of this article; and

(v) the completed biennial behind-the-wheel examination forms as required under section five hundred nine-g of this article.

(4) Each motor carrier shall notify the commissioner on the form and in the manner established by regulation of the commissioner, within ten days, of the date on which a bus driver commences employment, leaves the carrier's employ or is disqualified. Such notification shall be provided in accordance with regulations established by the commissioner and shall include any information the motor carrier has relative to the bus drivers' disqualification, including any information regarding criminal charges pending against the driver for violations which would disqualify the driver if a conviction resulted.

Exhibit 1 (Cont.)
New York State Vehicle and Traffic Law Section 509d

(5) Each motor carrier shall furnish the department, by October fifteenth, nineteen hundred eighty-five, a list of all bus drivers employed on September fourteenth, nineteen hundred eighty-five in accordance with regulations established by the commissioner.

(6) Each motor carrier shall furnish the department within ten days of receipt, with a copy of each bus driver's out-of-state driving record it has obtained, if such driver resides in another state, or has been employed in such other state within the past three years.

Tax Law

Article 34. New York State Lottery for Education

Exhibit 2
New York State Tax Law Section 1605 sub 3

e. Before issuing a license to any applicant to sell lottery tickets through a computer terminal, the division shall require each applicant to file fingerprints with the division within ten days after filing of his application. The fingerprints so obtained shall be forthwith transmitted to the division of criminal justice services or any other state or federal government agency having facilities for checking fingerprints for the purpose of determining whether or not the applicant had previously been convicted of a crime, and such agency shall promptly report a finding of only such previous convictions, if any, to the division in writing.

STATE OF NEW YORK

OFFICIAL COMPILATION

OF

CODES, RULES AND REGULATIONS

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CHAPTER II

Identification and Informational Services

PART

6050 Right of Individual to Review Own Record; Right to Challenge; Appeals
6051 Fees for Conducting Criminal History Record Searches in Certain Instances
6052 Access to Conviction Records in Connection with Employment of Persons in the Care and Supervision of Children
6053 Processing Juvenile Arrest Records

PART 6050

RIGHT OF INDIVIDUAL TO REVIEW OWN RECORD; RIGHT TO CHALLANGE; APPEALS

(Statutory authority: Executive Law, § 837 subd. 13)

Sec.
6050.1 Individual's right to review own record; right to challenge; appeals

Historical Note

Part (§ 6050.1) added by renum. Part (§ 679.1), filed May 9, 1974; repealed, new Part (§ 6050.1) filed Mar. 19, 1976 eff. Mar. 16, 1976.

Section 6050.1 Individual's right to review own record; right to challenge; appeals. (a) A person, upon satisfactory fingerprint identification, may review all the criminal history data maintained by the Division of Criminal Justice Services (DCJS) pertaining to such person, and may challenge the completeness or accuracy of such data.

(b) Review pursuant to subdivision (a) of this section may take place, during daytime business hours, at a DCJS facility or at such other places within the State as the Commissioner of DCJS may designate for that purpose.

(c) The criminal history data may be reviewed only by the subject in person or by the subject and his attorney, except that, for good cause, the commissioner may permit such review by the subject's attorney, duly authorized in writing, without requiring the presence of the subject person.

(d) A person or, where permitted pursuant to subdivision (c) of this section, a person's attorney may challenge the completeness or accuracy of criminal history data pertaining to such person by executing a "Statement of Challenge", on forms furnished by DCJS, indicating the precise nature of the alleged omission or error, and by filing such statement of challenge, by mail or otherwise, with DCJS. The challenger may submit any documentation he desires and must submit any relevant documentation required by DCJS, in support of the challenge. Upon the execution of a statement of challenge, the challenger or his attorney shall be entitled, upon request, to that portion of the criminal history record as relates to the data being challenged. Such data shall be furnished only on forms provided by DCJS and shall not be identifiable to the challenger.

(e) DCJS shall act upon challenges filed pursuant to subdivision (d) of this section within a reasonable time after receipt of all required documentation in support of the challenger's claim. If the challenge is found to be substantiated, DCJS shall immediately make the appropriate corrections in its records. Upon making such corrections or, upon determining that a challenge is unsubstantiated, as the case may be, DCJS shall immediately notify the subject person in writing accordingly.

(f) Upon making corrections in its files pursuant to a successful challenge, DCJS shall immediately notify every criminal justice agency known to it to which it has disseminated the subject data, of said corrections and shall direct such disseminees to conform their records to the corrected data. A person whose record has been corrected pursuant to subdivision (e) of this section shall be entitled to ascertain from DCJS the names of those non-criminal justice agencies known to it to which the erroneous data had previously been disseminated.

(g) Initial review of a challenge pursuant to subdivision (d) of this section shall be conducted by any deputy commissioner of DCJS or by his designees. A person whose challenge is rejected upon initial review may, upon written request, have such determination reviewed by the commissioner of DCJS. A request for review by the commissioner shall be acted upon within 15 working days of receipt of the request.

(h) A person whose challenge has been rejected after review by the commissioner of DCJS may appeal such determination to the security and privacy committee by filing a written notice of appeal with DCJS within 30 days after receipt of such rejection. Upon receipt of such notice, DCJS shall promptly transmit to the security and privacy committee copies of all its records concerning the appellant along with all the papers and documents filed by the appellant in support of his challenge. The appeal shall be determined upon the records, papers and documents submitted, except that the security and privacy committee may request DCJS or the appellant to furnish such further data as it deems necessary for the determination of the appeal. The security and privacy committee shall notify both the appellant and DCJS of its decision in writing and, where such decision reverses or modifies that of DCJS, shall require DCJS to correct its records accordingly.

PART 6052

ACCESS TO CONVICTION RECORDS IN CONNECTION WITH EMPLOYMENT OF PERSONS IN THE CARE AND SUPERVISION OF CHILDREN

(Statutory authority: Social Services Law, § 378-a)

Sec.

6052.1 Access to conviction records in connection with employment of persons in the care and supervision of children, pursuant to Social Services Law, section 378-a

Section 6052.1 Access to conviction records in connection with employment of persons in the care and supervision of children, pursuant to Social Services Law, section 378-a. An *authorized agency*, as that term is defined in section 371, subdivision 10 of the Social Services Law, may have access to conviction records maintained by the State Division of Criminal Justice Services (DCJS), pursuant to section 378-a of the Social Services Law, upon compliance with all of the following:

(a) An authorized agency shall submit to DCJS a certification from the State Board of Social Welfare evidencing that it is currently an authorized agency.

(b) An authorized agency shall enter into a "use and dissemination agreement" with DCJS which shall contain the terms and conditions governing the access to the records maintained by DCJS and the permissible use and dissemination of conviction reports by the authorized agency.

(c) Requests for conviction records shall be made on the letterhead of the authorized agency and shall be signed only by the head of such agency or by a person authorized in writing by the head of such agency to make such requests. A request shall state, with respect to each person whose conviction record is sought, that such person has applied for and is under active consideration for employment by such authorized agency in a position where such person will be engaged directly in the care and supervision of children.

(d) A request may cover more than one person but it must be accompanied, with respect to each person whose conviction record is sought, by the fingerprints of the subject person on a fingerprint card issued by DCJS, along with the fee for the records search prescribed by DCJS regulations.

Division of Criminal Statistics.

§ 114-10. **Division of Criminal Statistics.** — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

§ 114-10.1. **Police Information Network.** — (a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and

correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render. (1969, c. 1267, s. 2; 1975, c. 716, s. 5; 1977, c. 836.)

* * *

ARTICLE 4.

State Bureau of Investigation.

§ 114-12. Bureau of Investigation created; powers and duties. — In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the Attorney General shall set up in the Department of Justice a division to be designated as the State Bureau of Investigation. The Division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the Governor may direct. (1937, c. 349, s. 1; 1939, c. 315, s. 6.)

§ 114-13. Director of the Bureau; personnel. — The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Department of Administration under G.S. 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Department of Administration under G.S. 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus.

All the benefits, duties, authority and requirements of subsections (b), (c), (d), and (e) of G.S. 20-185 applicable to members and officers of the State Highway Patrol, shall be applicable to officers and special agents of the State Bureau of Investigation whose salaries are fixed as provided by law, and wherever in said subsections any duty, responsibility or authority is vested in the Commanding Officer of the State Highway Patrol or the Commissioner of Motor Vehicles, such duty, responsibility, or authority is hereby vested in the Director of the State Bureau of Investigation. Wherever in said subsection [s] any benefits, duties, authority, or requirements are vested in, placed on, or extended to officers and members of the State Highway Patrol, such benefits, duties, authority and requirements are vested in, placed on, and extended to officers and special agents of the State Bureau of Investigation. (1937, c. 349, s. 4; 1939, c. 315, s. 6; 1955, c. 1185, s. 1; 1957, c. 269, s. 1.)

§ 114-14. General powers and duties of Director and assistants. — The Director of the Bureau and his assistants are given the same power of arrest as is now vested in the sheriffs of the several counties, and their jurisdiction shall be statewide. The Director of the Bureau and his assistants shall, at the request of the Governor, give assistance to sheriffs, police officers, district attorneys, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the Department of Correction in the investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the Governor. (1937, c. 349, s. 5; 1973, c. 47, s. 2; c. 1262, s. 10.)

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is

authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice.

The State Bureau of Investigation is further authorized, upon request of the Governor or the Attorney General, to investigate the commission or attempted commission of the crimes defined in the following statutes:

(1) All sections of Article 4A of Chapter 14 of the General Statutes;
(2) G.S. 14-277.1;
(3) G.S. 14-277.2;
(4) G.S. 14-283;
(5) G.S. 14-284;
(6) G.S. 14-284.1;
(7) G.S. 14-288.2;
(8) G.S. 14-288.7;
(9) G.S. 14-288.8; and
(10) G.S. 14-288.20.

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1, and following, of the General

Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772; 1973, c. 47, s. 2; 1981, c. 822, s. 2; 1987, c. 858, s. 1; c. 867, s. 3.)

§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.

In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of

§ 114-17. Cooperation of local enforcement officers. — All local enforcement officers are hereby required to cooperate with the said Bureau, its officers and agents, as far as may be possible, in aid of such investigations and arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s.

§ 114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new Bureau; photographing and fingerprinting records.

The records and equipment of the Identification Bureau now established at Central Prison shall be made available to the said Bureau of Investigation, and the activities of the Identification Bureau now established at Central Prison may, in the future, if the Governor deem advisable, be carried on by the Bureau hereby established; except that the Bureau established by this Article shall have authority to make rules and regulations whereby the photographing and fingerprinting of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this State to service upon the roads, may be taken and filed with the Bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

§ 114-19. **Criminal statistics.** — It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or cooperative action on the part of the criminals, reporting such conditions, and to cooperate with all officials in detecting and preventing. (1965, c. 1049, s. 1; 1973, c. 1286, s. 19.)

§ 114-19.1. Fees for performing certain background investigations.

When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this subsection shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

As used in this section, "administration of criminal justice" means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court.

Nothing in this section shall be construed as enlarging any right to receive a record of the State Bureau of Investigation. Such rights are and shall be applied by G.S. 114-15, G.S. 114-19 and other applicable statutes. (1979, c. 1981, c. 832, s. 1.)

CHAPTER 14

CRIMINAL LAW

§ 14-454. Accessing computers.

(a) A person is guilty of a Class H felony if he willfully, directly or indirectly, accesses or causes to be accessed any computer, computer system, computer network, or any part thereof, for the purpose of:

(1) Devising or executing any scheme or artifice to defraud, unless the object of the scheme or artifice is to obtain educational testing material, a false educational testing score, or a false academic or vocational grade, or

(2) Obtaining property or services other than educational testing material, a false educational testing score, or a false academic or vocational grade for himself or another, by means of false or fraudulent pretenses, representations or promises.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any computer, computer system, computer network, or any part thereof, for any purpose other than those set forth in subsection (a) above, is guilty of a misdemeanor. (1979, c. 831, s. 1; 1979, 2nd Sess., c. 1316, s. 19.)

ARTICLE 5.

Expunction of Records.

§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and petitioner was not 18 years old at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then

transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge. (1973, c. 47, s. 2; c. 748; 1975, c. 650, s. 5; 1977, c. 642, s. 1; c. 699, ss. 1, 2; 1979, c. 431, ss. 1, 2; 1985, c. 636, s. 1.)

§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) If any person is charged with a crime, either a misdemeanor or a felony, and the charge is dismissed, or a finding of not guilty is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging such records shall be taxed against the petitioner.

(c) The Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expungement. (1979, c. 61; 1985, c. 636, ss. 1-7.)

Reports of Dispositions of Criminal Cases.

§ 15A-1381. Disposition defined.

As used in this Article, the term "disposition" means any action which results in termination or indeterminate suspension of the prosecution of a criminal charge. A disposition may be any one of the following actions:

(1) A finding of no probable cause pursuant to G.S. 15A-511(c)(2);
(2) An order of dismissal pursuant to G.S. 15A-604;
(3) A finding of no probable cause pursuant to G.S. 15A-612 [15A-612(a)(3)];
(4) A return of not a true bill pursuant to G.S. 15A-629;
(5) Dismissal of a charge pursuant to G.S. 15A-703;
(6) Dismissal pursuant to G.S. 15A-931 or 15A-932;
(7) Dismissal pursuant to G.S. 15A-954, 15A-955 or 15A-959;
(8) Finding of a defendant's incapacity to proceed pursuant to G.S. 15A-1002 or dismissal of charges pursuant to G.S. 15A-1008;
(9) Entry of a plea of guilty or no contest pursuant to G.S. 15A-1011 without regard to the sentence imposed upon the plea, and even though prayer for judgment on the plea be continued;
(10) Dismissal pursuant to G.S. 15A-1227;
(11) Return of verdict pursuant to G.S. 15A-1237, without regard to the sentence imposed upon such verdict and even though prayer for judgment on such verdict be continued. (1981, c. 862, s. 1.)

§ 15A-1382. Reports of disposition; fingerprints.

(a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition.

(b) When a defendant is found guilty of any felony, regardless of the class of felony, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. If a convicted felon was not fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, his fingerprints shall be taken and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation. (1981, c. 862, s. 1.)

§ 15A-1383. Plans for implementation of Article; punishment for failure to comply; modification of plan.

(a) On January 1, 1982, the senior resident superior court judge of each judicial district shall file a plan with the Director of the State Bureau of

...estigation for the implementation of the provisions of this Article. The plan ...ll be entered as an order of the court on that date. In drawing up the plan, ... senior resident superior court judge may consult with the chief district ...ge, the district attorney, the clerks of superior court within the district, the ...partment of Correction, the sheriffs and chiefs of police within the district ...d other persons as he may deem appropriate. Upon the request of the senior ...dent superior court judge, the State Bureau of Investigation shall provide ...h technical assistance in the preparation of the plan as the judge desires.

(b) A person who is charged by the plan with a duty to make reports who ...s to make such reports as required by the plan is punishable for civil ...ntempt under Article 2 of Chapter 5A of the General Statutes.

(c) When the senior resident superior court judge modifies, alters or amends ... plan under this Article, the order making such modification, alteration or ...endment shall be filed with the Director of the State Bureau of Investiga- ...n within 10 days of its entry.

(d) Plans prepared under this Article are not "rules" within the meaning of ...apter 150A of the General Statutes or within the meaning of Article 6C of ...apter 120 of the General Statutes. (1981, c. 862, s. 1.)

§§ 15A-1384 to 15A-1390: Reserved for future codification purposes.

* * *

§ 15A-502. Photographs and fingerprints.

(a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:

(1) Arrested or committed to a detention facility, or

(2) Committed to imprisonment upon conviction of a crime, or

(3) Convicted of a felony.

It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles," for which the penalty authorized does not exceed a fine of five hundred dollars ($500.00), imprisonment for six months, or both.

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile except under G.S. 7A-596 through 7A-627.

(d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.

(e) Fingerprints or photographs taken pursuant to subsection (a) may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies. (1973, c. 1286, s. 1; 1977, c. 711, s. 22; 1979, c. 850; 1981, c. 862, s. 3.)

§ 15-223. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(1979, c. 431, ss. 1, 2.)

§ 15-224. Expunction of records when charges are dismissed or there are findings of not guilty.

Except as otherwise provided in G.S. 90-96, if any person is charged with a crime, either a misdemeanor or a felony, and the charge is dismissed, or a finding of not guilty is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that at the time any of the proceedings against him occurred the person had not attained the age of 18 years and had not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial. The clerk shall send a copy of the expunction order to any public official known to be a custodian of such entries. (1979, c. 61.)

§ 90-96. Conditional discharge and expunction of records for first offense.

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Human Resources. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3), or G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Human Resources pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or
(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings

on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Human Resources, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article. (1971, c. 919, s. 1; 1973, c. 654, s. 2; c. 1066; 1977, 2nd Sess., c. 1147, s. 11B; 1979, c. 431, ss. 3, 4; c. 550; 1981, c. 922, ss. 1-4.)

§ 90-113.14. Conditional discharge and expunction of records for first offenses.

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Human Resources. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of

a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Human Resources pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or
(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty,

and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other

arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Human Resources, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article. (1971, c. 1078; 1975, c. 650, ss. 3, 4; 1977, c. 642, s. 3; 1979, c. 431, ss. 3, 4; 1981, c. 51, s. 11; c. 922, ss. 5-7.)

Public Records

§ 132-1. **"Public records" defined.** — "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government. (1935, c. 265, s. 1; 1975, c. 787, s. 1.)

§ 132-1.1. **Confidential communications by legal counsel to public board or agency; not public records.** — Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body. (1975, c. 662.)

§ **132-2. Custodian designated.** — The public official in charge of an office having public records shall be the custodian thereof. (1935, c. 265, s. 2.)

§ **132-3. Destruction of records regulated.** — No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a misdemeanor and upon conviction fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00). (1935, c. 265, s. 3; 1943, c. 237; 1953, c. 675, s. 17; 1957, c. 330, s. 2; 1973, c. 476, s. 48.)

§ **132-4. Disposition of records at end of official's term.** — Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both. (1935, c. 265, s. 4; 1943, c. 237; 1973, c. 476, s. 48; 1975, c. 696, s. 1.)

§ **132-5. Demanding custody.** — Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both. (1935, c. 265, s. 5; 1975, c. 696, s. 2.)

§ **132-5.1. Regaining custody; civil remedies.** — (a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the Superior Court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

(1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or

(2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 787, s. 2.)

§ 132-6. **Inspection and examination of records.** — Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. (1935, c. 265, s. 6.)

§ 132-7. **Keeping records in safe places; copying or repairing; certified copies.**—Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7; 1951, c. 294.)

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STICE - DIVISION OF CRIMINAL INFORMATION T12: 04C .0100

SUBCHAPTER 4C - SECURITY AND PRIVACY 23.14

SECTION .0100 - PROGRAM AND AGENCY SECURITY 23.16

.0101 PROTECTION OF POLICE INFORMATION NETWORK CENTRAL SITE 23.18

(a) The director or his designee shall maintain written procedures designed to protect the Police Information Network central site from environmental hazards including fire, flood and power failure. The director or his designee shall ensure adequate fire detection and quenching systems, protection against water and smoke damage, air conditioning systems, and emergency power sources are installed and functioning at the Network's central site.

(b) The director or his designee shall maintain a written disaster plan which contains procedures to follow in order to make the Police Information Network central site operational as soon as possible after damage or destruction has occurred. These procedures shall include location of fire resistant storage facilities and name or type of back-up computer programs and files stored at such facilities.

(c) The Director of the Police Information Network shall adopt security control which limits access to computerized criminal information files to authorized criminal justice agencies. These procedures may include use of guards, keys, badges, restricted access, sign in logs, PIN employees designated as escorts for visitors or like controls.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

.0102 PROTECTION OF POLICE INFORMATION NETWORK TERMINAL SITE

Agency heads who are responsible for management control shall institute controls for maintaining the sensitivity and confidentiality of all information provided by or through the Police Information Network. These controls will include, but are not limited to, the following:

(1) The PIN terminal and printer shall be located in a secure area accessible only to authorized criminal justice agency personnel.

(2) The PIN terminal operator's manual and changes thereto shall be located in a secure area accessible only to authorized criminal justice personnel. Unauthorized

personnel will not be given access to the operator's manual.

(3) The PIN terminal equipment must be safeguarded from damage by excessive dirt, employee misuse, fire, floods, and power failure. If any damage occurs, it will be reported to the Police Information Network computer center, telephone (919) 733-3171, or by message to the Police Information Network central site.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

.0103 DATA STORAGE ENTRY

(a) The Director of his designee shall develop and maintain a system program to insure that an agency may obtain only the data which it requests and to which it is entitled.

(b) When a criminal justice agency cancels a criminal history record, the system program must erase this portion of information from core and peripheral equipment.

(c) The PIN operations division shall create duplicate computer files to be stored in a facility other than the Police Information Network central site. The duplicate files will be used to protect and account for computerized criminal history information in case the Police Information Network computer site is damaged by fire or other hazards.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

.0104 TERMINAL AND AGENCY IDENTIFICATION

(a) There shall be a software terminal identification code for each remote terminal which must be used as precondition for entering a file.

(b) Within each agency, terminal use shall be assigned to persons who have been certified as a PIN terminal operator.

(c) The computer shall be programmed to recognize the identity of all terminals, the originating agency identifier used, the date, and individual's computerized criminal history information.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

JUSTICE - DIVISION OF CRIMINAL INFORMATION T12: 04C .0100

.0105 INFORMATION COLLECTED AND STORED

Data which is collected and contributed for the use of the Police Information Network shall fulfill the following requirements:

(1) Collection and entry of information into PIN will be performed by an officer or employee of a criminal justice agency concerned with apprehension, judgment, and correction of offenders.

(2) Collection and storage of information shall be made in performance of the employees or agency's official duties.

(3) Information collected and stored shall pertain to the criminal justice agency's responsibilities.

(4) Any record entered into PIN/NCIC files must be documented. The documentation required is:

(a) A theft report of items of stolen property;

(b) A warrant for the arrest of a wanted person;

(c) A missing person report and a written statement from a parent, spouse, family member, or legal guardian verifying the date of birth and confirming that a person is missing or a written statement from a physician or other authoritative source substantiating the missing person's physical or mental disability;

(d) An arrest fingerprint card(s) for a criminal history;

(e) A medical examiners report for an unidentified dead entry.

(5) It shall be the responsibility of the entering ORI of record to take reasonable steps necesary to insure records entered are accurate and complete.

(6) Any agency entering record information into PIN/NCIC files or which has a servicing agency enter record information for their agency, must be able to provide hit confirmations 24 hours a day. Hit confirmation means the agency originating the record must within ten minutes furnish to an agency requesting a record confirmation, a response indicating a positive or negative confirmation or a notice of the specific amount of time necesary to confirm or reject.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1984; October 3, 1983;
November 1, 1980.

.0106 EXCLUDED INFORMATION

Types of information excluded from storage in the Police Information Network's computerized criminal history files are:

(1) juvenile information except a juvenile who has been charged by the courts as an adult offender;
(2) traffic offenses except when a vehicle is involved or suspected of being involved in a felony or when the traffic offense involves drivers under the influence of alcohol or drugs, manslaughter or hit and run;
(3) nonspecific charges of suspicion or investigation.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. October 3, 1983; November 1, 1980.

.0107 MANAGER OF STATISTICAL AND FIELD SUPPORT DIVISION
.0108 CRIMINAL JUSTICE AGENCY HEAD
.0109 PIN TERMINAL OPERATOR
.0110 EMPLOYMENT SCREENING PURPOSE
.0111 EMPLOYMENT SCREENING
.0112 PERSONNEL WHO WILL BE SCREENED

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Repealed Eff. November 1, 1980.

JUSTICE - DIVISION OF CRIMINAL INFORMATION T12: 04C .0200

SECTION .0200 - ACCESS AND DISSEMINATION OF COMPUTERIZED CRIMINAL INFORMATION

.0201 ACCESS TO PIN INFORMATION

(a) Direct access, as defined in 4A .0105 of this Chapter, to information available through PIN is limited to authorized criminal justice agencies as described in Subchapter 4B, Rule .0207 of this Chapter.

(b) Indirect access, as defined in 4A, .0105 of this Chapter, to information available through PIN is discretionary, except criminal history and driver history information, to the agency with a PIN terminal. Any agencies with a PIN terminal may deny indirect access because of criminal justice priorities, budgetary limitations or other reasons determined to be legitimate by the terminal agency.

(c) Regulations relating to access of criminal history information and driver history information are set forth in this Subchapter, Rules, .0204, .0205, .0206, .0208, .0209, and .0210.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. October 3, 1983; March 1, 1982;
November 1, 1980.

.0202 RESEARCH USE & ACCESS OF COMPUTERIZED CRIMINAL INFORMATION

(a) Researchers who wish to use criminal justice information maintained by the Police Information Network shall first submit to the Director of the Police Information Network a completed research design that guarantees adequate protection of security and privacy. Authorization to use criminal justice information may be given after the Director of the Police Information Network has approved the research design.

(b) The Police Information Network Advisory Policy Board may be consulted for recommendation prior to the Director of the Police Information Network authorizing a particular research program agency access to computerized criminal information.

(c) In making a determination, the director and the advisory policy board must insure that an individual's rights to privacy will not be violated by the research program; that the program is calculated to prevent injury or embarrassment to any individual; and that the results outweigh any disadvantages that are created for the North Carolina criminal justice system if the research information is provided.

History Note: Statutory Authority G.S. 114-10; 114-10.1;

Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

.0203 LIMITS ON CRIMINAL JUSTICE RESEARCH

(a) Research designs must preserve the anonymity of all subjects. The following requirements shall be applicable to all such programs of research and each criminal justice agency and researcher shall be responsible for their full and prompt implementation.

(b) In no case shall computerized information furnished for purposes of any program of research be used to the detriment of the person(s) to whom such information relates.

(c) In no case may computerized information furnished for purposes of any program of research be used for any other purpose; nor may such information be used for any program of research other than that authorized by the Director of the Police Information Network.

(d) Each participant and employee of every program of research authorized access to computerized information shall, prior to having such access, fully and completely execute a non-disclosure agreement with the Director of the Police Information Network.

(e) In every case the authorization for access to computerized information shall assure the criminal justice agency and the Director of the Police Information Network full and complete rights to monitor the program of research to assure compliance with this Regulation. Such monitoring rights shall include the right of the Police Information Network staff and the Police Information Network Advisory Policy Board to audit and review such monitoring activities and also to pursue its own monitoring activities.

(f) Each program of research shall preserve the right of the Police Information Network and the criminal justice agency involved to examine and verify the data generated as the result of the program, and if a material error or omission is found to have occurred, to order that the data not be released for any purpose unless corrected to the satisfaction of the agency and the Police Information Network.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

.0204 ACCESS BY DEFENDANT'S ATTORNEY

(a) An attorney who has entered an appearance in a criminal case pursuant to G.S. 15A-141 is entitled to access to

information available through the Police Information Network as provided in this Rule.

(b) An attorney representing a defendant in a criminal case shall address a request on his professional letterhead to the district attorney in whose district the case is pending. The request must contain:

(1) a statement that the attorney has entered an appearance in accordance with G.S. 15A-141 describing the method by which the appearance has been entered;

(2) identification of the case by its caption and docket number;

(3) an unequivocal request for information which may be available through the Police Information Network;

(4) a description of the information or category of information which the attorney in question seeks, e.g., driving record, criminal record;

(5) if driver history is requested, the defendant's driver's license number; or

(6) if criminal history is requested, the defendant's full name, aliases, race, sex, date and place of birth to the extent available to the attorney requesting the information.

(c) If the district attorney or his assistant finds that the information requested is relevant to the criminal case, he must so note on the request and sign it.

(d) If the district attorney or his assistant refuses the request, the requesting attorney may petition the court before which the case is pending for access to information which is relevant to the case.

(e) The attorney representing the defendant may take the request with the notation of finding of relevance thereon to any agency having a PIN terminal in the district. The agency having the PIN terminal must respond to the requesting attorney by giving him a copy of the record or replying that no record is available through PIN within 24 hours of receipt of the request and finding of relevance.

(f) The terminal operator shall retain a copy of the request and a log of any information disseminated for one year.

History Note: Legislative Objection of June 16, 1980 to 12 NCAC 4C .0406 Administratively Transferred Eff. November 1, 1980; Statutory Authority G.S. 114-10; 114-10.1; Eff. February 1, 1976; Readopted Eff. January 5, 1978; Amended Eff. November 1, 1980.

.0205 INDIVIDUAL'S REVIEW OF COMPUTERIZED CRIMINAL INFORMATION

(a) Each individual shall have the right to review computerized criminal history relating to him.

(b) Each criminal justice agency utilizing the Police Information Network terminal and being asked by an individual to review his computerized criminal history records should refer the individual to the nearest SBI regional office or the identification section of the SBI.

(c) Such review shall occur only within the facilities of a criminal justice agency and only under the supervision of and in the presence of a designated employee or agent of a criminal justice agency. The computerized history made available to the individual shall not be removed from the premises of the criminal justice agency.

(d) Such review may be limited to ordinary business hours.

(e) Such review shall be permitted only after proper verification that the requesting individual is the subject of the computerized criminal history which he seeks to review and deposit for payment of man-hours and materials used. Fingerprinting or personal recognition shall be required for this purpose. Upon presentation of power of attorney from the individual involved, together with proof of identity, an individual's attorney may be permitted to examine the computerized criminal history related to the individual.

(f) A record of each such review shall be maintained by each criminal justice agency. Each such record shall be completed and signed by the supervisory employee or agent present at the review. The record should contain the name of the reviewing individual, the date of the review, and whether or not any exception was taken to the accuracy, completeness or contents of the information reviewed. The reviewing individual shall verify by his signature that he has reviewed his computerized criminal history file.

(g) The reviewing individual may make a written summary or notes in his own handwriting of the information reviewed and may take with him such copies. Reviewing individuals may not take any copy which might reasonably be confused with the original. Criminal justice agencies are not required to provide equipment for copying.

(h) Each reviewing individual shall be informed of his rights of challenge regarding criminal history information under this Regulation. Each such individual shall be informed that he may submit written exceptions as to the information content, completeness or accuracy to the criminal justice agency with custody or control of the information.

(i) The individual shall record any such exceptions, including an affirmance signed by the individual or his legal

representative, that the exceptions are made in good faith and to the best of the individual's knowledge are believed true.

(j) One copy of the exceptions shall be forwarded to the criminal justice agency which has custody or control of the information and one copy shall be forwarded to the Director of the Police Information Network.

(k) The criminal justice agency shall in each case cause to be conducted an audit of the individual's computerized criminal history information to determine the accuracy of the exceptions. The Director of the Police Information Network and the individual shall be informed in writing of the results of the audit. Should the audit disclose inaccuracies or omissions in the computerized criminal history information, the criminal justice agency with custody or control of the information shall cause appropriate alterations or additions to be made to the information and shall cause notice of such alterations or additions to be given to the Director of the Police Information Network, the individual involved and any other agencies to which the inaccurate or incomplete information has previously been disseminated.

History Note: Authority G.S. 114-10; 114-10.1;
40 F.R. 22114;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Amended Eff. November 1, 1980.

.0206 DISSEMINATION OF CRIMINAL HISTORY INFORMATION

(a) Except as provided by Rules .0202 .0208, and .0209 of this Subchapter, criminal history record information obtained from or through PIN, NCIC, or NLETS shall not be disseminated to anyone outside of authorized criminal justice agencies. A list of authorized criminal justice agencies and their ORI numbers is maintained in PIN Law Enforcement ORI and Criminal Justice ORI manuals. Any agency assigned an ORI number with a suffix of "P" shall not obtain criminal history record information. Any agency requesting criminal history record information which is not listed in the PIN ORI manuals should be denied access and referred to the Director of the Police Information Network.

(b) Criminal history record information is available to authorized criminal justice agencies only on a "need-to-know" or "right-to-know" basis, as defined in 12 NCAC 4A .0105.

(c) Each criminal justice agency obtaining criminal history record information through PIN shall maintain a log of dissemination on all responses indicating a criminal record for a period of not less than one year from the date the record was obtained. The dissemination log must contain the following elements:

(1) Date of inquiry;
(2) Name of terminal operator;
(3) Name of record subject;
(4) State identification number (SID) or FBI number;
(5) Description of information obtained or message key used to obtain information;
(6) Purpose;
(7) Name of secondary dissemination, if any.

(d) Dissemination logs shall be available for audit or inspection by the Director of PIN or his designee at such time as they may require, as provided in 12 NCAC 4C .0207.

(e) Any agency or agency's employee who disseminates criminal history record information to an unauthorized recipient or uses a criminal history record for unauthorized purposes shall be in violation of this Rule and subject to penalties determined by the PIN Advisory Policy Board as published in th PIN Manual and/or by federal and state law.

(f) Agencies with a PIN terminal responding to an out-of-state request for criminal history record information through NLETS shall only respond with criminal history record information received within their jurisdiction and maintained in their files. Out-of-state agencies requesting statewide criminal record check should be directed to the North Carolina State Bureau of Investigation, Identification Division.

History Note: Authority G.S. 114-10; 114-10.1;
28 C.F.R. 1B 20.21; 28 C.F.R. 1C 20.33;
Eff. November 1, 1980;
Amended Eff. November 1, 1984; October 3, 1983; March 1, 1982.

.0207 AUDIT

(a) The Police Information Network may periodically audit criminal justice information entered, modified, cancelled, cleared and disseminated by the Police Information Network terminal users. Agencies to be audited shall be any agency having direct or indirect access to information obtained through PIN.

(b) The Police Information Network shall send designated representative(s) to selected law enforcement and criminal justice agency sites to audit:

(1) criminal history dissemination logs;
(2) security safeguards and procedures adopted for the filing, dissemination, or destruction of criminal history records;
(3) secure location and access of PIN terminals;
(4) update of PIN Operator's Manual;

(5) documentation for records entered into PIN/NCIC files.

(c) The audits will be conducted to ensure that the agencies are complying with PIN's regulations, as well as federal and state statutes on security and privacy of criminal history record information.

(d) A review of the audit findings will be provided to the criminal justice agency head. If discrepancies or deficiencies are found, they will be noted and discussed in the audit report along with possible sanctions.

(e) Failure to comply with PIN rules and regulations, or federal or state statutes may lead to removal of the PIN terminal or other sanctions regarding use of the PIN terminal or revocation of PIN certification.

History Note: Authority G.S. 114-10; 114-10.1;
28 C.F.R. 1B 20.21;
Eff. November 1, 1980;
Amended Eff. October 3, 1983.

.0208 USE OF CCH FOR LICENSING AND EMPLOYMENT PURPOSES

(a) Criminal justice agencies who want to use computerized criminal history information maintained by the Division of Criminal Information for licensing and employment purposes shall submit to the SBI Assistant Director for the Division of Criminal Information a written request listing the types of licenses and permits in which they desire to use computerized criminal history information for their decision making process of issuing permits or licenses. A copy of the local ordinance(s) or a reference to the North Carolina General Statute(s) giving agency authority to issue a particular permit or license must be included in the written request.

(b) Authorization to use computerized criminal history information for licensing or employment purposes may be given only after the SBI Assistant Director for the Division of Criminal Information and the North Carolina Attorney General's Office have evaluated and authorized the authority of the North Carolina General Statute or local ordinance pertaining to the issuance of that particular license or permit.

(c) Upon authorization, a written notice will be submitted to the requesting agency authorizing that agency to use computerized criminal history information maintained by the Division of Criminal Information for specified licensing or employment purposes.

(d) After notice of authorization has been given, the agency's terminal will receive the capability to use the purpose code "E" in the purpose field of the computerized criminal history inquiry screens QHE and QRE. Once an agency has received this

capability, it shall be required to use the purpose code "E" space and followed by the two character code assigned for that particular approved licensing purpose and an abbreviation of ultimate recipient of the record, whenever making an inquiry for one of the approved licensing or employment purposes. It shall also be required to maintain a log of all primary and any secondary dissemination for one year on all positive responses received from this type of inquiry.

(e) Requests from non-criminal justice agencies to use criminal history information maintained by the Division of Criminal Information for licensing and employment purposes shall be treated as a fee for service request pursuant to G.S. 114-19.1.

(1) All such requests shall be submitted in writing to the SBI Assistant Director for the Division of Criminal Information who shall present the request to the Division of Criminal Information Advisory Policy board for consideration of the request and approval or disapproval as appropriate. The determination as to what, if any, non-criminal justice agencies shall be authorized to receive criminal history information shall be within the discretion of the Advisory Policy Board. Authorization to use criminal history information for licensing and employment purposes shall be granted only upon authorization of the Advisory Policy Board.

(2) Upon being approved, the requesting agency shall submit its requests for criminal history information to the Division of Criminal Information, Attention: Identification Section. Each request shall include sufficient documentation to establish and verify identity, including a set of fingerprints. Each request shall be accompanied by a fee established for such requests in the form of a certified cashier's check or money order.

(3) Criminal history information accessible by authorization of this section shall be North Carolina criminal history information only.

(4) Any agency granted approval shall be required to enter into a fee for service agreement with the Division of Criminal Information.

(f) Any agency obtaining criminal history record information through PIN for any authorized licensing or non-criminal justice employment purpose by means other than that described in this Rule shall be in violation of this Rule and subject to penalties determined by the PIN Advisory Policy Board or federal or state law.

(g) Any agency obtaining criminal history record information through PIN for any licensing or non-criminal justice employment purpose not approved by PIN shall be in violation of this Rule and subject to penalties determined by the PIN Advisory Policy Board or federal or state law.

History Note: Authority G.S. 114-10; 114-10.1;
28 C.F.R. 1C 20.33;
Eff. March 1, 1982;
Amended Eff. October 1, 1986; October 3, 1983.

.0209 RESTRICTIVE USE OF CCH FOR LICENSING OR EMPLOYMENT

(a) Use of computerized criminal history information maintained by the Division of Criminal Information for licensing or employment purposes shall only be authorized to those criminal justice agencies who have complied with Rule .0208 of this Subchapter.

(b) The following requirements and restrictions shall be applicable to all agencies who have received approval to use computerized criminal history information for licensing or employment purposes. Each such agency shall be responsible for their full and prompt implementation.

(1) In no case shall computerized criminal history information obtained for licensing or employment purposes be used or disseminated for any other purpose.

(2) In no case shall computerized criminal history information obtained for licensing or employment purposes be released to or reviewed by anyone other than the agencies authorized by the SBI Assistant Director of the Division of Criminal Information.

(3) The only data in the computerized criminal history which can be used in an agency's determination of issuing or denying a license or permit is conviction data or arrest data without a disposition which is presumed to be currently in the judicial process (a period of one year from date of arrest) on those crimes stipulated in the referenced North Carolina General Statute as grounds for disqualification of a license or permit. Each agency shall be responsible for reviewing each authorized General Statute and knowing what data can and cannot be used for grounds in denying or issuing a particular license or permit.

(4) Prior to denial of a license or permit due to data contained in a computerized criminal history record, a fingerprint card of the applicant shall be submitted to the State Bureau of Investigation, Identification

Division for verification of that record belonging to the applicant of the license or permit.

(c) A "no hit" received by the Division of Criminal Information on a computerized criminal history inquiry does not necessarily mean that individual does not have a record. If requesting agency desires a more complete check on applicant, a fingerprint card of applicant should be submitted to the Division of Criminal Information, Identification Section.

History Note: Authority G.S. 114-10; 114-10.1;
28 C.F.R. 1C 20.33;
Eff. March 1, 1982;
Amended Eff. October 1, 1986; November 1, 1984.

.0210 DISSEMINATION OF DRIVER HISTORY INFORMATION

(a) Driver history information obtained from or through the Police Information Network shall not be disseminated to anyone outside the authorized criminal justice agencies listed in PIN ORI Manuals unless obtained for the following purposes:

(1) 12 NCAC 4C .0204 ACCESS BY DEFENDANT'S ATTORNEY;

(2) In the decision of issuing permits or licenses if North Carolina General Statutes stipulate the non-issuance or denial of a permit or license to an individual who is a habitual violator of traffic laws or who has committed certain traffic offenses and those licensing purposes have been authorized by PIN and the Attorney General's Office;

(3) By governmental agencies to evaluate candidate employees for positions involving the operation of public owned vehicles.

(b) Each agency disseminating driver history information to a non-criminal justice agency for any of the purposes listed in Subparagraph (a)(1) through (3) of this Rule shall maintain a log of dissemination containing the following information:

(1) date of inquiry for obtaining driver history;
(2) name of terminal operator;
(3) name of record subject;
(4) driver's license number;
(5) name of individual and agency requesting or receiving information;
(6) purpose.

(c) Driver history records obtained for any purpose listed in Subparagraph (a)(1) through (3) of this Rule shall be used for only that official internal purpose and shall not be re-disseminated or released for any other purpose.

(d) Driver history information obtained from or through the Police Information Network shall not be released to the

individual of the record. If an individual wishes to review or challenge their driving record they should contact the Division of Motor Vehicles in Raleigh, North Carolina.

(e) Any individual or agency disseminating driver history information to an unauthorized recipient or using driver history information for purposes other than listed in this Rule shall be in violation of this Rule and subject to penalties determined by the PIN Advisory Policy Board as published in PIN Manual and/or by state law.

History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. March 1, 1982;
Amended Eff. November 1, 1984; October 3, 1983.

Rev.12/21/87

VIOLATIONS OF DCI REGULATIONS AND PENALTIES APPLIED

(1) DCI terminal in operational status without the direct supervision of a certified operator. Direct supervision means a certified operator stationed in the room with the DCI terminal as the main operator or as the supervisor of an employee training to become a certified operator. (Violation of DCI Regulation 12 NCAC 4B .0101)

1st Offense - Agency will be placed on probation for a period of 1 year from the date the violation was reported or until a reaudit reflects agency's policy and procedures have been established to prevent the reoccurrence of this violation. (Whichever occurs first).

2nd Offense Within 1 Yr. - Agency will be limited to the amount of DCI operational time. The amount of time an agency will be authorized to operate the DCI terminal will be for one shift only. This penalty will be in effect until agency head or designated representative satisfies the SBI Assistant Director for DCI that policies and procedures have been established to prevent the reoccurrence of this violation.

3rd Offense Within 1 Yr. - Agency's terminal(s) will be powered down until agency head or designated representative appears before a called meeting of the Advisory Policy Board and a ruling is made by the Board.

(2) Unauthorized use of a DCI Certified Operator Identification Number. (Violation of DCI Regulation 12 NCAC 4B .0101)

1st Offense - Agency will be placed on probation for a period of 1 year from the date the violation was reported or until a reaudit reflects agency's policy and procedures have been established to prevent the reoccurrence of this violation. (Whichever occurs first).

2nd Offense Within 1 Yr. - Agency will be limited to the amount of DCI operational time. The amount of time an agency will be authorized to operate the DCI terminal will be for one shift only. This penalty will be in effect until agency head or designated representative satisfies the SBI Assistant Director SBI of DCI that policies and procedures have been established to prevent the reoccurrence of this violation.

3rd Offense Within 1 Yr. - Agency's terminal(s) will be powered down until agency head or designated representative appears before a called meeting of the Advisory Policy Board and a ruling is made by the Board.

(3) *Failure to maintain a log of dissemination on "positive" criminal history record information obtained through DCI for a period of 1 year from the date the record was received. (Violation of DCI Regulation 12 NCAC 4C .0206)

1st Offense - Agency will be placed on probation for a period of 1 year from the date the violation was reported or until a reaudit reflects agency policy and procedures have been established to prevent the reoccurrence of this violation. (Whichever occurs first).

2nd Offense Within 1 Yr. - Agency's terminal(s) will be restricted from access to criminal history files for a period of 2 weeks beginning on a date designated by the SBI Assistant Director for DCI. Prior to reinstating agency's terminal(s) to access criminal history files a letter of verification must be submitted to the SBI Assistant Director for DCI, stating what corrective measures have been taken to assure compliance to this regulation.

3rd Offense Within 1 Yr. - Agency's terminal(s) will be powered down until agency head or designated representative appears before a called meeting of the Advisory Policy Board and a ruling is made by the Board.

(4) *Failure to maintain a log of dissemination on drivers histories obtained through DCI for the purposes and time limits outlined in Rule 12 NCAC 4C .0204 and .0210.

1st Offense - Agency will be placed on probation for a period of 1 year from the date the violation was reported or until a reaudit reflects agency policy and procedures have been established to prevent the reoccurrence of this violation. (Whichever occurs first).

2nd Offense Within 1 Yr. - Agency's terminal(s) will be restricted from access to drivers history for a period of 2 weeks beginning on a date designated by the SBI Assistant Director for DCI. Prior to reinstating agency's terminal(s) to access drivers history a letter of verification must be submitted to the SBI Assistant Director for DCI stating what corrective measures have been taken to assure compliance to this regulation.

3rd Offense Within 1 Yr. - Agency's terminal(s) will be powered down until agency head or designated representative appears before a called meeting of the Advisory Policy Board and a ruling is made by the Board.

*Note: Failure is defined as more than 10% deficient . . . . .

(5) *Failure to record all required data on log of dissemination. (Violation of DCI Regulation 12 NCAC 4C .0206)

1st Offense - A letter of warning will be submitted to agency stating corrective action needs to be taken.

2nd Offense Within 1 Yr. - Agency will be placed on probation for a period of 1 year from the date the 2nd offense was reported or until reaudit reflects agency policy and procedures have been established to prevent the reoccurrence of this violation. (Whichever occurs first).

3rd Offense Within 1 Yr. - Agency's terminal(s) will be restricted from access to criminal history files for a period of 2 weeks, beginning on a date designated by the SBI Assistant Director for DCI. Prior to reinstating agency's terminal(s) to access criminal history a letter of verification must be submitted to the SBI Assistant Director for DCI stating what corrective measures have been taken to assure compliance to this regulation.

(6) Transmission of non-criminal justice related information over DCI terminal. (Violation of DCI Regulation 12 NCAC 4B .0102)

1st Offense - A letter of warning, along with a log extract will be sent to the agency head.

2nd Offense Within 1 Yr. - Agency will be placed on probation for a period of 1 year from the date the 2nd violation was reported or until a reaudit reflects agency policy and procedures have been established to prevent the reoccurrence of this violation. (Whichever occurs first).

3rd Offense Within 1 Yr. - Agency's terminal(s) will be powered down until communication between SBI Assistant Director for DCI and agency head.

4th Offense - Agency's terminal(s) will be powered down until agency head or designated representative appears before a called meeting of the Advisory Policy Board and a ruling is made by the Board.

*Note: Additionally, if a 2nd offense is committed by the same individual their DCI Certification will be revoked until individual attends a full DCI Certification class and passes the test with a minimum of 80%.

(7) Unauthorized access, use, or dissemination of criminal history record information. (Violation of DCI Regulation 12 NCAC 4C .0204, 0205, 0206, 0208, and 0209)

*Note: Failure is defined as more than 10% deficient . . . .

1st Offense - Agency's terminal(s) will be restricted from access to criminal history for a period of 2 weeks beginning on a date designated by SBI Assistant Director for DCI. Prior to reinstating agency's terminal(s) to access criminal history, a letter of verification must be submitted to the SBI Assistant Director for DCI stating what corrective measures have been taken to assure compliance.

2nd Offense Within 1 Yr. - Agency's terminal(s) will be powered down completely until agency head or designated representative appears before a called meeting of the Advisory Policy Board and a ruling is made by the Board.

(8) Unauthorized dissemination or use of drivers history record information. (Violation of DCI Regulation 12 NCAC 4C .0210)

1st Offense - Agency's terminal(s) will be restricted form access to drivers history record information for a period of 2 weeks beginning on date designated by SBI Assistant Director for DCI stating what corrective measures have been taken to assure compliance to this regulation.

2nd Offense Within 1 Yr. - Agency's terminal(s) will be powered down completely until agency head or designated representative appears before a called meeting of the Advisory Policy Board and a ruling is made by the Board.

(9) Rescinded by Advisory Policy Board 12/17/87

(10) Improper use of CCH data in denial or revocation of a license or permit. This includes failure to obtain and submit fingerprint cards of applicant to SBI Identification Section for verification of identity prior to denial of license or permit based on the CCH record obtained through DCI. (Violation of DCI Regulation 12 NCAC 4C .0209)

1st Offense - Agency will be placed on probation for a period of 1 year from the date the violation was reported or until a reaudit reflects agency policy and procedures have been established to prevent the reoccurrence of this violation. (Whichever occurs first).

2nd Offense Within 1 Yr. - Agency's terminal(s) will be restricted from access to CCH files for licensing or non-criminal justice employment purposes for a period of 2 weeks beginning on a date designated by SBI Assistant Director for DCI. Prior to reinstating agency's terminal(s) to access CCH for licensing or non-criminal justice employment checks, a letter of verification must be submitted to SBI Assistant Director for DCI stating what corrective measures have been taken to assure compliance to this regulation.

Note: While agency is restricted from CCH for licensing or employment purposes and is reported using Purpose Code "C" to obtain CCH for licensing or employment purposes, that agency will be cited for 3rd offense of this violation and below penalties will apply.

3rd Offense - Within 1 Yr. Agency's terminal(s) will be restricted from access to CCH files for all purposes for a period of 2 weeks. Prior to reinstating agency's terminal(s) to access CCH files a letter of verification must be submitted to SBI Assistant Director for DCI stating what corrective measures have been taken to assure compliance to this regulation.

(11) Unsecure Location of DCI Terminal. (Violation of DCI Regulation 12 NCAC 4C .0102)

1st Offense - Agency head will be told about the violation and given up to 48 hours to place the terminal in a secure location.

2nd Offense - Within 1 Yr. Agency's terminal(s) will be powered down until terminal is relocated to a secure area approved by DCI. Terminal(s) must be relocated within 30 days or it will be returned to DCI.

3rd Offense - Within 1 Yr. Agency's terminal(s) and printer(s) will be returned to DCI. Prior to reinstating terminal(s) and printer(s) agency head or designated representative shall appear before a called meeting of the Advisory Policy Board.

(12) Failure by the servicing agency (agency providing direct access) to comply with penalties that are placed upon the non-terminal (indirect access) agencies. (12 NCAC 4B .0104 and 12 NCAC 4C .0201)

1st Offense - Servicing agency (agency providing direct access) will receive the same penalty that should have been imposed upon the non-terminal (indirect access agency).

2nd Offense - Within 1 Yr. Same as above

3rd Offense - Within 1 Yr. Same as above

*****NOTE*****

Any agency may appeal any penalty applied by submitting a letter to the SBI Assistant Director for DCI requesting an appeal hearing before the SBI/DCI Advisory Policy Board.

CHAPTER 12-60

BUREAU OF CRIMINAL INVESTIGATION

Section		Section	
12-60-01	Bureau created.	12-60-12	Officer may send fingerprints of persons having certain property in possession.
12-60-02	Board of managers — Selection of members — Qualifications—Repealed.	12-60-13	Court to ascertain criminal record of defendant—Furnish information of offense to the bureau.
12-60-03	Terms of office—Filling of vacancies—Repealed.	12-60-13.1	County and city officials to furnish crime statistics to superintendent.
12-60-04	Duty of board—Salaries—Repealed.	12-60-14	Violation of chapter—Misdemeanor—Repealed.
12-60-05	Attorney general — Duties — Appointment of personnel.	12-60-15	Duty to furnish information.
12-60-06	Furnishing of equipment.	12-60-16	Report of arrested person's transfer, release, or disposition of case.
12-60-07	Powers and duties of the bureau.	12-60-17	Superintendent to make rules and regulations.
12-60-08	Powers of investigators.	12-60-18	Money collected paid into general fund.
12-60-09	Authorization of attorney general for investigations.	12-60-19	Cooperation of bureau.
12-60-10	Fingerprints, photographs, description of persons arrested for felony to be procured and filed.	12-60-20	Bureau to act as a consumer fraud bureau.
12-60-11	Enforcement officers to send fingerprints and descriptions of felons to the bureau—Report of the bureau to arresting officer.	12-60-21	State crime laboratory.
		12-60-22	Provision of laboratory facilities and technical personnel —Request

12-60-01. Bureau created.—A bureau of the state government, under the attorney general, is hereby created and is designated as the bureau of criminal investigation, hereinafter referred to as the bureau.

Source: S. L. 1965, ch. 111, § 1; 1971, ch. 140, § 1.

12-60-02. Board of managers—Selection of members—Qualifications. —Repealed by S. L. 1971, ch. 141, § 1.

12-60-03. Terms of office—Filling of vacancies.—Repealed by S. L. 1971, ch. 141, § 1.

12-60-04. Duty of board — Salaries. — Repealed by S. L. 1971, ch. 141, § 1.

12-60-05. Attorney general — Duties — Appointment of personnel. The attorney general shall act as superintendent of the bureau and shall have the responsibility of and shall exercise absolute control and management of the bureau. The attorney general shall appoint and fix the salary of a chief of the bureau, such special agents, and such other employees as he deems necessary to carry out the provisions of this chapter within the limits of legislative appropriations therefor.

12-60-06. Furnishing of equipment.—The attorney general shall provide the bureau with necessary furniture, fixtures, apparatus, appurtenances, appliances, materials, and equipment as he deems necessary for the collection, filing, and preservation of all records required by law to be filed with the bureau or which he may authorize to require or procure respecting the identification and investigation of criminals, the investigation of crime and detection of the perpetrators thereof, and identification and information concerning stolen, lost, found, pledged, or pawned property.

12-60-07. Powers, duties, and functions of bureau.

1. The bureau shall cooperate with and assist the criminal bureau of the department of justice at Washington, D. C., and similar departments in other states in establishing and carrying on a complete system of criminal identification.
2. The bureau shall cooperate with and assist all judges, state's attorneys, sheriffs, chiefs of police, and all other law enforcement officers of this or any other state and of the federal government in establishing such system of criminal identification.
3. The bureau is the state central repository for the collection, maintenance, and dissemination of criminal history record information.
4. The bureau shall assist the sheriffs and other peace officers in establishing a system for the apprehension of criminals and detection of crime.
5. When called upon by any state's attorney, sheriff, police officer, marshal, or other peace officers, the superintendent, chief of the bureau, and their investigators may assist, aid, and cooperate in the investigation, apprehension, arrest, detention, and conviction of all persons believed to be guilty of committing any felony within the state.
6. The bureau shall perform such other duties in the investigation, detection, apprehension, prosecution, or suppression of crimes as may be assigned by the attorney general in the performance of the attorney general's duties.
7. The bureau shall provide assistance from time to time in conducting police schools for training peace officers in their powers and duties, and in the use of approved methods for detection, identification, and apprehension of criminals and require attendance at such police schools.
8. The bureau shall perform the inspection and enforcement duties for the attorney general's licensing department.
9. The bureau shall detect and apprehend persons illegally possessing or disposing of drugs.

12-60-08. Powers of investigators.—For the purpose of carrying out the provisions of this chapter, the investigators shall have all the powers conferred by law upon any peace officer of this state.

12-60-09. Authorization of attorney general for investigations. — No investigation of the acts or conduct of any state agency or state official shall be investigated or made through or by the bureau or any employee thereof, without the authorization of the attorney general particularly specifying the office, department, or person to be investigated and the scope and purposes of the investigation.

12-60-10. Fingerprints, photographs, description of persons charged with felony to be procured and filed. Repealed by S.L. 1987, ch. 162, § 12.

12-60-11. Enforcement officers to send fingerprints and descriptions of felons to the bureau — Report of the bureau to arresting officer. Repealed by S.L. 1987, ch. 162, § 12.

12-60-12. Officer may send fingerprints of persons having certain property in possession. Repealed by S.L. 1987, ch. 162, § 12.

12-60-13. Court to ascertain criminal record of defendant—Furnish information of offense to the bureau.—The judge of the district court of the county in which a defendant is to be sentenced, or the state's attorney or sheriff thereof, shall ascertain the criminal record of every defendant convicted of a felony before sentence is passed on said defendant. The state's attorneys and sheriffs, upon the request of the chief of the bureau or the attorney general, shall furnish to the chief of the bureau a statement of facts relative to the commission or alleged commission of all felonies within their respective counties upon such blanks or in such form as may be requested by the chief of the bureau or the attorney general.

Source: S. L. 1965, ch. 111, § 15.

12-60-14. Violation of chapter—Misdemeanor.—Repealed by S. L. 1975, ch. 106, § 673.

12-60-15. Duty to furnish information. Repealed by S.L. 1987, ch. 162, § 12.

12-60-16. Report of arrested person's transfer, release, or disposition of case. Repealed by S.L. 1987, ch. 162, § 12.

12-60-16.1. Definitions. As used in sections 12-60-16.1 through 12-60-16.10, unless the context otherwise requires:

1. "Bureau" means the bureau of criminal investigation.
2. "Criminal history record information" includes data concerning a reportable event which the bureau is required or permitted to retain under sections 12-60-16.1 through 12-60-16.10.
3. "Court" means the supreme court, district courts, county courts, and municipal courts of the North Dakota judicial system.
4. "Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.
5. "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:
   a. The transmittal of the information within a criminal justice agency.
   b. The reporting of the information as required by section 12-60-16.2.
   c. The transmittal of the information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.
6. "Noncriminal justice agency" means an entity that is not a criminal justice agency.
7. "Record subject" means the person who is the primary subject of a criminal history record. The term includes any representative designated by that person by power of attorney or notarized authorization. If the subject of the record is under legal disability, the term includes that person's parents or duly appointed legal representative.
8. "Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 12-60-16.2. The term includes only those events in which the subject of the event is an adult or a juvenile adjudicated as an adult.

12-60-16.2. Criminal history record information — Reportable events. Except as otherwise provided in sections 12-60-16.1 through 12-60-16.10, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 12-60-16.4. The following criminal justice agencies shall perform the duties indicated:

1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the fingerprints, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall take the fingerprints. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.
2. The state's attorney of each county shall notify the bureau of all charges filed, including all those added after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.
3. After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the state's attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.
4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported under subsection 3. For each charge, this information must include at least the following:
   a. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;
   b. Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and
   c. Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.
5. The North Dakota state penitentiary, board of pardons, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, parole, commutation of sentence, granting of executive clemency, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death, must also be furnished.

12-60-16.3. Criminal history record information — Rulemaking required. The attorney general shall adopt appropriate rules for criminal justice agencies regarding the reporting, collecting, maintaining, and disseminating of criminal history record information. The rules must include:

1. Policies and procedures to be used by criminal justice agencies regarding:
   a. Security of criminal history record information.
   b. Inspection and challenging of criminal history record information by a record subject.
   c. Auditing of criminal history record information to ensure that it is accurate and complete and that it is reported, collected, maintained, and disseminated in accordance with sections 12-60-16.1 through 12-60-16.10.
   d. Development and content of agreements between the bureau and criminal justice agencies providing for reporting of and access to criminal history record information.
   e. Use of criminal history record information for the purpose of research and statistical analysis of criminal activity.
   f. Criteria under which criminal history records are purged or sealed.
2. Reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.
3. Time requirements for reporting criminal history record information to the bureau.

12-60-16.4. Criminal history record information — Reportable offenses. Criminal justice agencies shall report to the bureau reportable events for each felony and for each of the following misdemeanor offenses:

1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
2. Class A misdemeanor offenses included in title 12.1.
3. Class A and B misdemeanor offenses in chapters 19-03.1 and 19-03.2, and in section 12-47-21.
4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-23-05, and 12.1-29-03.
5. Class A misdemeanor offenses in sections 53-06.1-16 and 53-06.1-16.1.
6. Class A misdemeanor offenses in title 62.1.

12-60-16.5. Criminal history record information — Exchange of information among criminal justice agencies and the courts. The bu-

reau and other criminal justice agencies shall disclose criminal history record information:

1. To a criminal justice agency that requests the information for its functions as a criminal justice agency or for use in hiring or retaining its employees.
2. To a court, on request, to aid in a decision concerning sentence, probation, or release pending trial or appeal.
3. Pursuant to a judicial, legislative, or administrative agency subpoena issued in this state.
4. As otherwise expressly required by law.

12-60-16.6. Criminal history record information — Dissemination to parties not described in section 12-60-16.5. Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, or the information is of a reportable event occurring within one year preceding the request.
3. The request is written and contains:
   a. The name of the requester.
   b. The name of the record subject.
   c. At least two items of information used by the bureau to retrieve criminal history records, including:
      (1) The fingerprints of the record subject.
      (2) The state identification number assigned to the record subject by the bureau.
      (3) The social security number of the record subject.
      (4) The date of birth of the record subject.
      (5) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

12-60-16.7. Criminal history record information — Prohibited dissemination. If dissemination is prohibited under section 12-60-16.6, or there is no information, the bureau shall provide the following answer to the requester: "No information is available because either no information exists or dissemination is prohibited."

12-60-16.8. Criminal history record information — Required disclosure of certain dissemination. If the bureau disseminates information under section 12-60-16.6, unless the request was accompanied by an authorization on forms prescribed by the bureau and signed by the record subject, the bureau shall mail notice of that dissemination to the record subject at the last known address of the record subject.

12-60-16.9. Criminal history record information — Fee for record check. The bureau shall impose a fee of twenty dollars for a record check conducted for a noncriminal justice agency that is not also a court.

12-60-16.10. Criminal history record information — Penalty. Any willful violation as defined in section 12.1-02-02 of any provision of sections 12-60-16.1 through 12-60-16.9 relating to reporting or disseminating criminal history record information is a class A misdemeanor.

12-60-17. Superintendent to make rules and regulations. The superintendent, pursuant to chapter 28-32, shall make and promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary and proper for the efficient performance of the bureau's duties. Such rules and regulations shall be printed and forwarded to each state's attorney, sheriff, constable, marshal, or other peace officer, and each of said officers shall assist the superintendent in the performance of his duties by complying with such rules and regulations.

12-60-18. Money collected paid into general fund.—All moneys collected or received, including all rewards for the apprehension or conviction of any criminal earned or collected by the superintendent, the chief of the bureau, his assistants, or any employee of his office, shall be paid into the general fund of the state.

* * *

Probation

12-53-18. Records on discharge from probation.—Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time be permitted in the discretion of the court to withdraw his plea of guilty. The court may in its discretion set aside the verdict of guilty; and in either case, the court may dismiss the information or indictment against such defendant, who shall then be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The clerk of the district court shall file all papers, including the findings and final orders in proceedings had hereunder, and shall note the date of filing on the papers. The records and papers shall be subject to examination by said clerk, the judges of the court, the juvenile commissioner, and the state's attorney. Others may examine such records and papers only upon the written order of one of the district judges.

Public Records

44-04-18. Access to public records—Penalty.—

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.
2. Violations of this section shall be punishable as an infraction.

NORTH DAKOTA

CRIMINAL HISTORY RECORDS LAW

RULES, POLICIES AND PROCEDURES

Published by

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Attorney General

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Chapter 10-13-01

Reporting of Criminal History Record Information

Chapter 10-13-01 REPORTING CHRI
10-13-01-01 Reporting Forms
10-13-01-02 Reporting to FBI Prohibited
10-13-01-03 Fingerprint Cards
10-13-01-04 Reporting Check Offenses

10-13-01-01. REPORTING FORMS. Criminal justice agencies required by statute to report criminal history record information to the bureau shall adhere to such procedures and use such forms as shall be promulgated by the bureau.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-01-02. REPORTING TO FBI PROHIBITED. Arresting agencies shall not report arrest information directly to the Federal Bureau of Investigation, but shall allow all arrest information to be forwarded to the FBI by the Bureau.

General Authority: NDCC 12-6-16.3

Law Implemented: NDCC 12-60-16.3

10-13-01-03. FINGERPRINT CARDS. Arresting agencies, or agencies acting on behalf of an arresting agency, shall prepare two fingerprint cards for submission to the bureau for each arrest for a reportable event. Arrests for check offenses are excluded from this requirement.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-01-04. REPORTING CHECK OFFENSES. Convictions for check offenses included in NDCC sections 6-08-16 and 6-08-16.1 shall be reported to the bureau on forms prescribed by the bureau. These forms may require a single print of the right index finger in lieu of a complete set of fingerprints.

General Authority: NDCC 12-60-16.3

Law Implemented: 12-60-16.3

Chapter 10-13-02

Collecting Criminal History Record Information

Chapter 10-13-02 COLLECTING CHRI
10-13-02-01 Bureau Responsibility

10-13-02-01. BUREAU RESPONSIBILITY. The bureau shall establish procedures and forms for collecting criminal history record information from criminal justice agencies. Such procedures shall include methods for facilitating the collection of disposition information or reportable events relating to initial arrest reports.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-03

Maintaining Criminal History Record Information

Chapter 10-13-03 MAINTAINING CHRI
10-13-03-01 Rules Apply to Manual and Automated Systems
10-13-03-02 Local Criminal History Records
10-13-03-03 Rules Governing Local Criminal History Records

10-13-03-01. RULES APPLY TO MANUAL AND AUTOMATED SYSTEMS. Criminal history record information may be maintained in manual files or in computerized criminal history files.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-03-02. LOCAL CRIMINAL HISTORY RECORDS. Local criminal justice agencies may compile and maintain criminal history records, as defined by NDCC 12-60-16.3, based on information generated within and by actions of that agency.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-03-03. RULES GOVERNING LOCAL CRIMINAL HISTORY RECORDS. Criminal history records maintained by local criminal justice agencies are subject to the standards established by NDCC 12-60-16.3 and these rules, and may be audited by the bureau for compliance.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-04

Exchanging Criminal History Record Information

Chapter 10-13-04 EXCHANGING CHRI
10-13-04-01 Limitation or Information to be Disclosed
10-13-04-02 Limitation on Use of Exchanged Information
10-13-04-03 Exchange Log
10-13-04-04 Disclosure Under the Security Clearance Information Act

10-13-04-01. LIMITATIONS ON INFORMATION TO BE DISCLOSED. Criminal justice agencies shall disclose only that information on reportable events which occurred within that agency or in relation to reportable events initiated by that agency. Information on arrests and dispositions occurring entirely within other jurisdictions or agencies may not be disclosed by an agency simply because it resides within that agency's criminal history record system.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-04-02. LIMITATION ON USE OF EXCHANGED INFORMATION. Criminal history record information exchanged between criminal justice agencies shall not be used or disseminated for purposes other than those for which it was originally obtained.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-04-03. EXCHANGE LOG. Criminal justice agencies shall maintain a transaction log of requests received for criminal

history record information and their response to those requests. Such log shall include:

1. Name of Record Subject.
2. Requesting Agency.
3. Date of Request.
4. Type of Response.

Exchange logs shall be retained for a minimum of three years.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-04-04. DISCLOSURE UNDER THE SECURITY CLEARANCE INFORMATION ACT OF 1985. (Public Law No. 99-169, 99 Stat. 1009, codified in part at 5 U.S.C. Section 801.) Criminal justice agencies may release criminal history record information to the Department of Defense (DOD), Central Intelligence Agency (CIA), and the Office of Personnel Management (OPM) as required by the Security Clearance Information Act (SCIA) if the following requirements are met:

1. The subagency within the three authorized agencies, is in fact authorized to make requests for criminal history records (local agencies or the bureau may ask the requesting agency for its authorization under SCIA).

2. The request relates to an individual under investigation by DOD, CIA, or OPM for the purpose of determining eligibility for (a) access to classified information (a security clearance); or (b) assignment to or retention in sensitive national security duties.

3. The requesting agency has received a written consent from the individual under investigation authorizing release of criminal history record information for the purposes specified above.

4. The request for record check is written and contains:

   a. The name of the record subject.

   b. At least two items of information used to retrieve criminal history records, including:

      (1) The fingerprints of the record subject.

      (2) The state identification number assigned to the record subject by the bureau.

      (3) The social security number of the record subject.

      (4) The date of birth of the record subject.

(5) A specific reportable event identified by date and either agency or court.

2. The information has not been purged or sealed.

3. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

4. The information to be disclosed is information relative to a reportable event initiated within that agency, in accordance with section 10-13-04-01 of these rules.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-05

Disseminating Criminal History Record Information

Chapter 10-13-05 DISSEMINATING CHRI
10-13-05-01 Criminal Justice Agency Response to Dissemination Requests
10-13-05-02 Bureau Handling of Dissemination Requests
10-13-05-03 Fee for Record Check
10-13-05-04 Dissemination Log

10-13-05-01. CRIMINAL JUSTICE AGENCY RESPONSE TO DISSEMINATION REQUESTS. Criminal justice agencies receiving requests for criminal history record information from noncriminal justice sources shall refer those requests to the bureau by providing the requestor with a request form supplied by the bureau.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-05-02. BUREAU HANDLING OF DISSEMINATION REQUESTS. The bureau shall provide forms and establish procedures for noncriminal justice entities to acquire criminal history record information, and shall make those procedures known to inquiring agencies. Request forms will be provided through criminal justice agencies and directly to noncriminal justice entities upon request.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-05-03. FEE FOR RECORD CHECK. Requests from noncriminal justice agencies for record checks must be accompanied by a check,

money order, cash, or government purchase order in the amount of $20.00 to cover the authorized fee. Checks, money orders, or purchase orders should be made payable to the "Attorney General's Office". Any request not accompanied by the $20.00 fee will be returned to the requesting party unprocessed. A receipt for payment of the fee will be returned to the requesting party.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-05-04. DISSEMINATION LOG. The bureau shall maintain a transaction log of all requests for criminal history record checks, and in those cases where criminal history record information is released, the details of the release shall be recorded. In those cases where dissemination is prohibited, in accordance with NDCC 12-60-16.3 section 7, the reason for not disseminating shall be recorded. Such dissemination log shall be retained by the recording agency for a minimum of three years.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

Chapter 10-13-06

Security of Criminal History Record Information

Chapter 10-13-06 SECURITY OF CHRI
10-13-06-01 Policies and Procedures Required
10-13-06-02 Facilities
10-13-06-03 Automated Systems

10-13-06-01. POLICIES AND PROCEDURES REQUIRED. All criminal justice agencies maintaining criminal history record systems, whether manual or automated must have written policies and procedures to protect criminal history data from unauthorized access. Written policies and procedures will include at a minimum.

1. Designation of personnel authorized access to criminal history files.

2. Screening of personnel authorized access.

3. Screening of noncriminal justice personnel with indirect access or work proximity to criminal history files (such as computer programmers, maintenance personnel, and non-agency janitorial personnel).

4. Supervision of personnel with direct or indirect access or proximity to criminal history files.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-06-02. FACILITIES. All criminal justice agencies maintaining criminal history record systems, whether manual or automated, must have adequate facilities to protect criminal history data from unauthorized access. Buildings and rooms used for file maintenance should be constructed and utilized so as to prevent unrestricted physical access by unauthorized persons.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-06-03. AUTOMATED SYSTEMS. Criminal justice agencies operating automated criminal history record systems must provide the following:

1. Protection against unauthorized access.

2. Protection against tampering or destruction.

3. Detection and logging of unauthorized access attempts.

4. Protection of software.

5. Assurance of restricted access in a shared computer system.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

Chapter 10-13-07

Inspection and Challenge of Criminal History Record Information by a Record Subject

Chapter 10-13-07 INSPECTION AND CHALLENGE OF CHRI
10-13-07-01 Inspection
10-13-07-02 Record Subject Identification
10-13-07-03 Inspection by Representative
10-13-07-04 Inspection of Local and State Central Repository Records
10-13-07-05 Request for Inspection From Out-of-State
10-13-07-06 Notification of Record Availability
10-13-07-07 Negative Response to Request for Inspection
10-13-07-08 Record Copies Restricted
10-13-07-09 Challenge of Denial to Inspect
10-13-07-10 Challenge of Completeness and Accuracy
10-13-07-11 Forwarding Challenge Forms to Originating Agency
10-13-07-12 Notification of Corrections to a Criminal History Record

10-13-07-01. INSPECTION. Any record subject shall, upon submission of a written request and satisfactory verification of his identity, be entitled to review without undue burden to either the criminal justice agency or the record subject, any criminal history record information maintained by any criminal justice agency about the record subject.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-02. RECORD SUBJECT IDENTIFICATION. Satisfactory verification of identify may consist of fingerprint comparison or presentation of photo-identification such as a driver's license or passport. If fingerprint comparison is required for positive identification the record subject may be required to return at a later date to the agency where the inspection was requested.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-03. INSPECTION BY REPRESENTATIVE. A representative of a record subject must satisfactorily establish his identity as representative and present evidence of power of attorney or notarized authorization before being allowed to view the information on file for the record subject.

General Authority: NDCC 12-60-16.1(7)
NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-04. INSPECTION OF LOCAL AND STATE CENTRAL REPOSITORY RECORDS. A record subject may make a request at any criminal justice agency in North Dakota to inspect his criminal history record, if any, retained by that agency and by the bureau. The agency receiving that request will prepare a form provided by the bureau, and containing information necessary to comply with that request, and will forward that request from to the bureau within five working days. Upon confirmation of the record subject's identity, the bureau will return a copy of any record information to the requesting agency within twenty working days.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-05. REQUEST FOR INSPECTION FROM OUT-OF-STATE. Any request for inspection of a criminal history record must be made in person at a criminal justice agency by the record subject or a duly authorized representative. Any requests made by mail or any other means from out-of-state cannot be processed by either the receiving agency or the bureau.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-07-06. NOTIFICATION OF RECORD AVAILABILITY. Criminal justice agencies shall notify the record subject when the individual's record is available for review and shall establish a time within normal working hours when that review can take place.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-07-07. NEGATIVE RESPONSE TO REQUEST FOR INSPECTION. A criminal justice agency or the bureau may deny inspection of a record if the record subject is not satisfactorily identified. Agencies or the bureau will also respond negatively if no record is found for the individual. In either situation, the individual will be informed in writing of the reason for the negative response and will be advised of his right to challenge the denial.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-07-08. RECORD COPIES RESTRICTED. Persons inspecting criminal history records may make notes of the information but will not be provided a copy of the information except when the person inspecting intends to challenge the information. If a challenge is indicated, the criminal justice agency will limit the copy to those portions to be challenged.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-07-09. CHALLENGE OF DENIAL TO INSPECT. If an individual is denied the right to inspect his criminal history record, he may challenge this denial by submitting a challenge form and a complete set of fingerprints, within 10 days of the denial, to the administrator of the agency which has issued the denial.

The administrator must, within 30 days, either allow inspection of the records requested, or respond to the individual in writing with his findings as to why the denial is upheld.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-07-10. CHALLENGE OF COMPLETENESS AND ACCURACY. Any record subject may challenge, in writing, the completeness and/or accuracy of specific criminal history record entries pertaining to the individual, and request that incomplete or inaccurate entries be corrected. Upon challenge, the criminal justice agency originating the record entry(ies) shall conduct an administrative review of the alleged incomplete or incorrect entry(ies), and shall notify the record subject, in writing, of the results of the review within twenty working days of the receipt of the challenge.

The record subject must specify the incomplete or inaccurate entry(ies) and indicate what he deems to be the complete or correct entry(ies).

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-07-11. FORWARDING CHALLENGE FORMS TO ORIGINATING AGENCY. If the reviewing agency is not also the originating agency, the original challenge form and any related documents shall be forwarded to the originating aency, or, in the case of challenges claiming incompleteness, to the agency that can verify the notations which, according to the record subject, should be included in the record. The reviewing agency shall retain a copy of the original challenge form.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-07-12. NOTIFICATION OF CORRECTIONS TO A CRIMINAL HISTORY RECORD. IN the event that corrections of criminal history record entries are made by the originating criminal justice agency, the originating agency shall notify all criminal justice and non-criminal justice agencies that have received the erroneous information within the year preceding the challenge of said corrections.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-08

Auditing of Criminal History Record Information

Chapter 10-13-08 AUDITING OF CHRI SYSTEMS
10-13-08-01 Auditing Local Criminal History Record Systems
10-13-08-02 Auditing of Bureau

10-13-08-01 AUDITING LOCAL CRIMINAL HISTORY RECORD SYSTEMS. The bureau shall conduct annual audits of a representative sample of local criminal justice agencies to ensure completeness and accuracy of criminal history record information and to ensure compliance with legal requirements for the reporting, collection, maintenance and dissemination of such information. Such audits shall be conducted to ascertain compliance with NDCC 12-60-16.1 through 12-60-16.10 and these rules. Upon completion of each audit, the bureau shall submit to the Attorney General a written reporting setting forth the audit methodology and a summary of findings and recommendations.

The audits of state and local agencies will include an inspection of facilities and equipment; observation of equipment and procedures; interviews with management and staff personnel; examination of files, documents and other material; analysis of record samples, and review of all relevant written standards, guidelines, regulations, manuals and training materials.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-08-02. AUDITING OF BUREAU. The bureau shall conduct an annual audit of the state central repository for criminal history record information. This audit will examine compliance with NDCC 12-60-16.1 through 12-60-16.10, these rules, and the policies and procedures established for operation of the bureau's central repository. The results of such audit shall be reported to the Attorney General

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-09.

Agreements Between the Bureau and Criminal Justice Agencies

Chapter 10-13-09 AGREEMENTS BETWEEN THE BUREAU AND CRIMINAL JUSTICE AGENCIES
10-13-09-01 Agreements Between the Bureau and Criminal Justice Agencies

10-13-09-01. AGREEMENTS BETWEEN THE BUREAU AND CRIMINAL JUSTICE AGENCIES. Any formal agreement required by state or federal law or regulation between criminal justice agencies, will be prescribed as needed by the bureau.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-10

Use of Criminal History Record Information for Research and Statistics

Chapter 10-13-10 USE OF CHRI FOR RESEARCH AND STATISTICS
10-13-10-01 Purposes Warranting Disclosure
10-13-10-02 Disclosure of Personal Identifiers
10-13-10-03 Written Agreement Required.

10-13-10-01. PURPOSES WARRANTING DISCLOSURE. Disclosure of criminal history record information for research and statistics is authorized for bonafide studies and analyses of such matters as the incidence of crime, recidivism, demographic trends or the administration of criminal justice.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-10-02. DISCLOSURE OF PERSONAL IDENTIFIERS. Criminal history records may be disclosed in a form that identifies record subjects, for the purposes authorized in rule 10-13-10-01, only if the results will be released to the public in statistical, aggregate and anonymous form and published information does not disclose the identity of record subjects. If the purposes of the study and analysis can be accomplished without access to personal identifiers, the required data will be made available without pesonal identifiers.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-10-03. WRITTEN AGREEMENTS REQUIRED. The recipient of criminal history record information for research and statistical purposes, shall execute a written agreement that defines the purposes of the study or analysis, and the intended use of the information, and establishes safeguards to assure the integrity, confidentiality and security of the information, ~~if the information is~~ disclosed to the ~~recipient in a form that identifies record subjects~~. The recipient may not use the information for purposes other than those specified in the agreement, or disclose information in a form that identifies the record subject, without the express written authorization of the record subject.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-11

Purging and Sealing of Criminal History Record Information

Chapter 10-13-11 PURGING AND SEALING OF CHRI
10-13-11-01 Court Order Required
10-13-11-02 Purging Limited
10-13-11-03 Access to Sealed Records
10-13-11-04 Methods of Sealing

10-13-11-01. COURT ORDER REQUIRED. Criminal history records, or portions thereof, may be purged or sealed only when expressly authorized by state or federal law, and pursuant to a court order.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-11-02. PURGING LIMITED. Purging shall be accomplished so as to retain records or portions of records which are not the direct objective of a purge order. Agencies may destroy an entire record, including fingerprints, photos, and arrest and disposition data, or they may destroy only specific portions of a record to accomplish the required purge.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

10-13-11-03. ACCESS TO SEALED RECORDS. Criminal justice agencies may access sealed records for the following purposes:

1. Records management

2. Review by the record subject
3. Authorized research and statistical purposes
4. Upon court order

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

10-13-11-04. METHODS OF SEALING. Records may be sealed by attaching a special marking to sealed files, or by removal from the general record file and storage in a eparate, secured file. In automated systems, sealing will be accomplished by limiting access to the sealed records or portions thereof to specific terminals and/or specifically authorized persons.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.3

Chapter 10-13-12

Agency Responsibility for Reporting Criminal History Record Information

Chapter 10-13-12 AGENCY REPORTING RESPONSIBILITY
10-13-12-01 Law Enforcement and Arresting Agencies
10-13-12-02 Prosecuting Attorneys
10-13-12-03 Local Correctional Facilities
10-13-12-04 State Penitentiary
10-13-12-05 Board of Pardons and Parole Board

10-13-12-01. LAW ENFORCEMENT AND ARRESTING AGENCIES. Law enforcement and arresting agencies shall report to the bureau the following events and information:

1. Arrests
   a. Fingerprints
   b. Physical description
   c. Charges

2. Decisions not to refer arrests for prosecution

3. Fingerprints ordered by the court after determination that defendant has not been previously fingerprinted for the current charge

The arresting agency retains responsibility for ensuring that the required information is reported to the bureau even though another agency is under agreement to provide fingerprinting services.

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.2
NDCC 12-60-16.3

10-13-12-02. PROSECUTING ATTORNEYS. Prosecuting attorneys shall report to the bureau the following events and information:

1. Charges filed
2. Charges added subsequent to the filing of a criminal court case
3. Decisions not to file charges after a reported arrest
4. Judgments of not guilty
5. Judgments of guilty including sentence imposed
6. Dismissal of charges
7. Reversal of conviction
8. Remand
9. Vacation of sentence
10. Sentence modification
11. Judgment terminating probation
12. Judgment revoking probation including resentencing
13. Deferred imposistion of sentence or suspended sentence
14. Death of defendant prior to trial
15. Conviction of misdemeanor check offenses

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.2
NDCC 12-60-16.3

10-13-12-03. LOCAL CORRECTIONAL FACILITIES. Local correctional facilities shall report to the bureau the following events and information:

1. Receipts
2. Escape
3. Death
4. Release

This information shall be reported only for those offenders actually sentenced to the custody of the sheriff or local correctional facility for reportable offenses. It does not apply to those offenders who happen to be in custody awaiting trial or transfer to another facility, except in the event of their escape or death.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.2
NDCC 12-60-16.3

10-13-12-04. STATE PENITENTIARY. The state penitentiary shall report to the bureau the followig events and information:

1. Receipt
2. Escape
3. Death
4. Release

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.2
NDCC 12-60-16.3

10-13-12-05. BOARD OF PARDONS AND PAROLE BOARD. The board of pardons and parole board, through the department of parole and probation, shall report to the bureau the following events and information.

1. Pardon
2. Parole
3. Commutation of sentence
4. Discharge from custody or supervision

The preceding events and information shall be reported for each sentence assigned to a record subject for each reportable offense.

General Authority: NDCC 12-60-16.3
Law Implemented: NDCC 12-60-16.2
NDCC 12-60-16.3

Chapter 10-13-13

Time Requirement for Reporting Criminal History Record Information

Chapter 10-13-13 REPORTING TIME REQUIREMENTS
10-13-13-01 Time Limits

10-13-13-01. TIME LIMITS. Reports and substantiating documents of reportable events shall be submitted to the bureau within the following time limits after the completion of the event:

1. Arrest - with 24 hours

2. Decision not to refer - within 48 hours

3. Decision not to file charges - within 48 hours

4. All other reportable events - within 30 days

General Authority: NDCC 12-60-16.3

Law Implemented: NDCC 12-60-16.3

Chapter 10-13-14

Definitions

Chapter 10-13-14 DEFINITIONS
10-13-14-01 Definitions As Used in These Rules

10-13-14-01. DEFINITIONS AS USED IN THESE RULES. Certain terms used in these rules shall be defined as follows:

DEFINITIONS

1. "Challenge" means to formally, in writing, call into question the completeness, contents, accuracy, dissemination or denial of access to a criminal history record.

2. "Collect" means to solicit and receive information pertaining to reportable events.

3. "Exchange" means to disclose criminal history record information, by any means, to another criminal justice agency or to a court.

4. "Maintain" means to file or store criminal history record information and to combine information on related reportable events for identified record subjects.

5. "Originating Agency" means the criminal justice agency which recorded and reported a reportable event.

6. "Personal Identifiers" means an individual's name, social security number, other number or descriptive information which is sufficiently unique to identify one individual.

7. "Purge" means destroying, blotting out, striking out or effacing a record so that no trace of the individual identification remains.

8. "Report" means to submit to the bureau information pertaining to reportable events.

9. "Reviewing Agency" means the criminal justice agency at which a record subject has appeared to request an inspection of his criminal history record.

10. "Seal" means retaining a record, but prohibiting access or dissemination except as provided by rule 10-13-11-03.

Ohio Revised Code Annotated
Title 1
State Government
Chapter 109: Attorney General

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

§ 109.51 Creation of bureau of criminal identification and investigation.

There is hereby created in the office of the attorney general, a bureau of criminal identification and investigation to be located at the site of the London correctional institution. The attorney general shall appoint a superintendent of said bureau. The superintendent shall appoint, with the approval of the attorney general, such assistants as are necessary to carry out the functions and duties of the bureau as contained in sections 109.51 to 109.63, inclusive, of the Revised Code.

§ 109.52 Operations of the bureau.

The bureau of criminal identification and investigation may operate and maintain a criminal analysis laboratory and mobile units thereof, create a staff of investigators and technicians skilled in the solution and control of crimes and criminal activity, keep statistics and other necessary data, assist in the prevention of crime, and engage in such other activities as will aid law enforcement officers in solving crimes and controlling criminal activity.

§ 109.55 Coordination of law enforcement activities.

The superintendent of the bureau of criminal identification and investigation shall recommend co-operative policies for the co-ordination of the law enforcement work and crime prevention activities of all state and local agencies and officials having law enforcement duties to promote co-operation between such agencies and officials, to secure effective and efficient law enforcement, to eliminate duplication of work, and to promote economy of operation in such agencies.

HISTORY: 130 v 16, § 1. EFF 9-24-63.

See provisions, § 2 of HB 283 (130 v 1670), following RC § 109.51.

§ 109.56 Training local law enforcement authorities.

The bureau of criminal identification and investigation shall, where practicable, assist in training local law enforcement officers in crime prevention, detection, and solution when requested by local authorities, and, where practicable, furnish instruction to sheriffs, chiefs of police, and other law officers in the establishment of efficient local bureaus of identification in their districts.

§ 109.57 Duties of the superintendent of the bureau.

(A) The superintendent of the bureau of criminal identification and investigation shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent, of all persons who have been convicted of a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, within the state, and of all well known and habitual criminals, from wherever procurable. The person in charge of any state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, shall furnish such material to the superintendent of the bureau upon request. Fingerprints, photographs, or other descriptive information of a child under eighteen years of age shall not be procured by the superintendent or furnished by any person in charge of any state correctional institution, except as may be authorized in section 2151.313 [2151.31.3] of the Revised Code. Every court of record in this state shall send to the superintendent of the bureau a weekly report containing a summary of each case involving a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. Such summary shall include the style and number of the case, the dates of arrest, commencement of trial, and conviction, a statement of the offense and the conduct which constituted it, and the sentence or terms of probation imposed, or other disposition of the offender. The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on charge of felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. He shall also file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory, or penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions.

The superintendent shall carry out sections 2950.01 to 2950.08 of the Revised Code, in regard to the registration of habitual sex offenders.

(B) The superintendent shall prepare and furnish to every state penal and reformatory institution and to every court of record in this state standard forms for reporting the information required under division (A) of this section.

(C) The superintendent may operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals, criminal activity, crime prevention, law enforcement, and criminal justice, and may establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies.

(D) The information and materials furnished to the superintendent pursuant to division (A) of this section are not public records under section 149.43 of the Revised Code.

(E) The attorney general shall adopt rules, in accordance with Chapter 119. of the Revised Code, setting forth the procedure by which a person may receive or release information gathered by the superintendent pursuant to division (A) of this section. A reasonable fee may be charged for this service.

[§ 109.57.1] § 109.571 [Law enforcement communications committee.]

(A) There is hereby created a law enforcement communications committee, consisting of the superintendent of the bureau of criminal identification and investigation as chairman, and four members appointed by the superintendent to serve at his pleasure, one each of whom shall be a representative of the office of budget and management, the division of state highway patrol, the county sheriffs, and the chiefs of police.

(B) The committee shall meet at least once every six months, or more often upon call of the superintendent or the written request of any two members. Committee members shall receive no compensation for their services as such, but are entitled to their actual and necessary expenses incurred in the performance of committee duties, as determined by the state employees compensation board.

(C) The committee shall aid and encourage coordination and cooperation among law enforcement agencies in the operation and utilization of data processing facilities and equipment, and a statewide law enforcement communications network.

§ 109.58 Superintendent shall prepare a standard fingerprint impression sheet.

The superintendent of the bureau of criminal identification and investigation shall prepare standard impression sheets on which fingerprints may be made in accordance with the fingerprint system of identification. Such sheets may provide for other descriptive matter which the superintendent may prescribe. Such sheets shall be furnished to each sheriff, chief of police, and person in charge of every workhouse, reformatory, or penitentiary within the state.

§ 109.59 Fingerprint impression and descriptive measurement records.

The sheriff, chief of police, or other person in charge of each prison, workhouse, reformatory, or penitentiary shall send to the bureau of criminal identification and investigation, on forms furnished by the superintendent of such bureau, such fingerprint impressions and other descriptive measurements which the superintendent may require. Such information shall be filed, classified, and preserved by the bureau.

§ 109.60 Duty of sheriffs and chiefs of police to take fingerprints; report.

The sheriffs of the several counties and the chiefs of police of cities shall immediately upon the arrest of any person for any felony, on suspicion of any felony, or for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward them, together with such other descriptions as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused be found not guilty of the offense charged or a nolle prosequi entered in any case, then the fingerprints and description shall be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice or wanted by any jurisdiction in this or any other state or the United States or a foreign country for any offense, he shall at once inform the arresting officer of such fact and give appropriate notice to the proper authorities in the jurisdiction in which such person is wanted, or, if such jurisdiction is a foreign country, give appropriate notice to federal authorities for transmission to such foreign country. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance unless the officers have reason to believe that such person is a past offender, or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age, except as provided in section 2151.313 [2151.31.3] of the Revised Code.

§ 109.61 Descriptions, fingerprints, and photographs sent to bureau by sheriffs and chiefs of police.

Each sheriff or chief of police shall furnish the bureau of criminal identification and investigation with descriptions, fingerprints, photographs, and measurements of:

(A) Persons arrested who in such police official's judgment are wanted for serious offenses, are fugitives from justice, or in whose possession at the time of arrest are found goods or property reasonably believed to have been stolen;

(B) All persons in whose possession are found burglar outfits, burglar tools, or burglar keys, or who have in their possession high power explosives reasonably believed to be intended to be used for unlawful purposes;

(C) Persons who are in possession of infernal machines or other contrivances in whole or in part and reasonably believed by said sheriffs or chiefs of police to be intended to be used for unlawful purposes;

(D) All persons carrying concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes;

(E) All persons who have in their possession inks, dies, paper, or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes, or dies, molds, or other articles necessary in the making of counterfeit money and reasonably believed to be intended to be used by them for such unlawful purposes.

HISTORY: 130 v 12, § 1. Eff 9-24-63.

§ 109.62 Interstate, national, and international cooperation.

The superintendent of the bureau of criminal identification and investigation shall co-operate with bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate, national, and international system of criminal identification and investigation.

Expungement of Record

[§ 2951.04.1] § 2951.041 [Treatment in lieu of conviction.]

(A) If the court has reason to believe that an offender charged with a felony or misdemeanor is a drug dependent person or is in danger of becoming a drug dependent person, the court shall, prior to the entry of a plea, accept that offender's request for treatment in lieu of conviction. If the offender requests treatment in lieu of conviction, the court shall stay all criminal proceedings pending the outcome of the hearing to determine whether the offender is a person eligible for treatment in lieu of conviction. At the conclusion of the hearing, the court shall enter its findings and accept the offender's plea.

(B) The offender is eligible for treatment in lieu of conviction if the court finds that:

(1) The offender's drug dependence or danger of drug dependence was a factor leading to the criminal activity with which he is charged, and rehabilitation through treatment would substantially reduce the likelihood of additional criminal activity;

(2) The offender has been accepted into an appropriate drug treatment facility or program. An appropriate facility or program for rehabilitation or treatment includes a special facility established by the director of mental health pursuant to section 5122.49 of the Revised Code, a program licensed by the director pursuant to section 5122.50 of the Revised Code, a program certified by the director pursuant to division (C) of section 5122.51 of the Revised Code, a public or private hospital, the veterans administration or other agency of the federal government, or private care or treatment rendered by a physician or a psychologist licensed in the state;

(3) If the offender were convicted he would be eligible for probation under section 2951.02 of the Revised Code, except that a finding of any of the criteria listed in divisions (D) and (F) of that section shall cause the offender to be conclusively ineligible for treatment in lieu of conviction;

(4) The offender is not a "repeat offender" or "dangerous offender" as defined in section 2929.01 of the Revised Code;

(5) The offender is not charged with any offense defined in section 2925.02, 2925.03, or 2925.21 of the Revised Code.

Upon such a finding and where the offender enters a plea of guilty or no contest, the court may stay all criminal proceedings and order the offender to a period of rehabilitation. Where a plea of not guilty is entered, a trial shall precede further consideration of the offender's request for treatment in lieu of conviction.

(C) The offender and the prosecuting attorney shall be afforded the opportunity to present evidence to establish eligibility for treatment in lieu of conviction, and the prosecutor may make a recommendation to the court concerning whether or not the offender should receive treatment in lieu of conviction. Upon the request of the offender and to aid the offender in establishing his eligibility for treatment in lieu of conviction, the court may refer the offender for medical and psychiatric examination to the department of mental health or to a state facility designated by the department, to a psychiatric clinic approved by the department, or to a program or facility described in division (B)(2) of this section. However, the psychiatric portion of an examination pursuant to a referral under this division shall be performed only by a court appointed individual who has not previously treated the offender or a member of his immediate family.

(D) An offender found to be eligible for treatment in lieu of conviction and ordered to a period of rehabilitation shall be placed under the control and supervision of the county probation department or the adult parole authority as provided in Chapter 2951. of the Revised Code as if he were on probation. The court shall order a period of rehabilitation to continue for such period as the judge or magistrate determines which may be extended but the total period shall not exceed three years. The period of rehabilitation shall be conditioned upon the offender's voluntary entrance into an appropriate treatment facility or program, faithful submission to prescribed treatment, and upon such other conditions as the court orders.

(E) Treatment of a person ordered to a period of rehabilitation under this section may include hospitalization under close supervision or otherwise, release on an out-patient status under supervision, and such other treatment or after-care as the appropriate treatment facility or program considers necessary or desirable to rehabilitate such person. Persons released from hospitalization or treatment but still subject to the ordered term of rehabilitation may be rehospitalized or returned to treatment at any time it becomes necessary for their treatment and rehabilitation.

(F) If the treating facility or program reports to the probation officer that the offender has successfully completed treatment and is rehabilitated, the court may dismiss the charges pending against the offender. If the treating facility or program reports that the offender has successfully completed treatment and is rehabilitated or has obtained maximum benefits from the treatment program, and that the offender completes the period of rehabilitation and other conditions ordered by the court, the court shall dismiss the charges pending against the offender. If the treating facility or program reports that the offender has failed treatment, or if the offender does not satisfactorily complete the period of

rehabilitation or the other conditions ordered by the court, the court may take such actions as it considers appropriate. Upon violation of the conditions of the period of rehabilitation, the court may enter an adjudication of guilt and proceed as otherwise provided. If at any time after treatment has commenced, the treating facility or program reports that the offender fails to submit to or follow the prescribed treatment, the offender shall be arrested as provided in section 2951.08 of the Revised Code and removed from the treatment program or facility. Such failure and removal shall be considered by the court as a violation of the conditions of the period of rehabilitation and dealt with according to law as in cases of probation violation. At any time and for any appropriate reason, the offender, his probation officer, the authority or department that has the duty to control and supervise the offender as provided for in section 2951.05 of the Revised Code, or the treating facility or program may petition the court to reconsider, suspend, or modify its order for treatment concerning that person.

(G) The treating facility or program shall report to the authority or department who has the duty to control and supervise the offender as provided for in section 2951.05 of the Revised Code, at any periodic reporting period the court requires and whenever the offender is changed from an inpatient to an outpatient, is transferred to another treatment facility or program, fails to submit to or follow the prescribed treatment, becomes a discipline problem, is rehabilitated, or obtains the maximum benefit of treatment.

(H) If, on the offender's motion, the court finds that the offender has successfully completed the period of rehabilitation ordered by the court, is rehabilitated, is no longer drug dependent or in danger of becoming drug dependent, and has completed all other conditions, the court shall dismiss the proceeding against him. Successful completion of a period of rehabilitation under this section shall be without adjudication of guilt and is not a criminal conviction for purposes of disqualifications or disabilities imposed by law and upon conviction of a crime, and the court may order the expungement of records in the manner provided in sections 2953.31 to 2953.36 of the Revised Code.

(I) An order denying treatment in lieu of conviction under this section shall not be construed to prevent conditional probation under section 2951.04 of the Revised Code.

(J) Any person ordered to treatment by the terms of this section shall be liable for expenses incurred during the course of treatment and if he is treated in a benevolent institution under the jurisdiction of the department of mental health, he is subject to the provisions of Chapter 5121. of the Revised Code.

(K) An offender charged with a drug abuse offense, other than a minor misdemeanor involving marihuana and otherwise eligible for treatment in lieu of conviction may request and may be ordered to a period of rehabilitation even though the findings required by divisions (B)(1) and (2) of this section are not made. An order to rehabilitation under this division shall be subject to such conditions as the court requires but shall not be conditioned upon entry into an appropriate treatment program or facility.

§ 2953.31 Definitions.

As used in sections 2953.31 to 2953.36 of the Revised Code:

(A) "First offender" means anyone who has been convicted of an offense in this state or any other jurisdiction, and who has not been previously or subsequently convicted of the same or a different offense in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act, or result from offenses committed at the same time, they shall be counted as one conviction.

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, a conviction for a violation of any section in Chapter 4511., 4513., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section in those chapters, is not a previous or subsequent conviction. A conviction for a violation of section 4511.02, 4511.19, 4511.192 [4511.19.2], 4511.251 [4511.25.1], 4511.80, 4549.02, 4549.021 [4549.02.1], 4549.03, 4549.042 [4549.04.2], or 4549.07, or sections 4549.41 to 4549.46 of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any of those sections, shall be considered a previous or subsequent conviction.

(B) "Prosecutor" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

(C) "Bail forfeiture" means the forfeiture of bail by a defendant who is arrested for the commission of a misdemeanor, other than a defendant in a traffic case as defined in traffic rule 2, if the forfeiture is pursuant to an agreement with the court and prosecutor in the case.

§ 2953.32 Sealing of record of conviction or bail forfeiture.

(A)(1) Except as provided in section 2953.61 of the Revised Code, a first offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the record of his conviction, at the expiration of three years after his final discharge if convicted of a felony, or at the expiration of one year after his final discharge if convicted of a misdemeanor.

(2) Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of his record in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

(B) Upon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons he believes justify a denial of the application. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

(C)(1) The court shall do each of the following:

(a) Determine whether the applicant is a first offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case;

(b) Determine whether criminal proceedings are pending against the applicant;

(c) If the applicant is a first offender who applies pursuant to division (A)(1) of this section, determine whether the applicant has been rehabilitated to the satisfaction of the court;

(d) If the prosecutor has filed an objection in accordance with division (B) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(e) Weigh the interests of the applicant in having the records pertaining to his conviction sealed against the legitimate needs, if any, of the government to maintain those records.

(2) If the court determines, after complying with division (C)(1) of this section, that the applicant is a first offender or the subject of a bail forfeiture, that no criminal proceeding is pending against him, and that the interests of the applicant in having the records pertaining to his conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain such records, and that the rehabilitation of an applicant who is a first offender applying pursuant to division (A)(1) of this section has been attained to the satisfaction of the court, the court shall order all official records pertaining to the case sealed and, except as provided in division (F) of this section, all index references to the case deleted and, in the case of bail forfeitures, shall dismiss the charges in the case. The proceedings in the case shall be deemed not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed, except that upon conviction of a subsequent offense, the sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for in sections 2953.31 to 2953.33 of the Revised Code.

(3) Upon the filing of an application under this section, the applicant, unless he is indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury. It shall pay twenty dollars of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance.

(D) Inspection of the sealed records included in the order may be made only by the following persons or for the following purposes:

(1) By any law enforcement officer or any prosecutor, or his assistants, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

(2) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while he is on parole or probation and in making inquiries and written reports as requested by the court or adult parole authority;

(3) Upon application by the person who is the subject of the records, by the persons named in his application;

(4) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(5) By any prosecuting attorney or his assistants to determine a defendant's eligibility to enter a pretrial diversion program established pursuant to section 2935.36 of the Revised Code;

(6) By any law enforcement agency or any authorized employee of a law enforcement agency as

part of a background investigation of a person who applies for employment with the agency as a law enforcement officer;

(7) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth in, and in the manner provided in, section 2953.321 [2953.32.1] of the Revised Code.

When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense.

(E) In any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing previously was issued pursuant to sections 2953.31 to 2953.36 of the Revised Code.

(F) The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed pursuant to this section may maintain a manual or computerized index to the sealed records. The index shall contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, agency, office, or department that has custody of the sealed records, and shall not contain the name of the crime committed. The index shall be made available by the person who has custody of the sealed records only for the purposes set forth in divisions (C), (D), and (E) of this section.

[§ 2953.32.1] § 2953.321 Disposition and use of investigatory work product.

(A) As used in this section, "investigatory work product" means any records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" contained in section 2953.51 of the Revised Code and that pertain to a case the records of which have been ordered sealed pursuant to division (C)(2) of section 2953.32 of the Revised Code.

(B) Upon the issuance of an order by a court pursuant to division (C)(2) of section 2953.32 of the Revised Code directing that all official records pertaining to a case be sealed:

(1) Every law enforcement officer who possesses investigatory work product immediately shall deliver that work product to his employing law enforcement agency.

(2) Except as provided in division (B)(3) of this section, every law enforcement agency that possesses investigatory work product shall close that work product to all persons who are not directly employed by the law enforcement agency and shall treat that work product, in relation to all persons other than those who are directly employed by the law enforcement agency, as if it did not exist and never had existed.

(3) A law enforcement agency that possesses investigatory work product may permit another law enforcement agency to use that work product in the investigation of another offense if the facts incident to the offense being investigated by the other law enforcement agency and the facts incident to an offense that is the subject of the case are reasonably similar. The agency that permits the use of investigatory work product may provide the other agency with the name of the person who is the subject of the case if it believes that the name of the person is necessary to the conduct of the investigation by the other agency.

(C)(1) Except as provided in division (B)(3) of this section, no law enforcement officer or other person employed by a law enforcement agency shall knowingly release, disseminate, or otherwise make the investigatory work product or any information contained in that work product available to, or discuss any information contained in it with, any person not employed by the employing law enforcement agency.

(2) No law enforcement agency, or person employed by a law enforcement agency, that receives investigatory work product pursuant to division (B)(3) of this section shall use that work product for any purpose other than the investigation of the offense for which it was obtained from the other law enforcement agency, or disclose the name of the person who is the subject of the work product except when necessary for the conduct of the investigation of the offense, or the prosecution of the person for committing the offense, for which it was obtained from the other law enforcement agency.

(D) Whoever violates division (C)(1) or (2) of this section is guilty of divulging confidential investigatory work product, a misdemeanor of the fourth degree.

§ 2953.33 Rights and privileges restored; answering questions.

(A) An order to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of sentence or by final release on parole.

(B) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, except as provided in division (E) of section 2953.32 of the Revised Code, a person may be questioned only with respect to convictions not sealed, bail forfeitures not expunged under section 2953.42 of the Revised Code as it existed prior to the effective date of this amendment, and bail forfeitures not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.

§ 2953.34 [First offender may still take appeal or seek relief.]

Nothing in sections 2953.31 to 2953.33 of the Revised Code precludes a first offender from taking an appeal or seeking any relief from his conviction or from relying on it in lieu of any subsequent prosecution for the same offense.

§ 2953.35 Divulging confidential information.

(A) Except as authorized by divisions (D), (E), and (F) of section 2953.32 of the Revised Code, any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which he had knowledge of were sealed by an existing order issued pursuant to sections 2953.31 to 2953.36 of the Revised Code, or were expunged by an order issued pursuant to section 2953.42 of the Revised Code as it existed prior to the effective date of this amendment, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

(B) Any person who, in violation of section 2953.32 of the Revised Code, uses, disseminates, or otherwise makes available any index prepared pursuant to division (F) of section 2953.32 of the Revised Code is guilty of a misdemeanor of the fourth degree.

§ 2953.36 Application of preceding sections.

Sections 2953.31 to 2953.35 of the Revised Code do not apply to convictions when the offender is not eligible for probation, convictions under Chapter 4507., 4511., or 4549. of the Revised Code, or bail forfeitures in a traffic case as defined in Traffic Rule 2.

§§ §§ 2953.41 to 2953.43 Repealed, 142 v H 175, § 2 [137 v S 192]. Eff 6-29-88.

These sections concerned expungement after agreed bail forfeiture. See now sections 2953.31 et seq.

§ 2953.51 Definitions.

Cross-References to Related Sections

Rules relating to inspection of sealed records by law enforcement agencies, RC § 2953.32.1.

§ 2953.52 Sealing of official records after not guilty finding, dismissal of proceedings or no bill.

(A)(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal his official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

(2) Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal his official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of two years after the date on which the foreman or deputy foreman of the grand jury reports to the court that the grand jury has reported a no bill.

(B)(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons he believes justify a denial of the application.

(2) The court shall do each of the following:

Personal Information System

§ 149.43 Availability of public records; mandamus action

(A) As used in this section:

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose his identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(B) All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division.

(C) If a person allegedly is aggrieved by the failure of a governmental unit to promptly prepare a public record and to make it available to him for inspection in accordance with division (B) of this section, or if a person who has requested a copy of a

public record allegedly is aggrieved by the failure of a person responsible for it to make a copy available to him in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the governmental unit or the person responsible for the public record to comply with division (B) of this section and that awards reasonable attorney's fees to the person that instituted the mandamus action. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

Public Records

§ 1347.01 [Definitions.]

As used in this chapter:

(A) "State agency" means the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state.

(B) "Local agency" means any municipal corporation, school district, special purpose district, or township of the state or any elected officer or board, bureau, commission, department, division, institution, or instrumentality of a county.

(C) "Special purpose district" means any geographic or political jurisdiction that is created by statute to perform a limited and specific function, and includes, but is not limited to, library districts, conservancy districts, metropolitan housing authorities, park districts, port authorities, regional airport authorities, regional transit authorities, regional water and sewer districts, sanitary districts, soil and water conservation districts, and regional planning agencies.

(D) "Maintains" means state or local agency ownership of, control over, responsibility for, or accountability for systems and includes, but is not limited to, state or local agency depositing or information with a data processing center for storage, processing, or dissemination. An agency "maintains" all systems of records that are required by law to be kept by the agency.

(E) "Personal information" means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.

(F) "System" means any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person. "System" includes both records that are manually stored and records that are stored using electronic data processing equipment. "System" does not include collected archival records in the custody of or administered under the authority of the Ohio historical society, published directories, reference materials or newsletters, or routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.

(G) "Interconnection of systems" means a linking of systems that belong to more than one agency or to an agency and other organizations, which linking of systems results in a system that permits each agency or organization involved in the linking to have unrestricted access to the systems of the other agencies and organizations.

(H) "Combination of systems" means a unification of systems that belong to more than one agency, or to an agency and another organization, into a single system in which the records that belong to each agency or organization may or may not be obtainable by the others.

(a) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreman or deputy foreman of the grand jury;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

(3) If the court determines, after complying with division (B)(2) of this section, that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the court of the no bill by the foreman or deputy foreman of the grand jury; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, the court shall issue an order directing that all official records pertaining to the case be sealed and that, except as provided in section 2953.53 of the Revised Code, the proceedings in the case be deemed not to have occurred.

§ 2953.53 Order to seal records; index to sealed records.

(A) The court shall send notice of any order to seal official records issued pursuant to section 2953.52 of the Revised Code to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record, that is the subject of the order. The notice shall be sent by certified mail, return receipt requested.

(B) A person whose official records have been sealed pursuant to an order issued pursuant to section 2953.52 of the Revised Code may present a copy of that order and a written request to comply with it, to a public office or agency that has a record of the case that is the subject of the order.

(C) An order to seal official records issued pursuant to section 2953.52 of the Revised Code applies to every public office or agency that has a record of the case that is the subject of the order, regardless of whether it receives notice of the hearing on the application for the order to seal the official records or receives a copy of the order to seal the official records pursuant to division (A) or (B) of this section.

(D) Upon receiving a copy of an order to seal official records pursuant to division (A) or (B) of this section or upon otherwise becoming aware of an applicable order to seal official records issued pursuant to section 2953.52 of the Revised Code, a public office or agency shall comply with the order and, if applicable, with the provisions of section 2953.54 of the Revised Code, except that it may maintain a record of the case that is the subject of the order if the record is maintained for the purpose of compiling statistical data only and does not contain any reference to the person who is the subject of the case and the order.

A public office or agency also may maintain an index of sealed official records, in a form similar to that for sealed records of conviction as set forth in division (F) of section 2953.32 of the Revised Code, access to which may not be afforded to any person other than the person who has custody of the sealed official records. The sealed official records to which such an index pertains shall not be available to any person, except that the official records of a case that have been sealed may be made available to the following persons for the following purposes:

(1) To the person who is the subject of the records upon written application, and to any other person named in the application, for any purpose;

(2) To a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(3) To a prosecuting attorney or his assistants to determine a defendant's eligibility to enter a pretrial diversion program established pursuant to section 2935.36 of the Revised Code.

§ 2953.61 Sealing of records in cases of multiple charges.

When a person is charged with two or more offenses as a result of or in connection with the same act and at least one of the charges has a final disposition that is different than the final disposition of the other charges, the person may not apply to the court for the sealing of his record in any of the cases until such time as he would be able to apply to the court and have all of the records in all of the cases pertaining to those charges sealed pursuant to divisions (A)(1) and (2) of section 2953.32 and divisions (A)(1) and (2) of section 2953.52 of the Revised Code.

§ 1347.02 Repealed, 138 v H 799, § 2 [136 v S 99; 137 v S 224]. Eff 1-23-81.

This section was about the creation of the Ohio privacy board.

§ 1347.03 [Annual notice of existence of personal information system.]

(A) Every state agency that maintains a personal information system shall, prior to the first day of December of each year, file a notice of the existence and character of the system with the director of administrative services. A state agency may file a supplemental or amended notice at any time after the original notice is filed.

(B) Every state agency that establishes a new personal information system or that substantially enlarges an existing personal information system shall do one of the following:

(1) If an original notice was filed pursuant to division (A) of this section, file a supplemental notice with the director of administrative services at any time after the original notice was filed;

(2) If an original notice was not filed pursuant to division (A) of this section, file a notice of the existence and character of the new or enlarged personal information system with the director pursuant to division (A) of this section.

(C) Notices required or permitted by divisions (A) and (B) of this section shall state the name, purpose, and use of the personal information system.

(D) The director of administrative services may order a state agency to amend a notice that does not conform to this section.

§ 1347.04 [Exemptions.]

(A)(1) Except as provided in division (A)(2) of this section, the following are exempt from the provisions of this chapter:

(a) Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;

(b) The criminal courts;

(c) Prosecutors;

(d) Any state or local agency or part of any state or local agency that is a correction, probation, pardon, or parole authority;

(e) Personal information systems that are comprised of investigatory material compiled for law enforcement purposes by agencies that are not described in divisions (A)(1)(a) and (A)(1)(d) of this section.

(2) A state agency is not exempt from complying with section 1347.03 of the Revised Code. A part of a state or local agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws is not exempt under this section.

(B) The provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in section 149.43 of the Revised Code, or to authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of section 121.22 of the Revised Code.

The disclosure to members of the general public of personal information contained in a public record, as defined in section 149.43 of the Revised Code, is not an improper use of personal information under this chapter.

§ 1347.05 [Duties of state and local agencies.]

Every state or local agency that maintains a personal information system shall:

(A) Appoint one individual to be directly responsible for the system;

(B) Adopt and implement rules that provide for the operation of the system in accordance with the provisions of this chapter that, in the case of state agencies, apply to state agencies or, in the case of local agencies, apply to local agencies;

(C) Inform each of its employees who has any responsibility for the operation or maintenance of the system, or for the use of personal information maintained in the system, of the applicable provisions of this chapter and of all rules adopted in accordance with this section;

(D) Specify disciplinary measures to be applied to any employee who initiates or otherwise contributes to any disciplinary or other punitive action against any individual who brings to the attention of appropriate authorities, the press, or any member of the public, evidence of unauthorized use of information contained in the system;

(E) Inform a person who is asked to supply personal information for a system whether the person is legally required to, or may refuse to, supply the information;

(F) Develop procedures for purposes of monitoring the accuracy, relevance, timeliness, and completeness of the personal information in this system, and, in accordance with the procedures, maintain the personal information in the system with the accuracy, relevance, timeliness, and completeness that is necessary to assure fairness in any determination made with respect to a person on the basis of the information;

(G) Take reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure;

(H) Collect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions.

§ 1347.06 [Rules.]

The director of administrative services shall adopt, amend, and rescind rules pursuant to Chapter 119. of the Revised Code for the purposes of administering and enforcing the provisions of this chapter that pertain to state agencies.

A state or local agency that, or an officer or employee of a state or local agency who, complies in good faith with a rule applicable to the agency is not subject to criminal prosecution or civil liability under this chapter.

§ 1347.07 [Use of personal information.]

A state or local agency shall only use the personal information in a personal information system in a manner that is consistent with the purposes of the system.

[§ 1347.07.1] § 1347.071 [Interconnected or combined systems.]

(A) No state or local agency shall place personal information in an interconnected or combined system, or use personal information that is placed in an interconnected or combined system by another state or local agency or another organization, unless the interconnected or combined system will contribute to the efficiency of the involved agencies in implementing programs that are authorized by law.

(B) No state or local agency shall use personal information that is placed in an interconnected or combined system by another state or local agency or another organization, unless the personal information is necessary and relevant to the performance of a lawful function of the agency.

(C) When a state or local agency requests a person to supply personal information that will be placed in an interconnected or combined system, the agency shall provide the person with information relevant to the system, including the identity of the other agencies or organizations that have access to the information in the system.

§ 1347.08 [Inspection of personal information maintained.]

(A) Every state or local agency that maintains a personal information system, upon the request and the proper identification of any person who is the subject of personal information in the system, shall:

(1) Inform the person of the existence of any personal information in the system of which he is the subject;

(2) Except as provided in divisions (C) and (E)(2) of this section, permit the person, his legal guardian, or an attorney who presents a signed written authorization made by the person, to inspect all personal information in the system of which he is the subject;

(3) Inform the person about the types of uses made of the personal information, including the identity of any users usually granted access to the system.

(B) Any person who wishes to exercise a right provided by this section may be accompanied by another individual of his choice.

(C) A state or local agency, upon request, shall disclose medical, psychiatric, or psychological information to a person who is the subject of the information or to his legal guardian, unless a physician, psychiatrist, or psychologist determines for the agency that the disclosure of the information is likely to have an adverse effect on the person, in which case the information shall be released to a physician, psychiatrist, or psychologist who is designated by the person or by his legal guardian.

(D) If an individual who is authorized to inspect personal information that is maintained in a personal information system requests the state or local agency that maintains the system to provide a copy of any personal information that he is authorized to inspect, the agency shall provide a copy of the personal information to the individual. Each state and local agency may establish reasonable fees for the service of copying, upon request, personal information that is maintained by the agency.

(E)(1) This section regulates access to personal information that is maintained in a personal information system by persons who are the subject of the information, but does not limit the authority of any person, including a person who is the subject of personal information maintained in a personal information system, to inspect or have copied, pursuant to section 149.43 of the Revised Code, a public record as defined in that section.

(2) This section does not provide a person who is the subject of personal information maintained in a personal information system, his legal guardian, or an attorney authorized by the person, with a right to inspect or have copied, or require an agency that maintains a personal information system to permit the inspection of or to copy, a confidential law enforcement investigatory record or trial preparation record, as those terms are defined in divisions (A)(2) and (4) of section 149.43 of the Revised Code.

(F) This section does not apply to the papers, records, and books pertaining to an adoption, which under section 3107.17 of the Revised Code are subject to inspection only upon consent of the court.

§ 1347.09 [Disputed information; duties of agency.]

(A)(1) If any person disputes the accuracy, relevance, timeliness, or completeness of personal information that pertains to him and that is maintained by any state or local agency in a personal information system, he may request the agency to investigate the current status of the information. The agency shall, within a reasonable time after, but not later than ninety days after, receiving the request from the disputant, make a reasonable investigation to determine whether the disputed information is accurate, relevant, timely, and complete, and shall notify the disputant of the results of the investigation and of the action that the agency plans to take with respect to the disputed information. The agency shall delete any information that it cannot verify or that it finds to be inaccurate.

(2) If after an agency's determination, the disputant is not satisfied, the agency shall do either of the following:

(a) Permit the disputant to include within the system a brief statement of his position on the disputed information. The agency may limit the statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.

(b) Permit the disputant to include within the system a notation that the disputant protests that the information is inaccurate, irrelevant, outdated, or incomplete. The agency shall maintain a copy of the disputant's statement of the dispute. The agency may limit the statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.

(3) The agency shall include the statement or notation in any subsequent transfer, report, or dissemination of the disputed information and may include with the statement or notation of the disputant a statement by the agency that it has reasonable grounds to believe that the dispute is frivolous or irrelevant, and of the reasons for its belief.

(B) The presence of contradictory information in the disputant's file does not alone constitute reasonable grounds to believe that the dispute is frivolous or irrelevant.

(C) Following any deletion of information that is found to be inaccurate or the accuracy of which can no longer be verified, or if a statement of dispute was filed by the disputant, the agency shall, at the written request of the disputant, furnish notification that the information has been deleted, or furnish a copy of the disputant's statement of the dispute, to any person specifically designated by the person. The agency shall clearly and conspicuously disclose to the disputant that he has the right to make such a request to the agency.

§ 1347.10 [Liability for wrongful disclosure; limitation of action.]

(A) A person who is harmed by the use of personal information that relates to him and that is maintained in a personal information system may recover damages in civil action from any person who directly and proximately caused the harm by doing any of the following:

(1) Intentionally maintaining personal information that he knows, or has reason to know, is inaccurate, irrelevant, no longer timely, or incomplete and may result in such harm;

(2) Intentionally using or disclosing the personal information in a manner prohibited by law;

(3) Intentionally supplying personal information for storage in, or using or disclosing personal information maintained in, a personal information system, that he knows, or has reason to know, is false;

(4) Intentionally denying to the person the right to inspect and dispute the personal information at a time when inspection or correction might have prevented the harm.

An action under this division shall be brought within two years after the cause of action accrued or within six months after the wrongdoing is discovered, whichever is later; provided that no action shall be brought later than six years after the cause of action accrued. The cause of action accrues at the time that the wrongdoing occurs.

(B) Any person who, or any state or local agency that, violates or proposes to violate any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may issue an order or enter a judgment that is necessary to ensure compliance with the applicable provisions of this chapter or to prevent the use of any practice that violates this chapter. An action for an injunction may be prosecuted by the person who is the subject of the violation, by the attorney general, or by any prosecuting attorney.

§ 1347.99 [Penalty.]

No public official, public employee, or other person who maintains, or is employed by a person who maintains, a personal information system for a state or local agency shall purposely refuse to comply with division (E), (F), (G), or (H) of section 1347.05, section 1347.071 [1347.07.1], division (A), (B), or (C) of section 1347.08, or division (A) or (C) of section 1347.09 of the Revised Code. Whoever violates this section is guilty of a minor misdemeanor.

109:5-1-01 PROCEDURE FOR REQUESTING CRIMINAL RECORDS.

(A) ANY PERSON MAY OBTAIN INFORMATION CONCERNING THE CRIMINAL RECORD OF ANY OTHER PERSON MAINTAINED AT THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION BY SUBMITTING THE FOLLOWING:

(1) THE COMPLETE NAME, CURRENT ADDRESS, AND OTHER IDENTIFYING CHARACTERISTICS OF THE INDIVIDUAL WHOSE RECORDS ARE SOUGHT;

(2) A COMPLETE SET OF FINGERPRINTS OF THE INDIVIDUAL WHOSE RECORDS ARE SOUGHT;

(3) THE SIGNED CONSENT OF THE INDIVIDUAL WHOSE RECORDS ARE SOUGHT;

(4) A CHECK IN THE AMOUNT OF THREE DOLLARS PAYABLE TO THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. LAW ENFORCEMENT OFFICERS AS DEFINED IN DIVISION (K) OF SECTION 2901.01 OF THE REVISED CODE WILL BE EXEMPT FROM THIS FEE.

(B) THE FOREGOING SHALL BE SUBMITTED TO THE "BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION, P. O. BOX 365, LONDON, OHIO 43140."

(C) "OTHER IDENTIFYING CHARACTERISTICS" MEANS DATE OF BIRTH, SOCIAL SECURITY NUMBER, HEIGHT, WEIGHT, SEX, RACE, AND NATIONALITY.

CERTIFICATION: Anthony J. Celebrezze

September ~~29~~ 20, 1984
DATE

PROMULGATED UNDER: 119.03
RULE AMPLIFIES: 109.57 (E)
EFFECTIVE DATE: September ~~29~~ 30, 1984

OKLAHOMA

Oklahoma Statutes Annotated

Title 74

CHAPTER 5. STATE BUREAU OF INVESTIGATION

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164. Repealed.
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§ 150.1 Short title

There is hereby created an agency of state government to be designated the Oklahoma State Bureau of Investigation.
Added by Laws 1976, c. 259, § 1, operative July 1, 1976.

§ 150.2. Powers and duties

The Oklahoma State Bureau of Investigation shall have the power and duty to:

1. maintain scientific laboratories to assist all law enforcement agencies in the discovery and detection of criminal activity; and

2. maintain fingerprint and other identification files; and

3. operate teletype, mobile and fixed radio or other communications systems; and

4. conduct schools and training programs for the agents, peace officers, and technicians of this state charged with the enforcement of law and order and the investigation and detection of crime; and

5. assist the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Chief Medical Examiner, and all law enforcement officers and district attorneys when such assistance is requested, in accordance with the policy determined by the Commission; and

6. investigate and detect criminal activity when directed to do so by the Governor; and

7. investigate, detect, institute and maintain actions involving vehicle theft pursuant to Section 150.7 of this title or oil, gas or oil field equipment theft pursuant to Sections 152.2 through 152.9 of this title.

8. investigate, detect, institute and maintain actions involving vehicle theft pursuant to Section 150.7 of this title or oil, gas or oil field equipment theft pursuant to Sections 152.2 through 152.9 of this title.

§ 150.3 State Bureau of Investigation Commission

A. There is hereby created an Oklahoma State Bureau of Investigation Commission which shall consist of seven (7) members, not more than two of whom shall be from the same Congressional District as construed at the time of enactment of this section. The members shall be appointed by the Governor and confirmed by the Senate and shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. The term of office of each member shall be seven (7) years. The first appointments shall be for the following terms as designated by the Governor: one member for a term of one (1) year; one member for a term of two (2) years; one member for a term of three (3) years; one member for a term of four (4) years; one member for a term of five (5) years; one member for a term of six (6) years; and one member for a term of seven (7) years. A member may serve more than one term on the Commission. Each member shall continue to serve so long as he is qualified until his successor has been appointed and confirmed by the Senate. Vacancies occurring during a term shall be filled for the unexpired portion of the term by the same procedure used to make the regular appointments.

B. Four of the members shall represent the lay citizenry, one member shall be a district attorney while serving in that capacity, one member shall be a sheriff while serving in that capacity, and one member shall be a chief of police while serving in that capacity; provided that the sheriff and police chief members shall have successfully completed an approved course of instruction for peace officers as required by law.

C. Annually the Commission shall select one of the Commission members to serve as Chairman and one member to serve as Vice Chairman. The Commission shall meet at least quarterly. The Chairman shall preside at all meetings of the Commission and shall have the power to call meetings of the Commission. In addition, meetings of the Commission may be called by a majority of the members. The Vice Chairman shall perform these functions in the absence or incapacity of the Chairman. A quorum of four members of the Commission shall be necessary to conduct any official business. All actions taken by the Commission shall be by a simple majority vote of a quorum. In the event of a tie vote, the measure being voted upon shall be deemed to have failed.

The Commission shall adopt rules of procedure for the orderly performance of its functions.

D. Members of the Commission shall serve without salary but may be reimbursed for travel and other expenses in attending meetings and performing their duties in the manner provided for other state officers and employees under the State Travel Reimbursement Act.[1] The lay-citizen members shall be paid Thirty Dollars ($30.00) per diem for attendance at meetings of the Commission. No other provisions of law shall be construed as prohibiting public officers from also serving as members of the Commission, nor shall any other provisions of law be construed as prohibiting public officers or public employees from performing services for the Commission without compensation. It is further provided that no town, city, county or other subdivision or other agency of state government shall be prohibited from receiving a grant or from benefiting from grants or expenditures of the Commission for the reason that an officer or employee of such town, city, county or other subdivision or agency of state government is a Commission member or employee.

§ 150.4. Commission—Powers and duties

The Commission shall have the following powers and duties and responsibilities:

1. To appoint the Director of the Oklahoma State Bureau of Investigation, whose compensation shall be determined by the Legislature.

2. To hear any complaint against the Bureau or any of its employees according to the following procedure:

a. Only those complaints which have been submitted in writing and are signed will be acted upon by the Commission.

b. All hearings on complaints shall be conducted in executive sessions, and shall not be open to the public.

c. The Commission shall have limited access to pertinent investigative files when investigating a complaint. The Director shall provide a procedure whereby the identification of all persons named in any investigative file except the subject of the complaint and the complaining witness shall not be revealed to the members of the Commission. Any consideration of files shall be in executive session not open to the public. No information or evidence received in connection with the hearings shall be revealed to any person or agency. Any violation hereof shall be grounds for removal from the Commission, and shall constitute a misdemeanor.

3. To make recommendations to the Director of any needed disciplinary action necessary as a result of an investigation conducted upon a complaint received.

4. To establish general procedures with regard to assisting law enforcement officers and district attorneys.

5. To establish a program of training for agents utilizing such courses as the National Police Academy conducted by the Federal Bureau of Investigation.

6. To require the Director to advise the Commission on the progress of pending investigations. All discussions of pending investigations shall be conducted in executive session not open to the public and no minutes of such sessions shall be kept. The Director shall not reveal the identity of any witnesses interviewed or the substance of their statements. No information received by the Commission shall be revealed to any person or agency by any Commission member. Any violation of this paragraph by a Commission member shall be grounds for removal from the Commission and shall constitute a misdemeanor.

§ 150.5. Investigations—Persons to initiate request

A. Oklahoma State Bureau of Investigation investigations not covered under Section 150.2 of this title shall be initiated at the request of the following persons:

1. The Governor;

2. The Attorney General;

3. The Council on Judicial Complaints upon a vote by a majority of said Council; or

4. The chairman of any Legislative Investigating Committee which has been granted subpoena powers by resolution, upon authorization by a vote of the majority of said Committee.

Such requests for investigations shall be submitted in writing and shall contain specific allegations of wrongdoing under the laws of the State of Oklahoma.

B. The Governor may initiate special background investigations with the written consent of the person who is the subject of the investigation.

C. The chairman of any Senate committee which is fulfilling the statutory responsibility for approving nominations made by the Governor may, upon a vote by a majority of the committee and with the written consent of the person who is to be the subject of the investigation, initiate a special background investigation of any nominee for the Oklahoma Horse Racing Commission as established by Provision No. 1, State Question No. 553, Initiative Petition No. 315 (3A O.S. Supp. 1982, Section 201). The Bureau shall submit a report to the committee within thirty (30) days of the receipt of the request. Any consideration by the committee of a report from the Bureau shall be for the exclusive use of the committee and shall be considered only in executive session.

D. All records relating to any investigation being conducted by the Bureau shall be confidential and shall not be open to the public or to the Commission except as provided in Section 150.4 of this title; provided, however, officers and agents of the Bureau may disclose, at the discretion of the Director, such investigative information to officers and agents of federal, state, county, or municipal law enforcement agencies and to district attorneys, in the furtherance of criminal investigations within their respective jurisdictions. Any unauthorized disclosure of any information contained in the confidential files of the Bureau shall be a misdemeanor. The person or entity authorized to initiate investigations in this section shall receive a report of the results of the requested investigation. The person or entity requesting the investigation may give that information only to the appropriate prosecutorial officer or agency having statutory authority in the matter if that action appears proper from the information contained in the report, and shall not reveal or give such information to any other person or agency. Violation hereof shall be deemed willful neglect of duty and shall be grounds for removal from office.

Amended by Laws 1989, c. 369, § 145, operative July 1, 1989.

§ 150.6 Director—Qualifications

The State Bureau of Investigation shall be under the operational control of a Director. The Director shall be appointed or dismissed by a majority vote of the total membership of the Commission. The Director shall be a professional law enforcement officer who possesses a bachelor's degree from an accredited college or university and who shall have a minimum of five (5) years' experience in criminal investigation and or law enforcement or five (5) years' experience as an agent with said Bureau and must have at least two (2) years' experience in an administrative position.

§ 150.7 Director—Powers and duties

The Director of the Oklahoma State Bureau of Investigation shall have the following powers, duties and responsibilities:

1. To appoint or dismiss a Deputy Director who shall have the same qualifications as the Director;

2. To supervise the maintaining of all reports and records of the Bureau which shall be kept for at least ten (10) years. Such records shall not be transferred to the custody or control of the State Archives Commission. The Director may, after said ten-year period, order destruction of records deemed to be no longer of value to the Bureau;

3. To report to the Commission at each regular meeting, or as directed by the Commission, the current workload of the Bureau. Such reports shall be submitted by category of the persons or entities authorized to initiate investigations as provided for in subsection A of Section 5 of this act,[1] and any other category the Commission may request which does not violate the confidentiality restrictions imposed in this act. Such reports shall contain the following information:

   a. what types of investigations are pending,
   b. what new types of investigations have been opened,
   c. what types of investigations have been closed, and
   d. what criminal charges have been filed as a result of Bureau investigations.

The reports shall not contain any information on the individual subjects of the investigation or persons questioned in connection with an investigation. These reports shall be open for public inspection; and

4. To designate positions, appoint employees and fix salaries of the Bureau.

Added by Laws 1976, c. 259, § 7, operative July 1, 1976.

§ 150.9. System of criminal identification—Fee for fingerprints

A. The Oklahoma State Bureau of Investigation shall procure and file for record, photographs, descriptions, fingerprints, measurements and other pertinent information relating to all persons who have been convicted of a felony within the state and of all well-known and habitual criminals, and it shall be the duty of the persons in charge of any state institution to furnish such data upon the request of the Director of the Bureau. The Oklahoma State Bureau of Investigation shall cooperate with and assist the sheriffs, chiefs of police and other law enforcement officers of the state in the establishment of a complete system of criminal identification, and shall file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory or penitentiary on felony charges, and any other pertinent information concerning such persons as it may from time to time receive from the law enforcement officers of this and other states.

B. The Oklahoma Department of Consumer Credit, the Oklahoma State Insurance Commission, the Oklahoma Horse Racing Commission, or any other state agency, board, department or commission requesting an analysis of fingerprints for licensing purposes by the Bureau on any person shall pay a Thirty-five Dollar ($35.00) fee to the Bureau for each such investigation.

Laws 1976, c. 259, § 9, operative July 1, 1976. Laws 1986, c. 201, § 11, operative July 1, 1986.

C. An owner or administrator of a child care facility requesting a criminal history investigation of an applicant for employment shall pay a Ten Dollar ($10.00) fee to the Bureau for each such investigation. Whenever such request includes an analysis of fingerprints, the fee shall be Forty-one Dollars ($41.00).

§ 150.10 Uniform crime reporting system

A. A uniform crime reporting system shall be established by the Oklahoma State Bureau of Investigation. The Director shall have the power and duty, when directed by the Commission, to collect and gather such information from such state agencies as may be prescribed in this act.

B. The Oklahoma State Bureau of Investigation is hereby designated as the agency which shall collect, gather, assemble and collate such information as is prescribed by this section.

C. All state, county, city and town law enforcement agencies shall submit a quarterly report to the Oklahoma State Bureau of Investigation on forms prescribed by the Bureau, which report shall contain the number and nature of offenses committed within their respective jurisdictions, the disposition of such matters, and such other information as the Bureau may require, respecting information relating to the cause and prevention of crime, recidivism, the rehabilitation of criminals and the proper administration of criminal justice.

D. Upon receipt of such information the Director shall have such data collated and formulated and shall compile such statistics as he may deem necessary in order to present a proper classification and analysis of the volume and nature of crime and the administration of criminal justice within this state.

§ 150.12 Felony arrest—Sending fingerprints to State and Federal Bureaus

It is hereby made the duty of any sheriff, chief of police, city marshal, constable and any other law enforcement officer, immediately upon the arrest of any person who, in the best judgment of the arresting officer, is wanted on the charge of the commission of a felony, or who is believed to be a fugitive from justice, or upon the arrest of any person who is in the possession at the time of his arrest of goods or property, reasonably believed to have been stolen by such person, or in whose possession is found a burglary outfit, tools or keys or explosives, reasonably believed to be intended for unlawful use by such person, or who is in possession of an infernal machine, bomb, or other contrivance, in whole or in part, and reasonably believed to be intended for no lawful purpose, or who is carrying concealed firearms or other deadly weapon, reasonably believed to be intended for use in an unlawful purpose, or who is in possession of ink, die, paper or other articles used in the making of counterfeit bank notes, or in the alteration of bank notes, or dies, molds, or other articles used in making counterfeit money, defacing or changing numbers on motor vehicles and reasonably believed to be intended for any unlawful purpose, to cause fingerprint impressions in triplicate to be made of such person or persons and forward one (1) copy of such impression to the State Bureau of Investigation, at its Oklahoma City office, and one (1) copy to the Federal Bureau of Investigation, at its Washington, D.C., office, the other copy to be filed in his office. This section is not intended to include violators of city or town ordinances, or persons arrested for ordinary misdemeanors, and great care shall be exercised to exclude such persons.

§ 18. Expungement of records—Persons authorized

Persons authorized to file a motion for expungement, as provided herein, must be within one of the following categories:

1. the person has been acquitted;

2. the person was arrested and no charges are filed or charges are dismissed within one (1) year of the arrest; or

3. the statute of limitations on the offense had expired and no charges were filed.

For purposes of this act,[1] "expungement" shall mean the sealing of criminal records.

Added by Laws 1987, c. 87, § 1, emerg. eff. May 14, 1987.

[1] Section 1 et seq. of this title.

§ 19. Sealing and unsealing of records—Procedure

A. Any person qualified under Section 18 of Title 22 of the Oklahoma Statutes may petition the district court of the district in which the arrest information pertaining to him is located for the sealing of all or any part of said record, except basic identification information.

B. Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days of notice of the hearing to the district attorney, the arresting agency, the Oklahoma State Bureau of Investigation, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of such record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

Any order entered under this subsection shall specify those agencies to which such order shall apply.

D. Upon the entry of an order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person.

E. Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of such records, the Attorney General, or by the district attorney and only to those persons and for such purposes named in such petition.

F. Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records provide information that has been sealed, including any reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

G. All arrest and criminal records information existing prior to the effective date of this section, except basic identification information, is also subject to sealing in accordance with subsection C of this section.

H. Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

I. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

J. For the purposes of this act,[1] district court index reference of sealed material shall be destroyed, removed or obliterated.

K. Any record ordered to be sealed pursuant to this act, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of said ten-year period.

L. Subsequent to records being sealed as provided herein, the district attorney, the arresting agency, the Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing said records. Upon filing of a petition the court shall set a date for hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

M. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to Section 2608 of Title 12 of the Oklahoma Statutes.

OKLAHOMA OPEN RECORDS ACT

§ 24A.1. Short title

Sections 24A.1 through 24A.19 of this title and Section 7 of this act [1] shall be known as the "Oklahoma Open Records Act".

Amended by Laws 1988, c. 68, § 1, eff. Nov. 1, 1988; Laws 1988, c. 187, § 1, emerg. eff. June 6, 1988.

[1] Section 24A.20 of this title.

§ 24A.2. Public policy—Purpose of act

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act [1] shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act [2] is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

§ 24A.3. Definitions

Definitions. As used in this act: [1]

1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean nongovernment personal effects or, unless public disclosure is required by other laws or regulations, personal financial statements submitted to a public body for the purpose of obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, "public body" does not mean judges, justices, the State Legislature, or State Legislators;

3. "Public office" means the physical location where public bodies conduct business or keep records;

4. "Public official" means any official or employee of any public body as defined herein; and

5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

Amended by Laws 1988, c. 187, § 3, emerg. eff. June 6, 1988.

[1] Section 24A.1 et seq. of this title.

§ 24A.5. Inspection, copying and/or mechanical reproduction of records—Exemptions

All records of public bodies and public officials shall be open to any person for inspection, copying, and/or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act [1] does not apply to records specifically required by law to be kept confidential including:

   a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges; or

   b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions, provided however, the Oklahoma Department of Public Safety shall not be required to assemble for the requesting person specific information requested from the Oklahoma Department of

Public Safety's Driver License file relating to persons whose names are not furnished by the requesting person.

2. Any request for a record which contains individual records of persons and the cost of copying, reproducing or certifying such individual record which is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of document copying, and/or mechanical reproduction. In no instance shall said document copying fee exceed twenty-five cents ($0.25) per page for documents having the dimensions of eight and one half (8½) by fourteen (14) inches or smaller, or a maximum of One Dollar ($1.00) per copied page for a certified copy. However, if the request is:

a. solely for commercial purpose; or

b. clearly would cause excessive disruption of the public body's essential functions;

then the public body may charge a reasonable fee to recover the direct cost of document search.

Any public body establishing fees under this act shall post a written schedule of said fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

Said fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, such index shall not be copied and/or mechanically reproduced for the purpose of sale of such information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one such person shall be available at all times to release records during the regular business hours of the public body.

§ 24A.8. Law enforcement records—Disclosure

A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

3. Conviction information, including the name of any person convicted of a criminal offense;

4. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

5. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and a brief summary of what occurred;

6. A crime summary, including a departmental summary of crimes reported and public calls for service by classification or nature and number;

7. Radio logs, including a chronological listing of the calls dispatched; and

8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of his commitment, the authority committing him, whether committed for a criminal offense, a description of his person, and the date or manner of his discharge or escape.

B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act[1] shall not be made available for public inspection.

§ 991c. Deferred judgment procedure

Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation under the supervision of the State Department of Corrections upon the conditions of probation prescribed by the court. The court shall first consider restitution, administered in accordance with the provisions pertaining thereto, among the various conditions of probation it may prescribe. The court may also consider ordering the defendant to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant. Further, the court may order the defendant confined to the county jail for a period not to exceed ninety (90) days to be served in conjunction with probation. Further, the court may order the defendant to pay a sum into the court fund not to exceed the amount of fine authorized for the offense alleged against the defendant or authorized under Section 9 of Title 21 of the Oklahoma Statutes and an amount for reasonable attorney fee, to be paid into the court fund, if a court-appointed attorney has been provided to defendant. Further, the court may, in the case of a person before the court for the offense of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol and another intoxicating substance, before the court for the offense of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person to participate in one or both of the following:

(1) an alcohol and drug substance abuse course, pursuant to Sections 11-902.2 and 11-902.3 of Title 47 of the Oklahoma Statutes;

(2) a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars ($5.00), to the victims impact panel program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

Upon completion of the probation term, which probation term under this procedure shall not exceed five (5) years, the defendant shall be discharged without a court judgment of guilt, and the verdict or plea of guilty or plea of nolo contendere shall be expunged from the record and said charge shall be dismissed with prejudice to any further action. Upon violation of the conditions of probation, the court may enter a judgment of guilt and proceed as provided in Section 991a of this title. Further, if the probation is for a felony offense, and the defendant violates the conditions of probation by committing another felony offense, the defendant shall not be allowed bail pending appeal. The deferred judgment procedure described in this section shall only apply to defendants not having been previously convicted of a felony.

§ 2–410. Conditional discharge for possession as first offense

Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled dangerous substance under Section 2–402, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported or state-approved facility, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire or any other public or private purpose; provided, that, any such plea of guilty or finding of guilt shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant.

Laws 1971, c. 119, § 2–410.

Chapter 181

1981 REPLACEMENT PART

State Police; Crime Reporting and Records; Police and Parole and Probation Standards and Training

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STATE POLICE

181.010 Definitions for ORS 181.010 to 181.560. As used in ORS 181.010 to 181.560, unless the context requires otherwise:

(1) "Bureau" means the Department of State Police Bureau of Criminal Identification.

(2) "Criminal offender information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(3) "Crime for which criminal offender information is required" means:

(a) Any felony;

(b) Any misdemeanor or other offense which involves criminal sexual conduct; or

(c) Any crime which involves a violation of the Uniform Controlled Substances Act.

(4) "Department" means the Department of State Police established under ORS 181.020.

(5) "Deputy superintendent" means the Deputy Superintendent of State Police.

(6) "Law enforcement agency" means county sheriffs, municipal police departments, State Police, other police officers of this and other states and law enforcement agencies of the Federal Government.

(7) "State Police" means the members of the state police force appointed under ORS 181.250.

(8) "Superintendent" means the Superintendent of State Police.

(9) "Criminal Justice Agency" means:

(a) The Governor;

(b) Courts of criminal jurisdiction;

(c) The Attorney General;

(d) District attorneys, city attorneys with criminal prosecutive functions and public defender organizations established under ORS chapter 151;

(e) Law enforcement agencies;

(f) The Corrections Division;

(g) The State Board of Parole; and

(h) Any other state or local agency designated by order of the Governor.

(10) "Disposition report" means a form or process prescribed or furnished by the bureau, containing a description of the ultimate action taken subsequent to an arrest. [Amended by 1963 c.547 §1; 1971 c.467 §1; 1975 c.548 §1; 1977 c.745 §46; 1981 c.905 §1]

181.020 Department of State Police established. There is established a Department of State Police. The department shall consist of office personnel and the Oregon State Police. The Oregon State Police shall consist of members of the state police force appointed under ORS 181.250, state police cadets and legislative security personnel appointed under ORS 181.265. [Amended by 1963 c.547 §8; 1971 c.467 §2]

181.030 Powers and duties of department and its members. (1) The Department of State Police and each member of the Oregon State Police shall be charged with the enforcement of all criminal laws.

(2) Each member of the state police is authorized and empowered to:

(a) Prevent crime.

(b) Pursue and apprehend offenders and obtain legal evidence necessary to insure the conviction in the courts of such offenders.

(c) Institute criminal proceedings.

(d) Execute any lawful warrant or order of arrest issued against any person or persons for any violation of the law.

(e) Make arrests without warrant for violations of law in the manner provided in ORS 133.310.

(f) Give first aid to the injured.

(g) Succor the helpless.

(3) Each member of the state police shall have in general the same powers and authority as those conferred by law upon sheriffs, police officers, constables, peace officers and may be appointed as deputy medical examiners.

(4) The members of the state police shall be subject to the call of the Governor, and are empowered to cooperate with any other instrumentality or authority of the state, or any political subdivision in detecting crime, apprehending criminals and preserving law and order throughout the state; but the state police shall not be used as a posse except when ordered by the Governor. [Amended by 1961 c.434 §7; 1971 c.467 §3; 1973 c.408 §30; 1977 c.595 §1]

181.040 Department to enforce laws relating to highways and operation of vehicles on highways; power of arrest possessed by persons not members of department. (1) The Department of State Police shall enforce all laws now or hereafter enacted relating to highways and to the operation of vehicles on state or other highways.

(2) Members of the state police have the power to arrest violators of any provision of the laws applicable to highways or to the movement of vehicles on highways.

(3) The necessary expenses in carrying out this section shall be paid from the State Highway Fund and from the moneys received under ORS 481.950.

(4) ORS 181.010 to 181.560 does not prevent an officer or employe of the Department of Transportation from arresting any person for any crime committed in his presence and does not affect other powers of arrest granted by the laws of this state to persons other than peace officers. [Amended by 1967 c.175 §5; 1971 c.467 §4]

181.050 State police to enforce laws and regulations of agencies. The state police, with the approval of the Governor, may be called upon by any other branch or department of the state government to enforce criminal laws or any regulation of such branch or department. [Amended by 1971 c.58 §1]

181.060 [Repealed by 1963 c.547 §11]

181.065 [1963 c.547 §6; repealed by 1975 c.548 §2 (181.066 enacted in lieu of 181.065)]

181.066 Bureau of criminal identification. (1) There is established in the department a bureau of criminal identification which shall be operated by the department.

(2) The bureau shall:

(a) Install and maintain systems for filing and retrieving fingerprint data and supplemental information submitted by criminal justice agencies for the identification of criminal offenders as the superintendent deems necessary;

(b) Employ its fingerprint record file as a basis for identifying individuals and provide criminal offender information to criminal justice agencies while acting in the performance of their official duties;

(c) Provide information to persons and agencies as provided in ORS 181.555 and 181.560; and

(d) Undertake such other projects as are necessary or appropriate to the speedy collection and dissemination of information relating to crimes and criminals. [1975 c.548 §3 (enacted in lieu of 181.065); 1975 c.605 §11a; 1981 c.905 §2]

181.070 State detective bureau. (1) The superintendent may, with the approval of the Governor, maintain a state detective bureau under his immediate supervision.

(2) The detective bureau shall:

(a) Maintain facilities for the detection of crime by the state police.

(b) Supply expert information on handwriting and ballistics.

(3) To accomplish the purposes of subsection (2) of this section, the superintendent may, with the approval of the Governor, utilize the services of such members of the state police as assistant state detectives as he deems expedient. [Amended by 1963 c.547 §9; 1971 c.467 §22]

181.080 Crime detection laboratories. (1) The Department of State Police may establish crime detection laboratories, to be operated by the department in cooperation with the Oregon Health Sciences University.

(2) The Oregon Health Sciences University may furnish adequate quarters, heat and light for the laboratory in the buildings of the school at Portland and may assist the personnel of all laboratories with technical advice and assistance.

(3) The laboratories shall furnish service as available to all district attorneys, sheriffs and other peace officers in the state. The services of the laboratories shall also be available to any defendant in a criminal case on order of the court before which the criminal case is pending. [Amended by 1953 c.5 §3; 1963 c.218 §1; 1971 c.467 §23]

181.090 Headquarters and patrol stations. The superintendent, with the approval of the Governor, may establish headquarters and patrol stations at such places as he may deem most advisable for the patrol and protection of the state and for the enforcement of the laws. For that purpose, with the approval of the Governor, he may use lands and buildings for the accommodation of members of the state police and their vehicles and equipment. [Amended by 1971 c.467 §21]

181.100 Organization of work of department. The superintendent shall, so far as in his judgment it is practicable and expedient so to do, organize the work of his department so that:

(1) The various duties required of the department may be assigned to appropriate departments, to be performed by persons experienced and qualified for such respective kinds of work.

(2) The duties of his various officers and police are coordinated so that when not engaged in a particular duty specified or directed to be done or not then requiring attention such officers and police shall perform the other duties required of the department and then required to be done.

(3) The cooperation of other officers and police may be secured for the purposes of avoiding duplication of time and effort.

181.110 Distribution of police throughout state. The superintendent shall distribute the state police throughout the various sections of the state where they will be most efficient in carrying out the purposes of the department to preserve the peace, to enforce the law and to prevent and detect crime.

181.120 Standard uniform for state police. The State of Oregon shall provide the members of the state police with standard uniforms. Subject to detailed regulations and specifications prescribed by the superintendent, the uniform to be worn by members of the state police shall be of standard pattern and distinctive design. [Amended by 1971 c.467 §7; 1979 c.30 §1]

181.130 Service without wearing uniform. The superintendent may direct that members of the state police shall serve without wearing uniform, when, in his judgment, law enforcement will thereby be made more efficient. [Amended by 1971 c.467 §8]

181.140 Wearing uniforms by other persons prohibited. (1) No person other than a member of the Oregon State Police shall wear, use or order to be worn or used, copy or imitate in any respect or manner the standard uniforms specified in ORS 181.120.

(2) As used in this section, "person" includes agents, officers and officials elected or appointed by any municipality or county.

181.150 Supplies and equipment of state police. (1) The state shall provide the members of the state police with emergency and first aid outfits, weapons, motor vehicles, and all other supplies and equipment necessary to carry out the objects of the department. All such property shall remain the property of the state.

(2) When any of the property, supplies or equipment becomes surplus, obsolete or unused it shall be disposed of by the Department of General Services as provided in ORS 283.230. [Amended by 1955 c.148 §1; 1971 c.467 §9]

181.160 [Repealed by 1955 c.260 §3]

181.170 Damage or loss of property by neglect of member; deduction from pay. The superintendent shall make charges against any member of the state police for property of the department damaged, lost or destroyed through carelessness or neglect of such member. If it is determined that such damage, loss or destruction was due to carelessness or neglect, there shall be deducted from the pay of such member the amount of money necessary to repair or replace the article or articles damaged, lost or destroyed.

181.175 State Police Account. There is established in the General Fund of the State Treasury an account to be known as the State Police Account. All moneys received by the Department of State Police shall be paid to the credit of the State Police Account, and such moneys are continuously appropriated for the payment of expenses of the Department of State Police. [1971 c.277 §2; 1979 c.541 §4; 1981 c.881 §3]

181.180 Petty cash account. The superintendent shall establish a petty cash account from the appropriation for carrying out the functions of the department in the amount of $10,000 and shall authorize designated commissioned officers to make disbursements from such account in all cases where it may be necessary to make an immediate cash payment for transportation expenses, accessories and repairs to motor vehicles, board and lodging, immediate medical and veterinary supplies, telephone and imperative supplementary supplies. Upon presentation to the Secretary of State of duly approved vouchers for moneys so expended from the petty cash account or fund, the account or fund shall be reimbursed to the amount of vouchers submitted. Disbursing officers shall give a surety bond to the State of Oregon to be approved by

the Attorney General in the amount of $10,000 for faithful performance of duty and proper administration of funds, the premium on which shall be paid by the department.

181.190 Commanding assistance of citizens. All members of the state police may direct and command the assistance of any able-bodied citizen of the United States to aid, when necessary, to maintain law and order. When so called, any person shall, during the time his assistance is required, be considered a member of the state police and subject to ORS 181.010 to 181.560. [Amended by 1971 c.467 §10]

181.200 Superintendent of State Police; appointment; confirmation; removal. The Superintendent of State Police shall be the executive and administrative head of the Department of State Police. Subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, the Governor shall appoint the superintendent for a term of four years. The Governor may remove the superintendent for inefficiency or malfeasance in office after charges have been preferred and a hearing granted. [Amended by 1971 c.467 §11; 1973 c.792 §1]

181.210 Oath and bond of superintendent and deputy. The Superintendent of State Police and the Deputy Superintendent of State Police, before assuming their duties, each shall take and subscribe an oath of office as prescribed by ORS 181.390 and shall be covered by a fidelity or blanket bond as provided in ORS 291.011. [Amended by 1971 c.467 §13]

181.220 Deputy Superintendent of State Police; qualifications, appointment and removal. The Superintendent of State Police may, with the approval of the Governor as to person and salary, appoint a Deputy Superintendent of State Police. The deputy superintendent shall have served as a captain or in higher rank in the Oregon State Police not less than one year prior to his appointment. The deputy superintendent shall be removable for the causes and in the manner provided in ORS 181.290 to 181.350 for the removal of members of the state police. [Amended by 1971 c.467 §12]

181.230 [Repealed by 1971 c.467 §26]

181.240 Powers and duties of deputy superintendent. The deputy superintendent, when appointed and qualified, shall possess during his term of office all the powers of the superintendent and shall act as the head of the department in the absence or incapacity of the superintendent, and shall perform such duties as the superintendent may prescribe.

181.250 State police force; appointment; examination and enlistment of applicants. The superintendent, with the approval of the Governor, shall appoint a state police force, consisting of the number of commissioned officers, noncommissioned officers and troopers who are, in the judgment of the Governor and the superintendent, necessary in the performance of the duties of the department. The superintendent shall, subject to the laws of the state and with the approval of the Governor, arrange for the examination and enlistment of applicants and establish ranks or grades. [Amended by 1971 c.467 §6]

181.260 Qualifications for appointment and reappointment as member of state police. (1) No person, other than an expert in crime detection, shall be appointed a member of the state police unless he is:

(a) A citizen of the United States.

(b) A resident of the State of Oregon.

(c) Of good health and of good moral character.

(d) Over the age of 21 years.

(2) No person shall be appointed a member of the state police who has not established satisfactory evidence of his qualifications by passing a physical and mental examination based upon the standard provided by the rules and regulations of the United States Army; but the superintendent, with the approval of the Governor, may, for such positions and where, in his judgment, the good of the service requires it, waive the physical standard provided by such rules and regulations.

(3) Any member who voluntarily withdraws from the state police force without the consent of the superintendent, and all persons removed from the state police for cause after hearing, shall be ineligible for reappointment.

181.265 Qualification for cadets and legislative and executive security personnel. Notwithstanding ORS 181.260 (1)(d), the superintendent may appoint, as state police cadets or legislative and executive security personnel, individuals who are 18 years of age or older and satisfy other requirements of ORS 181.260 (1) and (2). [1971 c.467 §25b; 1977 c.258 §1]

181.270 [Amended by 1953 c.50 §4; 1955 c.704 §1; 1957 c.674 §1; 1959 c.677 §1; 1961 c.493 §2; 1963 c.572 §54; repealed by 1965 c.14 §2 (181.271 enacted in lieu of 181.270)]

181.271 Salaries of state police. The salaries of members of the Oregon State Police shall be fixed in the same manner as the salaries of other officers and employes in the unclassified service pursuant to ORS 240.240. [1965 c.14 §3 (enacted in lieu of 181.270); 1971 c.467 §14]

181.280 Instruction; rules and regulations for discipline and control. The superintendent shall:

(1) Provide the necessary preliminary and subsequent instruction to recruits and troopers as to their duties as police officers of the state.

(2) Make rules and regulations for the discipline and control of the state police. [Amended by 1971 c.467 §15]

181.290 Grounds for removal of state police. The superintendent may remove members of the Oregon State Police in the manner prescribed in ORS 181.290 to 181.350 for inefficiency, misfeasance, malfeasance, nonfeasance in office; violation of the criminal laws of the state or of the United States, wilful violation of any rule or regulation of the department, insubordination, forfeiture of license to operate a motor vehicle, or physical or mental disability not incurred in line of duty. [Amended by 1971 c.467 §16]

181.300 Proceeding for removal. (1) Members of the Oregon State Police may be removed only after written charges have been preferred and a hearing granted as prescribed in ORS 181.290 to 181.350.

(2) This section does not require a hearing for:

(a) Disciplinary measures taken by the superintendent or any commanding officer of a detachment for the punishment of minor infractions of the rules or regulations of the department.

(b) Demotion of members.

(c) Removal of recruits. [Amended by 1971 c.467 §17]

181.310 Superintendent to make rules and regulations governing proceedings for removal. The superintendent shall make rules and regulations providing for:

(1) The filing of written charges against an accused member of the Oregon State Police.

(2) A hearing by the trial board on the charges upon not less than 10 days' notice.

(3) An opportunity to the accused member to produce proof in his defense. [Amended by 1971 c.467 §18]

181.320 Trial board; members; presiding officer. A trial board to hear charges against members of the Oregon State Police shall consist of the superintendent and two commissioned officers, senior in service, appointed by the superintendent. The superintendent shall be the presiding officer of the trial board. Upon written order of the superintendent, any commissioned officer appointed or designated by him may sit as presiding officer of the trial board. [Amended by 1971 c.467 §19]

181.330 Hearing on charges; compelling attendance of witnesses; witness fees and mileage. The presiding officer of the trial board shall make all necessary rulings during the course of the hearing which may be held at any place designated by the superintendent. The superintendent or the officer acting in his stead as presiding officer of the trial board is empowered to issue subpenas to compel the attendance of witnesses and the production of evidence and to administer all necessary oaths. Persons summoned as witnesses before the trial board shall be entitled to witness fees and mileage for traveling, as provided by law for witnesses in courts of record in the county in which the hearing is held. Failure or refusal to obey any subpena shall be brought to the attention of such circuit court and shall be punished by that court as a contempt.

181.340 Finding of trial board; action by superintendent. If the charges are proved the trial board shall make a written finding of guilty and recommend either removal of the member of the Oregon State Police or such disciplinary punishment as, in their opinion, the offense merits. Thereupon the superintendent shall direct the removal or punishment. If any member refuses to attend the hearing or abide by any such disciplinary order, the superintendent may by order remove him forthwith. [Amended by 1971 c.467 §20]

181.350 Procedure for review of decision of trial board. The decisions of the trial board shall be subject to review by the Court

of Appeals. The procedure for review shall be as provided in ORS 183.482. [Amended by 1979 c.772 §14]

181.360 Directors of crime detection laboratories. The superintendent shall appoint:

(1) The director of each crime detection laboratory, who shall have charge and supervision over the laboratory under the general supervision of the superintendent.

(2) The assistants necessary for the operation of the laboratories. [Amended by 1971 c.467 §24]

181.370 [Repealed by 1971 c.467 §26]

181.380 [Repealed by 1971 c.467 §26]

181.390 Oath of members of state police. Each member of the Oregon State Police shall take and subscribe to an oath of office to support the Constitution and laws of the United States and of the State of Oregon, and to honestly and faithfully perform the duties imposed upon him under the laws of Oregon. The oath of the superintendent and deputy superintendent shall be filed with the Secretary of State, and the oaths of all other members with the superintendent. [Amended by 1971 c.467 §5]

181.400 Restrictions on members of state police; personal and property rights of others; political contests. All members of the state police are subject to the following restrictions:

(1) No member of the state police shall in any way interfere with the rights or property of any person, except for the prevention of crime, or the capture or arrest of persons committing crimes.

(2) Notwithstanding any other law, no member of the state police shall in any way be active or participate in any political contest of any general or special election, except to cast his ballot. No member of the state police shall be detailed or ordered to duty at or near any voting precinct where any election is being held, nor shall any member of the state police remain in or about such voting precinct, except for the time necessary to cast his vote. [Amended by 1971 c.467 §25]

181.410 Records and reports of time spent in performance of duties; approval of claims. (1) Under rules and regulations to be promulgated by the Superintendent of State Police, with the approval of the Governor, all state police shall be required to keep a record of the time spent in the performance of their various duties and report same to the superintendent at such times as he shall direct.

(2) The superintendent shall approve all claims. [Amended by 1957 c.521 §4; 1959 c.480 §3]

181.415 [1967 c.194 §1; repealed by 1977 c.249 §1]

181.420 [Amended by 1957 c.7 §1; repealed by 1971 c.743 §432]

CRIME REPORTING

181.510 [1963 c.547 §3; repealed by 1975 c.548 §4 (181.511 enacted in lieu of 181.510)]

181.511 Fingerprints, identifying data, disposition report required. (1) A law enforcement agency immediately upon the arrest of a person for a crime shall:

(a) Place the required fingerprints and identifying data on forms prescribed or furnished by the bureau, photograph the arrested person, and promptly transmit the form and photograph to the bureau.

(b) If the arrest is disposed of by the arresting agency, cause the disposition report to be completed and promptly transmitted to the bureau.

(c) If the arrest is not disposed of by the agency, cause the disposition report to be forwarded to the court that will dispose of the charge for action by the court in accordance with ORS 181.521.

(2) A law enforcement agency may record, in addition to fingerprints, the palm prints, sole prints, toe prints, or other personal identifiers when, in the discretion of the agency, it is necessary to effect identification of the persons or to the investigation of the crime charged.

(3) A law enforcement agency, for the purpose of identification, may record and submit to the bureau the fingerprints of persons arrested for crimes for which criminal offender information is not required.

(4) The prosecuting attorney shall submit to the court a disposition report for submission by the court to the bureau in accordance with ORS 181.521. [1975 c.548 §5 (enacted in lieu of 181.510)]

181.520 [1963 c.547 §4; repealed by 1975 c.548 §6 (181.521 enacted in lieu of 181.520)]

181.521 Courts to report disposition of certain cases; State Court Administrator to inquire about status of arrests. Courts shall cause the final court order or judgment of a crime for which criminal offender information is required to be reported promptly to the bureau. The State Court Administrator, upon notice by the bureau, shall make inquiry as to the status of an arrest which has not been reported disposed of within a reasonable time after the date of arrest. If from such inquiry the State Court Administrator believes that a court, or its clerk or administrator, may not be making satisfactory reports of dispositions he shall report his findings in relation thereto to the Supreme Court for its action. [1975 c.548 §6a (enacted in lieu of 181.520)]

181.530 Report of release or escape from state institution of certain inmates. (1) The superintendent of any institution of this state shall notify the bureau prior to the release or immediately after the escape from such institution, of any person committed to such institution, for a crime for which a report is required or under civil commitment as a sexually dangerous person. The notice shall state the name of the person to be released or who has escaped, the county in which he was convicted or from which he was committed and, if known, the address or locality at which he will reside.

(2) Promptly upon receipt of the notice required by subsection (1) of this section, the bureau shall notify all law enforcement agencies in the county in which the person was convicted or from which he was committed and in the county, if known, in which the person will reside. [1963 c.547 §5]

181.535 Criminal identification information available to Executive Secretary of Oregon Racing Commission. (1) The department may, upon request of the Oregon Racing Commission, furnish to the Executive Secretary of the Oregon Racing Commission such information as the department may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information and data.

(2) For the purposes of requesting and receiving the information and data described in subsection (1) of this section, the Oregon Racing Commission is a "state agency" and a "criminal justice agency" and its enforcement agents are "peace officers" within this chapter and rules adopted thereunder. [1975 c.549 §19]

181.537 Criminal identification information available to Department of Human Resources. (1) On the request of the Department of Human Resources and written consent of the person about whom information is being requested, the department may furnish to the director such information as the department may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information, concerning persons serving as or being considered to serve as foster parents pursuant to placement of persons in their custody and care. The department shall adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information.

(2) For purposes of receiving the information described in subsection (1) of this section, the Department of Human Resources is a "criminal justice agency" under ORS 181.010 to 181.560 and the rules adopted under ORS 181.555. [1979 c.732 §2]

181.540 Confidentiality of some records. (1) Notwithstanding the provisions of ORS 192.410 to 192.500 relating to public records the fingerprints, photographs, records and reports compiled under ORS 137.225, 181.010, 181.511, 181.521, 181.555, 481.125 (2) and this section are confidential and exempt from public inspection except:

(a) As ordered by a court;

(b) As provided in rules adopted by the department under ORS 183.310 to 183.550 to govern access to and use of computerized criminal offender information including access by an individual for review or challenge of the individual's own records; or

(c) As provided in ORS 181.555 and 181.560.

(2) The records of the department of crime reports to the department and of arrests made by the department, however, shall not be confidential and shall be available in the same manner as the records of arrest and reports of crimes of other law enforcement agencies under ORS 192.500 (1)(c). [1963 c.547 §7; 1973 c.794 §16; 1975 c.548 §7; 1979 c.518 §1; 1981 c.905 §3]

181.550 Reporting of crime statistics. (1) All law enforcement agencies shall report to the Executive Department statistics con-

cerning crimes:

(a) As directed by the Executive Department, for purposes of the Uniform Crime Reporting System of the Federal Bureau of Investigation; and

(b) As otherwise directed by the Governor concerning general criminal categories of criminal activities but not individual criminal records.

(2) The Executive Department shall prepare:

(a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this section, and others having an interest therein; and

(b) Special reports as directed by the Governor. [1973 c.130 §2]

181.555 Establishment of procedures for access to criminal record information. The department shall adopt rules under ORS 183.310 to 183.550 establishing procedures:

(1) To provide access to criminal offender information by criminal justice agencies and by other state and local agencies.

(2) (a) To permit a person or agency not included in subsection (1) of this section to inquire as to whether the department has compiled criminal offender information on an individual.

(b) To provide that any person making an inquiry under paragraph (a) of this subsection furnish the department with such information known to the inquirer as will assist the department in identifying and notifying the individual about whom the information is sought. If the information is sought by an employer for employment purposes, the employer first shall have advised the employe or prospective employe that such information might be sought and shall state upon making the request that the individual has been so advised and the manner in which the individual was so advised.

(3) To provide each individual about whom criminal offender information has been compiled the right to inspect and challenge that criminal offender information.

(4) Providing for purging or updating of inaccurate or incomplete information. [1975 c.548 §8; 1981 c.905 §6]

181.560 Procedure when information requested by other than criminal justice agency. (1) When a person or agency, other than a criminal justice agency or a law enforcement agency, pursuant to ORS 181.555 (2), requests from the department criminal offender information regarding an individual, if the department's compiled criminal offender information on the individual contains records of any conviction, or of any arrest less than one year old on which there has been no acquittal or dismissal, the department shall respond to the request as follows:

(a) The department shall send prompt written notice of the request to the individual about whom the request has been made. The department shall address the notice to the individual's last address known to the department and to the individual's address, if any, supplied by the person making the request. However, the department has no obligation to insure that the addresses are current. The notice shall state that the department has received a request for information concerning the individual and shall identify the person or agency making the request. Notice to the individual about whom the request is made shall include:

(A) A copy of all information to be supplied to the person or agency making the request;

(B) Notice to the individual of the manner in which the individual may become informed of the procedures adopted under ORS 181.555 (3) for challenging inaccurate criminal offender information; and

(C) Notice to the individual of the manner in which the individual may become informed of rights, if any, under Title VII of the Civil Rights Act of 1964, and notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law and that the individual may obtain further information by contacting the Bureau of Labor and Industries.

(b) Fourteen days after sending notice to the individual about whom the request is made, the department shall deliver to the person or agency making the request the following information if held regarding any convictions and any arrests less than one year old on which the records show no acquittal or dismissal:

(A) Date of arrest.

(B) Offense for which arrest was made.

(C) Arresting agency.

(D) Court of origin.

(E) Disposition, including sentence imposed, date of parole if any and parole revocations if any.

(c) The department shall deliver only the data authorized under paragraph (b) of this subsection.

(d) The department shall inform the person or agency requesting the criminal offender information that the department's response is being furnished only on the basis of similarity of names and description and that identification is not confirmed by fingerprints.

(2) If the department holds no criminal offender information on an individual, or the department's compiled criminal offender information on the individual consists only of nonconviction data, the department shall respond to a request under this section that the individual has no criminal record and shall release no further information.

(3) The department shall keep a record of all persons and agencies making inquiries under ORS 181.555 (2) and shall keep a record of the names of the individuals about whom such persons or agencies are inquiring, regardless of whether the department has compiled any criminal offender information on the individuals. These records shall be public records and shall be available for inspection under ORS 192.410 to 192.500.

(4) Nothing in ORS 181.066, 181.540, 181.555 or this section is intended to prevent the department from charging a reasonable fee, pursuant to ORS 192.440, for responding to a criminal offender information inquiry or for making information available under ORS 181.555 or this section. [1981 c.905 §5]

181.570 [1975 c.375 §1; repealed by 1979 c.485 §1]

181.575 Specific information not to be collected or maintained. No law enforcement agency, as defined in ORS 181.010, may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct. [1981 c.905 §8]

Chapter 137

Sealing Conviction Record

137.225 Order setting aside conviction; prerequisites; limitations. (1) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court wherein that conviction was entered for entry of an order setting aside the conviction.

(2) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation and opportunity be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction" shall be forwarded to the bureau. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. If the court determines that the circumstances and behavior of the applicant from the date of conviction to the date of the hearing on the motion warrant setting aside the conviction, it shall enter an appropriate order which shall state the original arrest charge and the conviction charge if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest resulting in the criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Corrections Division when the person has been in the custody of the Corrections Division. Upon entry of such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

(5) The provisions of subsection (1) of this section apply to a conviction of:

(a) A Class C felony.

(b) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court.

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed.

(e) A violation described in ORS 167.207, 167.217 or 167.222.

(f) An offense committed before January 1, 1972, which if committed after that date would be:

(A) A Class C felony.

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court.

(C) A misdemeanor.

(D) A violation.

(6) The provisions of subsection (1) of this section do not apply to:

(a) A person convicted of a state or municipal traffic offense;

(b) A person convicted, within the 10-year period immediately preceding the filing of his

Chapter 430
Expungement of Record

430.505 Expunction of verdict. If a person is diverted after conviction, but prior to sentencing, the court may order expunction from the record of the verdict of the court and all proceedings incident thereto upon successful completion of the diversion plan and a post-treatment period of three years, provided there have been no new convictions for misdemeanor or felony offenses. [1977 c.871 §20]

Chapter 192

Public Records

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of state-wide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries, and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to insure orderly retention and destruction of all public records, whether current or noncurrent, and to insure the preservation of public records of value for administrative, legal and research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon, and to assure the retention of records essential to meet the needs of the Legislative Assembly, the state,

its political subdivisions and its citizens, in so far as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds. All records not included in types described in this subsection shall be destroyed in accordance with the rules adopted by the Secretary of State.
[1973 c.439 s.1]

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record" means a document, book, paper, photograph, file, sound recording or other material, such as court files, mortgage and deed records, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. "Public records" includes correspondence, public records made by photocopying and public writings, but does not include:

(a) Records of the Legislative Assembly, its committees, officers and employes.

(b) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(c) Extra copies of a document, preserved only for convenience of reference.

(d) A stock of publications.

(6) "Public writing" means a written act or record of an act of a sovereign authority, official body, tribunal or public officer of this state, whether legislative, judicial or executive.

(7) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state. However, "state agency" does not include the Legislative Assembly or its committees, officers and employes.
[1961 c.160 s.2; 1965 c.302 s.1]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate.

* * *

INSPECTION OF PUBLIC RECORDS

192.410 Defintions for ORS 192.410 to 192.500. As used in ORS 192.410 to 192.500:

(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

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

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.
[1973 c.794 s.2]

192.420 Right to inspect public records. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500.
[1973 c.794 s.3]

192.440 Certified copies of public records; fees. (1) The custodian of any public record which a person has a right to inspect shall give him, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available.
[1973 c.794 s.5]

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection. (1) Subject to ORS 192.480, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. The burden is on the agency to sustain its action. The Attorney General shall issue his order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day he receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if he grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by him that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with his order requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.
[1973 c.794 s.6; 1975 c.308 s.2]

192.460 Procedure to review denial of right to inspect other public records. ORS 192.450 is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body

are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body, in the cases permitted under subsection (3) of ORS 192.450, unless he ordinarily serves as counsel for it.
[1973 c.794 s.7]

192.465 Effect of failure of Attorney General, district attorney or public official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.
[1975 c.308 s.5]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting him to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

———— (date)

I (we), ———— (name(s)), the undersigned, request the Attorney General (or District Attorney of ———— County) to order ———— (name of governmental body) and its employes to (make available for inspection) (produce a copy or copies of) the following records:

1. ————
(Name or description of record)

2. ————
(Name or description of record)

I (we) asked to inspect and/or copy these records on ———— (date) at ———— (address). The request was denied by the following person(s):

1. ————
(Name of public officer or employe; title or position, if known)

2. ————
(Name of public officer or employe; title or position, if known)

————
(Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General.
[1973 c.794 s.10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in his discretion, as counsel in such suit for an elected official for which he ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed.
[1973 c.794 s.8]

192.490 Court authority in reviewing action denying right to inspect public

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Superintendent of Banks in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employes and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 135.155, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 346.165, 346.167, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 469.090, 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 722.414, 731.264 or 744.017;

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable; and

(j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to subsection (3) of ORS 469.530.

(3) If any public record contains material which is not exempt under subsection (1), (2) or (4) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) (a) Upon application of any public body prior to convening of the 1975 regular session of the Legislative Assembly, the Governor may exempt any class of public records, in addition to the classes specified in subsection (1) of this section, from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance, if he finds that the class of public records for which exemption is sought is such that unlimited public access thereto would substantially prejudice or prevent the carrying out of any public function or purpose, so that the public interest in confidentiality of such records substantially outweighs the public interest in disclosure. Such exemption from disclosure shall be limited or conditioned to the extent the Govenor finds appropriate.

(b) Prior to the granting of any exemption under this subsection the Governor shall hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.

(c) Any exemption granted under this subsection shall expire June 14, 1975.

[1973 c.794 s.11; 1975 c.308 s.1; 1975 c.582 s.150; 1975 c.606 s.41a]

192.500 Public records exempt from disclosure

(1) The following public records are exempt from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

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

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

  (A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

  (B) The offense with which the arrested person is charged;

  (C) The conditions of release pursuant to ORS 135.230 to 135.290;

  (D) The identity of and biographical information concerning both complaining party and victim;

  (E) The identity of the investigating and arresting agency and the length of the investigation;

  (F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

  (G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;
(e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;
(f) Information relating to the appraisal of real estate prior to its acquisition;
(g) The names and signatures of employes who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;
(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060;
(i) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;
(j) The circulation records of a public library showing use of specific library materials by named persons;
(k) Records, reports and other information received or compiled by the director under ORS 697.732; and
(l) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction.

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not

apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Superintendent of Banks in the administration of ORS chapters 723, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employes and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.077 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 9.545, 40.225 to 40.295, 41.675, 56.100, 57.850, 135.155, 146.780, 147.115, 173.230, 179.495, 181.540, 251.145, 308.290, 308.413, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 346.165, 346.167, 351.065, 351.070, 410.150, 410.690, 411.320, 418.135, 418.770, 419.567, 441.113, 441.671, 469.090, 476.090, 482.141, 483.610, 656.702, 657.665, 671.550, 673.710, 677.425, 678.126, 679.280, 684.023, 684.100, 706.720, 706.730, 722.414, 731.264, 731.312,

734.650, 734.830, 744.017, 756.075, 760.140, 761.421, 767.644 or ORS chapter 432;

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable;

(j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530 (3); and

(k) Employe and retiree address, telephone number and other nonfinancial membership records maintained by the Public Employes' Retirement System pursuant to ORS 237.001 to 237.320.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

[1973 c.794 §11; 1975 c.308 §1; 1975 c.582 §150; 1975 c.606 § 41a; 1977 c.107 §1; 1977 c.587 §1; 1977 c.793 §5a; 1979 c.190 § 400; 1981 c.107 §1; 1981 c.139 §8; 1981 c.187 §1; 1981 c.892 § 92; 1981 c.905 §7; 1983 c.17 §29; 1983 c.198 §1; 1983 c.617 §3; 1983 c.620 §12; 1983 c.703 §8; 1983 c.709 §42; 1983 c.717 §30; 1983 c.740 §46; 1983 c.830 §9]

Cross References

ORS 9.080(2)(a) Records of claim against lawyer's professional liability fund are exempt from disclosure

ORS 9.545(2)(a) Confidentiality of information furnished to lawyer's assistance committees

ORS 40.270 Public officer may not be examined as to public records exempt from disclosure

ORS 56.100 Public records law inapplicable to electronic materials kept by Corporation Division

ORS 118.525 Department of Revenue unauthorized to reveal inheritance tax information; exceptions

ORS 119.515 Department of Revenue unauthorized to reveal gift tax information; exceptions

ORS 144.210 Statements and information about convicted person committed to custody of Corrections Division

ORS 146.750(3) Physicians' duties to report injury or abuse of person under 18 to medical examiner

ORS 161.336(9) Confidentiality of medical, social, and criminal history of persons committed to jurisdiction of Psychiatric Security Review Board

ORS 176.765 Governor shall keep certain energy resource information confidential

ORS 180.320 Confidentiality of certain information furnished to Support Enforcement Division
ORS 251.145 Material in Voters' Pamphlet exempt from public inspection until fourth day after final filing date
ORS 288.590 Records of registered bond ownership are not public records
ORS 343.173(1) Parents' right to examine records of school district pertaining to placement of child in special education program
ORS 351.065(5) Confidentiality of personnel records of employees of institutions, divisions, and departments under control of State Board of Higher Education
ORS 410.690 Confidentiality of records and reports on abuse of elderly persons
ORS 418.130 Confidentiality of information on persons applying for or receiving aid to dependent children
ORS 418.770 Confidentiality of records and reports on child abuse
ORS 419.567 Confidentiality of records and reports in juvenile court proceedings
ORS 441.671 Confidentiality of records pertaining to abuse of patients in nursing homes
ORS 469.090 Confidentiality of certain energy resource information
ORS 488.176 Confidentiality of boating accident reports
ORS 671.550 Confidentiality of information obtained by inspection of landscape contractor's business
ORS 673.455(7) Confidentiality of records and information prepared by or for Standards Enforcement Committee of State Board of Accountancy
ORS 677.425(1) Confidentiality of information provided to Board of Medical Examiners
ORS 679.300 Privileged nature of data furnished to State Board of Dentistry
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ANNOTATIONS

OREGON CASES

1. In General
2. Under ORS 192.500(1)(a)
3. Under ORS 192.500(1)(c)
4. Under ORS 192.500(2)(a)
5. Under ORS 192.500(2)(b)
6. Under ORS 192.500(2)(c)
7. Under ORS 192.500(2)(d)
8. Under ORS 192.500(3)

1. In General

Since public policy favors disclosure of public records, the statutory exemption to disclosure set forth in ORS 192.500(1)(h) is narrowly construed. The purpose of the exemption is fulfilled by authorizing that disclosure be denied to members of the public exclusive of those directly involved in an unlawful employment practice dispute under ORS Ch. 659. Thus, in a proceeding between the Commission of Labor and an employer accused of unlawful employment practices, the ordinary rules of discovery apply, and it was an error for the Commissioner to deny the employer the right to examine the Commissioner's investigatory file on the case against the employer. Ogden v Bureau of Labor, 68 Or App 235, 682 P2d 802 (1984).

It was not error to admit a witness's testimony about his opinion of the value of condemned property, even though the witness relied on information contained in an earlier appraisal report prepared by the witness's father. Even if the report were to be classed as information protected by the privilege contained in ORS 44.040(1)(e) (ORS 40.270), this privilege would not apply to bar the witness's testimony independent of the report, where there was no basis for concluding that the witness was a public official within the meaning of the privilege. City of Portland v Nudelman,

45 Or App 425, 608 P2d 1190 (1980).

The Public Records Act did not apply to a private taxpayer's business records, which the taxpayer sought to keep confidential from the Department of Revenue under the theory that disclosure would risk revealing sensitive information to business competitors. Eola Concrete Tile & Products Co. v State, 288 Or 241, 603 P2d 1181 (1979).

ORS 192.500 was not applicable to a case in which the facts occurred prior to the statute's effective date, regardless of which party misled the trial court into believing that the statute applied. Ayers v Lee Enterprises, Inc., 277 Or 527, 561 P2d 998 (1977).

ORS 192.500(1) indicates that the Legislature generally intended that secrecy of public documents would last only as long as there was a reason for secrecy. Jensen v Schiffman, 24 Or App 11, 544 P2d 1048 (1976).

Under ORS 192.490(1), the burden is on the public body denying access to public records to sustain its action. The effect of this statutory rule is to be interpreted as assigning a burden of pleading to public agencies, regardless of where the ultimate burden of proof might lie. Thus, it behooves an agency that is arguing for nondisclosure of public records to, in its pleading: (1) describe the records in question with as much particularity as possible, consistent with the claim of confidentiality; and (2) indicate, separately for each record, the exemption or exemptions under ORS 192.500 that it claims to be applicable. Turner v Reed, 22 Or App 177, 538 P2d 373 (1975).

For at least some categories of documents, the question of whether they are available for public inspection may be answered solely on the basis of the nature of the documents, without regard to the particular contents of the documents. Stated differently, in applying the exceptions to disclosure in ORS 192.500(1) and (2) there will be extremes at either end of a spectrum; certain categories of documents will always be available for public inspection, regardless of their contents, and other classes of documents will never be available for inspection, regardless of their contents. Between these extremes, decisions may have to be based, at least in part, on the contents of individual documents. Turner v Reed, 22 Or App 177, 538 P2d 373 (1975).

The testimony of a psychiatrist with experience in providing psychiatric reports to the Corrections Division, a District Parole and Probation Officer, and the Administrator of the Corrections Division was inadequate to establish that 46 documents relating to a convict's prison and parole records were exempt from disclosure under ORS 192.500, where the psychiatrist and the parole officer had neither written nor examined the documents, and the Administrator testified only that he was familiar "in general" with the convict's records, but did not testify specifically about any of the documents. Turner v Reed, 22 Or App 177, 538 P2d 373 (1975).

A professor was entitled to inspect a report made to university officials under the terms of former ORS 192.030, even if it could be assumed without deciding that ORS 44.040(1)(e) (ORS 40.270) was a limitation on ORS 192.030, where the Board of Higher Education had failed to show that the report was received in official confidence or that the public interest would be impaired by the disclosure of the report. Papadopoulos v State Board of Higher Education, 8 Or App 445, 494 P2d 260 (1972).

2. Under ORS 192.500(1)(a)

A probationary school teacher was informed by a school district that her contract would not be renewed. She sought disclosure of the minutes of a school board meeting, of which she had not been informed, during which the board had reached a consensus not to rehire her. She also sought disclosure of the hearing record of another probationary teacher. Both requests were denied. The Court of Appeals ruled that the records subject to disclosure

under ORS 192.410, 192.420, and 192.490, and were not exempted from disclosure by ORS 192.500(1)(a) as records pertaining to litigation. Under ORS 192.420, it was irrelevant that the teacher did not state or have an adequate purpose to request the records. There was no evidence that her request was unduly burdensome to the district. Also, the fact that the teacher did receive the records before her trial on her writ of review seeking reinstatement was no reason for refusing to produce the records, since not all of the issues raised were resolved by turning over the records. Thus, the teacher's possession of the records did not justify the trial court in refusing to declare that they were public and subject to disclosure. Smith v School District No. 45, Clackamas County, 63 Or App 685, 666 P2d 1345 (1983), rev den 295 Or 731, 773, 670 P2d 1036 (1983).

Under ORS 192.500(1)(a), public records are exempt from disclosure only when the records contain information compiled or acquired by the public body for use in ongoing litigation, or, if a complaint has not been filed but the public body shows that such litigation is reasonably likely to occur. Thus, a substitute teacher roster and related documents were not exempted from disclosure by the statute, where there was no ongoing litigation against the district and no evidence that the records were compiled because litigation was likely to occur. Lane County School District No. 4J v Parks, 55 Or App 416, 637 P2d 1383 (1981), rev den 293 Or 103, 648 P2d 850 (1982).

3. Under ORS 192.500(1)(c)

The exemption from public disclosure of investigatory information compiled for criminal law purposes under ORS 192.500(1)(c) is not limited to literal investigations of crimes, but includes investigations to determine whether a crime has been comitted. Jensen v Schiffman, 24 Or App 11, 544 P2d 1048 (1976).

ORS 192.500(1)(c), providing exemption for public disclosure of investigatory information compiled for criminal law purposes, requires identification and balancing of the various reasons for secrecy. Thus, investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings, but investigations not connected with pending or contemplated proceedings will remain secret, generally speaking, only if the government establishes that disclosure would: (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedures; or (6) endanger the life or physical safety of law enforcement personnel. Jensen v Schiffman, 24 Or App 11, 544 P2d 1048 (1976).

Prompted by various allegations of misconduct, a district attorney requested a county sheriff's department to investigate a city police department. The sheriff's department submitted a report to the district attorney. Disclosure of this report was sought by a private citizen under ORS 192.410 et seq. Based on an in camera inspection of the report, the Court of Appeals held that it was not exempt from disclosure under ORS 192.500(1)(c), where the district attorney stipulated that no prosecutions were contemplated as a result of the investigation, and the report dealt primarily with the conduct of public servants in the performance of their public duties. However, the case was remanded to permit the district attorney to reconsider his refusal to turn over the records in light of the Court of Appeals' opinion. Jensen v Schiffman, 24 Or App 11, 544 P2d 1048 (1976).

4. Under ORS 192.500(2)(a)

Subjective evaluations and recommendations to the Parole Board, including recommendations as to whether to grant, deny, or revoke parole, constitute material of an advisory nature preliminary to an agency determination of action. Such records are exempted from public disclosure by ORS 192.500(2)(a) because the public interest in encouraging frank communication with the Parole Board clearly outweighs the public interest in disclosure. However, purely factual data given to the Parole Board is subject to disclosure. Turner v Reed, 22 Or App 177, 538 P2d 373 (1975).

ORS 192.500(2)(a) did not exempt from public disclosure documents held by the Corrections Division that were, or might prove to be, embarassing to division officials. Public records that are per se available for public inspection include records where the only interest in confidentiality is to protect public officials from criticism for the way they have discharged their public duties. Such records included public speeches, legislative testimony, newspaper stories, and television appearances by a parolee that were critical of the corrections system. Turner v Reed, 22 Or App 171, 538 P2d 373 (1975).

5. Under ORS 192.500(2)(b)

The names and addresses of part-time instructors employed by a community college were not exempt from disclosure as public records by ORS 192.500(2)(b) as information of a personal nature. Such information is not of the type that "normally would not be shared with strangers." Addresses are commonly listed in telephone directories, printed on checks, provided to merchants, and appear on identification, such as drivers licenses, that is routinely shown to strangers. Kotulski v Mt. Hood Community College, 62 Or App 452, 660 P2d 1083 (1983).

The exemption to disclosure of public records set forth in ORS 192.500(2)(b) is to be narrowly construed. Also, construction of this provision does not depend on who requests the information or the circumstances existing at the time of the request. Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

The phrase, "such as that kept in a personal, medical or similar file" used in ORS 192.500(2)(b) is illustrative, rather than limiting, since it uses words like "such as" and "similar." Also, the exemption in ORS 192.500(2)(b) does not turn on the existence of a "file." Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

The phrase "information of a personal nature" as used in ORS 192.500(2)(b) means information that normally would not be shared with strangers. Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Under ORS 192.490(1), the public body seeking to deny access to public records under ORS 192.500(2)(b) has the general burden of sustaining its action in denying disclosure, even though the ultimate burden to prove that public disclosure outweighs the right to privacy may lie with the person making the request for disclosure. Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Whether information is of a personal nature under ORS 192.500(2)(b) does not depend on an inquiry into the unreasonableness of the invasion of privacy that would be occasioned by public disclosure. The last sentence of ORS 192.500(2)(b) expressly shifts the burden of proof to the party seeking disclosure to show that public disclosure would not constitute an unreasonable invasion of privacy. Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den

291 Or 893, 642 P2d 309 (1981).

The phrase "in the particular instance" as used in ORS 192.500(2)(b) acquires significance only if information sought to be exempted from public disclosure initially fits into the category, and if the invasion of privacy is not shown not to be unreasonable, but the public interest clearly requires disclosure "in the particular instance." Furthermore, the party seeking the information must show that "public disclosure" would not constitute an unreasonable invasion of privacy; the term "public" indicates that the focus is on the effect of disclosure in general, not disclosure to a particular person at a particular time. Morrison v School District No.48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

The exemption from disclosure of public records under ORS 192.500(2)(b) is applicable if: (1) the information requested is within the category, the burden of proof being on the public body; and (2) public disclosure would constitute an unreasonable invasion of privacy, the burden of disproof being on the person requesting the information, unless; (3) the public interest is shown by clear and convincing evidence to require disclosure. Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Information not otherwise personal, but which may become personal by reason of the context of a particular request, does not fall within the exemption from disclosure of public records set forth in ORS 192.500(2)(b). Thus, a list of names of substitute teachers in a school district, which was requested by a teachers' union, was not exempted from disclosure by the statute. One's name or identity as a substitute teacher is not personal information, as it would be readily available to parents of students and other parties. Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

6. Under ORS 192.500(2)(c)

The names and addresses of part-time faculty employed by a community college were not exempt from disclosure as public records by ORS 192.500(2)(c) as information submitted to a public body in confidence, where the addresses were provided by faculty members in their initial application forms and retained in files kept by the college, but the applicants were never informed that the information would be confidential. Kotulski v Mt. Hood Community College, 62 Or App 452, 660 P2d 1083 (1983).

A substitute teacher roster and related documents were not exempted from public disclosure by a school district under ORS 192.500(2)(c) as information submitted to a public body in confidence, where the records contained no information that the school district obliged itself not to disclose. Lane County School District No. 4J v Parks, 55 Or App 416, 637 P2d 1383 (1981), rev den 293 Or 103, 648 P2d 850 (1982).

To avail itself of the exemption for disclosure of public information in ORS 192.500(2)(c), the public body must establish that the information sought to be exempted was submitted to it in confidence at the outset. A list of the names and addresses of substitute teachers was not submitted in confidence to a school district under this statute, where there was no evidence that the substitute teachers had submitted their names in confidence. Morrison v School District No. 48, Washington County, 53 Or App 148, 631 P2d 784 (1981), rev den 291 Or 893, 642 P2d 309 (1981).

Under ORS 192.500(2)(c), communications to the Oregon State Bar relating to the professional conduct of an attorney were not exempt from public disclosure, where there was no evidence that they were submitted in confidence and it was clear that the bar could not oblige itself in good faith not to disclose the information. Sadler v Oregon State Bar, 275 Or 279, 550 P2d 1218 (1976).

7. Under ORS 192.500(2)(d)

Information about a convicted person's family life, including comments by his wife about their marriage, which is normally regarded as personal in nature, is exempted from public disclosure by ORS 192.500(2)(d). Factual information about a convicted person's family life, such as that he is married or a parent, would be subject to disclosure as information normally not considered personal or kept from strangers. Turner v Reed, 22 Or App 177, 538 P2d 373 (1975).

Disclosure of psychiatric examination reports that are part of the records of the Corrections Division would substantially prejudice the carrying out of the division's functions. Thus, the public interest in confidentiality clearly outweighs the public interest in disclosure of such reports, and they are exempt from disclosure under ORS 192.500(2)(d). This rule applies specifically to the literal findings of a psychiatrist or psychologist that are expressed in the professional's own words, but no decision is reached as to paraphrases or summaries of professional findings that are written by laypersons. Turner v Reed, 22 Or App 177, 538 P2d 373 (1975).

8. Under ORS 192.500(3)

ORS 192.500(3) only requires editing of documents when segregating exempt and nonexempt material is: (1) reasonably possible; and (2) can be done so as to genuinely preserve the confidentiality of exempt material. However, where editing of documents was neither impossible nor even difficult, a public agency should have been required to comply with ORS 192.500(3). Turner v Reed, 22 Or App 177, 538 P2d 373 (1975).

ATTORNEY GENERAL OPINIONS

The Oregon Investment Council's technical reports, prepared by money managers and consultants, and written evaluations of money managers, prepared by financial consultants, can be kept confidential through an executive session if the conditions of ORS 192.500(2)(c) are met. 42 Op Att'y Gen 392, 402 (1982).

An executive session may be used to consider a public record if the record meets the requirements of ORS 192.500(2)(c) concerning information submitted in confidence. 42 Op Att'y Gen 392, 398 (1982).

Records of the juvenile court, made confidential by ORS 419.567, are exempt from public disclosure under the Public Records Act, ORS 192.500(1)(c). 42 Op Att'y Gen 17 (1981).

Under ORS 192.500(3), records partly disclosable and partly exempt from disclosure must be separated by the cognizant public body. 41 Op Att'y Gen 437 (1981).

Completed forms used to evaluate a district school superintendent, which do not include information of a personal nature, are not within the disclosure exemption found in ORS 192.500(2)(b), especially where there is a clear public interest in knowing how the superintendent is performing. 41 Op Att'y Gen 437 (1981).

Under ORS 192.500(2)(b), personal information on applications for public library cards or library privileges, and records showing use of specific material by named persons, are exempt from disclosure under ORS 192.410 to 192.500, to the extent that disclosure would be an unreasonable invasion of privacy. However, the information may still be disclosed if the public interest clearly and convincingly requires disclosure. 41 Op Att'y Gen 435 (1981).

Drafts of orders under consideration by the Land Use Board of Appeals, as well as drafts of the recommendations the Board will make to LCDC, are exempt from disclosure under ORS 192.500(2), which exempts communications of a "preliminary," advisory nature. Accordingly, the drafts are not subject to disclosure until the final order is issued or the Board's recommendation is

transmitted to LCDC. 41 Op Att'y Gen 218 (1980).

ORS 192.500(2)(c) protects informants who submit information regarding the conditions found in a long-term health care facility where the information is outside the reporting requirements of Oregon Laws 1979, Ch. 770, § 9 relating to patient abuse. 40 Op Att'y Gen 155, 159 (1979).

The Board of Parole must disclose to prisoners, prior to parole, all information submitted pursuant to ORS 144.210 except for that material exempted from disclosure by ORS 192.500(2)(d). 38 Op Att'y Gen 1881 (1978).

Where a public body determines that the public interest in material within an ORS 192.500 exemption justifies a conditional disclosure of the material to the press, the body may give partial or conditional disclosure to the press. The only enforcement mechanism available if the stipulation is violated is a refusal to release other exempt material in the future. 38 Op Att'y Gen 1761 (1978).

Background materials regarding agency matters before city and county governing bodies, given to governing body members prior to public hearing, are public records under ORS 192.410 and are subject to disclosure unless exempted by ORS 192.500. 38 Op Att'y Gen 1761 (1978).

Student records at a state university fall within the definition of "public record" found in ORS 192.005(5). Student records are public records notwithstanding ORS 351.065(5). ORS 192.500 exempts certain records from disclosure, including student and faculty records covered by ORS 351.065, but does not change their status as public records. 38 Op Att'y Gen 945, 948 (1977).

The only criminal records subject to ORS 192.410 to ORS 192.500 are reports of crime and a record of arrest, although disclosure of both of those records may be delayed with cause. All other criminal investigatory material is exempt from disclosure by ORS 192.500(1)(c), unless the public interest requires disclosure in a particular instance. 37 Op Att'y Gen 126 (1974).

Notwithstanding ORS 311.280(1), which states that unrecorded deeds, contracts of sale, or other documents indicating a purchaser's interest filed with the county tax assessor do not constitute public records, those documents are public records under the provisions of the later enacted Public Records Law and are not within any of the exemptions to that law found in ORS 192.500. Accordingly, they must be made available for inspection upon request. 37 Op Att'y Gen 98 (1974).

Non-medical information contained in a confidential medical file may be disclosed unless it is of a "personal nature," in which case it is exempt from disclosure under ORS 192.500(2)(b). 36 Op Att'y Gen 1080, 1085 (1974).

ORS 192.500(1)(c) merely authorizes nondisclosure of investigatory information compiled for criminal law purposes; it does not prohibit such disclosure. 36 Op Att'y Gen 786 (1974).

A person's name, identity, and professional business address are not "information of a personal nature" for purposes of ORS 192.500(2)(b). 36 Op Att'y Gen 543 (1974).

OREGON ADMINISTRATIVE RULES

CHAPTER 257

OREGON STATE POLICE

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OREGON

DIVISION 10

OREGON CRIMINAL OFFENDER INFORMATION SYSTEM

Scope of System

257-10-010 Rules adopted herein relate solely to the Oregon Criminal Offender Information System as maintained by the Oregon State Police. The Rules do not affect in any way other agencies' original records of arrest, arrest logs, or reports of crimes available for inspection under terms of the Oregon Public Records Law (ORS 192.410 to 192.500).

Oregon Criminal Offender Information files contain information, contributed by Criminal Justice Agencies, on a person's record of arrests, the nature and disposition of criminal charges, sentencing, confinement, and release, plus identifying data only relating to fingerprints of applicants submitted under Oregon Law. These files shall not permanently contain information about the political, religious, or social views, associations, or activities of any individual, group, association, corporation, business, or partnership unless such information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities.

The Oregon CCH System is a computerization of essentially the same criminal offender information, and is maintained by the OSP under provisions of Oregon Law. Computerization of the manually accessed paper file is designed to provide faster access to criminal offender information for Oregon Criminal Justice Agencies.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4.
Eff. 4-30-76

257-10-015 As used in these rules:

(1) "Criminal Offender Information" means records and related data, including fingerprints, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(2) "Computerized Criminal History (CCH) System" means the maintenance in online computer files of significant criminal offender information.

(3) "OSP" means the Oregon State Police and includes the OSP Bureau of Criminal Identification.

(4) "LEDS" means the Oregon Law Enforcement Data System.

(5) "Oregon CCH System" means the Oregon Computerized Criminal History System.

(6) "NCIC-CCH System" means the national computerized criminal history system maintained and operated by the FBI.

(7) "Interstate System" means the NCIC-CCH system and the network of participating states and agencies.

(8) "Criminal Justice Agency" means:

(a) The Governor

(b) Courts of Criminal Jurisdiction

(c) The Attorney General

(d) District Attorneys

(e) Law Enforcement Agencies

(f) The Corrections Division

(g) The State Board of Parole, and

(h) Any other state or local agency designated by order of the Governor.

(9) "State Control Terminal" means the agency within each state responsible for the NCIC interface to that state.

(10) "Law Enforcement Agency" means County Sheriffs, Municipal Police Departments, State Police, other police officers of this and other states and law enforcement agencies of the Federal Government.

(11) "Criminal Records Council" means that Council, advisory to the Governor established under the provisions of Executive Order 75-23.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

System Responsibilities

257-10-020 (1) Oregon State Police.

(a) Maintenance and Dissemination of Criminal Offender Information. The Oregon State Police has statutory and administrative responsibility for the maintenance and dissemination of criminal offender information in Oregon.

(b) Accuracy and Completeness of Information. Information entered into Criminal Offender Information files is based on written documents submitted to the OSP by Criminal Justice Agencies reporting their record of official action, which documents contain fingerprint or other verification as to the identity of the individual to whom the information refers.

OSP is responsible for the accuracy and completeness of information entered into the Oregon Criminal Offender Information System and any information subsequently transmitted for inclusion in the NCIC-CCH System.

This responsibility extends only to information contained in the documents as submitted to OSP.

(c) Removal of Information. OSP is responsible for removal of information from the Oregon Criminal Offender Information and the NCIC-CCH System where required by law or court order. In the event the OSP discovers there has been an erroneous entry in criminal offender information records maintained by it, it shall make a reasonable effort to notify any recipient person or agency known to have received such information within a reasonable period preceding discovery of the error, of the fact of such error and of the correct information. Any such erroneous or inaccurate information shall be purged from the record and replaced by the correct information.

(d) Entry of Information. Only terminals located at OSP or others designated by the Superintendent of the OSP are allowed to enter records into the Oregon system or to change existing records.

(e) Information to Qualified Criminal Justice Agencies. OSP is responsible for providing Criminal Offender information to qualified Criminal Justice Agencies. Such information will be furnished, after proper inquiry, in either computerized form, via LEDS or document form.

(f) Development of Operational Procedures. OSP is responsible for development of operational procedures to be followed by Criminal Justice Agencies having access to Oregon Criminal Offender Information and NCIC-CCH files.

(g) All Criminal Offender information distributed by the OSP shall contain a notice in writing in substantially the following language: "All persons are advised that the information contained in this report can only be considered accurate for a period of six months from the date of this report. For accurate information, new inquiry must be made."

All agencies shall insofar as is feasible, taking into consideration the then existing capability of the OSP to respond, request and obtain a current criminal offender information record when that record is to be disseminated outside that agency.

(2) Law Enforcement Data System - Executive Department.

(a) NCIC Control Terminal Responsibility. LEDS is the "state control terminal" for the NCIC interface to Oregon and is responsible for assuring that all policies and rules for access to the Oregon or the NCIC-CCH System are adhered to by Oregon user agencies.

(b) System Development and Operation. LEDS is responsible for providing the computer hardware and software capabilities necessary to insure that efficient processing and integrity of the information stored in the Oregon CCH System and for interfacing to the NCIC-CCH System.

(c) Physical Security of Computer Installation. LEDS is responsible for development and implementation of policies and procedures to safeguard the CCH information at the central computer site from accidental or malicious damage or unauthorized access or use.

(d) Audit and Inspection of the User Agencies. LEDS is responsible for periodically auditing and inspecting each terminal location accessing CCH or the FBI NCIC-CCH to insure compliance with the published rules, policies, and procedures.

CCH terminal transaction records will be maintained at and by LEDS and will be made available to participating Criminal Justice Agencies.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Access to and Use of Criminal Offender Information

257-10-025 (1) Access to OSP Criminal Offender information by any means shall be limited to:

(a) Criminal Justice Agencies, where the information is to be used for criminal justice purposes or criminal justice agency employment.

(b) Other state and local agencies, after application to the Criminal Records Council and upon Executive Order of the Governor, where the information is required to implement a Federal or State Statute or Executive Order that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct.

(2) Access to CCH information by means of terminals shall be limited to authorized Criminal Justice Agencies using their agency identification number (ORI).

(3) Inquiries for nonofficial purposes or the checking of records for unauthorized persons or agencies outside the Criminal Justice community is prohibited.

(4) Criminal Offender information may be furnished only to authorized agency employees and no person who has been convicted of a crime which could have resulted in a sentence to a Federal or State Penitentiary will be allowed to operate a terminal accessing CCH information or have access to Criminal Offender information.

Exceptions to this rule may be made in extraordinary circumstances upon written application to the Superintendent of the Oregon State Police setting forth such circumstances. The Superintendent of the OSP will maintain a central file where such exception authorization shall be filed.

(5) Screening of Criminal Justice Agency and Regional Criminal Justice information system employees who have access to CCH or Criminal Offender Information records is the responsibility of the employing agency.

(6) Any Criminal Justice Agency obtaining Criminal Offender information or NCIC-CCH information, either directly through that agency's terminals, or through the terminal of another Criminal Justice Agency, must have executed a written agreement with the OSP prior to such access.

(7) Security of Terminals. Any terminal with CCH accessing capability must be physically secure and placed in a location not available to unauthorized persons. Terminals must be so placed that unauthorized persons may not observe the content of messages transmitted or received on such terminal.

(8) Security of Criminal Offender Information Records. Any Criminal Justice Agency obtaining Criminal Offender information shall maintain those records in secure files until they are destroyed by burning or shredding, and shall treat those records in such a manner that the record does not become public information in any later proceeding, except through court order or as otherwise provided by law.

(9) Radio Transmission. Any radio transmission of Criminal Offender Information records shall be limited to essential details only, with information identifying individuals and offenses concealed insofar as possible.

Plain text transmission of an entire (summary or full CCH) record is prohibited.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Criminal Justice Research and Evaluation Projects

257-10-030 Criminal Offender information will be made available to qualified persons for research and evaluation related to criminal justice activity upon written application to the Criminal Records Council or, in exigent circumstances for temporary access to the Superintendent of the Oregon State Police but authorization to utilize such information will be conditioned upon:

(1) The execution of nondisclosure agreements by all participants in the program.

(2) When such qualified persons acknowledge a fundamental commitment to respect individual privacy interests with the identification of subjects of such information divorced as fully as possible from the data received, and agree to comply with any additional requirements and conditions found necessary to assure the protection of personal privacy and system security interests, and,

(3) When a specific agreement is executed between such qualified persons and the OSP, the agreement stating the scope of the project, the permissible dissemination of information for any purpose other than that for which it was obtained.

(4) Where temporary access is authorized by the Superintendent of the OSP, he shall report the reasons for such temporary grant to the Criminal Records Council for review and comment at its next regular meeting. No temporary grant of access shall be valid for more than 30 days or after the next regularly scheduled Council meeting, whichever period is longer.

(5) OSP and LEDS will retain the right to monitor and audit any approved criminal justice research and evaluation project and to terminate access to CCH or Criminal Offender information if a violation of this rule is detected.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
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Eff. 4-30-76

Access by Individuals for Purpose of Review and/or Challenge

257-10-035 (1) Any individual desiring to review information concerning himself maintained in the OSP Criminal Offender Record System, or who believes that the information as maintained is inaccurate, incomplete, or maintained in violation of any State or Federal statute or act, shall be entitled to review such information and obtain a copy thereof for the purpose of challenge or correction. The OSP shall not charge an individual for a reasonable request to provide him with a copy of Criminal Offender information which refers to him.

(2) Verification of such individual's identity may only be effected through submission, in writing, of name, date of birth, and a set of rolled ink fingerprints to the Oregon State Police. The request for review may be made at the General Headquarters of the Oregon State Police, Salem, Oregon, or through any Oregon Criminal Justice Agency. The OSP may prescribe reasonable hours and places of inspection.

If the request is made at other than the General Headquarters of the Oregon State Police and, after positive identification by the OSP of the fingerprints submitted, copy of the record, along with the fingerprints submitted for that purpose, will be forwarded to the Criminal Justice Agency to whom the request was made.

(3) Upon receipt of such record that agency shall furnish same to the individual named in the record and at the same time return to that individual the fingerprints submitted for positive identification.

(4) All data included in the Criminal Offender information record is obtained from contributing Criminal Justice Agencies.

If after review of the information concerning himself as maintained in such record, the individual believes that it is incomplete or incorrect in any respect and wishes changes, corrections, or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information, requesting the appropriate agency to correct it in accordance with its respective administrative rules and procedures. Upon receipt of an official communication directly from the agency which contributed the original information, the OSP will make any changes necessary in accordance with the information supplied by the agency.

(5) Any individual whose record is not removed, modified, or corrected as he may request, following refusal by the agency originally contributing such information, may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act, relating to contested cases and judicial review.

After conclusion of such procedure or review, any information found to be inaccurate, incomplete, or improperly maintained, shall be removed from the individual's record and the originating agency so notified with copy of the record as corrected being furnished to the challenging individual.

(6) Any Criminal Justice Agency receiving a record after such notice of contested case has been filed and prior to final determination, shall be notified by the OSP that the record is being challenged.

Statutory Authority: ORS Chapter 181
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Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Annual Audits

257-10-040 At least once annually, the Governor shall cause to be conducted a random audit of the practices and procedures of the OSP and LEDS concerning information collected and disseminated pursuant to Executive Orders 74-6 and 75-23 and these rules to insure compliance with the requirements and restrictions set forth.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Violation of Rules

257-10-045 Willful violation of published rules relating to Criminal Offender Information record by any authorized agency or employee may result in immediate termination of such agency's right to receive such information from the Oregon System and/or the NCIC-CCH System.

Reinstatement will be effected only upon demonstration by the Agency that the cause of such violation has been corrected. Final determination as to the reinstatement of any agency so terminated will be the responsiblity of the OSP.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Rights of Appeal

257-10-050 A Criminal Justice Agency or employee desiring to appeal any action, order, or administrative ruling by the OSP or LEDS may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act relating to contested cases and judicial review.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
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Eff. 4-30-76

PENNSYLVANIA

Pennsylvania Consolidated Statutes Annotated (Purdon)

Title 18

Crimes and Offenses

PART III

MISCELLANEOUS PROVISIONS

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CHAPTER 91.—CRIMINAL HISTORY RECORD INFORMATION

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SUBCHAPTER A. GENERAL PROVISIONS

Act 1978, Nov. 26, P.L. 1274, No. 305, §§ 101 to 903, constituting 19 P.S. §§ 1511 to 1536, formerly the Criminal History Record Information Act was repealed by Act 1979, July 16, P.L. 116, No. 47, § 3.

A new Criminal History Record Information Act, constituting sections 9101 to 9183 of this title was enacted by Act 1979, July 16, P.L. 116, No. 47, § 2.

§ 9101. Short title of chapter

This chapter shall be known and may be cited as the "Criminal History Record Information Act."

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

1. Construction and application

The Criminal History Record Information Act, other than subchapters B, D and F, does not restrict the public's access to criminal records including records of charges and the disposition therefor. In re Cambria County Clerk of Courts, 13 D. & C.3d 710, 1980.

§ 9102. Definitions

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:.

"Administration of criminal justice." The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.

"Audit." The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

"Automated systems." A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data and data storage devices.

"Central repository." The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

"Criminal history record information." Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments; informations or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

"Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal constitutions or both.

"Disposition." Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismissed, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

"Dissemination." The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

"Expunge."

(1) To remove information so that there is no trace or indication that such information existed;

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes; or

(3) maintenance of certain information required or authorized under the provisions of section 9122(c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or posttrial diversion or probation program.

"Intelligence information." Information concerning the habits, practices, characteristics, possessions, associations or financial status of any individual.

"Investigative information." Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.

"Police blotter." A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.

"Repository." Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

"Treatment information." Information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1979, Dec. 14, P.L. 556, No. 127, § 2, imd. effective; 1982, June 11, P.L. 476, No. 138, § 3, effective in 180 days.

§ 9103. Applicability

This chapter shall apply to persons within this commonwealth and to any agency of the Commonwealth or its political subdivisions which collects, maintains, disseminates or receives criminal history record information.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

§ 9104. Scope

(a) **General rule.**—Except for the provisions of Subchapter B (relating to completeness and accuracy),[1] Subchapter D (relating to security)[2] and Subchapter F (relating to individual right of access and review),[3] nothing in this chapter shall be construed to apply to:

(1) Original records of entry compiled chronologically, including, but not limited to, police blotters and press releases that contain criminal history record information and are disseminated contemporaneous with the incident.

(2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.

(3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(4) Announcements of executive clemency.

(b) **Court dockets, police blotters and press releases.**—Court dockets, police blotters and press releases and information contained therein shall, for the purpose of this chapter, be considered public records.

(c) **Substitutes for court dockets.**—Where court dockets are not maintained any reasonable substitute containing that information traditionally

available in court dockets shall, for the purpose of this chapter, be considered public records.

(d) Certain disclosures authorized.—Nothing in this chapter shall prohibit a criminal justice agency from disclosing an individual's prior criminal activity to an individual or agency if the information disclosed is based on records set forth in subsection (a).

(e) Noncriminal justice agencies.—Information collected by noncriminal justice agencies and individuals from the sources identified in this section shall not be considered criminal history record information.

(f) Deleted by amendment. 1979, Dec. 14, P.L. 556, No. 127, § 3. 1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1979, Dec. 14, P.L. 556, No. 127, § 3, imd. effective; 1982 June 11, P.L. 476, No. 138, § 4, effective in 180 days.

§ 9105. Other criminal justice information

Nothing in this chapter shall be construed to apply to information concerning juveniles, except as provided in section 9123 (relating to juvenile records), unless they have been adjudicated as adults, nor shall it apply to intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information, nor presentence investigation information. Criminal history record information maintained as a part of these records shall not be disseminated unless in compliance with the provisions of this chapter.
1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

§ 9106. Prohibited information

Intelligence information, investigative information and treatment information shall not be collected in the central repository nor in any automated or electronic criminal justice information system. This prohibition shall not preclude the collection in the central repository or in any automated or electronic criminal justice information system of names, words, numbers, phrases or other similar index keys to serve as indices to investigative reports.
1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1979, Dec. 14, P.L. 556, No. 127, § 3, imd. effective.

REPOSITORY OR AUTOMATED SYSTEMS.

(a) General rule.--

~~(1)~~ Intelligence information, investigative information and treatment information shall not be collected in the central repository [nor in any automated or electronic criminal justice information system]. This prohibition shall not preclude the collection in the central repository [or in any automated or electronic criminal justice information system] of names, words, numbers, phrases or other similar index keys to serve as indices to investigative reports.

(B) COLLECTION OF PROTECTED INFORMATION.--

(1) INTELLIGENCE INFORMATION MAY BE PLACED IN AN AUTOMATED OR ELECTRONIC CRIMINAL JUSTICE SYSTEM ONLY IF THE FOLLOWING APPLY:

(I) THE CRIMINAL JUSTICE AGENCY HAS REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

(II) ACCESS TO THE INTELLIGENCE INFORMATION CONTAINED IN THE AUTOMATED OR ELECTRONIC CRIMINAL JUSTICE SYSTEM IS RESTRICTED TO THE AUTHORIZED EMPLOYEES OF THE CRIMINAL JUSTICE AGENCY AND CANNOT BE ACCESSED BY ANY OTHER INDIVIDUALS INSIDE OR OUTSIDE OF THE AGENCY.

(III) THE INTELLIGENCE INFORMATION IS RELATED TO CRIMINAL ACTIVITY THAT WOULD GIVE RISE TO PROSECUTION FOR A STATE OFFENSE GRADED A MISDEMEANOR OR FELONY, OR FOR A

FEDERAL OFFENSE FOR WHICH THE PENALTY IS IMPRISONMENT FOR MORE THAN ONE YEAR. INTELLIGENCE INFORMATION SHALL BE CATEGORIZED BASED UPON SUBJECT MATTER.

(IV) THE INTELLIGENCE INFORMATION IS NOT COLLECTED IN VIOLATION OF STATE LAW.

(2) INTELLIGENCE INFORMATION MAY NOT BE COLLECTED OR MAINTAINED IN AN AUTOMATED OR ELECTRONIC CRIMINAL JUSTICE SYSTEM CONCERNING PARTICIPATION IN A POLITICAL, RELIGIOUS OR SOCIAL ORGANIZATION, OR IN THE ORGANIZATION OR SUPPORT OF ANY NONVIOLENT DEMONSTRATION, ASSEMBLY, PROTEST, RALLY OR SIMILAR FORM OF PUBLIC SPEECH, UNLESS THERE IS A REASONABLE SUSPICION THAT THE PARTICIPATION BY THE SUBJECT OF THE INFORMATION IS RELATED TO CRIMINAL ACTIVITY OR PRISON RULE VIOLATION.

(3) INVESTIGATIVE INFORMATION AND TREATMENT INFORMATION CONTAINED IN FILES OF ANY CRIMINAL JUSTICE AGENCY MAY BE PLACED WITHIN AN AUTOMATED OR ELECTRONIC CRIMINAL JUSTICE INFORMATION SYSTEM, PROVIDED THAT ACCESS TO THE INVESTIGATIVE INFORMATION AND TREATMENT INFORMATION CONTAINED IN THE AUTOMATED OR ELECTRONIC CRIMINAL JUSTICE INFORMATION SYSTEM IS RESTRICTED TO AUTHORIZED EMPLOYEES OF THAT AGENCY AND CANNOT BE ACCESSED BY INDIVIDUALS OUTSIDE OF THE AGENCY.

(C) DISSEMINATION OF PROTECTED INFORMATION.--

(1) INTELLIGENCE INFORMATION MAY BE PLACED WITHIN AN AUTOMATED OR ELECTRONIC CRIMINAL JUSTICE INFORMATION SYSTEM AND DISSEMINATED ONLY IF THE FOLLOWING APPLY:

(I) THE INFORMATION IS RELIABLE AS DETERMINED BY AN AUTHORIZED INTELLIGENCE OFFICER.

(II) THE DEPARTMENT, AGENCY OR INDIVIDUAL REQUESTING THE INFORMATION IS A CRIMINAL JUSTICE AGENCY WHICH HAS POLICIES AND PROCEDURES ADOPTED BY THE OFFICE OF ATTORNEY

GENERAL IN CONSULTATION WITH THE PENNSYLVANIA STATE POLICE WHICH ARE CONSISTENT WITH THIS ACT AND INCLUDE:

(A) DESIGNATION OF AN INTELLIGENCE OFFICER OR OFFICERS BY THE HEAD OF THE CRIMINAL JUSTICE AGENCY OR HIS DESIGNEE.

(B) ADOPTION OF ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS, INCLUDING AUDIT TRAILS, TO INSURE AGAINST UNAUTHORIZED ACCESS AND AGAINST INTENTIONAL OR UNINTENTIONAL DAMAGES.

(C) LABELING INFORMATION TO INDICATE LEVELS OF SENSITIVITY AND LEVELS OF CONFIDENCE IN THE INFORMATION.

(III) THE INFORMATION IS REQUESTED IN CONNECTION WITH THE DUTIES OF THE CRIMINAL JUSTICE AGENCY REQUESTING THE INFORMATION, AND THE REQUEST FOR INFORMATION IS BASED UPON A NAME, FINGERPRINTS, MODUS OPERANDI, GENETIC TYPING, VOICE PRINT OR OTHER IDENTIFYING CHARACTERISTIC.

(2) IF AN INTELLIGENCE OFFICER OF A DISSEMINATING AGENCY IS NOTIFIED THAT INTELLIGENCE INFORMATION WHICH HAS BEEN PREVIOUSLY DISSEMINATED TO ANOTHER CRIMINAL JUSTICE AGENCY IS MATERIALLY MISLEADING, OBSOLETE OR OTHERWISE UNRELIABLE, THE INFORMATION SHALL BE CORRECTED AND THE RECIPIENT AGENCY NOTIFIED OF THE CHANGE WITHIN A REASONABLE PERIOD OF TIME.

(3) CRIMINAL JUSTICE AGENCIES SHALL ESTABLISH RETENTION SCHEDULES FOR INTELLIGENCE INFORMATION. INTELLIGENCE INFORMATION SHALL BE PURGED UNDER THE FOLLOWING CONDITIONS:

(I) THE DATA IS NO LONGER RELEVANT OR NECESSARY TO THE GOALS AND OBJECTIVES OF THE CRIMINAL JUSTICE AGENCY.

(II) THE DATA HAS BECOME OBSOLETE, MAKING IT UNRELIABLE FOR PRESENT PURPOSES; AND THE UTILITY OF

UPDATING THE DATA WOULD BE WORTHLESS.

(III) THE DATA CANNOT BE UTILIZED FOR STRATEGIC OR TACTICAL INTELLIGENCE STUDIES.

(4) INVESTIGATIVE AND TREATMENT INFORMATION SHALL NOT BE DISSEMINATED TO ANY DEPARTMENT, AGENCY OR INDIVIDUAL UNLESS THE DEPARTMENT, AGENCY OR INDIVIDUAL REQUESTING THE INFORMATION IS A CRIMINAL JUSTICE AGENCY WHICH REQUESTS THE INFORMATION IN CONNECTION WITH ITS DUTIES, AND THE REQUEST IS BASED UPON A NAME, FINGERPRINTS, MODUS OPERANDI, GENETIC TYPING, VOICE PRINT OR OTHER IDENTIFYING CHARACTERISTIC.

(5) EACH MUNICIPAL POLICE DEPARTMENT ACCESSING AUTOMATED INFORMATION SHALL FILE A COPY OF ITS PROCEDURES WITH THE PENNSYLVANIA STATE POLICE FOR APPROVAL. SUCH PLAN SHALL BE REVIEWED WITHIN 60 DAYS.

(6) EACH DISTRICT ATTORNEY ACCESSING AUTOMATED INFORMATION SHALL FILE A COPY OF ITS PROCEDURES WITH THE OFFICE OF ATTORNEY GENERAL FOR APPROVAL. SUCH PLAN SHALL BE REVIEWED WITHIN 60 DAYS.

(D) SECONDARY DISSEMINATION PROHIBITED.--A CRIMINAL JUSTICE AGENCY WHICH POSSESSES INFORMATION PROTECTED BY THIS SECTION, BUT WHICH IS NOT THE SOURCE OF THE INFORMATION, SHALL NOT DISSEMINATE OR DISCLOSE THE INFORMATION TO ANOTHER CRIMINAL JUSTICE AGENCY BUT SHALL REFER THE REQUESTING AGENCY TO THE AGENCY WHICH WAS THE SOURCE OF THE INFORMATION. THIS PROHIBITION SHALL NOT APPLY IF THE AGENCY RECEIVING THE INFORMATION IS INVESTIGATING OR PROSECUTING A CRIMINAL INCIDENT IN CONJUNCTION WITH THE AGENCY POSSESSING THE INFORMATION. AGENCIES RECEIVING INFORMATION PROTECTED BY THIS SECTION ASSUME THE SAME LEVEL OF RESPONSIBILITY FOR THE SECURITY OF SUCH INFORMATION AS THE AGENCY WHICH WAS THE SOURCE OF THE INFORMATION.

~~(d)~~ (E) Notations of the record.--Criminal justice agencies maintaining intelligence information, investigative information or treatment information must enter, as a permanent part of an individual's information file, a listing of all persons and agencies to whom they have disseminated that particular information, the date of the dissemination and the purpose for which the information was disseminated. This listing shall be maintained separate from the record itself.

~~(e)~~ (F) Security requirements.--Every criminal justice agency collecting, storing or disseminating intelligence information, investigative information or treatment information shall insure the confidentiality and security of such information by providing that wherever such information is maintained, a criminal justice agency must:

(1) institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters;

(2) select, supervise and train all personnel authorized to have access to intelligence information, investigative information or treatment information;

(3) insure that, where computerized data processing is employed, the equipment utilized for maintaining intelligence information, investigative information or treatment information is dedicated solely to purposes related to the administration of criminal justice, or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency is accorded equal management participation in computer operations used to maintain the intelligence information, investigative information or treatment information.

~~(f)~~ (G) Penalties.--Any person, including any agency or organization, who violates the provisions of this section shall be subject to the administrative penalties provided in section 9181 (relating to general administrative sanctions) and the civil penalties provided in section 9183 (relating to civil actions) IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL PENALTY PROVIDED BY LAW.

SUBCHAPTER B. COMPLETENESS AND ACCURACY

§ 9111. Duties of criminal justice agencies

It shall be the duty of every criminal justice agency within the commonwealth to maintain complete and accurate criminal history record information and to report such information at such times and in such manner as required by the provisions of this chapter or other applicable statutes. 1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

§ 9112. Mandatory fingerprinting

(a) General rule.—Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a

second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.

(b) Other cases.—

(1) Where private complaints for a felony or misdemeanor result in a conviction, the court of proper jurisdiction shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense was allegedly committed or in the absence of a police department, the State Police. Fingerprints so obtained shall, with 48 hours, be forwarded to the central repository in a manner and in such form as may be provided by the central repository.

(2) Where defendants named in police complaints are proceeded against by summons, or for offenses under section 3929 (relating to retail theft), the court of proper jurisdiction shall order the defendant to submit within five days of such order for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or, in the absence of a police department, the State Police. Finger prints so obtained shall, within 48 hours, be forwarded to the central repository in a manner and in such form as may be provided by the central repository.

(c) Transmittal of information.—The central repository shall transmit the criminal history record information to the criminal justice agency which submitted a complete, accurate and classifiable fingerprint card. 1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1979, Dec. 14, P.L. 556, No. 127, § 3, imd. effective; 1982, June 11, P.L. 476, No. 138, § 4, effective in 180 days.

§ 9113. Disposition reporting by criminal justice agencies

(a) Reports of dispositions required.—All criminal justice agencies, including but not limited to, courts, county, regional and state correctional institutions and parole and probation agencies, shall collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository as provided for in this section.

(b) Courts.—Courts shall collect and submit criminal court dispositions as required by the Administrative Office of Pennsylvania Courts.

(c) Correctional institutions.—County, regional and state correctional institutions shall collect and submit information regarding the admission, release and length of sentence of individuals sentenced to local and county institutions as required by the Bureau of Correction.

(d) Probation and parole offices.—County probation and parole offices shall collect and submit information relating to the length of time and charges for which an individual is placed under and released from the jurisdiction of such agency as required by the Pennsylvania Board of Probation and Parole.

(e) State agencies.—The Administrative Office of Pennsylvania Courts, the Bureau of Correction, the Pennsylvania Board of Probation and Parole and the Pennsylvania Board of Pardons shall collect and submit to the central repository such information necessary to maintain complete and accurate criminal history record information. Each State agency listed in this subsection shall submit to the central repository any reports of dispositions occurring within their respective agencies and such information reported from county and local criminal justice agencies.

§ 9114. Correction of inaccurate information

Within 15 days of the detection of inaccurate data in a criminal history record, regardless of the manner of discovery, the criminal justice agency which reported the information shall comply with the following procedures to effect correction:

(1) Correct its own records.

(2) Notify all recipients, including the central repository, of the inaccurate data and the required correction.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

SUBCHAPTER C. DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

§ 9121. General regulations

(a) **Dissemination to criminal justice agencies.**—Criminal history record information maintained by any criminal justice agency shall be disseminated without charge to any criminal justice agency or to any noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.

(b) **Dissemination to noncriminal justice agencies and individuals.**—Criminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request:

(1) A fee may be charged by a State or local police department for each request for criminal history record information by an individual or noncriminal justice agency.

(2) Before a State or local police department disseminates criminal history record information to an individual or noncriminal justice agency, it shall extract from the record all notations of arrests, indictments or other information relating to the initiation of criminal proceedings where:

(i) three years have elapsed from the date of arrest;

(ii) no conviction has occurred; and

(iii) no proceedings are pending seeking a conviction.

(c) **Data required to be kept.**—Any criminal justice agency which disseminates criminal history record information must indicate to the recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

(d) **Extracting from the record.**—When criminal history record information is maintained by a criminal justice agency in records containing investigative information, intelligence information, treatment information or other nonpublic information, the agency may extract and disseminate only the criminal history record information if the dissemination is to be made to a noncriminal justice agency or individual.

(e) **Dissemination procedures.**—Criminal justice agencies may establish reasonable procedures for the dissemination of criminal history record information.

(f) **Notations on record.**—Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

§ 9122. Expungement

(a) Specific proceedings.—Criminal history record information shall be expunged in a specific criminal proceeding when:

(1) No disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the director of the repository that no disposition is available and no action is pending. Expungement shall not occur until the certification from the court is received and the director of the repository authorizes such expungement; or

(2) A court order requires that such nonconviction data be expunged.

(b) Generally.—Criminal history record information may be expunged when:

(1) An individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision; or

(2) An individual who is the subject of the information has been dead for three years.

(c) Maintenance of certain information required or authorized.—Notwithstanding any other provision of this chapter, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged where the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program. Such information shall be used solely for the purpose of determining subsequent eligibility for such programs. Criminal history record information may be expunged as provided in subsection (b)(1) and (2). Such information shall be made available to any court upon request.

(d) Notice of expungement.—Notice of expungement shall promptly be submitted to the central repository which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.

(e) Public records.—Public records listed in section 9104(a) (relating to scope) shall not be expunged.

(f) District attorney's notice.—The court shall give ten days prior notice to the district attorney of the county where the original charge was filed of any applications for expungement under the provisions of subsection (a)(2).

§ 9123. Juvenile records

(a) Expungement of juvenile records.—Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after ten days notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court other than as a result of a consent decree;

(2) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(3) the individual is 21 years of age or older and a court orders the expungement.

(b) Notice to prosecuting attorney.—The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

(c) Dependent children.—All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older.

§ 9124. Use of records by licensing agencies

(a) **State agencies.**—Except as provided by this chapter, a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not preclude the issuance of a license, certificate, registration or permit.

(b) **Prohibited use of information.**—The following information shall not be used in consideration of an application for a license, certificate, registration or permit:

(1) Records of arrest if there is no conviction of a crime based on the arrest.

(2) Convictions which have been annulled or expunged.

(3) Convictions of a summary offense.

(4) Convictions for which the individual has received a pardon from the Governor.

(5) Convictions which do not relate to the applicant's suitability for the license, certificate, registration or permit.

(c) **State action authorized.**—Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:

(1) Where the applicant has been convicted of a felony.

(2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

(d) Notice.—The board, commission or department shall notify the individual in writing of the reasons for a decision which prohibits the applicant from practicing the trade, occupation or profession if such decision is based in whole or part on conviction of any crime.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1979, Dec. 14, P.L. 556, No. 127, § 3, imd. effective.

§ 9125. Use of records for employment

(a) General rule.—Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) Use of information.—Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

(c) Notice.—The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1979, Dec. 14, P.L. 556, No. 127, § 3, imd. effective; 1982, June 11, P.L. 476, No. 138, § 4, effective in 180 days.

SUBCHAPTER D. SECURITY

§ 9131. Security requirements for repositories

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

(1) Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters.

(2) Select, supervise and train all personnel authorized to have access to criminal history record information.

(3) Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice, or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

§ 9141. [ANNUAL AUDIT OF REPOSITORIES] AUDITS.

(A) AUDIT REQUIRED.--

(1) THE ATTORNEY GENERAL SHALL CONDUCT ANNUAL AUDITS OF THE CENTRAL REPOSITORY AND OF A REPRESENTATIVE SAMPLE OF ALL REPOSITORIES. THE OFFICE OF ATTORNEY GENERAL SHALL CONDUCT A REVIEW OF STATE CRIMINAL JUSTICE AGENCIES' AUTOMATED POLICIES AND PROCEDURES ESTABLISHED PURSUANT TO SECTION 9106 (RELATING TO INFORMATION IN CENTRAL REPOSITORY OR AUTOMATED SYSTEMS) TO ENSURE THAT THE PROVISIONS OF THIS CHAPTER ARE UPHELD WITHIN TWO YEARS OF THE EFFECTIVE DATE OF THIS ACT.

(2) THE PENNSYLVANIA STATE POLICE SHALL CONDUCT AN ANNUAL AUDIT OF AT LEAST 5% OF ALL MUNICIPAL POLICE DEPARTMENT PLANS, POLICIES OR PROCEDURES WHICH ARE IMPLEMENTED PURSUANT TO SECTION 9106(C), TO ENSURE THAT THE PROVISIONS OF THIS CHAPTER ARE UPHELD. THE FIRST SUCH AUDIT SHALL BE CONDUCTED WITHIN TWO YEARS OF THE EFFECTIVE DATE OF THIS ACT. A COPY OF THE AUDIT SHALL BE SUBMITTED TO THE ATTORNEY GENERAL.

(B) ACCESS TO RECORDS.--PERSONS CONDUCTING THE AUDIT SHALL BE PROVIDED ACCESS TO ALL RECORDS, REPORTS AND LISTINGS REQUIRED TO CONDUCT AN AUDIT OF CRIMINAL HISTORY RECORD INFORMATION, AND ALL PERSONS WITH ACCESS TO SUCH INFORMATION OR AUTHORIZED TO

RECEIVE SUCH INFORMATION SHALL COOPERATE WITH AND PROVIDE INFORMATION REQUESTED.

(C) CONTENTS OF AUDIT.--THE AUDIT SHALL CONTAIN A REPORT OF DEFICIENCIES AND RECOMMENDATIONS FOR THE CORRECTION OF SUCH DEFICIENCIES. UPON THE COMPLETION OF EVERY AUDIT, THE AUDITED AGENCY SHALL CARRY OUT THE RECOMMENDATIONS WITHIN A REASONABLE PERIOD OF TIME UNLESS THE AUDIT REPORT IS APPEALED TO THE ATTORNEY GENERAL AND THE APPEAL IS UPHELD.

(D) MODIFICATION OF RECOMMENDATIONS.--THE ATTORNEY GENERAL SHALL HAVE THE POWER TO MODIFY THE CORRECTIVE MEASURES RECOMMENDED BY THE AUDIT.

§ 9142. Quality control

Each repository shall establish effective procedures, in compliance with rules and regulations promulgated by the Attorney General, for the completeness and accuracy of criminal history record information.
1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

§ 9143. REGULATIONS.

IT SHALL BE THE DUTY AND RESPONSIBILITY OF THE ATTORNEY GENERAL IN CONSULTATION WITH THE PENNSYLVANIA STATE POLICE TO ADOPT RULES AND REGULATIONS PURSUANT TO THIS ACT. THE OFFICE OF ATTORNEY GENERAL IN CONSULTATION WITH THE PENNSYLVANIA STATE POLICE SHALL HAVE THE POWER AND AUTHORITY TO PROMULGATE, ADOPT, PUBLISH AND USE GUIDELINES FOR THE IMPLEMENTATION OF THIS ACT FOR A PERIOD OF ONE YEAR IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THIS SECTION PENDING ADOPTION OF FINAL RULES AND REGULATIONS.

Section ~~4~~ 7. This act shall take effect as follows:

(1) Section ~~3~~ 4 of this act, amending section 9106, shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

SUBCHAPTER F. INDIVIDUAL RIGHT OF ACCESS AND REVIEW

§ 9151. Right to access and review

(a) **General rule.**—Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his criminal history record information.

(b) **Prisoners.**—Persons incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge and appeal.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

§ 9152. Procedure

(a) **Rules and regulations.**—The Attorney General in cooperation with appropriate criminal justice agencies shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

(b) **Requests for information.**—Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists the individual may review a copy of such information without undue delay for the purpose of review and challenge.

(c) **Challenge of accuracy.**—The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is incorrect and what the correct version should be.

Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy of any part subsequently challenged upon the individual. Information subsequently added to such record shall also be subject to review, challenge, correction or appeal.

(d) **Review of challenge.**—All criminal justice agencies shall have 60 days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. If the challenge is deemed valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected.

(2) A certified and corrected copy of the criminal history record information is provided to the individual.

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies shall be destroyed or returned and replaced with corrected information.

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

(e) **Appeals.**—

(1) If the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.

(2) The Attorney General shall have the authority to conduct administrative appeal hearings in accordance with the Administrative Agency Law.[1]

(3) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

[1] 2 Pa.C.S.A. §§ 501 et seq. and 701 et seq.

§ 9158. Individual rights on access and review

Any individual exercising his or her right to access and review under the provisions of this subchapter shall be informed when criminal history record information is made available that he or she is under no obligation to divulge such information to any person or agency.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

SUBCHAPTER G. RESPONSIBILITY OF ATTORNEY GENERAL

§ 9161. Duties of the attorney general

The Attorney General shall have the power and authority to:

(1) Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

(2) Establish the maximum fees which may be charged for the cost of reproducing criminal history record information for individual access and review for research or statistical purposes and for access by noncriminal justice agencies and individuals.

(3) Make investigations concerning all matters touching the administration and enforcement of this chapter and the rules and regulations promulgated thereunder.

(4) Institute civil proceedings for violations of this chapter and the rules and regulations adopted thereunder.

(5) Conduct annual audits of the central repository and of a representative sample of all repositories within the commonwealth, collecting, compiling, maintaining and disseminating criminal history record information.

(6) Appoint such employees and agents as it may deem necessary.
1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1982, June 11, P.L. 476, No. 138, § 4, effective in 180 days.

SUBCHAPTER H. PUBLIC NOTICE

§ 9171. Requirements of repositories relating to public notice

Repositories maintaining criminal history record information shall inform the public and post in a public place, notice of the existence, purpose, use and accessibility of the criminal history record information they maintain and the requirements of the repository for identification on individual access and review.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

SUBCHAPTER I. SANCTIONS

§ 9181. General administrative sanctions

Any person, including any agency or organization, who violates the provisions of this chapter or any regulations or rules promulgated under it may:

(1) Be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate.

(2) Be subject to civil penalties or other remedies as provided for in this chapter.

(3) In the case of an employee of any agency who violates any provision of this chapter, be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1982, June 11, P.L. 476, No. 138, § 4, effective in 180 days.

§ 9182. Deleted by amendment. 1979, Dec. 14, P.L. 556, No. 127, § 3, imd. effective

§ 9183. Civil actions

(a) **Injunctions.**—The Attorney General or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter.

(b) **Action for damages.—**

(1) Any person aggrieved by a violation of the provisions of this chapter or of the rules and regulations promulgated under this chapter, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a violation of this chapter or the rules or regulations promulgated under this chapter, shall be entitled to actual and real damages of not less than $100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than $1,000 nor more than $10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980.

Repealed in Part

This section is repealed by Act 1980, Oct. 15, P.L. 950, No. 164, § 504, to the extent that it authorizes the institution of an action by a Commonwealth agency, but the duties imposed upon the Attorney General by this section shall not be affected.

* * *

Title 61

IDENTIFICATION OF CRIMINALS

§ 2171. State police to procure and file photographs, etc.

From and after the passage of this act, the Pennsylvania State Police shall continue to procure and file for record photographs, pictures, descriptions, fingerprints, and such other information as may be pertinent, of all persons who have been, or may hereafter be, convicted of crime within this Commonwealth, and also of all well-known and habitual criminals wherever they may be procured.

§ 2172. Authorities in penal institutions to furnish information

It shall be the duty of the persons in charge of any State penal institution, or of any jail, prison, or workhouse within this Commonwealth, to furnish to the Pennsylvania State Police, upon request, the fingerprints, photographs, and description of any person detained in such institution, jail, prison, or workhouse.

1927, April 27, P.L. 414, § 2; 1937, June 29, P.L. 2433, § 2; 1943, April 28, P.L. 119, § 2.

§ 2173. Fingerprints or photographs of criminals; copies to state police; duties of state police

The Pennsylvania State Police, the persons in charge of State penal institutions, the wardens or keepers of jails, prisons, and workhouses within this Commonwealth, and all police officers within the several political subdivisions of this Commonwealth, shall have the authority to take, or cause to be taken, the fingerprints or photographs of any person in custody, charged with the commission of crime, or who they have reason to believe is a fugitive from justice or a habitual criminal, except persons charged with a violation of "The Vehicle Code" which is punishable upon conviction in a summary proceeding unless they have reason to believe the person is a fugitive from justice or a habitual criminal; and it shall be the

duty of the chiefs of bureaus of all cities within this Commonwealth to furnish daily, to the Pennsylvania State Police, copies of the fingerprints and, if possible, photographs, of all persons arrested within their jurisdiction charged with the commission of felony, or who they have reason to believe are fugitives from justice or habitual criminals, such fingerprints to be taken on forms furnished or approved by the Pennsylvania State Police. It shall be the duty of the Pennsylvania State Police, immediately upon the receipt of such records, to compare them with those already in their files, and, if they find that any person arrested has a previous criminal record or is a fugitive from justice, forthwith to inform the arresting officer, or the officer having the prisoner in charge, of such fact.

§ 2174. State police to cooperate with other agencies for criminal identification

It shall be the duty of the Pennsylvania State Police to cooperate with agencies of other States and of the United States, having similar powers, to develop and carry on a complete interstate, national, and international system of criminal identification and investigation, and also to furnish, upon request, any information in its possession concerning any person charged with crime to any court, district attorney, or police officer of this Commonwealth, or of another state or of the United States.

§ 2175. District attorneys to employ fingerprint experts; compensation; files of fingerprints

(a) The district attorneys of the several counties are hereby authorized and empowered, from time to time, to employ the services of experts on fingerprints to assist them in the investigation of pending cases and to testify upon the trial thereof. The compensation of any such expert shall be fixed by the district attorney employing him, with the approval of the court of quarter sessions, and shall be paid from the county treasury upon warrant of the county commissioners in the usual manner.

(b) The district attorney of any county, the warden or keeper of the county jail, or any expert employed by the district attorney, or any other person designated by the district attorney, shall have the power, upon the written order of the district attorney, to take the fingerprints of any persons confined in the county jail of such county for use in the identification of the prisoner or upon his trial.

(c) The district attorneys of the several counties shall keep and arrange files of the fingerprints, taken under the provisions of this act, of persons convicted of crime and shall destroy the fingerprints of all persons acquitted. The files of fingerprints maintained by the district attorneys shall be open to the inspection of any other district attorney of this Commonwealth, or their representatives, or of the Pennsylvania State Police, or any sheriff or police or peace officer.

(d) District attorneys shall not be authorized to take fingerprints, under this section, of persons arrested for misdemeanors, unless the district attorneys have reason to believe that such persons are old offenders against the penal laws of this Commonwealth.

§ 2176. Refusal to make reports; destruction of police records; penalties

Neglect or refusal of any person mentioned in this act to make the report required herein, or to do or perform any other act on his part to be done or performed in connection with the operation of this act, shall constitute a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not less than five nor more than twenty-five dollars, or by imprisonment in the county jail for a period of not exceeding thirty days, or by both, in the discretion of the court. Such neglect or refusal shall also constitute malfeasance in office and subject such person to removal from office. Any person who removes, destroys, or mutilates any of the records of the Pennsylvania State Police, or of any district attorney, shall be guilty of a misdemeanor,[1] and such person shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for a period of not exceeding one year, or by both, in the discretion of the court.

Title 65

Public Records

§ 66.1 Definitions

In this act [1] the following terms shall have the following meanings:

(1) "Agency." Any department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, the Pennsylvania Turnpike Commission, or any State or municipal authority or similar organization created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function.

(2) "Public Record." Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.

As amended 1971, June 17, P.L. 160, No. 9, § 1.

§ 66.2 Examination and inspection

Every public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania. 1957, June 21, P.L. 390, § 2.

§ 66.3 Extracts, copies, photographs or photostats

Any citizen of the Commonwealth of Pennsylvania shall have the right to take extracts or make copies of public records and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats. 1957, June 21, P.L. 390, § 3.

§ 66.4 Appeal from denial of right

Any citizen of the Commonwealth of Pennsylvania denied any right granted to him by section 2 or section 3 of this act,[1] may appeal from such denial to the Court of Common Pleas of Dauphin County if an agency of the Commonwealth is involved, or to the court of common pleas of the appropriate judicial district if a political subdivision or any agency thereof is involved. If such court determines that such denial was not for just and proper cause under the terms of this act, it may enter such order for disclosure as it may deem proper. 1957, June 21, P.L. 390, § 4.

* * *

Regulations

REGULATIONS FOR THE ADMINISTRATION OF THE CRIMINAL HISTORY RECORD INFORMATION ACT

Subpart K. CRIMINAL INFORMATION
CHAPTER 195. CRIMINAL RECORDS

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§ 195.1. Definitions.

The following words and terms, when used in this chapter, shall have, unless the context clearly indicates otherwise, the following meanings.

Administration of criminal justice - The activities directly concerned with the prevention, control or reduction of crime and the apprehension, detention, pretrial release, post - trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage, dissemination, or usage of criminal history record information.

Automated systems - A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data, and data storage devices.

Central repository - The central location for the collection, compilation, maintenance, and dissemination of criminal history record information by the Pennsylvania State Police.

Criminal history record information - Information collected by criminal justice agencies concerning individuals and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, and dates and notations of arrests, indictments, informations, or other formal criminal charges and any dispositions arising therefrom; the term does not include intelligenc information, investigative information, treatment information, or informatio and records specified in 18 Pa. C. S. § 9104.

Criminal justice agency - Any court including the minor judiciary with criminal jurisdiction or any other governmental agency or subunit thereof created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, and pardon boards.

Disposition - Information indicating that criminal proceedings have been concluded including information disclosing that police have elected not to refer a matter for prosecuting, that a prosecuting authority has elected not to commence criminal proceedings, or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in this Commonwealth shall include, but not be limited to acquittal, acquittal by reason of insanity, pretrail probation or diversion, charge dismissed, guilty plea nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under the provisions of 234 Pa. Code (relating to rules criminal procedure), demurrer sustained, pardoned, sentence commuted, mistrial - defendant, discharge from probation or parole, or correctional supervision.

Dissemination - The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the crimin justice agency which maintains the information.

Expunge - To remove information so that there is no trace or indication that such information existed; or to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes.

Intelligence information - Information concerning the habits, practices, characteristics, history, possessions, associations, or financial status of any individual.

Investigative information Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing; the term may include modus operandi information.

Repository - Any location in which criminal history record information is collected, compiled, maintained, and disseminated by a criminal justice agency.

Secondary dissemination - (Reserved)

Treatment information - Information concerning medical, psychiatric, psychological, or other rehabilitative treatment provided, suggested, or prescribed for any individual.

§ 195.2. Completeness and accuracy.

(a) As to each written indication contained in a repository's records that a criminal charge has been brought against an individual, the repository shall maintain a complete and accurate criminal record as to that charge.

(b) A complete and accurate criminal history record as to a particular criminal charge shall include but not be limited to the following:

(1) The full name and aliases of the individual charged.

(2) An accurate statement of the crime charged, including the title of the offense and the statutory citation and the Offense Tracking Number (OTN) - with appropriate prefixes and suffixes - whenever an OTN has been assigned.

(3) The final or latest disposition of the charge.

(4) The sentence imposed for a conviction of the charge.

(c) The timely recording and reporting of dispositions, the taking and filing of fingerprints, the expunging of information, and the correcting of inaccurate information shall be conducted in the manner set forth in 18 Pa. C. S. § 9111-9114, 9121-9123 and 9153.

§ 195.3. Uniform schedule of fees.

Individuals and noncriminal justice agencies requesting criminal history record information, whether for individual access and review or for other purposes shall pay a nonrefundable fee of $10 for each request made. Such fee shall be paid by check or money order and shall be made payable to the re - ponding repository.

§ 195.4. Access and review.

(a) An individual shall be permitted to review his own criminal history record information maintained by any repository.

(b) The individual wishing to review his own record shall complete a Request for Review of Criminal History Record Information Form which may be obtained from the Pennsylvania State Police or from any repository. The individual making such a request shall be required to indicate on the application form only his full name including any aliases, his current address, the date and place of his birth and his social security number. The completed form should then be delivered, by mail or in person, to the repository maintaining the information the individual wishes to review.

(c) An individual exercising his right to review his criminal history record information shall be informed that he is not required to divulge such information or the lack thereof to any person or agency.

(d) If, after a proper search, criminal history record information is not found in the responding repository, the individual shall be so informed, in writing, within 30 days of receipt by the repository of the application from and fee.

(e) If criminal history record information is found in the responding repository, the repository shall, within 30 days of receipt of the application form and fee, deliver by mail to the address indicated on the application form or deliver in person a copy of the information to the individual making the request.

(f) If the individual requests information from a repository other than the central repository, the respository which disseminates the criminal history record information shall indicate to the recipient that the information disseminated is only the information contained in its own files as of the date of the last entry and that a summary of the statewide criminal history record information may be obtained from the central repository.

§ 195.5. Challenge.

(a) Enclosed along with the copy of the criminal history record information shall be a postage paid form - the Challenge Form - which is to be completed and returned within 30 days of the date the form is received by the subject of the criminal history record information and which states that the subject has reviewed the criminal history information and that he understands that those portions of the record not challenged shall be presumed by law to be accurate. The challenge form shall state in bold letters: "YOU HAVE 30 DAYS FROM THE DATE OF THIS NOTICE TO CHALLENGE THE ACCURACY OF THE INFORMATION CONTAINED HEREIN."

(b) An individual wishing to challenge the accuracy of the reviewed criminal history record information must, within 30 days of the date the information is received, submit the Challenge Form to the repository identifying therein the portion or portions of the record being challenged and providing his correct version of his record and an explanation of why he believes his version to be correct.

(c) Upon receiving such written notification of a challenge, the repository maintaining the criminal history information being challenged shall conduct a review for accuracy, which review shall be completed within 60 days of the date the challenge is received. The responding repository has the burden of showing the accuracy of the information; except that, when the information has been contributed by another repository, the contributing repository shall, upon request by the responding repository, verify or correct such information within 30 days of the date the request for verification is received.

(d) The findings of the respository shall be communicated to the individual. If the repository determines that the record is correct, the respository shall so notify the individual and advise him of his right to appeal. Such notice and advice shall be delivered to the individual at the address indicated on the challenge Form.

(e) If the challenge is determined to be valid, the repository shall so notify the individual by mail at the address indicated on the challenge form, and the repository shall insure that:

(1) the record is corrected;

(2) a certified and corrected copy of the record is provided to the individual;

(3) errors in criminal history record information previously disseminated to criminal justice agencies are eliminated and replaced with corrected information.

(4) the individual is supplied with the names and addresses of those noncriminal justice agencies and individuals which have received erroneous criminal history record information; and

(5) every reasonable effort is made to notify those individuals and noncriminal justice agencies to whom the erroneous information was disseminated; such notification shall include a certified and corrected copy of the record.

§ 195.6. Security.

Each criminal justice agency which collects, compiles, maintains, or disseminates criminal history record information shall develope and implement a plan to insure the security of all such information contained in its repositories. Such plan shall conform to the requirements of 18 Pa. C. S. § 9131, and a copy of the plan shall be submitted to the Attorney General by March 5, 1980. The Attorney General may approve or disapprove such plan or portions thereof and may require that different procedures by implemented to insure security.

Code Civil Proc. - Evidence

§ 1781. Right to inspect and copy public documents

Every citizen has a right to inspect and take a copy of any public document of Puerto Rico, except as otherwise expressly provided by law.—Code Civil Proc., 1933, § 409.

(No. 129)
(Approved June 30, 1977)
AN ACT

To establish a Criminal Justice Information System in the Commonwealth of Puerto Rico.

STATEMENT OF MOTIVES

The Legislature of the Commonwealth of Puerto Rico recognizes the need to develop and establish a Criminal Justice Information System in the Commonwealth through which prompt and accurate information will be made available to the various agencies composing the Criminal Justice System, for the proper discharge of their duties and needs.

In cognition of the fact that the compilation, storage, use, diffusion, analysis and evaluation of information related to citizens is protected by the Constitution of the Commonwealth, the Legislature hereby establishes the necessary structure for the operation, control and coordination of the Criminal Justice Information System in the Commonwealth of Puerto Rico, so as to guarantee the right to individual privacy.

This legislation vests in an Executive Board, consisting of high government officials, the duty of establishing the public policy for the System and creates a working group that will be responsible for the compliance of public policy directives at the operational levels of the System's components.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Creation of the Criminal Justice Information System.-

The Criminal Justice Information System is hereby created to provide full and accurate information to the various agencies that compose the Criminal Justice System for the proper functioning of their needs. It shall be composed by three agencies of the Executive Branch: the Department of Justice, the Puerto Rico Police and the Correctional Administration, and by the Judicial Branch, through the Courts Administration. The Criminal Justice Information System shall compile information on such individuals who are convicted, with regard to past and present events of the criminal proceedings and any action resulting therefrom, such as the arrest, filing of charges, sentencing and imprisonment.

The agencies composing the Criminal Justice System shall furnish the information to be compiled uninterruptedly, promptly

and in accordance with the Rules of the Executive Board of the System.

Section 2.- Definitions.-

For the purposes of this Act, the following terms shall have the meanings stated below:

1.- System-means the Criminal Justice Information System.

2.- Executive Board-means the Executive Board of the Criminal Justice Information System.

3.- Administrative Director- means the Administrative Director of the Criminal Justice Information System.

4.- Working Group- means the personnel which includes the Data Center Director of the Information system of each component of the Criminal Justice System of the Commonwealth and the Data Center Director of the Criminal Justice Information System.

Section 3.- Creation of the Executive Board of the Criminal Justice Information System.

An Executive Board of the Criminal Justice Information System is hereby established which shall be composed of the following officers:

The Secretary of Justice, who shall be its Chairman, the Administrative Director of the Courts, the Police Superintendent, and the Correctional Administration Director. The Executive Board shall be attached to the Committee to Fight Crime

Section 4.- Powers and Duties of the Executive Board.- The Executive Board shall have the following powers and duties:

a) To hold the meetings needed to carry out the purposes of this Act. It shall be the duty of the Secretary of Justice to call the meetings.

b) To establish the structure and determine the operational directives for the Criminal Justice Information System.

c) To establish and promulgate the rules and regulations for the System. Said rules and regulations shall have the force of law after the provisions of Act No. 112 of June 30, 1957, known as the 'Regulations Act of 1958', are complied with.

d) To amend the regulations mentioned in subsection (c), on occasion, as circumstances may warrant.

e) To establish priorities in the use of the equipment and technical facilities of the System.

f) To designate the Administrative Director of the System and the Director of the System's Data Center.

g) To establish the guidelines, supervise the operations, and evaluate the performance of the System's working group.

h) To consider the requests of other agencies within and without the Commonwealth Government and to adopt the necessary

agreements to share such information as may be necessary or convenient for the Commonwealth.

i) To study and evaluate laws, directives and practices of the Federal Government and other state governments with regard to Criminal Justice Information Systems, for the improvement of the Commonwealth's System and to guarantee compliance with pertinent Federal legislation.

j) To investigate the allegations of violations of the provisions of this Act.

k) To promote statistical, criminological, procedural, administrative or substantive studies based on information contained in the System which will tend to improve the Criminal Justice System.

l) To create a Statistical Analysis Center, under a Director, who shall answer to the Executive Board and whose function shall be to analyze and interpret the information compiled by the System.

m) To issue a certificate, through the Puerto Rico Police's Criminal Identification Division which will contain data on the verdicts of guilt in the file of each person who may have a record in the Criminal Justice Information System as a result of having been sentenced by any Court of Justice of the Commonwealth.

Any individual, upon prior verification of his identity, or through his designated attorney, may request and obtain the certificate of his criminal record. Any party in a civil or criminal case may also request and obtain the certificate of the criminal record of any party or witness in the case involved.

n) The decisions of the Executive Board shall be made with due regard to, and without interfering with the autonomy and separation of the legislative, executive and judicial powers, as established by the Constitution and the laws of the Commonwealth of Puerto Rico.

o) To review the adverse decisions of the Administrative Director in such cases where a citizen has filed a written claim alleging that the information compiled by the Information System is incorrect, incomplete or illegal.

Section 5.- Reports and Recommendations of the Executive Board.-

The Executive Board shall render an annual report to the Governor, to the Chief Justice of the Supreme Court, and to the Legislature of Puerto Rico, with respect to the compliance with this Act, including recommendations as to new legislation or amendments to existing legislation. The Executive Board may submit whatever internal reports and recommendations it

deems necessary to the Governor, to the Chief Justice of the Supreme Court, to the Legislature, and to the Heads of the Puerto Rico Criminal Justice System's Agencies.

Section 6.- Personnel.-

The Executive Board shall appoint such personnel as it may deem necessary to carry out its functions.

Any System personnel not attached administratively to one of the agencies that compose the System, shall be attached administratively to the Committee to Fight Crime.

The personnel shall be subject to the provisions of Act No. 5 of October 14, 1975 known as "Puerto Rico Public Service Personnel Act".

Section 7.- Contracting of Services.-

The Executive Board may contract such professional and advisory services as it may need for the proper performance of its duties, for which the creation of a regular position is not practical or advisable, through the procedures established for the executive organizations of the Government.

The Executive Board is hereby authorized to contract the services of employees and officials of any department, agency, corporation or public instrumentality and of the municipalities, with the prior written consent of the executive head involved,

outside their regular hours as public employees, and to pay them for the services rendered, without being subject to the provisions of Section 177 of the Political Code of 1902, as amended, or any other applicable law.

Section 8.- Security and Accuracy of Information-Protection of Individual Privacy:-

The Executive Board shall take all necessary measures, which shall not be limited to the promulgation of Rules and Regulations, to insure to the maximum degree, the security and accuracy of all information compiled through the System, and the protection of each individual's right to privacy in accordance with the constitutional principles of the Commonwealth. The Executive Board shall take all the necessary measures to ascertain that the Criminal Justice Information System will not record any data regarding the political affiliation or activities of any person. It shall also take all necessary measures to insure that all data regarding convictions, which a competent Court has ordered to be eliminated from the criminal record of a person be effectively and totally deleted from the Criminal Justice Information System, including, but without being limited to, the memories of any computers used by the System.

Section 9.- Per Diems and Traveling Expenses.-

Executive Board members shall be entitled to be reimbursed for expenses they actually incur in the performance of their duties, pursuant to the standards established by regulation by the Secretary of the Treasury for such disbursements to public officials.

Section 10.- Administrative Director of the Criminal Justice Information System- Duties and Responsibilities.-

The Administrative Director shall have all such duties and responsibilities delegated to him by the Executive Board. He shall ascertain that the administrative and operational policies established by the Executive Board for the entire System are complied with, and shall coordinate the duties and responsibilities of the working group.

The Administrative Director shall be administratively attached to the Committee to Fight Crime.

Section 11.- Working Group of the Criminal Justice Information System.-

The working group shall consist of the Director of the Information System Data Center of each component of the Criminal Justice System of the Commonwealth, and the Director of the System's Data Center. The Working Group shall operate under the coordination of the Administrative Director.

Section 12.- Working Group-Duties and Responsibilities.-

The Working Group shall have the following duties and responsibilities:

a) To enforce the operational directives issued by the Executive Board.

b) To render such reports as the Executive Board may request.

c) To advise the Executive Board regarding all the operational procedures of the System.

d) To insure compliance at the operational level, with all the Rules, Regulations and Directives issued by the Executive Board, particularly in connection with the accuracy of the information and the protection of the individual's right to privacy.

e) To follow-up the performance and quality of the services contracted and to perform such evaluations as may be required.

Section 13.- Criminal Justice Information System Data Center.-

The Data Center is composed of all the administrative and operational personnel and the physical equipment, including the central computer, the peripherals, the terminals and the feeding lines of the System. Any electronic equipment,

as well as the personnel that is proper or unique to each of the components of the Criminal Justice System is excluded from the Data Center.

The Data Center shall serve as a computer resource, under the authority of the Executive Board, for all the criminal justice agencies. The compilation of information shall be the responsibility of the usuary agencies composing the System and emphasis shall be given to the exchange of information between the terminals, whenever feasible.

Section 14.- Acceptance of Economic Aid.-

The Executive Board shall be empowered to accept economic aid of any nature, including donations, whether in species or technical or professional services furnished by individuals, nonprofit institutions, the United States Government, or the Commonwealth of Puerto Rico, or any instrumentality, agency or political subdivision thereof.

The donations shall be accepted subject to applicable provisions of Act No. 57 of June 19, 1958 as amended, and the Rules and Regulations promulgated thereunder.

Section 15.- Administrative Review.-

Any person may file a written claim with the Administrative Director alleging that all or part of the information

compiled by the Criminal Justice Information System under his name is incorrect, incomplete or illegal. The claim shall contain the grounds for the allegation, the complementing or substituting data that should allegedly appear in the record and the specific information which was allegedly illegally recorded.

The filing of a claim under the aforesaid procedures shall be performed within ten (10) days after delivery of the copy containing the requested information.

The Administrative Director shall carefully consider the claims filed pursuant to this section and shall notify the claimant of his decision to accept or reject the allegation, within a reasonable number of days after its filing. If the allegation is accepted, the notice shall state the corrective action taken.

If the allegation is rejected, the claimant may file a petition for reconsideration before the whole Executive Board within five (5) days after the Administrative Director's notice has been received.

The Executive Board shall consider the motion and notify the claimant within a reasonable number of days from the date of its filing.

The Executive Board may authorize a hearing to discuss the petitions for reconsideration.

Section 16.- Judicial Review.

a) Any person affected adversely by a Resolution or Order of the Executive Board, may request the Superior Court of the Commonwealth of Puerto Rico, for a judicial review of said resolution or order in the courtroom in the jurisdiction of the aggrieved party's residence, through a petition for review, at the discretion of the Court. The petition for review shall be filed in the Superior Court within fifteen (15) days from the date of notice of the Resolution or Order of the Executive Board.

b) The Order, Resolution or Regulation of the Executive Board shall be valid until the decision of the Superior Court reversing the ruling of the Executive Board becomes final and unappealable.

c) The review shall be executed by filing a petition for review in the Office of the Clerk of the Superior Court, stating the grounds on which it is based. The petitioner shall notify the Executive Board of the filing of the petition for review within the following five (5) days.

d) Once the petition for review is filed, the Executive Board shall send a certified copy of the documents which embody the record to the Court, within the term of ten (10) days from the date on which the filing was notified.

e) The Court shall review the decisions or orders of the Executive Board on the basis of the administrative record

submitted. The review before the Superior Court shall be limited exclusively to questions of law. The findings of fact issued by the Executive Board shall be conclusive when substantially supported by evidence.

f) The petition for review made to the Superior Court shall not affect the validity of the Regulations, Order or Resolution of the Executive Board.

g) The Secretary of Justice shall be the legal representative of the Board before the Courts.

Section 17.- Appropriation of Funds.-

The amount of two hundred thousand (200,000) dollars is hereby appropriated from the Treasury of the Commonwealth of Puerto Rico's funds to match the Federal funds granted by the 'Law Enforcement Assistance Administration' to the Committee to Fight Crime, for the development of the System.

These funds shall not be identified with any particular fiscal year so that the matching of Federal funds may be more flexible.

The operating funds of the System shall be appropriated in the general annual budget through the Committee to Fight Crime.

Section 18.- Administration Services.-

The Committee to Fight Crime shall furnish all such budgetary, accounting, personnel and general service

administration services, as may be necessary for the operation of the System.

Section 19.- Effectiveness.-

This Act shall take effect immediately after its approval, with the exception of subsection (H) of Section 4, which shall become effective by Executive Proclamation. Immediately after subsection (H) of Section 4 takes effect by Executive Proclamation, Act No. 254 of June 27, 1974 shall be repealed.

"Section 20.- Penalties

Any official or public employee who by willful or negligent omission fails to comply with any duty established by this Act or any Regulation approved hereunder shall be punished by imprisonment not to exceed six months or by a fine not to exceed five hundred (500) dollars, or both penalties, in the discretion of the court."

Section 9.- Effectiveness.- This Act shall take effect immediately after its approval.

REGULATION NUMBER I

To govern the safety and privacy of the Criminal Justice Information System in the Commonwealth of Puerto Rico.

SECTION 1 - Brief Title

These regulations shall be known by the name of "CJIS Safety and Privacy Regulations

SECTION 2 - Legal Base

These regulations are hereby adopted under the power and authority conferred upon the Executive Board of the Criminal Justice Information System according to Section 4(c) of Act Number 129 of June 30th 1977.

SECTION 3 - Purpose

These regulations formalizes the following principles of public policy:

a) Act Number 129 of June 30th 1977 established a Criminal Justice Information System in the Commonwealth of Puerto Rico that allows the providing of quick and correct informa-

tion into the various agencies which compose the Criminal Justice System so that they carry out their own functions and needs.

b) The keeping of the law as well as the quality of criminal justice improve through the responsible and proper exchange of correct, full and speedy information among the agencies of the Criminal Justice System.

c) Irresponsible disclosure of incomplete or incorrect criminal justice information, may harm the constitutionally protected rights of individual privacy and dignity.

d) That it is necessary and useful for the Commonwealth to incorporate into these Regulations the rules on safety and privacy for the Offender Based Tracking System and of the Computerized Criminal History promulgated by the Federal Government and by the Law Enforcement Assistance Administration.

SECTION 4 - Application

The provisions of these Regulations shall be applied to all government personnel that inter-

vene in the carrying out of the System, as well as in administering it or supervising it, be that through the gathering of information its processing, evaluation or through the dissemination of the System's information, it shall be applied to any person that may have access, authorized by the Board or by the Administrative Director of the CJIS, to undertake studies or to carry out scientific research; also to any person that request and receives information included in the records of the CJIS's horizontal system; and all the agencies of criminal justice.

These Regulations apply to the information contained in the OBTS/CCH of the Commonwealth of Puerto Rico CJIS subject to the following exceptions:

a) Posters, announcements or list for identifying or arresting fugitives or wanted persons.

b) The original admission records kept by criminal justice agencies, such as the

Police Incident Book, chronologically compiled and whose dissemination is required by law or by tradition.

c) Court records on public judicial procedures.

d) Published judicial or administrative opinions.

e) Record of traffic violations kept by the Transportation and Public Works Department for purposes of issuing, suspending, revoking or renewing driver's licenses.

f) Executive Clemency Announcements.

g) Information related to the accusations for which the individual is presently within the criminal justice system.

h) Information which confirms the criminal record, disseminated to the news media or to any other person through specific questions on whether a certain individual was arrested, accused, convicted or acquitted on a specific date.

SECTION 5 - Definitions

a) Information - means data compiled by the Criminal Justice Information System on

individuals processed as adults, consisting in identifiable descriptions, annotations of arrests, accusations, as well as any provision arising therefrom, sentences, imprisonment and parole.

b) Offender Based Tracking System (OBTS)—means the information contained in the SIJC on all current cases undergoing criminal procedure, the details and the stage at which any case may find itself as well as the number of cases throughout the entire system.

c) Computerized Criminal History (CCH)—means the person's criminal record, as well as the current situation on any case which is pending of said person, compiled by the CJIS.

d) Criminal Justice Administration - are those functions which are carried out by the Criminal Justice agencies, such as: the determination of probable cause for the arrest, fixing of bail, preliminary hearing, filing of accusation, judgement, verdict, sentence

and imprisonment. This term includes the activity of criminal identification and the gathering, storing and dissemination of the OBTS/CCH information.

e) Criminal Justice Agency - means the Puerto Rico Police, the Justice Department, the Courts Administration and the Corrections Administration when and to the extent in which they participate in the administration of criminal justice.

f) CJIS Horizontal System - means that portion of the CJIS to which all criminal justice agencies have access and which provides the information needs of said agencies; the OBTS/CCH information is processed through this system.

g) Vertical System - means that portion of the CJIS which is operated and controlled exclusively by a criminal justice agency to serve its particular informative and operational needs.

h) Disposition - means any authorized decision and reason for same, which postpones indefinitely or concludes the criminal justice procedures.

i) Non-Conviction Data - means information on arrest without a disposition or order where more than a years time has elapsed from the time of the arrest and there is no accusation or denouncement pending; that a prosecutor has decided not to prosecute, or that the proceedings have been postponed indefinitely, as well as all acquittals, and dismissals.

j) Access - means the obtaining of information from OBTS or CCH.

k) Dissemination - means to render available to a person or to the public information contained in the the Criminal Justice Information System.

l) Safety - means all measures taken and adopted by the Executive Board, the Administrative Director, the work group and the criminal justice agencies for the protection of the System's information and the physical equipment, including the central computer, peripherals, terminals and lines, in order to prevent loss, damage, mutilation, destruction or unauthorized access.

m) Privacy - means the right that each person has, whose identity can be established through the System's mechanisms, to the necessary measures being adopted so that any information which may be contained on the CJIS records be not disseminated either partially or totally in violation of the laws and regulations which govern the CJIS.

n) Files - means any method of compiling and storing the CJIS's information.

o) Work Group - means the personnel composed by the Director of the Data Center of the Information System from each component part of the CJIS and the Director of the CJIS Data Center.

SECTION 6 - Complete and Correct Information

The CJIS Data Center shall be the central repository for the information. This information shall be kept complete and correct. The agencies' information centers shall provide the initial and disposition data within 30 days of an event having taken place. Said centers shall consult the CJIS Data Center before dissemination

of information on the computerized criminal record in order to make sure that the disposition data are the most recent ones, except in those cases where there may be time pressure and it is technically impossible for the deposit to respond within the required time.

SECTION 7 - Verification of Identity for the OBTS/CCH Files

The identity of each person which has been arrested for a felony shall be verified through fingerprints. All those persons arrested or summoned for misdemeanor shall also have their fingerprints taken. In cases of traffic violations related to driving in a state of drunkenness, or leaving the scene of an accident, as well as reckless driving when there has been an accident in which there have been persons wounded or hurt the accused shall also have his fingerprints taken. No fingerprints shall be entered on the OBTS/CCH Criminal Justice Information System where a person has been accused of minor traffic violations.

When the offender's identity has not been substan-

tiated or verified through fingerprints, the information shall not be entered on the CCH files. In its place the information shall be kept on the OBTS history file. This information shall be subject to the following additional restrictions:

a) A record shall be made for each separate offense of each person; the records are not to be merged.

b) This information shall not be disseminated to any agencies other than the Criminal Justice agencies.

c) The person involved shall be given the opportunity of access and review of the records being discussed before it is used.

d) If the person denies permission to use the record or if he states that it is not valid, the burden of proof falls upon the criminal justice agency and the record will not be used until a court declares it valid.

This procedure for the verification of identity imposes no limit on the authority or power of the

Police in their criminal investigations, criminal identification, and other circumstances where the law or the regulation authorizes the taking of fingerprints.

SECTION 8 - Limits to the dissemination of information contained in the OBTS/CCH.

a) It shall be the exclusive perrogative of the criminal justice agencies to have access to the OBTS/CCH in the CJIS horizontal system, as these are defined in Section 3 (b) of these Regulations, based on the need to know, which is inherent to its functions, in order to carry out the administration of criminal justice or for the evaluation of any candidates applying for jobs in said agencies.

b) No data from the OBTS/CCH within the vertical system of a criminal justice agency shall be disseminated outside of that agency unless there be an exception such as stated on Section 4.

c) The CJIS Executive Board or upon whom it delegates, will be able to authorize the dissemination of information contained in the OBTS/CCH if it has been properly requested

before and based on the following situations:

(1) Individuals and agencies for any purpose authorized by law, statute, executive order, court order or court decision, as interpreted by the proper local agencies or officials.

(2) Individuals and agencies with which the CJIS Executive Board has made a contract to provide services related to the administration of criminal justice which is the object of the agreement. The contract shall specifically authorize the access to necessary information, it shall limit its use to the agreed upon purpose, it shall keep the safety and privacy of the information in a manner which is consistent with this Regulation, and it shall provide sanctions for violations thereof.

(3) Individuals and agencies for the express purpose of carrying out investigations, evaluations, and statistical studies according to a contract with the CJIS Executive Board which specifically authorizes access to the information, limits the use of same to the agreed

upon purpose, keeps or maintains the privacy and safety of the information in a manner consistent with this Regulation and provides sanctions for any violations thereof.

d) The burden of establishing the need to know and the justification or authority to obtain access to the OBTS/CCH falls upon the individual or agency so requesting it.

e) Contracts made under articles 2 and 3 of previous subsection (c) shall specify the standard requisites related with the access to the OBTS/CCH, it shall specify the sanctions to be imposed in cases of noncompliance, it shall stipulate the terminal through which access shall be obtained, and any time limit for the access as well as any other condition deemed necessary.

f) Any individual or agency to whom access has been granted under articles 2 and 3 of subsection (c) in this Section shall establish his identity and authorization for access when and where it would be required by the CJIS Administrative Director or by the person in charge of the CJIS Data Center or of the authorized terminal.

g) With the exception of that which has been provided in subsections (a) and (c) (1) of this Section, no individual or agency shall confirm the existence of information contained in the OBTS/CCH.

h) The information on conviction can be disseminated through criminal record certificate, which shall contain guilty verdict data, filed in each person's record that by reason of having been sentenced in any court of the Commonwealth of Puerto Rico, has a record with the CJIS.

Any person, whose identity has been previously verified, or his appointed attorney, can require and obtain his own criminal record certificate. Likewise, any party to a criminal or civil case can require and obtain the criminal record certificate of party or witness in the case at hand.

The Criminal Record Certificate must contain information related to the person's full name on behalf of whom the record is issued, the number of the case, the court at which the sentence was decreed, date of sentence, offense for which he was condemned, penalty imposed, whether the sentence finds itself at an appeal stage, date of record, signature of official issuing the record.

No certificates shall be issued on a guilty verdict which has been revoked. When no information appears on criminal history a negative criminal record certificate shall be issued.

SECTION 9 - Individual Access and Review of Information Contained in the CCH:

a) Individual Access - Any person or his attorney or legal representative when duly authorized in writing shall have the right to examine the entire information contained in the CCH which appears at CJIS under his name. The request to examine the information shall be filed before the Administrative Director in the form approved by the CJIS Executive Board. Before granting any request to examine the information the Administrative Director shall require adequate information which may include the applicant's fingerprints. Through payment of the corresponding dues the applicant shall be provided with a copy from the CCH for purposes of challenge or correction.

b) Allegation of inaccurate information, incomplete or kept without the authorization of the Law - Any person may file a written and

sworn statement before the Administrative Director alleging that either all or part of the information contained in the CCH of the CJIS which appears on his record under his name is inaccurate, incomplete or that there is no authorization by law to include it. The statement must contain grounds for the allegation, as well as the substitute facts or complementary data which allegedly must appear on the record and the specific data for whose inclusion it is alleged that no legal basis exists.

The filing of a claim under the previous procedure shall be done within ten (10) days following the issuance of a copy containing the requested information.

c) Acceptance or Rejection of Claims - The Administrative Director shall consider claims filed under subsection (b) of this Section and shall notify the claimant of this decision within 15 days of having received the claim. If the claim is accepted, the notification shall include mention of any corrective action which has been taken.

d) Administrative Revision - Any person who is not satisfied with the decision or the corrective

action taken by the Administrative Director with respect to the claims filed under subsection (b) of this Section, shall have 5 days from the date of receipt of notification to file a request or petition for reconsideration before the CJIS Executive Board. The CJIS Executive Board can designate examining officers whose task or function shall be to preside over the administrative hearings to be held on a Board level. The examiners shall submit a report unto the CJIS Board, who shall render a decision with grounds, which shall be notified to the claimant within 30 days following the date in which the petition for reconsideration was received.

e) Upon request by the person on behalf of whom the record has been corrected, the names of all agencies outside the criminal justice system to whom information was granted, shall be provided. It shall be the duty of the Administrative Director to notify to the person his right to demand the delivery of the corrected CCH to all agencies outside the Criminal Justice System to whom inaccurate, incomplete or incorrect information was supplied or kept without due authorization

by law.

f) Notification of Corrections - Whenever a change is effected in the CCH record, the Administrative Director shall notify the change on the record, to all criminal justice agencies, who in turn shall correct, within a reasonable time span, any system of manual and/or vertical records which they may have on the individual.

g) Notification to the National Crime Information Center of the Federal Bureau of Investigations - The National Crime Information Center of the Federal Bureau of Investigations shall be notified on any change made in the CCH record of a person.

h) Requests or Petitions for Revision of the CCH files of the National Crime Information Center of the Federal Bureau of Investigations - Any person, may try to obtain the information contained in the CCH of the National Crime Information Center of the Federal Bureau of Investigations, through the CJIS Administrative Director. Upon referring said petitions, the Administrative Director shall comply with the identification requisites

contained on Section 20.34 of the Criminal Justice Information System's Regulations of the United States Justice Department, Federal Register, Number 98, of May 20, 1973, as amended.

SECTION 10 - Annual Auditing

The CJIS Executive Board shall order an annual audit for each Criminal Justice agency in order to verify compliance with these Regulations. The CJIS Executive Board shall specify the types of records to be held back or kept for use in the auditing. These records shall include but shall not be confined to, the names of all persons and agencies outside the criminal justice system to whom information from the CCH was granted and the date on which said information was provided.

SECTION 11 - CJIS Administrative Director - Duties and Responsibilities :

The CJIS Administrative Director shall have all the duties and obligations that the Executive Board delegates upon him.

The Administrative Director shall coordinate the functions of the Work Group and shall supervise the operational activities of the CJIS Data Center

in order to guarantee the compliance with the Executive Board's directives. The CJIS Administrative Director shall be administratively assigned to the Crime Commission.

SECTION 12 - CJIS Work Group

Duties and Responsibilities

The Work Group shall have the following duties and responsibilities:

a) It shall implant the operational directives issued by the CJIS Executive Board.

b) It shall render those reports which the Executive Board shall require from time to time.

c) It shall advise the Executive Board in respect to each and every one of the operational procedures which have arisen in the CJIS.

d) It shall make sure that all regulations rules and directives issued by the Executive Board are complied with at the operational level, specially in respect to the safety of the information and the protection of the right to privacy.

e) It shall supervise both the rendering of services contracted for and their quality, and shall carry out the necessary evaluations.

SECTION 13 - CJIS Data Center

The Data Center is made up of the entire operational and administrative personnel, and the physical equipment, including the central computer, the peripherals, the terminals as well as the System's lines. From the Data Center is excluded any hardware, and that personnel which pertains to each one of the Criminal Justice System's component.

The Data Center shall serve as a computer resource under the authority of the Executive Board for all the Criminal Justice Agencies. The compiling of the information shall be the responsibility of the using agencies which make up the System and the exchange of information among the terminals shall be emphasized as long as it is feasible. The Data Center shall respond to the Executive Board's policy directives through the Administrative Director in everything relating to the work and supervision of this personnel. Said Data Center shall be located at the Headquarters of the Puerto Rico Police.

SECTION 14 - Safety of the CJIS Data Center

The Executive Board in coordination with the Police shall work out and shall set up a safety or security system for the due protection of the Data Center and its files, from unauthorized access, damage or destruction. The Data Center is responsible for the training on regulations about safety and privacy to all its personnel.

SECTION 15 - Criminal Identification Division

The Police shall keep the function of taking and classifying fingerprints and its file. Also, the Police shall keep the manual files containing the records which support and back the OBTS/CCH files.

SECTION 16 - Safety of the Data Support Centers -

The installation of data support centers shall be confined to criminal justice agencies. Each agency is responsible, for the physical safety of all terminals set up within its premises. To that end, the CJIS Executive Board in coordination with each agency shall approve an Administrative Manual that contains rules for the due protection of its corresponding center. The Administrative Director and the Director for the Data Center shall

be responsible for the inspection of each center so as to secure compliance with safety measures.

SECTION 17 - Security Investigation

The CJIS Executive Board shall approve uniform rules and procedures for security investigations in the employment of the entire CJIS personnel. The CJIS personnel at the level of each agency shall be subject to said investigation by its respective agencies. The investigation of the Data Center personnel shall be carried out by the Police.

SECTION 18 - Separability

If any disposition or provision within these Regulations or in the course of application of same to any person or circumstance be declared unconstitutional, said nullification shall not affect the other provisions nor the application of these Regulations that may have an effect without the need for the provisions or applications which would have been declared void, and to that end it is hereby declared that the provisions of these Regulations are separable the ones from the others.

SECTION 19 - Annulment

Any other rule, regulation or any part of these that may be in conflict with the provisions of these Regulations are hereby voided and annulled.

SECTION 20 - Amendments

Any amendment to these Regulations shall be approved in the manner provided for in Section 21 and shall comply with the requisites provided by Act Number 112 of June 30, 1957, as amended, and known as "The Regulations Act of 1958".

SECTION 21 - Administrative Orders

a) In any case in which through these Regulations the Executive Board must undertake an interpretation or take any action relative to these Regulations or must amend these Regulations, it shall issue forth an Administrative Order.

b) The Administrative Order shall consist of a document that shall have the following characteristics:

(i) It shall be a written document that states or expresses that deals with or that has to do with an Administrative Order promulgated by virtue of these Regulations.

(ii) It shall point out the section and its contents in these Regulations in accordance with which the Administrative Order is being promulgated, including an explanation of the way in which the contents of the Order furthers the purposes of the Regulations.

(iii) It shall be authorized by the Executive Board and certified by the CJIS Administrative Director without being able to delegate this particular function.

(iv) An excerpt of each administrative order shall be published in two newspapers of general circulation. This publication shall be made within the twenty-five days following the date of filing in the State Department.

SECTION 23 - Date of Effectiveness

These Regulations shall go into effect once approval has been obtained by the Board and once all the requisites provided by Act Number 112 of June 30, 1957 as amended, and known as the "Regulations Act of 1958" have been complied with.

Approved by the CJIS Executive Board in February 23, 1978.

CERTIFIED CORRECT:

MIGUEL GIMENEZ MUÑOZ
PRESIDENT
CJIS EXECUTIVE BOARD

PUERTO RICO

AMENDMENTS TO REGULATION NUMBER 1 TO GOVERN THE SAFETY AND PRIVACY OF THE CRIMINAL JUSTICE INFORMATION SYSTEM IN THE COMMONWEALTH OF PUERTO RICO

1. Paragraph (d) of Section 3 of the Security and Privacy Regulation of the Criminal Justice Information System in the Commonwealth of Puerto Rico is amended to read as follows:

"Section 3 - Purpose

.....

(d) That is necessary and useful for the Commonwealth of Puerto Rico to incorporate into these Regulations the rules on safety and privacy for the PROMIS (Prosecutor's Management Information System) as promulgated by the Federal Government and by the Law Enforcement Assistance Administration."

2. Section 4 of the Security and Privacy Regulation of CJIS is amended to read as follows:

"Section 4 - Application

A. The provisions of this Regulation shall be applied to all government personnel that intervene in the carrying out of the System, as well as in administering it or supervising it, be that through the gathering of information, its processing, evaluation or through the dissemination of the System's information; it shall be applied to any person that may have access, authorized by the Board or by the carry out scientific research; also to any person that request and receives information included in the records of the PROMIS system and all the criminal justice agencies.

B. These Regulations apply to the information contained in the PROMIS system, which include information about the offenders tracking while they are in the criminal justice process and the criminal history of such individuals, subdividing PROMIS in OBTS (Offender Base Tracking System) and the CCH (Computarized Criminal History). The applicability of this regulation is subject to the following exceptions:

a) Posters, announcements or list for identifying or arresting fugitives or wanted persons.

b) The original admission records kept by criminal justice agencies, such as the Police Incident Book, chronologically compiled and whose dissemination is required by law or by tradition.

c) Court records on public judicial procedures.

d) Published judicial or administrative opinions.

e) Record of traffic violations kept by the Transportation and Public Works Department for purposes of issuing, suspending, revoking or renewing driver's licenses.

f) Executive Clemency Announcements.

g) Information related to the accusations for which the individual is presently within the criminal justice system.

h) Information which confirms the criminal record, disseminated to the news media or to any other person through specific questions on whether a certain individual was arrested, accused, convicted or acquitted on a specific date."

3. Paragraph (b), (c), (f) and (g) of Section 5 of the Security and Privacy Regulation of CJIS are amended, the order of the definitions is changed, and a new paragraph (p) is added, to that such Section 5 reads as follows:

"Section 5 - Definitions

a) Information - means data compiled by the Criminal Justice Information System on individuals processed as adults, consisting in identificable descriptions, annotations of arrests, accusations, as well as any provision arising therefrom, sentences, imprisonment and parole.

b) PROMIS (Prosecutor's Management Information System) - On line information system designed to provide offender tracking in all cases processed by any agency of the criminal justice system.

c) Offender Based Tracking System (OBTS) - means the information contained in PROMIS on all current cases undergoing criminal procedure, the details and the stage at which any case may find itself as well as the number of cases throughout the entire system.

d) Computarized Criminal History (CCH) - means the person's criminal record, as well as the current situation on any case which is pending of said person, compiled by PROMIS.

e) Criminal Justice Administration - are those functions which are carried out by the Criminal Justice Agencies such as: the determination of probable cause for the arrest, fixing of bail, preliminary hearing, filing of accusation, judgement, verdict, sentence and imprisonment. This term includes the activity of criminal identification and the gathering, storing and dissemination of the OBTS/CCH information.

f) Criminal Justice Agency - means the Puerto Rico Police, the Department of Justice, the Courts Administration, when and to the extent in which they participate in the administration of criminal justice.

g) Horizontal System - means that portion of PROMIS to which all criminal justice agencies have access and which provides the information needs of said agencies; the OBTS/CCH information is processed through this system.

h) Vertical System - means that portion of PROMIS which is operated and controlled exclusively by a criminal justice agency to serve its particular informative and operational needs.

i) Disposition - means any authorized decesion and reason for same, which postpones indefinitely or concludes the criminal justice procedures.

j) Non-conviction Data - means information on arrest without a disposition or order where more than a year time has elapsed from the time of the arrest and there is no accusation or denouncement pending; that a prosecutor has decided not to prosecute, or that the proceedings have been postponed indefinitely, as well as all acquittals, and dismissals.

k) Access - means the obtaining of information from OBTS or CCH.

l) Dissemination - means to render available to a person or to the public information contained in the Criminal Justice Information System.

m) Safety - means all measures taken and adopted by the Executive Board, the Administrative Director, the work group and the criminal justice agencies for the protection of the System's information and the physical equipment, including the central computer, peripherals, terminals and lines, in order to prevent loss, damage, mutilation, destruction or unauthorized access.

n) Privacy - means the right that each person has, whose identity can be established through the System's mechanisms, to the necessary measures being adopted so that any information which may be contained on the CJIS records not be disseminated either partially or totaly in violation of the laws and regulations which govern the CJIS.

o) Files - means any method of compiling and storing the CJIS's information.

p) Work Group- means the personnel composed by the Director of the Data Center of the information system from each component part of the CJIS and the Director of the CJIS Data Center."

4. Paragraph (h) of Section 8 of the Security and Privacy Regulation of CJIS is amended to read as follows:

"Section 8 - Limits of the Dissemination of Information Contained in the OBTS/CCH

.....

h) The information on conviction can be disseminated through criminal record certificate, which shall contain guilty verdict data, files in each person's record that by reason of having been sentenced in any court of the Commonwealth of Puerto Rico, has a record in PRCMIS. Any person, whose identity has been previously verified, or his appointed attorney, can require and obtain his own criminal record certificate. Likewise, any party to a criminal or civil case can require and obtain the criminal record certificate of party or witness in the case at hand, by means of a court order. The Criminal Record Certificate must contain information related to the person's full name on behalf of whom the record is issued, the number of the case, the court at which the sentence was decreed, date of sentence, offense for which he was condemned, penalty imposed, whether the sentence finds itself at an appeal stage, date of record, signature of official issuing the record."

5. Section 11 of the Security and Privacy Regulation of CJIS is amended to read as follows:

" Section 11 - CJIS Administrative Director - Duties and Responsibilities:

The CJIS Administrative Director shall have all the duties and obligations that the Executive Board delegates upon him.

The Administrative Director shall coordinate the functions of the Work Group and shall supervise the operational activities of the CJIS Data Center in order to guarantee the compliance with the Executive Board's directives. The CJIS Administrative Director shall be administratively assigned to the Department of Justice".

6. Section 17 of the Security and Privacy Regulation of CJIS is amended to read as follows:

" Section 17 - Security Investigation:

The CJIS Executive Board shall approve uniform rules and procedures for security investigations in the employment of the entire CJIS personnel. The CJIS personnel at the level of each agency shall be subject to said investigation by its respective agencies. The investigation of the Data Center personnel shall be carried out by the Police or by the Bureau of Special Investigations of the Department of Justice".

7. Approval:

This amendments to Regulation Number 1, to govern the Safety and Privacy of the Criminal Justice Information System in the Commonwealth of Puerto Rico have been approved on February 24, 1983, by the Executive Board of CJIS.

8. Effectiveness:

This amendments to the Security and Privacy Regulation of CJIS shall take effect thirty (30) days after be filed in the State Department, as provided by Act Number 112 of June 30, 1957 as amended, and known as the "Regulations Act of 1958".

CRIMINAL JUSTICE INFORMATION SYSTEM EXECUTIVE BOARD

Hon. Carmen Rita Vélez Borrás
Attorney General (President)

Mr. Desiderio Cartagena
Police Superintendent (Member)

Eulalio A. Torres, Esq.
Courts Administrator (Member)

Jorge L. Collazo
Corrections Administrator (Member)

CHAPTER 1

IDENTIFICATION AND APPREHENSION OF CRIMINALS

SECTION.

12-1-1. Rewards offered by governor.
12-1-2. Appropriations for expenses authorized by governor.
12-1-3. Rewards offered by towns and cities.
12-1-4. Division of criminal identification — Chief and assistants.
12-1-5. Office space of division.
12-1-6. Appropriations for division.
12-1-7. Criminal identification records — Stolen property reports.
12-1-8. Methods of identification.
12-1-9. Assistance to state and local police in fingerprint identification — Enforcement powers — Cooperation with federal bureau and other states.
12-1-10. Duty of police officials to furnish fingerprints and stolen property lists.
12-1-11. Photographs and descriptive information as to persons convicted.
12-1-12. Destruction of records of persons acquitted.
12-1-13. Removal and destruction of records subsequent to conviction for misdemeanor.

12-1-1. Rewards offered by governor. — Whenever any murder, attempt at murder, robbery, or other high crime, shall be committed in the state, and the perpetrator thereof shall escape detection, or shall escape from custody or imprisonment, either before or after conviction, the governor may issue his proclamation offering a suitable reward, not exceeding one thousand dollars ($1,000), for the apprehension of the offender.

12-1-2. Appropriations for expenses authorized by governor. — The general assembly shall annually appropriate such sums as it may deem necessary for the payment of such services as may be authorized by the governor in the execution of the laws, the detection of crime and the apprehension of offenders, not including

therein the sum to be paid under § 12-1-1 as a reward for the apprehension of offenders.

12-1-3. Rewards offered by towns and cities. — Every town council of any town, or mayor of any city acting with the advice of the city council thereof, may offer a suitable reward, not exceeding five hundred dollars ($500) in any one case, for the detention, apprehension and conviction of any offender committing a high crime or misdemeanor within the limits of such town or city, to be paid by the town treasurer or city treasurer upon the order of the town council, or mayor and city council, out of any funds of the town or city not otherwise specifically appropriated.

12-1-4. Division of criminal identification — Chief and assistants. — There shall be a division of criminal identification in the department of the attorney-general to be in charge of a chief who shall be appointed by the attorney-general to serve at the pleasure of the attorney-general, and who shall devote all his time to the duties of his office. The said chief with the approval of the attorney-general may appoint such assistants as he may deem necessary to carry out the work of the division, within the limits of any appropriation made for such purpose, and may with the approval of the attorney-general discontinue the employment of any such assistants at any time. Said chief shall perform the functions required by §§ 12-1-5 to 12-1-12, inclusive. In addition to availability of records to law enforcement agencies and officers, the records shall be made available to any attorney of record in any criminal action, and any officials of businesses which are required by federal or state law or regulation to effectuate a criminal background check of potential or prospective employees. Such information shall be confidential and shall be used only by the employer for the employee's application of employment.

12-1-5. Office space of division. — The division shall have suitable offices in the Providence county courthouse assigned to it by the director of administration.

12-1-6. Appropriations for division. — The general assembly shall annually appropriate such sum as it may deem necessary for the salaries of the chief and his assistants and for the expenses of maintaining the division in accordance with the provisions of this chapter.

12-1-7. Criminal identification records — Stolen property reports. — It shall be the duty of the attorney-general to procure and file for record in the office of his department so far as the same can be procured, fingerprints, plates, photos, outline pictures, descriptions, information and measurements of all persons who shall be or shall have been convicted of felony, or imprisoned for violating any of the military, naval or criminal laws of the United States or of any state, and of all well-known and habitual criminals from wherever procurable. He shall procure and keep on file in the office of said department, so far as the same can be procured, fingerprints, measurements, processes, operations, signalletic cards, plates, photographs, outline pictures, measurements and descriptions of any person who shall have been or shall be confined in any penal institution of this state, taken in accordance with the system of identification in use in any such institution. He shall also keep on file in said office the reports of lost, stolen, found, pledged or pawned property required to be furnished to him under the provisions of § 12-1-10.

12-1-8. Methods of identification. — The department may use any of the following systems of identification: the Bertillon, the fingerprint system and any system of measurement that may be adopted by law in the various penal institutions of the state.

12-1-9. Assistance to state and local police in fingerprint identification — Enforcement powers — Cooperation with federal bureau and other states. — Whenever requested by the superintendent of state police or by any superintendent or chief of police or town sergeant of any city or town, the attorney-general may assist such police officials as a criminal investigator in all criminal investigations involving identification by fingerprints. The attorney-general shall have and may exercise in any part of the state with regard to the enforcement of the criminal laws, all powers of sheriffs, deputy sheriffs, town sergeants, chiefs of police, members of the division of state police, police officers and constables. The attorney-general may send or cause to be sent to any state or national bureau of identification established for the purpose of exchanging information, according to the method of identification by fingerprint, or to any police department, whether within or without the state, the descriptions of any person who may have been fingerprinted in this state.

12-1-10. Duty of police officials to furnish fingerprints and stolen property lists. — It shall be the duty of the superintendent of state police and of the superintendents or chiefs of police or town sergeants of each city or town, hereinafter referred to as police officials, to promptly furnish to the attorney-general fingerprints and descriptions of all persons arrested, who, in the judgment of such police officials, are persons wanted for serious crimes, or who are fugitives from justice, and of all persons in whose possession at the time of arrest are found goods or property reasonably believed by such police officials to have been stolen by such persons; and of all persons in whose possession are found burglar outfits or tools or keys or who have in their possession explosives reasonably believed to have been used or to be used for unlawful purposes, or who are in possession of infernal machines, bombs, or other contrivances in whole or in part and reasonably believed by said police officials to have been used or to be used for unlawful purposes, and of all persons who carry concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes or who have in their possession inks, dye, paper or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes; or dies, molds or other articles necessary in the making of counterfeit money, and reasonably believed to have been used or to be used by such persons for such unlawful purposes. This section is not intended to include violators of

city or town ordinances or of persons arrested for similar minor offenses. It is also made the duty of said police officials to furnish said department daily copies of the reports received by their respective offices of lost, stolen, found, pledged or pawned property.

12-1-11. Photographs and descriptive information as to persons convicted. — In the case of every offense for which an indictment has been found or an information filed and in which the offender has been found guilty and sentenced, or has pleaded guilty or nolo contendere, the attorney-general shall cause to be taken a photograph, and the name, age, weight, height, and a general description of such offender, and his fingerprints in accordance with the fingerprint system of identification of criminals and a history of the offender as shown upon trial. In the case of all offenses triable in the superior court for the counties of Providence and Bristol the attorney-general shall cause such fingerprints, photograph and other information to be taken by his department and in the case of all offenses triable in any other county he may make such arrangements for the taking of such fingerprints, photographs and information as may to him seem most desirable. In the case of offenses other than those that are indictable, for which an offender is committed under a sentence of imprisonment for a period of six (6) months or more, the warden or keeper of a place of detention or penal institution other than institutions designed primarily for the detention of juveniles, to which an offender is committed, shall cause to be taken, unless the court otherwise orders, a like description, photograph, fingerprints and history of such person. Such description, photographs, fingerprints and history shall be taken by persons in the service of the state appointed by the attorney-general for that purpose. All such descriptions, photographs, fingerprints and identifying matter shall be transmitted forthwith to the attorney-general.

12-1-12. Destruction or sealing of records of persons acquitted or otherwise exonerated. — Any fingerprint, photograph, physical measurements or other record of identification, heretofore or hereafter taken by or under the direction of the attorney general, the superintendent of state police, the member or members of the police department of any city or town or any other officer authorized by this chapter to take the same, of a person under arrest, prior to the final conviction of such person for the offense then charged, shall be destroyed by the office or department having the custody or possession thereof within forty-five (45) days after said acquittal or other exoneration if such person is acquitted or otherwise exonerated from the offense with which he or she is charged, and the clerk of court where such acquittal or exoneration has taken place shall, consistent with § 12-1-12.1 place under seal all records of said person in said case. Provided, that such person shall not have been previously convicted of any felony offense. Any person who shall violate any provision of this section shall be fined not exceeding one hundred dollars ($100).

12-1-12.1. Motion for sealing of records of persons acquitted or otherwise exonerated. — (A) Any person who is acquitted or otherwise exonerated of all counts in a criminal case may file a motion for the sealing of his or her court records in said case, provided that no person who has been convicted of a felony shall have his or her court records sealed pursuant to this section.

(B) Any person filing a motion for sealing his or her court records pursuant to this section shall give notice of the hearing date set by the court to the department of the attorney general and the police department which originally brought the charge against said person at least ten (10) days prior thereto.

(C) If the court, after the hearing at which all relevant testimony and information shall be considered, finds that said person is entitled to the sealing of such records, it shall order the sealing of the court records of said person in that case.

(D) The clerk of the court shall, within forty-five (45) days of the order of the court granting the motion, place under seal the court records in said case of the person who has been acquitted or otherwise exonerated.

CHAPTER 1.3

EXPUNGEMENT OF CRIMINAL RECORDS

SECTION.

12-1.3-1. Definitions.
12-1.3-2. Petition for expungement.
12-1.3-3. Petition for expungement — Notice — Hearing — Criteria for granting.
12-1.3-4. Effect of expungement of records — Access to expunged records — Wrongful disclosure.

12-1.3-1. Definitions. — For purposes of this chapter only, the following definitions apply:

Records and records of conviction and/or probation shall include all court records, all records in the possession of any state or local police department, the bureau of criminal identification and the probation department, including but not limited to, any fingerprints, photographs, physical measurements or other records of identification. The terms records and records of conviction, and/or probation do not include the records and files of the department of attorney general which are not kept by the bureau of criminal identification in the ordinary course of the bureau's business.

Expungement of records and records of conviction shall mean the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to said conviction and/or probation.

Law enforcement agency means a state police organization of this or any other state, the division of drug control, the enforcement division of the department of environmental management, the office of the state fire marshal, the capitol police, a law enforcement agency of the federal government, and any agency, department or bureau of the United States government which has as one of its functions the gathering of intelligence data.

Crime of violence includes murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, entering a dwelling house with intent to commit murder, robbery, sexual assault or larceny.

First offender means a person who has been convicted of a felony offense or a misdemeanor offense and said person has not been previously convicted of or placed on probation for a felony or a misdemeanor and there is no criminal proceeding pending against said person in any court.

12-1.3-2. Motion for expungement. — (A) Any person who is a first offender may file a motion for the expungement of all records and records of conviction for a felony or misdemeanor by filing a motion in the court in which the conviction took place, provided that no person who has been convicted of a crime of violence shall have his or her records and records of conviction expunged.

(B) Subject to subsection (A), a person may file a motion for the expungement of records relating to a misdemeanor conviction after five (5) years from the date of the completion of his or her sentence.

(C) Subject to subsection (A), a person may file a motion for the expungement of records relating to a felony conviction after ten (10) years from the date of the completion of his or her sentence.

12-1.3-3. Motion for expungement — Notice — Hearing — Criteria for granting. — (A) Any person filing a motion for expungement of the records of his or her conviction pursuant to § 12-1.3-2 shall give notice of the hearing date set by the court to the department of the attorney general and the police department which originally brought the charge against said person at least ten (10) days prior thereto.

(B) The court, after the hearing at which all relevant testimony and information shall be considered, may, in its discretion, order the expungement of the records of conviction of the person filing said motion if it finds:

(1) that in the five (5) years preceding the filing of the motion if the conviction was a misdemeanor, in the ten (10) years preceding the filing of the motion if the conviction was for a felony, the petitioner has not been convicted nor arrested for any felony or misdemeanor, there are no criminal proceedings pending against said person and he or she has exhibited good moral character;

(2) that the petitioner's rehabilitation has been attained to the court's satisfaction and the expungement of the records of his or her conviction is consistent with the public interest.

(C) If the court grants the motion, it shall order all records and records of conviction relating to the conviction expunged and all index and other references to it deleted. A copy of the order of the court shall be sent to any law enforcement agency and other agency known by either the petitioner, the department of the attorney general or the court to have possession of said records. Compliance with said order shall be according to the terms specified by the court.

12-1.3-4. Effect of expungement of records — Access to expunged records — Wrongful disclosure. — (A) Any person having his or her record expunged shall, thereafter, be released from all penalties and disabilities resulting from the crime of which he or she had been convicted except upon conviction of any subsequent crime, such conviction may be considered as a prior conviction in determining the sentence to be imposed.

(B) In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged pursuant to this chapter, may state that he or she has never been convicted of such crime. Provided, however, that if such person is an applicant for a law enforcement agency position, such person shall disclose the fact of a conviction.

(C) Whenever the records of any conviction and/or probation of an individual for the commission of a crime have been expunged under the provisions of this chapter, any custodian of the records of conviction relating to that crime shall not disclose the existence of such records upon inquiry from any source unless said inquiry be that of the individual whose record was expunged, that of a sentencing court following the conviction of the individual for the commission of a crime, or that of any law enforcement agency when the nature and character of the offense with which an individual is to be charged would be affected by virtue of such person having been previously convicted of the same offense.

(D) The custodian of any records which have been expunged pursuant to the provisions of this chapter shall only release or allow access to such records for the purposes specified in subsections (B) or (C) of this section or by order of a court. Any agency and/or person who willfully refuses to carry out the expungement of the records of conviction pursuant to § 12-1.3-2, or this section or willfully releases or willfully allows access to records of conviction knowing the same to have been expunged, shall be civilly liable.

TITLE 38

PUBLIC RECORDS

CHAPTER.
2. ACCESS TO PUBLIC RECORDS, §§ 38-2-1 to 38-2-12.

CHAPTER 2

ACCESS TO PUBLIC RECORDS

SECTION.
38-2-1. Purpose.
38-2-2. Definitions.
38-2-3. Records of public bodies.
38-2-4. Costs assessed.
38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings.
38-2-6. Commercial use of public records prohibited.
38-2-7. Denial of access.
38-2-8. Administrative appeals.
38-2-9. Jurisdiction of state courts.
38-2-10. Burden of proof.
38-2-11. Right supplemental.
38-2-12. Severability.

38-2-1. Purpose. — The public's right to access to records pertaining to the policy-making responsibilities of government and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to governmental records which pertain to the policy-making functions of public bodies and/or are relevant to the public health, safety, and welfare. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

38-2-2. Definitions. — As used in this chapter:

(a) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory, administrative body of the state or any political subdivision thereof; including, but not limited to any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(b) "Public business" means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(c) "Supervisor of the regulatory body" means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.

(d) "Public record" or "Public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(1) All records which are identifiable to an individual applicant for benefits, clients, patient, student, or employee; including, but not limited to, personnel, medical treatment, welfare, employment security, and pupil records and all records relating to a client/attorney relationship and to a doctor/patient relationship.

(2) Trade secrets and commercial or financial information obtained from a person, firm, or corporation, which is of a privileged or confidential nature.

(3) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(4) All records maintained by law enforcement agencies for criminal law enforcement. Provided, however, any records reflecting the initial arrest of an adult and any complaint against an adult filed in court by a law enforcement agency shall be public.

(5) Any records which would not be available by law or rule of court to an opposing party in litigation.

(6) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor.

(8) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(9) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(10) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(11) Preliminary drafts, notes, impressions, memoranda, working papers and work products.

(12) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or promotion or academic examinations provided, however, that a person shall have the right to review the results of his or her examination.

(13) Correspondence of or to elected officials with or relating to those they represent, and correspondence of or to elected officials in their official capacities.

(14) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision.

(15) All tax returns.

(16) All investigatory records of public bodies pertaining to possible violations of statute, rule or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(17) Records of individual test scores on professional certification and licensing examinations.

(18) Requests for advisory opinions until such time as the public body issues its opinion.

(19) Records, reports, opinions, information, and statements required to be kept confidential by federal or state law, rule, rule of court, or regulation or by state statute.

(20) Judicial bodies are included in the definition only in respect to their administrative function provided that, records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

(21) Library records which, by themselves, or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

(22) Printouts from telecommunication devices for the deaf or hearing and speech impaired.

However, any reasonably segregable portion as determined by the chief administrative officer of the public body of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of said segregable portion does not violate the intent of this section.

(e) "Chief administrative officer" means the highest authority of the public body as defined in subsection (a) of this section.

38-2-3. Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. — (a) Except as provided in § 38-2-2(d), all records maintained or kept on file by any public body, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect and/or copy such records at such reasonable time as may be determined by the custodian thereof.

(b) Each public body shall make, keep, and maintain written or recorded minutes of all meetings.

(c) Each public body shall establish procedures regarding access to public records.

(d) If a public record is in active use or in storage and, therefore, not available at the time a person requests access, the custodian shall so inform the person and make an appointment for said citizen to examine such records as expeditiously as they may be made available.

(e) Any public body which maintains its records in a computer storage system shall provide a printout of any data properly identified.

(f) Nothing herein shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect such public records was made.

38-2-4. Cost. — Subject to the provisions of the general law § 38-2-3 a public body must allow copies to be made or provide copies of public records. The cost per copied page of written public documents shall not exceed fifteen cents ($ .15) per page for documents copyable on common business or legal size paper.

A reasonable charge may be made for search or retrieval of documents. Hourly costs for search and retrieval shall not exceed fifteen dollars ($15.00) per hour and no costs shall be charged for the first ten (10) minutes of search or retrieval.

Copies of documents shall be provided and search and retrieval of documents accomplished within a reasonable time after a request. A public body shall provide an estimate of the costs of a request for documents prior to providing copies.

38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:

(a) construed as preventing any public body from opening its records concerning the administration of such body to public inspection; or

(b) construed as limiting the right of access as it existed prior to [July 1, 1979], of an individual who is the subject of a record to the information contained herein; or

(c) deemed in any manner to affect the status of judicial records as they existed prior to [July 1, 1979], nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

38-2-6. Commercial use of public records prohibited. — No person or business entity shall use information obtained from public records pursuant to this chapter to solicit for commercial purposes; or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who, knowingly and willfully, violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars ($500) and/or imprisonment for no longer than one (1) year.

38-2-7. Denial of access. — Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person requesting such right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of such request. Failure to comply with a request to so inspect or copy such public record within such ten (10) business day period, shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

38-2-8. Administrative appeals. — Any person denied the right to inspect a record of a public body by the custodian of said record may petition the chief administrative officer of that public body for a review of the determinations made by his/her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

If the chief administrative officer determines that the record is not subject to public inspection, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

38-2-9. Jurisdiction of state courts. — (a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) Said court may examine any record which is the subject of such a suit in camera to determine whether said record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner made in accordance with the rules of civil procedure of the superior court.

(d) The court may impose a civil fine not exceeding one thousand dollars ($1,000) against a public body found to have committed a willful violation of this chapter.

38-2-10. **Burden of proof.** — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

38-2-11. **Right supplemental.** — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

38-2-12. **Severability.** — If any provision of this chapter is held unconstitutional, such decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, such decision shall not affect other applications of this chapter.

38-2-13. **Records access continuing.** — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in said records.

CLERKS OF COURTS

§14-17-325. Clerk shall report disposition of each case in court of general sessions.

Every clerk of court shall report the disposition of each case in the Court of General Sessions to the State Law Enforcement Division within thirty days of disposition. The disposition report must be in a format approved by representatives of the State Law Enforcement Division and the office of court administration. With the approval of the State Law Enforcement Division and the office of court administration, this reporting requirement may be satisfied by use of General Sessions docket information transmitted to the office of the court administration.

Act No. 105

Fingerprinting of children

SECTION 1. Section 20-7-780 of the 1976 Code is amended to read:

"Section 20-7-780. The court shall make and keep records of all cases brought before it and shall devise and cause to be printed forms for social and legal records and other papers as may be required. The official juvenile records of the courts and the Department of Youth Services are open to inspection only by consent of the judge to persons having a legitimate interest but must always be available to the legal counsel of the juvenile. All information obtained and social records prepared in the discharge of official duty by an employee of the court or Department of Youth Services must be confidential and must not be disclosed directly or indirectly to anyone, other than the judge or others entitled under this chapter to receive this information unless otherwise ordered by the judge. However, these records must be open to inspection without the consent of the judge where the records are necessary to defend against an action initiated by a juvenile. The name, identity, or picture of any child under the jurisdiction of the court, pursuant to this

chapter, must not be made public by any newspaper, radio, or television station except as authorized by order of the court. A juvenile charged with committing a violent offense as defined in Section 16-1-60, or charged with committing grand larceny of a motor vehicle, may be fingerprinted by the law enforcement agency who takes the juvenile into custody. A juvenile charged with committing a nonviolent or status offense shall not be fingerprinted by law enforcement except upon order of a family court judge. The fingerprint records of a juvenile shall be kept separate from the fingerprint records of adults. The fingerprint records of a juvenile shall not be transmitted to the files of the State Law Enforcement Division or to the Federal Bureau of Investigation or otherwise distributed or provided to any other law enforcement agency unless and until the juvenile is adjudicated delinquent for having committed a violent offense, as defined in Section 16-1-60, or for grand larceny of a motor vehicle. The fingerprint records of a juvenile who is not adjudicated delinquent for having committed a violent offense, as defined in Section 16-1-60, or for grand larceny of a motor vehicle shall, upon notification to law enforcement, be destroyed or otherwise expunged by the law enforcement agency who took the juvenile into custody. The Department of Youth Services may fingerprint and photograph a juvenile upon commitment to a juvenile correctional institution. Fingerprints and photographs taken by the Department of Youth Services shall remain confidential and shall not be transmitted to the State Law Enforcement Division, the Federal Bureau of Investigation, or to any other agency or person, except for the purpose of aiding the department in apprehending an escapee from the Department of Youth Services or to the Missing Persons Information Center to assist in the location or identification of a missing or runaway child.",

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Code of Laws of South Carolina 1976

Title 23

Chapter 3

CRIMINAL INFORMATION AND COMMUNICATION SYSTEM

SEC.

23-3-110. Creation and functions of statewide criminal information and communication system.
23-3-120. Reports of criminal data by law-enforcement agencies and court officials.
23-3-130. Determination of information to be supplied and methods of evaluation and dissemination; promulgation of rules and regulations.
23-3-140. Disclosure of information in violation of law is not authorized.
23-3-150. Grants and appropriations; contracts with public agencies.

§ 23-3-110. Creation and functions of statewide criminal information and communication system.

There is hereby established as a department within the State Law Enforcement Division a statewide criminal information and communication system, hereinafter referred to in this article as "the system," with such functions as the Division may assign to it and with such authority, in addition to existing authority vested in the Division, as is prescribed in this article.

§ 23-3-120. Reports of criminal data by law-enforcement agencies and court officials.

All law-enforcement agencies and court officials shall report to the system all criminal data within their respective jurisdictions and such information related thereto at such times and in such form as the system through the State Law Enforcement Division may require.

§ 23-3-130. Determination of information to be supplied and methods of evaluation and dissemination; promulgation of rules and regulations.

The State Law Enforcement Division is authorized to determine the specific information to be supplied by the law-enforcement agencies and court officials pursuant to § 23-3-120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

§ 23–3–140. Disclosure of information in violation of law is not authorized.

The provisions of this article shall not be construed to require or permit the disclosure or reporting of any information in the manner prohibited by existing law.

§ 23–3–150. Grants and appropriations; contracts with public agencies.

The State Law Enforcement Division is authorized to accept, on behalf of the State, and use in the establishment, expansion and improvement of the system, funds in the nature of grants or appropriations from the State, the United States, or any agency thereof, and may contract with any public agency for use of the system in the furtherance of effective law enforcement.

* * *

§ 17–1–40. After discharge, dismissal or finding of innocence, criminal records must be destroyed.

Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law-enforcement agency.

* * *

§ 23–3–40. Certain fingerprints shall be made available to State Law-Enforcement Division.

All sheriff's and police departments in South Carolina shall make available to the Criminal Justice Records Division of the State Law-Enforcement Division for the purpose of recordation and classification all fingerprints taken in criminal investigations resulting in convictions. The State Law-Enforcement Division shall pay for the costs of such program and prepare the necessary regulations and instructions for the implementation of this section.

SOUTH CAROLINA

Title 30

Chapter 1

Public Records

§ 30–1–10. Definitions.

For the purposes of §§ 30–1–10 to 30–1–140 *"public records"* means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics. Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of §§ 30–1–10 to 30–1–140, nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public; *provided, however,* if necessary, security copies of closed or restricted records may be kept in the South Carolina Department of Archives and History, with the approval of the agency or political subdivision of origin and the Director of the Department of Archives and History, and, *provided, further,* that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of §§ 30–1–10 to 30–1–140 for the disposal of public records.

"Agency" means any State department, agency or institution.

"Subdivision" means any political subdivision of the State.

"Archives" means the South Carolina Department of Archives and History.

"Director" means the Director of the Department of Archives and History.

§ 30–1–60. Inspection and examination of records.

Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person unless such records by law must be withheld, or the public interest is best served by not disclosing them, and he shall furnish, upon reasonable request and at a reasonable fee, certified copies of public records not restricted by law or withheld from use in the public interest.

§ 30–1–140. Penalties for refusal or neglect to perform duty respecting records.

Any public official or custodian of public records who refuses or neglects to perform any duty required of him by §§ 30–1–10 to 30–1–140 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars for each month of such refusal or neglect.

CHAPTER 4 [New]

Freedom of Information Act

SEC.

30–4–10. Short title.
30–4–20. Definitions.
30–4–30. Right to inspect or copy public records; fees; notification as to public availability of record.
30–4–40. Matters exempt from disclosure.
30–4–50. Certain matters declared public information.
30–4–60. Meetings of public bodies shall be open.
30–4–70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.
30–4–80. Notice of meetings of public bodies.
30–4–90. Minutes of meetings of public bodies.
30–4–100. Injunctive relief; costs and attorney's fees.
30–4–110. Penalties.

§ 30–4–10. Short title.

This chapter shall be known and cited as the "Freedom of Information Act".

§ 30-4-20. Definitions.

(a) "Public body" means any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts and special purpose districts, or any organization, corporation or agency supported in whole or in part by public funds or expending public funds and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, such bodies as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

(b) "Person" includes any individual, corporation, partnership, firm, organization or association.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter nor shall the definition of public records include those records concerning which the public body, by favorable public vote of three-fourths of the membership taken within fifteen working days after receipt of written request, concludes that the public interest is best served by not disclosing them. *Provided,* however, nothing herein shall authorize or require the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of such institutions required to be made by law.

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(e) "Quorum" unless otherwise defined by applicable law means simple majority of the constituent membership of a public body.

§ 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records.

(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Such records shall be furnished at the lowest possible cost to the person requesting the records. Records shall be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for such public body to provide the records in such form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that wavier or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees shall not be charged for examination and review to determine if such documents are subject to disclosure. Nothing in this chapter shall prevent the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of such costs prior to searching for or making copies of the records.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record.

§ 30-4-40. Matters exempt from disclosure.

(a) The following matters may be exempt from disclosure under the provisions of this chapter:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy, including, but not limited to, information as to gross receipts contained in applications for business licenses.

(3) Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(A) Disclosing identity of informants not otherwise known;

(B) The premature release of information to be used in a prospective law enforcement action;

(C) Disclosing investigatory techniques not otherwise known outside the government;

(D) By endangering the life, health or property of any person.

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents incidental to proposed contractual arrangements and proposed sale or purchase of property.

(6) Salaries of employees below the level of department head; *provided,* however, that complete salary schedules showing compensation ranges for each employee classification, including longevity steps, where applicable shall be made available.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(8) Memoranda, correspondence and working papers in the possession of individual members of the General Assembly or their immediate staffs, *provided,* however, nothing herein shall be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

(b) If any public record contains material which is not exempt under item (a) of this section, the public body shall separate the exempt and nonexempt material available for examination.

§ 30–4–50. Certain matters declared public information.

Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of §§ 30–4–20, 30–4–40 and 30–4–70 of this chapter:

(1) The names, sex, race, title and dates of employment of all employees and officers of public bodies;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the public body;

(5) Written planning policies and goals and final planning decisions;

(6) Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) The minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to § 30–4–70.

§ 30–4–60. Meetings of public bodies shall be open.

Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30–4–70 of this chapter.

§ 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or the appointment of a person to a public body; *provided,* however, that if an adversary hearing involving the employee, other than under a grievance procedure provided in Chapter 17 of Title 8 of the 1976 Code, is held such employee shall have the right to demand that the hearing be conducted publicly.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this item "formal action" means a recorded vote committing the body concerned to a specific course of action.

(b) Any public body may hold a closed meeting for the purpose of receiving an administrative briefing by an affirmative vote of three-fourths of its members present and voting when required by some exceptional reason so compelling as to override the general public policy in favor of public meetings; *provided,* that no budgetary matters shall be discussed in such closed session except as otherwise provided by law. Such reasons and the votes of the members shall be recorded and be matters of public record. No regular or general practice or pattern of holding closed meetings shall be permitted.

(c) No chance meeting, social meeting or electronic communica-

tion shall be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(d) This chapter shall not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

§ 30-4-80. Notice of meetings of public bodies.

(a) All public bodies shall give written public notice of their regular meetings at the beginning of each calendar year. The notice shall include the dates, times and places of such meetings. Agendas, if any, for regularly scheduled meetings shall be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies shall post on such bulletin board public notice for any called, special or re-scheduled meetings. Such notice shall be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice shall include the agenda, date, time and place of the meeting. This requirement shall not apply to emergency meetings of public bodies.

(b) Legislative committees shall post their meeting times during weeks of the regular session of the General Assembly and shall comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees shall give reasonable notice during weeks of the legislative session only if it is practicable to do so.

(c) Written public notice shall include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(d) All public bodies shall make an effort to notify local news media, or such other news media as may request notification of the times, dates, places and agenda of all public meetings, whether scheduled, rescheduled or called, and the efforts made to comply with this requirement shall be noted in the minutes of the meetings.

§ 30–4–90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30–4–70 of this chapter.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to § 30–4–70 of this chapter, provided that in so recording there is no active interference with the conduct of the meeting. *Provided,* further, that the public body shall not be required to furnish recording facilities or equipment.

§ 30–4–100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for injunctive relief to enforce the provisions of this chapter in appropriate cases provided such application is made no later than sixty days following the date which the alleged violation occurs or sixty days after ratification of such act in public session whichever comes later. The court may order equitable relief as it deems appropriate.

(b) If a person seeking such relief prevails, he may be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof.

§ 30–4–110. Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

SOUTH CAROLINA

PROPOSED REGULATIONS

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

CHAPTER 73

STATUTORY AUTHORITY: SECTION 23-3-130 OF THE 1976 CODE

ARTICLE 3 - CRIMINAL INFORMATION AND COMMUNICATION

These regulations replace all existing regulations in Article 3, Subarticle I

73-20 Definitions

These definitions shall have the following meaning when used in the discussion of criminal history record information (CHRI) and computerized criminal history (CCH) unless the context denotes otherwise:

A. "Administration of Criminal Justice" means the performance of any activity directly involving the detection, apprehension, detention pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused or convicted persons or criminal offenders, or the collection, storage, and dissemination of criminal history record information.

B. "Criminal Justice Agency" means any governmental agency or subunit which as its principal function performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

C. "Criminal History Record Information" (CHRI) means records, fingerprint cards, dispositions, and data collected by criminal justice agencies on adult individuals who are at least seventeen years of age consisting of identifiable descriptors and notations of arrests, detentions, indictments, information, or other formal charges, and any dispositions arising therefrom. The term shall not include juvenile record information, as provided by law, except cases where an appropriate judicial authority rules otherwise.

D. "Criminal Justice Information System" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

E. "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.

F. "Conviction data" means information which shows that an individual has been convicted or found guilty of a crime. When less than one year has elapsed from the date of an arrest, and there is no judicial disposition of the case, the arrest information is treated as conviction data.

G. "Nonconviction data" means arrest information without disposition when an interval of more than one year has elapsed from the date of arrest and no active prosecution of the charge is pending, or that proceedings have been indefinitely postponed.

H. "Access" means the capability to add, delete, modify or otherwise manipulate information, or to cause such data to be transferred or stored either temporarily or permanently. This would apply to information maintained in either manual or automated form.

I. "Screening" means the process wherein an individual's background is reviewed with special emphasis being placed on determining whether there exists any criminal history record information on that individiual. Screening will include the securing of an individual's fingerprints on the standard FBI fingerprint card, and the submission of this fingerprint card to the South Carolina Law Enforcement Division's Criminal Records Department for further processing.

J. "Direct Access" means the capability to obtain information available through the SLED/CJICS network by means of a computer terminal or similar device, and the dissemination of such information.

K. "Indirect Access" means receiving information available through the SLED/CJICS network by either an individual or agency possessing no computer terminal or similar device through an agency having direct access.

L. "User Agreement" means an agreement, entitled "Criminal History and Criminal Justice Information Agreement",between the South Carolina Law Enforcement Division and a SLED/CJICS user agency that will have direct access to various SLED/CJICS information. This agreement establishes responsibilities for the rules and regulations that govern the exchange of information between the parties, and the policies and procedures by which the system operates.

M. "Non-terminal User Agreement" means an agreement, entitled "Criminal Justice Non-Terminal Originating Agency Identifier (ORI) User Authorization Agreement", between a SLED/CJICS user agency having direct access and a criminal justice agency desiring indirect access to SLED/CJICS information. This agreement authorizes the agency having direct access to the SLED/CJICS information to utilize the ORI of the agency that will indirectly access SLED/CJICS at times when that agency will request information.

N. "Disposition" means information which states that a criminal charge contained in a criminal history record has been dealt with by proper judicial authority and that a final disposal of the charge has been made through a finding of guilt or innocence, or that the charge has been dismissed, or that adjudication has been indefinitely postponed. In findings of guilt, a disposition will include information showing the final action of any court of appropriate jurisdiction including, but not limited to fines, sentencing, probation, pardon and restitution information.

73-21 Organization, Purpose and Function of Departments

A. The State Law Enforcement Division Criminal Justice Information and Communication System, known as SLED/CJICS, acting as the State's central criminal justice information repository, shall collect, process, and store criminal justice information and records necessary to the operation of the criminal justice information system of the State Law Enforcement Division. The SLED/CJICS is comprised of four departments:

(1) The Computerized Criminal History (CCH) Department has the responsibility for converting manual criminal history record information to computerized data. The mission of the computerized criminal history unit is to serve criminal justice agencies and to assist non-criminal justice agencies throughout the State and nation by providing current criminal history record information. Conversion of existing computerized criminal history will be compatible with established concepts and operating policies of the Federal Bureau of Investigation's National Crime Information Center (NCIC) to enable an accurate exchange of criminal history data. The five segments comprising an offender's Criminal History Record Information are:

(a) identification segment

(b) identification add-on segment

(c) arrest segment

(d) judicial segment

(e) custody/supervision segment

South Carolina offense codes are assigned to each specific charge. The offense codes must meet State and national requirements for the entering of criminal history data.

(2) The Criminal Records Department has the responsibility of collecting, processing and storing all fingerprint cards and dispositions of persons arrested in the State. The Criminal Records Department supervisor will serve as the custodian of records. Fingerprints will be the basis for establishing computerized criminal history. The Criminal Records Department is responsible for the timely processing of all supporting documents for criminal history record information as provided to the SLED/CJICS by other criminal justice agencies. The department is also responsible for handling expungements as required by South Carolina statute. After the processing at SLED is completed, the department is responsible for forwarding the necessary documentation to the FBI Identification Division in Washington, D.C.

The Criminal Records Department will be responsible for entering, editing, and storing all criminal fingerprint card images on the automated fingerprint identification system.

(3) The Data Processing Department has the responsibility of providing the necessary systems and programming support to develop, manage, and modify various computer applications and programs as deemed necessary by the Computerized Criminal History Department, the Criminal Records Department, the Uniform Crime Reporting Department and other criminal justice entities to facilitate the automated processing of various

information. This department is further charged with the responsiblity of maintaining computer equipment and associated software to ensure effective and efficient information processing and message switching, and to ensure that adequate levels of security are provided throughout the electronic data processing system. The Data Processing Department is also responsible for the maintenance and operation of the statewide communications network, the computer interface with the Federal Bureau of Investigation's National Crime Information Center, the National Law Enforcement Telecommunication System, the South Carolina Department of Highways and Public Transportation, the South Carolina Automated Fingerprint Identification System, and other automated criminal justice systems.

(4) The Uniform Crime Reporting (UCR) Department has the responsibility for processing, analyzing, coding and compiling incident, supplemental, and booking reports received from law enforcement agencies, whether such reports are submitted on paper or by automated means. The Uniform Crime Reporting Department will classify and count incident, supplemental, and booking reports submitted by other agencies according to procedures defined by the International Association of Chiefs of Police Committee on Uniform Crime Reports, the Uniform Crime Records Committee of the National Sheriffs Association, the Uniform Crime Reports Section of the Federal Bureau of Investigation and the State Law Enforcement Division. The Uniform Crime Reporting Department will assure through training and quality control measures that all automated incident, supplemental, and arrest data submitted to the State Uniform Crime Reporting program are classified and counted according to these procedures.

B. When practicable, the SLED/CJICS will develop systems which will facilitate the exchange of criminal justice information between criminal justice agencies.

C. The SLED/CJICS will collect, process, maintain, and dissseminate information and records with due regard to the privacy of individuals, and will maintain and disseminate only accurate and complete records.

73-22 Completeness and Accuracy of Records

A. The Criminal Records Department will maintain complete and accurate criminal history record information as submitted by criminal justice agencies.

B. Dispositions will be forwarded to the Criminal Records Department by the appropriate criminal justice agencies as soon after final judicial action as practicable in accordance with procedures established by the South Carolina Office of Court Administration and the South Carolina Law Enforcement Division.

C. The Criminal Records Department will process the dispositions as soon as practicable following their receipt.

D. All criminal justice agencies will query the central criminal history records repository at SLED/CJICS prior to dissemination of any criminal history record information to assure that the most current disposition data are being used. Inquiries will be made prior to any dissemination except in those cases when the central repository at SLED/CJICS is technically incapable of responding within the necessary time period.

E. Criminal history record information will not contain any information known to be in error. To accomplish this end, the South Carolina Law Enforcement Division will institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurrate information.

73-23 Dissemination of Criminal History Record Information

A. SLED/CJICS will operate and maintain a criminal justice information system which will support the collection, storage, retrieval, and dissemination of criminal history record information, both

intrastate and interstate. SLED/CJICS will make available to bona-fide criminal justice agencies, upon request, any information which will aid these agencies in the performance of their official duties, provided that the dissemination of such information will not be a violation of state or federal laws and regulations restricting its use. Dissemination will include conviction and nonconviction data.

B. User agencies will agree to abide by all laws, rules, and regulations concerning collection, storage, retrieval, and dissemination of criminal justice information.

C. All Criminal justice agencies which desire to exchange criminal history record information through the SLED/CJICS will execute a standard user agreement.

D. User agencies agree to indemnify and save harmless SLED/CJICS and its officials and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liability to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment, or any cause of action whatsoever, or against any loss, cost, expense, and damage, resulting therefrom, arising out of or involving any action, inaction, slander or libel on the part of the user agencies in the exercise or enjoyment of this agreement.

E. The SLED/CJICS may disseminate certain criminal history record information to private persons, authorized governmental entities, businesses, and commercial establishments for other than criminal justice purposes if South Carolina statutes specify that such persons or entities are entitled to criminal history record information. The dissemination of criminal history record information will include conviction data, as well as findings of not guilty, nolle prosequi, dismissals, and similar dispositions which show any final disposition of an arrest.

1. Identification of an individiual whose record is to be searched will be based upon name, race, sex, date of birth, and, if available, a social security number. Notation will be made on any disseminated records which are identified solely by these characteristics and not by fingerprint comparison.

(2) Costs

(a) Private persons, authorized governmental entities, businesses, and commercial establishments will be charged a reasonable fee for performing criminal history record searches. The fee will will be established by the State Law Enforcment Division with the advice and approval of the South Carolina Legislature. The South Carolina Law Enforcement Division may change the fee for this service without notice and without amending these rules. The fee will be adjusted to compensate for changes in the cost of processing criminal history record information searches.

(b) Method of Payment

Payment shall be made to the South Carolina Law Enforcement Division as specified by the Division.

(3) All requests for criminal history record information by noncriminal justice agencies shall be made in writing or by personal appearance at the Criminal Records Department.

(4) Persons wishing to determine whether criminal history records naming them are housed by SLED/CJICS may do so by inquiring in person at the Criminal Records Department between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday except legal State holidays. Proper identification will be required of persons making inquiries.

F. No criminal justice agency other than SLED/CJICS will disseminate to private persons, governmental entities, or any private or public entities, except criminal justice agencies, any criminal history record information other than that originated by that criminal justice agency, except where specifically provided for by State statute.

G. Criminal history logs will be maintained by those agencies which indirectly disseminate criminal history record information. The logs will contain the data necessary for contacting agencies or persons to which inaccurate information has been disseminated. Upon finding inaccurate information of a material nature, it is the duty of the criminal justice agency which discovers the inaccuracy to notify all criminal justice agencies or persons known to have received the inaccurate information. The following minimum information concerning the dissemination of criminal history record information will be maintained in the logs in order to provide an aduit trail:

(1) Manual log:

(a) date of dissemination

(b) agency requestor

(c) individual requestor

(d) name of criminal history record subject

(e) State identification number of criminal history record subject

(f) description of items released

(g) agency providing the information if this is indirect dissemination

(2) Computer system log:

The same information needed for manual logging of indirectly disseminated information will be maintained in any automated or computer logging system used for direct dissemination. The log information must be maintained in a medium which allows the data to be reproduced as a printed list.

(3) All log sheets will be made available to the SLED/CJICS upon request for purposes of quality control. The manual log and computer log will be maintained for a period of one year.

73-24 Limitations on Dissemination of Nonconviction Data

Nonconviction data may be disseminated to the persons or entities below as specified:

A. Criminal justice agencies for purposes of the adminstration of criminal justice and criminal justice agency employment.

B. Individuals and agencies for any purpose authorized by state statute, or circuit court rule, decision, or order.

C. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice. The agreement shall specifically authorize access to data, limit the use of data to the purposes for which it is given, ensure the security and confidentiality of the data consistent with these and federal regulations.

D. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, ensure the confidentiality and security of the data consistent with these and federal regulations.

73-25 Access and Review of Criminal Record Information

A. Individuial right of access and review:

(1) Upon satisfactory verification of his or her identity, an individual will be entitled to review without undue burden to either the agency or the individual, specific portions of criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction. Individuals wishing to review their records must appear personally at the SLED Criminal Records Department.

(2) Times for review will be 8:30 a.m. through 5:00 p.m. Monday through Friday, except legal State holidays.

(3) The requesting individual will fill out a SLED/CJICS review form, "Individual Request for Criminal Record Review".

(4) If the individual is accompanied by legal counsel, the attorney will produce evidence that he or she is a practicing attorney.

(5) When an individual is accompanied by other persons, because the individual cannot interpret the record due to mental or language deficiencies, statement explaining the presence of such persons will be included in the review form. The accompanying individual will also sign the review form.

(6) If the individual is accompanied by other persons, including potential employers, those persons will not be allowed to see the record. The accompanying person must follow the regular dissemination procedures given above.

(7) Waivers are without authority. The record does not belong to the reviewing person, but to the agency which holds it.

(8) A reasonable fee will be charged for processing this review at SLED/CJICS. The fee is not to exceed the actual cost of searching, processing, fingerprinting, and producing copies of the review.

(9) Posters displayed at SLED will inform the public of an individual's right to inspect his or her criminal history record information.

B. Inspection method:

(1) A person wishing to inspect his or her record at SLED/CJICS must submit his or her name, date of birth, and a complete set of fingerprints recorded on an approved non-criminal fingerprint card.

(2) Inspection will be restricted to one time every six months, provided the record has not been challenged and new information has not been added.

(3) The site for inspecting a record housed at SLED CJICS will be the office of the Criminal Records Department supervisor or a location designated by him or her to ensure the privacy of the individual during the review.

(4) Inspection of records held by other agencies will be the responsibility of the requestor.

C. Challenge procedures:

(1) In order to formally challenge a record, the individual will complete a SLED/CJICS challenge form, "Challenge of Criminal History Record".

(2) After completion of the challenge form, the individual will be given a copy of the entries which are being challenged.

(3) Each copy will be marked "For Review and Challenge Only".

D. Record verification and review procedures:

(1) It is the responsibility of SLED/CJICS to accept or deny the challenge by performing an "Administative Review", as defined below, to determine the validity of the challenge.

(2) If SLED/CJICS finds errors or omissions or cannot verify the accuracy of a challenged record entry through other documentation by the appropriate criminal justice agencies,SLED/CJICS will accept the challenge and modify the record.

E. Administrative Review:

(1) Any individual who challenges his or her record at SLED/CJICS is entitled to have the challenged portion of the record removed, modified or corrected if there is no factual controversy concerning the challenge.

(2) If there is factual controversy and the finding of SLED/CJICS is against the individual, he or she is entitled to a review of the decision by the Agent in Charge of SLED/CJICS, within thirty days of notification of the finding.

F. Administrative Appeal:

(1) If an individual's challenge or a portion of the challenge is denied by administrative review,the individual may, within thirty days of receipt of the denial, appeal the denial by petitioning the Criminal History Administrative Appeal Board.

(2) The Criminal History Appeal Board will be composed of the Assistant Director of the South Carolina Law Enforcement Division, and one management level representative each from a local law enforcement agency, the South Carolina Department of Probation, Parole, and Pardon Services, The South Carolina Department of Corrections, and the South Carolina Department of Court Administration.

(3) The individual requesting an administrative appeal will, within sixty days, be given a hearing at which the individual may present evidence concerning the record. If the appeal is denied, the individual will be notified in writing of the reason for the denial.

G. Agencies housing records which must be modified as a result of Challenge must:

(1) Provide a corrected record to every criminal justice agency which received the criminal history record information during the twelve months before the challenge was decided.

(2) Instruct those agencies to provide a corrected record to every criminal justice agency which received the criminal history record information from them in the twelve month period prior to notification.

(3) The notification cycle will be maintained until all criminal justice agencies have been notified and the names of all noncriminal justice agencies and individuals have been obtained.

(4) Upon request, provide the record subject with the names of non-criminal justice agencies and individuals which received the information during the previous twelve month period.

(5) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be interpreted to include any information other than that defined under U.S. Title 28, Section 20.3(b) and Section 20.21G(6).

SOUTH CAROLINA

73-26 Security

All agencies will provide security for any information which is subject to these regulations. These security principles and standards apply to both manual and automated information system. The standards for both types of systems include access restraints, personnel control, disaster protection, and training.

A. Access restraints to criminal history record information and the area in which it is located will ensure that access to criminal history record information, system facilities, system operating environments, file contents, whether in use or stored in a media library, and system documentation is restricted to authorized agencies and personnel.

(1) Physical locations such as records rooms, computer facilities, computer terminal locations, and rooms where files are kept will have access restraints.

(2) Areas having criminal history records will be secured by physical barriers or attended by agency personnel who will restrict access.

(3) Criminal history record information, when in areas with no access restraints, will be kept in cabinets or desks which can be locked.

(4) All personnel who are allowed access to criminal history record information will be subjected to a criminal history background investigation.

(5) Each criminal justice agency will control access to its criminal history record information and will screen employees and other individuals who may have access to criminal history record information stored within the agency.

B. Criminal justice agencies will have the authority to ensure that appropriate disciplinary action is taken whenever personnel violate security rules.

(1) Personnel control measures apply to the agency's employees, other public employees who work in the computer center, and private employees, if those employees have access to criminal history record information, or use an automated system which can access criminal history record information.

(2) Agencies will ensure that criminal justice agency employees and all personnel having access to criminal history record information are familiar with access and dissemination rules.

C. Criminal justice agencies will develop means to protect both automated and manual systems from natural or man-made disasters. These measures must protect any respository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or natural or man made disasters.

D. Personnel whose duties require access to criminal history record information will be instructed in all access and security measures and procedures. SLED/CJICS will provide basic training in this area for all criminal justice agencies.

73-27 Expungement of Criminal History Record Information

SLED/CJICS will expunge criminal history record information in accordance with the South Carolina 1976 Code of Laws, as amended. SLED/CJICS will ensure that its manual and automated records are expunged as required, and that the Federal Bureau of Investigation Identification Bureau is notified whenever expungements affect criminal history record information housed at the Federal Bureau of Investigation.

73-28 Audit Procedures

SLED/CJICS will institute audit procedures to ensure that criminal history record information is accurate. SLED/CJICS has the right to suspend services to any user agency which knowingly and willfully violates any federal or state law or regulation pertaining to the use, collection, storage, or dissemination of criminal history record information.

A. Field audits of user agencies will be performed by personnel designated by the Agent in Charge of SLED/CJICS. The Agent in Charge of SLED/CJICS will act as liaison between user agencies and auditors, and will review the findings of audits to determine what assistance, remedies, or other action may be required, or whether a user agency may be re-audited after a period sufficient to correct any deficiences which may have been discovered. Auditors will perform audits in accordance with a schedule approved by the Agent in Charge of SLED/CJICS, and will regularly report their findings and recommendations. In addition to auditing user agencies for

compliance with the contents of this chapter and State statutes, the auditors will review the agencies' compliance with all Federal Bureau of Investigation/National Crime Information Center regulations, and federal regulations and statutes governing criminal justice information and communications.

B. Field audits will have two basic components:

(1) A procedural audit will examine the procedures which are necessary for compliance with State and federal statutes and regulations. Auditors will inspect written procedures and manuals, and will interview personnel to evaluate methods of compliance as well as levels of understanding. Sites will be examined to determine levels of access restraint and security. The audit will include, but not be limited to, reviews of record and disposition reporting procedures, dissemination procedures, individuals' right of inspection, and security.

(2) An audit of a user agency's activity logs will examine an agency's activity tracking mechanisms. Dissemination logs and record correction logs for criminal history record information will be examined, as well as site access logs and computer terminal records. The auditor will review logging procedures as well as interview personnel who handle or process records.

C. The regulations also require systematic internal auditing as a means of guaranteeing the completeness and accuracy of computerized criminal history information. The Criminal Records Department and the Computerized Criminal History Department will verify the completeness and accuracy of the data by comparing Criminal History Record Information with the source documents. These source document include the original and subsequent fingerprint cards, arrest reports, disposition reports, court, corrections, probation, and parole records. SLED/CJICS will maintain computer edits that assure the entry of valid data. Records found to contain errors will be forwarded to the Criminal Records Department and, if necessary, to the originating agency for correction. Errors will be corrected as soon as practicable in both the manual and automated files.

SOUTH DAKOTA

South Dakota Codified Laws Annotated

Chapter 23-5

CRIMINAL IDENTIFICATION

Section

23-5-1. Criminal identifying information—Procurement and filing by attorney general.

23-5-2. Co-operation of attorney general with law enforcement officers to establish complete state system.

23-5-3. Criminal records of inmates of penal institutions—Procuring and filing.

23-5-4. Fingerprints to be taken and forwarded on arrests—Failure of officer to take and report, misdemeanor, penalty.

23-5-5. Fingerprints taken on arrest—Comparison with files—Information on previous criminal record.

23-5-6. Identification records made by wardens and superintendents of penal institutions.

23-5-7. Records for identification of prisoners—Filing and preserving in department or institution—Restrictions as to use.

23-5-8. Warden of penitentiary—Furnishing of identification of inmates, transmission to division of criminal investigation.

23-5-9. Conviction of felony or misdemeanor—Report by county clerk to division of criminal investigation.

23-5-1. Criminal identifying information—Procurement and filing by attorney general.—The attorney general shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent of all persons who may hereafter be taken into custody for offenses other than those arising solely out of the violation of the fish, game, conservation, or traffic laws of this state with the exception of those persons charged with driving a motor vehicle while under the influence of alcoholic beverages, and also of all criminals wheresoever the same may be procured. It shall be the duty of the person in charge of any state institution to furnish any such information to the attorney general upon his request.

23-5-2. Co-operation of attorney general with law enforcement officers to establish complete state system.—The attorney general shall also co-operate with, and assist sheriffs, chiefs of police, and other law enforcement officers to the end that a complete state system of criminal identification, investigation, and statistical information may be established.

23-5-3. Criminal records of inmates of penal institutions—Procuring and filing.—The attorney general shall procure and file for record the fingerprint impressions and other means of identification and statistical information of all persons contained in any workhouse, jail, reformatory, penitentiary, or other penal institutions, together with such other information as he may require from the law enforcement officers of the state and its subdivisions.

23-5-4. Fingerprints to be taken and forwarded on arrests—Failure of officer to take and report, misdemeanor, penalty.—It is made the duty of the sheriffs of the several counties of the state, the chiefs of police, marshals of the cities and towns, or any other law enforcement officers and peace officers of the state, immediately upon the arrest of any person for a felony or misdemeanor, exclusive of those exceptions set forth in § 23-5-1, to take his fingerprints according to the fingerprint system of identification established by the division of criminal investigation, on forms to be furnished such sheriffs, chiefs of police, marshals or other law enforcement or peace officers and to forward the same together with other descriptions as may be required with a history of the offense alleged to have been committed, to this division for classification and filing. A copy of the fingerprints of the person so arrested, shall be transmitted forthwith by the arresting officer to the federal bureau of investigation in Washington, D. C.

Any officer required under the provisions of this section to take and report fingerprint records, who shall fail to take and report such records as is required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or imprisonment not exceeding thirty days, or by both.

23-5-5. Fingerprints taken on arrest—Comparison with files—Information on previous criminal record.—The attorney general shall compare the description received pursuant to § 23-5-4 with those already on file in the division of criminal investigation and if he finds the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact.

23-5-6. Identification records made by wardens and superintendents of penal institutions.—The warden or superintendent of any penal or reformatory institution in this state, the attorney general or his authorized assistants or agents, the sheriff of any county in this state, or the chief of police of any municipality in the state is hereby authorized and empowered, when in his judgment such proceeding shall be necessary for the purpose of identifying any person accused or convicted of crime, or for the purpose of preventing the escape or of facilitating the recapture of any such person, to cause to be taken or made and preserved such photographs, impressions, measurements, descriptions, and records as may in the judgment of any of said officials be deemed necessary.

23-5-7. Records for identification of prisoners—Filing and preserving in department or institution—Restrictions as to use.—All photographs, impressions, measurements, descriptions, or records taken or made as provided for in § 23-5-6 shall be filed and preserved in the department or institution where made or taken and shall not be published, transferred, or circulated outside such department or institutions, nor exhibited to the public or any person or persons except duly authorized peace officers unless the subject of such photograph, measurement, description, or other record shall have become a fugitive from justice, or shall have escaped from a penal or reformatory institution.

23-5-8. Warden of penitentiary—Furnishing of identification of inmates, transmission to division of criminal investigation.—The warden of the penitentiary shall furnish photographs, fingerprints, and other identifying information of all inmates received at such institution and shall transmit the same to the division of criminal investigation.

CHAPTER 23-5

CRIMINAL IDENTIFICATION

Section
23-5-10. Definition of terms.
23-5-11. Confidential criminal justice information not subject to inspection.
23-5-12. Examination of own criminal history information — Written request — Authorization of release to others — Waiver of liability.
23-5-13. Costs of providing information — Special revenue fund.

23-5-10. Definition of terms. Terms used in §§ 23-5-10 to 23-5-13, inclusive, mean:

(1) "Confidential criminal justice information," criminal identification information compiled pursuant to chapter 23-5, criminal intelligence information, criminal investigative information, criminal statistics information made confidential pursuant to § 23-6-14, and criminal justice information otherwise made confidential by law;

(2) "Criminal history information," arrest information, conviction information, disposition information and correction information compiled by the attorney general pursuant to chapter 23-5, commonly referred to as a "rap sheet";

(3) "Criminal intelligence information," information associated with an identifiable individual, group, organization or event compiled by a law enforcement agency: in the course of conducting an investigation into a criminal conspiracy, projecting a potential criminal operation, or producing an estimate of future criminal activities; or in relation to the reliability of information derived from reports of informants or investigators or from any type of surveillance;

(4) "Criminal investigative information," information associated with an individual, group, organization, or event compiled by a law enforcement agency in the course of conducting an investigation of a crime or crimes. This includes information about a crime or crimes derived from reports of officers, deputies, agents, informants or investigators or from any type of surveillance.

23-5-11. Confidential criminal justice information not subject to inspection. Section 1-27-1 does not apply to confidential criminal justice information.

23-5-12. Examination of own criminal history information — Written request — Authorization of release to others — Waiver of liability. Any person may examine criminal history information filed with the attorney general that refers to that person. The person requesting such information shall supply the attorney general with a written request together with fingerprint identification. The person may also authorize the attorney general to release his criminal history information to other individuals or organizations. The attorney general may require the person to sign a waiver releasing the state, its employees or agents from any liability before releasing criminal history information.

23-5-13. Costs of providing information — Special revenue fund. Any costs collected pursuant to § 1-11-13 for providing information requested under § 23-5-12 shall be deposited in a special revenue fund for reimbursement to the office of the attorney general for the costs of administering the procedure authorized in § 23-5-12.

CHAPTER 23-6

CRIMINAL STATISTICS

Section
23-6-1. Bureau of criminal statistics—Establishment in office of attorney general.
23-6-2. Attorney general as director of bureau—Seal—No salary.
23-6-3. Work of bureau—Assignment of deputies and clerks—Expenses paid from department appropriation.
23-6-4. Statistical information—Compilation by director.
23-6-5. Information as to particular offenders—Gathering by director.
23-6-6. Classification of crimes and offenders—Promulgation by director.
23-6-7. Authority of director to enter prisons and penal institutions.
23-6-8. Information received by bureau—Filing by director—Form and classification of records, preservation.
23-6-9. Copy of available information—Furnishing to law enforcement agencies.
23-6-10. Reports by director—Contents—Distribution.
23-6-11. Access of director to public records.
23-6-12. Co-operation of bureau with federal government and other states—Development of international system of criminal identification.
23-6-13. Certified copies of documents—Admission as evidence.
23-6-14. Access to files and records of bureau.
23-6-15. Acceptance of rewards by director or employees prohibited.
23-6-16. Officials dealing with persons charged with crime—Reports required by director.
23-6-17. Coroners—Transmission of information required by director.
23-6-18. Violations of chapter—Misdemeanor—Penalty.
23-6-19. Uniformity of interpretation of chapter.
23-6-20. Citation of chapter.

23-6-1. Bureau of criminal statistics—Establishment in office of attorney general.—There is hereby established, in the office of the attorney general a bureau of criminal statistics, hereinafter called the bureau.

23-6-2. Attorney general as director of bureau—Seal—No salary.—The bureau shall function through a director. The attorney general shall, by virtue of his office, be the director. The director shall have a seal of office in such form as he shall prescribe. The attorney general shall not receive a salary as such director.

23-6-3. Work of bureau—Assignment of deputies and clerks—Expenses paid from department appropriation.—The attorney general shall assign for the work of the bureau such deputies and clerical assistants in his department as he may from time to time find necessary. The compensation of the clerical assistants assigned to the bureau and all other expenses of the bureau shall be paid out of the appropriation for the department of the attorney general when approved by him.

23-6-4. Statistical information—Compilation by director.—The director shall collect and compile information, statistical and otherwise, which will, as far as practicable, present an accurate survey of the number and character of crimes committed in the state, the extent and character of delinquency, the operations of the police, prosecuting attorneys, courts and other public agencies of criminal justice, and the operations of penal and reformatory institutions, probation, parole, and other public agencies concerned with the punishment or treatment of criminal offenders. He shall include such information as may be useful in the study of crime and delinquency and the causes thereof, for the administration of criminal justice, and for the apprehension, punishment and treatment of criminal offenders.

23-6-5. Information as to particular offenders—Gathering by director.—The director shall also gather such information concerning particular criminal offenders as in his judgment may be helpful to other public officials or agencies dealing with them.

23-6-6. Classification of crimes and offenders—Promulgation by director.—The director shall promulgate classifications and shall prepare forms for the statistical classification of crimes, of offenders, of their punishment and treatment and of all other pertinent information, to conform, as far as practicable, with those promulgated by the appropriate agency in the United States department of justice, and by the federal bureau of the census.

23-6-7. Authority of director to enter prisons and penal institutions.—The director, or any person deputized by the director, upon exhibiting specific written authorization by the director, is empowered to enter any prison, jail, penal or reformatory institution in this state, and to take or cause to be taken fingerprints or photographs, or both, and to make investigation relative to any person, confined therein, who has been accused or convicted of a crime, for the purpose of obtaining information which may lead to the identification of criminals. The officials in charge of all such institutions are hereby required to render the director, and all persons so deputized by him, the needed assistance to that end.

23-6-8. Information received by bureau—Filing by director—Form and classification of records, preservation.—The director shall file, or cause to be filed, all information received by the bureau and shall make, or cause to be made, a complete and systematic record and index thereof, to provide a convenient method of

reference and consultation. As far as practicable all such records shall coincide in form and classification with those of the appropriate agency in the United States department of justice, and with those of similar bureaus in other states, in order to permit easy interchange of information and records. Information and records received by the bureau may not be destroyed.

23-6-8.1. **Destruction of records of certain persons, incidents, and offenses.** The director of the bureau of criminal statistics may authorize the destruction of information and records of:

(1) Persons who are dead;
(2) Persons seventy-five years of age or older unless a violation has occurred within the last ten years;
(3) Incidents that are no longer considered crimes under the laws of the state of South Dakota;
(4) Misdemeanor offenses whose final date of disposition occurred at least ten years prior to authorized destruction date.

23-6-9. Copy of available information—Furnishing to law enforcement agencies.—Upon request therefor and payment of the reasonable cost, the director shall furnish a copy of all available information and of records pertaining to the identification and history of any person or persons of whom the bureau has a record, to any similar governmental bureau, sheriff, chief of police, prosecuting attorney, attorney general, or any officer of similar rank and description of the federal government, or of any state or territory of the United States or of any insular possession thereof, or of the District of Columbia, or of any foreign country, or to the judge of any court, before whom such person is being prosecuted, or has been tried and convicted, or by whom such person may have been paroled.

23-6-10. Reports by director—Contents—Distribution.—Annually, and at such other times as he may determine, the director shall prepare and publish reports reflecting the crime situation in this state, the operation of public agencies engaged in the administration of criminal justice and in the conduct of the punishment or treatment of criminals. The director shall point out what he considers to be significant features regarding crime, the administration of criminal justice and the punishment or treatment of criminals, and may recommend such measures as he may consider desirable or constructive with reference thereto. Upon request therefor and payment of the reasonable cost, the director shall furnish copies of such reports to officers of the United States, and to any public police, prosecution, judicial, punishment, or treatment official or agency of this or any other state, or territory, or country.

23-6-11. Access of director to public records.—Every person having custody or charge of public or official records or documents, from which information is sought for the purposes of this chapter, shall grant to the director, or to any person deputized by him, access thereto, for the purpose of obtaining such information.

23-6-12. Co-operation of bureau with federal government and other states—Development of international system of criminal identification.—The bureau shall co-operate with the appropriate agency of the federal government and with similar agencies in other states, territories and countries, toward the end of developing and carrying on a complete and uniform interstate, national and international system of criminal identification.

23-6-13. Certified copies of documents—Admission as evidence.—Whenever any record, photograph, picture, fingerprint, or other document or paper, in the files of the bureau of this state, or in the files of a similar agency in any other state, territory or country, or of the United States, may be admissible in evidence, a copy thereof, duly certified by the director of any such bureau, under seal of his office, or with the appropriate seal of state, shall be admissible in evidence with the same effect as the original.

23-6-14. Access to files and records of bureau.—The Governor, and persons specifically authorized by the director, shall have access to the files and records of the bureau. No such file or record of information shall be given out or made public except as provided in this chapter, or except by order of court, or except as may be necessary in connection with any criminal investigation in the judgment of the Governor or director, for the apprehension, identification or trial of a person, or persons, accused of crime, or for the identification of deceased persons, or for the identification of property.

23-6-15. Acceptance of rewards by director or employees prohibited.—No rewards for the apprehension or conviction of any person or for the recovery of any property may be accepted by the director, or by any employee of the bureau, but any such reward, if paid to the director or an employee of the bureau shall be paid into the state treasury and credited to the general fund of the state.

23-6-16. Officials dealing with persons charged with crime—Reports required by director.—It shall be the duty of the clerk of every court, of the chief or head of every police department, or other police agency, of every sheriff and constable, of every prosecuting attorney, of every probation or parole officer, and of the head of every department or institution, state, county or local, which deals with criminals, or persons charged with crime, and it shall be the duty of every other official who, by reason of his office, is qualified to furnish information and reports, to prepare and send in writing to the director quarterly, semiannually, or annually, as the director may designate all reports and information requested by the director, to enable him to perform the duties provided in this chapter; but nothing herein shall preclude the gathering, by any public official, of information in addition to that required by the director.

23-6-17. Coroners—Transmission of information required by director.—It shall be the duty of all coroners to transmit promptly to the director reports and information, as required by the director, regarding autopsies performed and inquests conducted, together with the verdict of the coroner's jury.

23-6-18. Violations of chapter—Misdemeanor—Penalty.—Any official or employee of this state, or of any political subdivision thereof, who willfully refuses or neglects to comply with, or willfully violates any of the provisions of this chapter, or who intentionally makes a false statement in any report required under this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense and shall be subject to removal from office.

23-6-19. Uniformity of interpretation of chapter.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

23-6-20. Citation of chapter.—This chapter may be cited as the Uniform Criminal Statistics Act.

Chapter 1-11

Attorney General

1-11-13. **Costs of providing information — Reimbursement of attorney general.** The attorney general may require persons requesting information to reimburse him for the actual costs of providing such information, other than proposed rules. The reimbursable costs include, but are not limited to, the cost of published documents, clerical time and document reproduction.

Chapter 127

Public Records and Files

1-27-1. **Records open to inspection.** If the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, the officer or public servant shall keep the record, document, or other instrument available and open to inspection by any person during normal business hours. Any employment examination or performance appraisal record maintained by the bureau of personnel is excluded from this requirement.

1-27-2. Criminal records not open to inspection.—

1-27-2. Repealed by SL 1977, ch 16, § 3.

1-27-3. Records declared confidential or secret.—Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept.

Regulations

ARTICLE 2:02

BUREAU OF CRIMINAL STATISTICS

CHAPTER

2:02:01	Definitions
2:02:02	Completeness and Accuracy of Records
2:02:03	Access and Review
2:02:04	General Reporting Requirements
2:02:05	General Administrative Procedures

CHAPTER 2:02:01

DEFINITIONS

2:02:01:01. Definitions. Words used in Chapter 2:02, unless the context plainly requires otherwise, mean:

(1) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system;

(2) "Criminal Justice Agency" means a governmental agency or subunit which performs any of the following activities: collection and dissemination of criminal history records information, detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of persons accused of or convicted of a criminal offense.

(3) "Director" means the director of the bureau of criminal statistics as defined in SDCL 23-6-2;

(4) "State registry" means the registry of criminal history record information maintained pursuant to Section 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

2:02:01:02. Scope of Applicability. The rules in Article 2:02 apply only to the criminal history record information kept in the state registry by the division of criminal investigation pursuant to Section 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

CHAPTER 2:02:02

COMPLETENESS AND ACCURACY OF RECORDS

Section
2:02:02:01 Completeness and Accuracy of Records
2:02:02:02 Retroactive Applicability
2:02:02:03 External Audit Procedure
2:02:02:04 Internal Audit Procedures
2:02:02:05 Records Required to Facilitate Audit

2:02:02:01 Completeness and Accuracy of Records. Criminal history record information maintained in the state registry shall be complete and accurate and if the registry contains information that an individual has been arrested, the registry shall also include information of any disposition in South Dakota which has occurred in regard to the particular case and individual, within ninety (90) days after the disposition has occurred.

2:02:02:02. Retroactive Applicability. Rule 2:02:01 shall apply to all arrests made after March 19, 1976.

2:02:02:03. External Audit Procedure. Local criminal justice agencies making inquiries of the state registry of criminal history records are authorized to make periodic inquiries of the state registry for current disposition records to insure that the current disposition information required by rule 2:02:02:01 is entered on the state's registry files.

2:02:02:04. Internal Audit Procedures. At least once every year, the director shall select a representative sample of files in the state registry and audit such files to insure compliance with the provisions of 41 Federal Register 11714.

2:02:02:05. Records Required to Facilitate Audit. To facilitate the audit provided by rules 2:02:02:03 and 2:02:02:04, the state registry shall maintain records which show the date on which criminal history record information is received by the state registry and, if such information is disseminated to someone other than a state, local or federal repository of criminal history record information, the date of the release of such information and the identity of the person or agency to whom it is released.

CHAPTER 2:02:02:03

ACCESS AND REVIEW

Section

2:02:03:01	Access and Review
2:02:03:02	Requests for Corrections in Record
2:02:03:03	Request for Dissemination of Information
2:02:03:04	Notification of Agencies Receiving Information
2:02:03:05	Limitation on Access and Review of Criminal Record Information
2:02:03:06	Specific Agencies Authorized Access to Registry Information

2:02:03:01. Access and Review. Any individual shall have the right to review his or her criminal history record information file maintained in the state registry and to obtain a copy of the same at his or her expense. Review of criminal history record information under this rule shall be available only upon verification of the identity of the individual and at times which do not place an undue burden on the state registry.

2:02:03:02. Requests for corrections in record. If an individual finds material in his criminal record history information file in thestate registry which he believes to be inaccurate or incomplete, he may request that the necessary corrections be made in his record file. If the state registry refuses to make the requested changes, individuals shall be entitled to appeal the decision under the provisions of SDCL 1-26-30.

2:02:03:03. Request for Dissemination of Information. Upon request, an individual whose record has been corrected pursuant to rule 2:02:03:02, shall be given the names of all non-criminal justice agencies, if any, to whom the data has been given.

2:02:03:04. Notification of Agencies Receiving Information. If an individual's record is corrected under the provisions of rule 2:02:03:02, the state registry will notify all criminal justice agencies of the corrected information.

2:02:03:05. Limitation on Access and Review of Criminal Record Information. An individual's right to access and review of his or her criminal history record information, shall not extend to data contained in intelligence, investigatory or other related files, and shall not be construed to include any other information than criminal history record information as defined in rule 2:02:01:01.

2:02:03:06. Specific Agencies Authorized Access to Registry Information. Pursuant to SDCL 23-6-14, and without being limited to the following, the director specifically authorizes access to information in the state registry to the following, for official purposes to:

1. The Governor of the State of South Dakota.

2. Criminal Justice Agencies for the Administration of Criminal Justice.
3. Criminal Justice Agencies for the purpose of criminal justice agency employment.
4. Federal agencies where required by federal statute or federal executive order for security clearance, employment or international travel.
5. Pursuant to court orders.

CHAPTER 2:02:04

GENERAL REPORTING REQUIREMENTS

Section
2:02:04:01 Reporting Deadline for Criminal History Records Information
2:02:04:02 Reporting Deadline for Criminal Records History Information on Repeat Offenders
2:02:04:03 Consequences of Noncompliance

2:02:04:01. Reporting Deadline for Criminal History Records Information. All agencies required to report criminal history record information to the state registry shall submit the information to the state registry within ten working days of the availability of the information to them.

2:02:04:02. Reporting Deadline for Criminal Records History Information on Repeat Offenders. All agencies required to report criminal history records information to the state registry shall report all information relating to persons having their fourth felony arrest or second felony conviction within forty-eight hours of the information being available to them.

2:02:04:03. Consequences of Noncompliance. Failure to comply with rules 2:02:04:01 and 2:02:04:02 will make an agency requesting information from the state registry ineligible to receive any information from the state registry or assistance from the director until the submission of all required criminal history records information is completed according to the rules in ARSD Article 2:02.

CHAPTER 2:02:05

GENERAL ADMINISTRATIVE PROCEDURES

Section
2:02:05:01 Requests for Declaratory Rulings

2:02:05:01 Requests for Declaratory Rulings. Petitions may be filed with the director for the purpose of requesting a declaratory ruling as to the applicability of any statutory provision or rule included within the scope of Article 2:02 or any final order of the director to a given set of facts included under Article 2:02. The petition shall be in writing and contain all pertinent facts necessary to inform the director of the nature of the problem on which a ruling is requested. The director may request more facts where necessary upon which to make his ruling.

37-1-408. State registry to screen child care providers. — (a)(1) The Tennessee bureau of investigation shall establish and maintain a registry to screen child care providers as set forth herein.

(2) The registry shall consist of:

(A) Any persons alleged or adjudicated to have committed sexual abuse against a child as defined in § 37-1-602; and

(B) Any persons who have been alleged or who have been adjudicated to have committed an act against a child which would constitute severe child abuse. Severe child abuse shall be defined for this purpose as those acts committed against a child as set forth in § 37-1-602 or §§ 39-2-101 [repealed], 39-2-103 [repealed], 39-2-201 [repealed], 39-2-202 [repealed], 39-2-211 [repealed], 39-2-221 [repealed], 39-2-301 [repealed], and 39-4-422 [repealed].

(3) The registry shall identify by name and by fingerprints those persons who:

(A) Have been bound over to the grand jury following a preliminary hearing by a judge or have been indicted by a grand jury following allegations of any act as set forth in subdivision (a)(2)(A) or (B); or

(B) Have been adjudicated guilty of or pled guilty to any act as set forth in subdivision (a)(2)(A) or (B).

(4) When a defendant is found not guilty of severe child abuse or child sexual abuse his name shall be expunged from the record.

(b)(1) Upon receiving the appropriate form from the department of human services, the bureau shall search the registry for the purpose of verifying the existence of the applicant's name within the registry for:

(A) Any person applying for the adoption of a child or of any person prior to the placement of a child in a foster home; or

(B) Any person applying to work with children as a volunteer or as a paid employee for a child welfare agency as defined in § 71-3-501 or in any institutional or residential child care facility, except such volunteer who is a parent, a grandparent, a person with whom a child permanently resides, or a person having legal custody of a child at such agency or facility.

(2) The bureau shall advise the department of any positive match and the department shall advise the child welfare agency or the institutional or residential child care facility accordingly.

(c) The department shall forward the appropriate form it receives pursuant to § 71-3-529 to the bureau to verify the accuracy of the information as contained on the bureau's registry under subsections (a) and (b). [Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; T.C.A., §§ 37-1207, 37-1208; Acts 1985, ch. 478, § 40; 1987, ch. 145, §§ 22, 28-30, 32; 1988, ch. 964, § 1.]

37-1-409. Reports confidential — Penalty for violation — Authorized access to information. — (a)(1) Reports of harm made under this part and the identity of the reporter are confidential except when the juvenile court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to an indictment or conviction.

(2) Except as may be ordered by the juvenile court as herein provided, the name of any person reporting child abuse shall not be released to any person other than employees of the department or other child protection team members responsible for child protective services, the abuse registry, or the appropriate district attorney upon subpoena of the Tennessee bureau of investigation without the written consent of the person reporting. Such person's identity shall be irrelevant to any civil proceeding and shall, therefore, not be subject to disclosure by order of any court. This shall not prohibit the subpoenaing of a person reporting child abuse when deemed necessary by the district attorney or the department to protect a child who is the subject of a report, provided that the fact that such person made the report is not disclosed.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to this part, or any information concerning a report or investigation of a report of harm under this part, directly or indirectly derived from the records, papers, files or communications of the department of human services or divisions thereof acquired in the course of the performance of official duties.

(c) Any person violating any of the provisions of this section is guilty of a Class B misdemeanor.

(d) In addition to such other purposes as may be directly connected with the administration of this part, the department shall also grant access to information to those persons specified in § 37-1-612.

(e) The department may confirm whether a child abuse or neglect investigation has been commenced, but may not divulge, except as permitted under this part, any details about the case, including, but not limited to, the name of the reporter, the alleged victim, or the alleged perpetrator.

(f) The department shall adopt such rules as may be necessary to carry out the following purposes:

(1) The establishment of administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child sexual abuse, physical abuse, emotional abuse, or neglect; and

(2) For other purposes directly connected with the administration of this chapter, including, but not limited to, cooperation with schools, child welfare agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, and for cooperation with scientific and governmental research on child abuse and neglect. [Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; Acts 1978 (Adj. S.), ch. 886, § 4; T.C.A., §§ 37-1208, 37-1209; Acts 1985, ch. 478, § 42; 1987, ch. 145, §§ 15, 23; 1988, ch. 964, § 3; 1989, ch. 591, § 112.]

CHAPTER 6

BUREAU OF INVESTIGATION

SECTION.		SECTION.	
38-6-101.	Bureau created — Director — Divisions of bureau.	38-6-105.	Retired agents.
38-6-102.	Criminal investigation division.	38-6-106.	Requests by governor for investigative records.
38-6-103.	Forensic services division.	38-6-107.	Certification of records by director.
38-6-104.	Personnel.		

38-6-101. Bureau created — Director — Divisions of bureau. — (a)(1) There is created the Tennessee bureau of investigation which shall be a separate department of state government. References to the bureau of criminal identification elsewhere in the Code shall be deemed references to the bureau of investigation.

(2) The bureau shall be divided into two divisions, the criminal investigation division and the forensic services division, and the director shall have full control over the activities of each division.

(3) The bureau shall be provided with suitable office space, supplies and equipment to perform the duties and functions assigned to it.

(b)(1) A director shall be appointed to administer such department.

(2) The director's compensation shall be fixed at an amount no less than that provided for the commissioner of safety.

(3) The director shall be a person of experience and ability in the detection of crime and shall be appointed to a fixed term of office by the governor from a list of three (3) nominees submitted to him by a nominating commission composed of:

(A) Two (2) members to be nominated by the speaker of the senate and elected by resolution of the senate;

(B) Two (2) members to be nominated by the speaker of the house of representatives and elected by resolution of the house; and

(C) The executive secretary of the Tennessee district attorneys general conference.

No person nominated by the speakers shall be a member of the general assembly and no more than one member nominated by each speaker and elected by each house shall be from the same political party. Members nominated by the speakers and elected by each house shall serve from the date of their election until January 1 of the year in which the term of the director expires. If no one (1) of the three (3) persons nominated by the commission is satisfactory to the governor, he may reject all three (3), and require the nominating commission to submit three (3) additional names from which to appoint. If none are satisfactory he may require additional nominees, in groups of three (3), until he is able to make his appointment. In any case in which the governor rejects the nominees submitted by the commission, the commission shall resubmit a list of nominees within thirty (30) days of written notice by the governor of such rejection. Within thirty (30) days from the date the full membership of the commission is named initially, the commission shall meet, upon the call of the speaker of the senate, and elect a chairman. Thereafter the commission shall meet at the call of the chairman and shall, within thirty (30) days of the initial meeting, submit its initial list of nominees to the governor. In the case of a vacancy in the office of director arising hereafter during a term, the commission shall meet and submit its list of nominees within sixty (60) days of the date of such vacancy. In such a case the appointment by the governor shall be for the unexpired portion of the director's term. With respect to the appointment of a director to a new term of office, the nominating commission shall be named no later than ninety (90) days before the expiration of the prior term. The commission in such case shall meet initially at the call of the speaker of the senate, elect a chairman and shall then meet and make its submission of nominees no later than thirty (30) days prior to expiration of the term. The first term of office of the director shall begin on March 27, 1980 and shall extend through the thirtieth day of June, 1986. The next term shall begin on the first day of July, 1986, and it, and all successive terms shall be of six (6) full years. The nominating commission as defined under this section shall be subject to the provisions of chapter 44 of title 8.

(4) The director shall be subject to removal from office under the provisions of chapter 47 of title 8, but in the case of suspension of the director under the provisions of § 8-47-116 the office of director shall be filled pending final disposition of the removal proceeding by the official in charge of the criminal investigation division of the bureau.

(5) The official in charge of the criminal investigation division of the bureau shall likewise serve as acting director of the bureau from the occurrence of any vacancy in the office of director until a director is appointed as provided for in this chapter. [Acts 1951, ch. 173, § 1 (Williams, § 11465.10); 1980 (Adj. S.), ch. 636, §§ 1, 13, 15; impl. am. Acts 1982 (Adj. S.), ch. 733, § 4; T.C.A. (orig. ed.), § 38-501.]

38-6-103. Forensic services division — Purchase of breathalyzer tests by local governments. — (a) The forensic services division shall consist of experts in the scientific detection of crime. The director is hereby empowered to employ either upon a temporary or permanent basis, but is not limited to, ballistics expert, pathologist, toxicologist, expert in the detection of human bloodstains and fingerprint experts and such other persons of expert knowledge in the detection of crime as may be found feasible. It shall be the duty of the forensic services division to keep a complete record of such fingerprints as may be obtained by them through exchange with the federal bureau of investigation, with similar bureaus in other states and from fingerprints obtained in this state. Each peace officer of this state, upon fingerprinting any person arrested, shall furnish a copy of such fingerprints to the forensic services division of the bureau. Likewise, such fingerprints as are now on file at the state penitentiary shall be transferred therefrom to the bureau and maintained by it. Each person hereafter received at the state penitentiary shall be fingerprinted and a copy thereof furnished to the bureau. The bureau is hereby authorized to exchange with the federal bureau of investigation any and all information obtained by it in the course of its work and to request of the federal bureau of investigation such information as it may desire.

(b) The services of the forensic services division may be made available by the director to any district attorney general of this state, the chief medical examiner and all county medical examiners in the performance of their duties under the postmortem examination law or to any peace officer upon the approval of the district attorney general of the circuit in which such peace officer is located. The forensic services division likewise is authorized to avail itself of the services of any and all other departments of the state where the same may be of benefit to it, including but not limited to the state chemists and other expert personnel.

(c) The Tennessee crime laboratory and all regional crime laboratories shall be under the supervision of the director of the bureau or his designated representatives.

(d)(1) The Tennessee bureau of investigation shall charge the following fees for services rendered or administered by its forensic services division in connection with any case in a criminal, juvenile, or municipal court, or when otherwise required by law to render such services:

Controlled substances, drugs and narcotics.....$20.00

Alcohol or drug content of blood, breath or urine $10.00
Certification of criminal histories
when required by law ..... The same amount as fixed by the federal bureau of investigation

The results of such tests and the fees therefor shall be certified by the director or his authorized representative and filed with the clerk of the appropriate court. Such fees shall be adjudged as part of the costs of the case to which they relate regardless of whether the charged offense is reduced, amended or changed, or whether the defendant is found guilty of a lesser offense. The appropriate clerk, after deducting five percent (5%) as compensation, shall remit all such fees to the state treasurer, to be expended only as appropriated by the general assembly.

(2) Upon approval of the director of the Tennessee bureau of investigation, local governing bodies which have the responsibility for providing funding for sheriff's offices and police departments, are authorized to purchase from state contracts approved for bureau purchases, scientific instruments designed to examine a person's breath and measure the alcohol content thereof, for use as evidence in the trial of cases, provided that prior to use thereof, such instruments must be delivered to the forensic services division of the bureau for testing and certification pursuant to subsection (g) of this section. The bureau shall continue to maintain and certify the instruments and operating personnel, pursuant to subsection (g) of this section, and furnish expert testimony in support of the use of such instruments when required.

(e)(1) Any fees authorized for services rendered by the bureau which are not incident to a court case shall be paid to the Tennessee bureau of investigation for deposit with the state treasurer for expenditure as herein provided.

(2) Every local governing body purchasing the instruments pursuant to subsection (d) of this section shall report the use of the instrument to the clerk of the court, for inclusion of the service fee as a part of the court costs, which service fee will be disbursed to the local governing body until the purchase price is recovered. Thereafter the service fee will be disbursed by the clerk to the bureau, for the payment to the state treasurer as required by subsection (f) of this section.

(f) All revenue resulting from fines, forfeitures and services rendered by the bureau shall be paid to the state treasurer and used only as appropriated by the general assembly.

(g) The Tennessee bureau of investigation through its forensic services division shall establish, authorize, approve and certify techniques, methods, procedures and instruments for the scientific examination and analysis of evidence, including blood, urine, breath or other bodily substances, and teach and certify qualifying personnel in the operation of such instruments to meet the requirements of the law for the admissibility of evidence. When examinations, tests and analyses have been performed in compliance with such standards and procedures, the results shall be prima facie admissible into evidence in any judicial or quasi-judicial proceeding, subject to the rules of evidence as administered by the courts. [Acts 1951, ch. 173, § 3 (Williams, § 11465.12); 1980 (Adj. S.), ch. 636, § 3; 1980 (Adj. S.), ch. 810, § 1; 1981, ch.

38-6-106. Requests by governor for investigative records — Background checks of appointees. — (a) Any request for investigative records by the governor shall be in writing and shall state specifically the reasons for such request. All such written requests must be signed by the governor and not his agent or designee.

(b) The governor is hereby authorized to request the director of the Tennessee bureau of investigation to conduct a background investigation concerning any person who has asked or agreed to be considered by the governor for appointment to a position of trust and responsibility. Upon the request of the governor, the director shall conduct the investigation and report the results to the governor, either verbally or in writing, as the governor may direct.

(c) All confidential information reported to the governor pursuant to subsection (b) shall remain confidential. [Acts 1980 (Adj. S.), ch. 636, § 14; T.C.A., § 38-506; Acts 1988, ch. 711, § 1.]

38-6-109. Persons applying to work with children — Verification of criminal violation information. — The Tennessee bureau of investigation shall grant access to its computer registry files of criminal offenders to the department of human services for the purpose of verifying the accuracy of criminal violation information of applicants applying to work with children pursuant to § 71-3-529. [Acts 1985, ch. 478, § 28.]

CHAPTER 10

INTRASTATE COMMUNICATION OF CRIMINAL STATISTICS

SECTION.
38-10-101. System established.
38-10-102. Reports by state and local agencies.
38-10-103. Uniform crime reports — Rules on form and content.
38-10-104. Correlation of reports — Annual reports.
38-10-105. Failure of official to make report or comply with provisions.

38-10-101. System established. — The director of the Tennessee bureau of investigation shall establish a system of intrastate communication of vital statistics and information relating to crime, criminals, and criminal activity. [Acts 1973, ch. 159, § 1; 1978 (Adj. S.), ch. 803, § 1; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1201.]

38-10-102. Reports by state and local agencies. — All state, county, and municipal law enforcement and correctional agencies, and courts, shall submit to the director of the Tennessee bureau of investigation reports setting forth their activities in connection with law enforcement and criminal justice, including uniform crime reports. [Acts 1973, ch. 159, § 2; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1202.]

38-10-103. Uniform crime reports — Rules on form and content. — It shall be the duty of the director of the Tennessee bureau of investigation to adopt and promulgate rules and regulations prescribing the form, general content, time, and manner of submission of such uniform crime reports required pursuant to § 38-10-102. The rules so adopted and promulgated shall be filed with the secretary of state pursuant to chapter 5 of title 4 and shall have the force and effect of law. [Acts 1973, ch. 159, § 3; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1203.]

38-10-104. Correlation of reports — Annual reports. — The director of the Tennessee bureau of investigation shall correlate the reports submitted to it pursuant to § 38-10-102, and shall compile and submit to the governor and the legislature an annual report based on such reports. A copy of said report shall be furnished to law enforcement, prosecuting, judicial, correctional authorities, and other appropriate law enforcement and criminal justice agencies. [Acts 1973, ch. 159, § 4; 1977, ch. 355, § 1; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1204.]

38-10-105. Failure of official to make report or comply with provisions. — Any officer or official mentioned in this chapter who shall have been notified and refuses to make any report or do any act required by any provision of this chapter shall be deemed guilty of nonfeasance of office and subject to removal therefrom. [Acts 1978 (Adj. S.), ch. 803, § 2; T.C.A., § 38-1205.]

PART 6—COMPUTER OFFENSES

39-14-601. Definitions for computer offenses. — The following definitions apply in this part, unless the context otherwise requires:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve or intercept data from, or otherwise make use of any resources of a computer, computer system or computer network;

(2) "Computer" means a device that can perform substantial computation, including numerous arithmetic or logic operations, without intervention by a human operator during the processing of a job;

(3) "Computer network" means a set of two (2) or more computer systems that transmit data over communication circuits connecting them;

(4) "Computer program" means an ordered set of data that are coded instructions or statements that, when executed by a computer, cause the computer to process data;

(5) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer system or computer network;

(6) "Computer system" means a set of connected devices including a computer and other devices including, but not limited to, one (1) or more of the following: data input, output, or storage devices, data communication circuits, and operating system computer programs that make the system capable of performing data processing tasks;

(7) "Data" is a representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared in a formalized manner, and is intended to be stored or processed, or is being stored or processed, or has been stored or processed, in a computer, computer system or computer network;

(8) "Financial instrument" includes, but is not limited to, any check, cashier's check, draft, warrant, money order, certificate of deposit, negotiable instrument, letter of credit, bill of exchange, credit card, debit card, marketable security, or any computer system representation thereof;

(9) "Intellectual property" includes data, which may be in any form including, but not limited to, computer printouts, magnetic storage media, punched cards, or may be stored internally in the memory of a computer;

(10) "To process" is to use a computer to put data through a systematic sequence of operations for the purpose of producing a specified result;

(11) "Property" includes, but is not limited to, intellectual property, financial instruments, data, computer programs, documentation associated with data, computers, computer systems and computer programs, all in machine-readable or human-readable form, and any tangible or intangible item of value; and

(12) "Services" includes, but is not limited to, the use of a computer, a computer system, a computer network, computer software, computer program or data to perform tasks. [Acts 1989, ch. 591, § 1.]

39-14-602. Violations — Penalties. — (a) Whoever knowingly, directly or indirectly, accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, for the purpose of obtaining money, property, or services for himself or another by means of false or fraudulent pretenses, representations, or promises violates this subsection and is subject to the penalties of § 39-14-105.

(b) Whoever intentionally and without authorization, directly or indirectly

(1) Accesses; or

(2) Alters, damages, destroys, or attempts to damage or destroy, any computer, computer system, computer network, computer software, program or data;

violates this subsection.

(c) A violation of subdivision (b)(1) is a Class C misdemeanor.

(d) A violation of subdivision (b)(2) is punished as in § 39-14-105.

(e) Whoever receives, conceals, uses, or aids another in receiving, concealing or using any proceeds resulting from a violation of either subsection (a) or subdivision (b)(2), knowing the same to be proceeds of such violation, or whoever receives, conceals, uses, or aids another in receiving, concealing or using, any books, records, documents, property, financial instrument, computer software, program, or other material, property, or objects, knowing the same to have been used in violating either subsection (a) or subdivision (b)(2) violates this subsection and is subject to the penalties of § 39-14-105. [Acts 1989, ch. 591, § 1.]

39-14-603. Venue. — For the purposes of venue under the provisions of this part, any violation of this part shall be considered to have been committed:

(1) In any county in which any act was performed in furtherance of any transaction violating this part;

(2) In any county in which any violator had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instrument, computer software, computer program or other material, objects or items which were used in furtherance of the violation; and

(3) In any county from which, to which or through which any access to a computer, computer system, or computer network was made, whether by wire, electromagnetic waves, microwaves or any other means of communication. [Acts 1989, ch. 591, § 1.]

Chapter 15

Expungement of Records

40-15-106. Expunging records. — (a)(1) Upon petition by a defendant in the court which entered a nolle prosequi in his case the court shall order all public records expunged.

(2) For purposes of this section, the word "court" shall also include any court exercising juvenile jurisdiction.

(b) Public records, for the purpose of expunction only, shall not include arrest histories, investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of human services which are confidential under state or federal law and which are required to be maintained by state or federal law for audit or other purposes. Whenever an order of expunction issues under this section directed to the department of human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefor. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law.

(c)(1) Release of such confidential records or information contained therein other than to law-enforcement agencies for law-enforcement purposes shall be a misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or his agent for purposes of audit investigation; the comptroller or his agent having such access shall protect the confidential nature of any such records which are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to such attorney upon request. [Acts 1976 (Adj. S.), ch. 790, § 1; 1980 (Adj. S.), ch. 892, § 1; T.C.A., § 40-2109; Acts 1987, ch. 335, §§ 1, 3.]

CHAPTER 32

DESTRUCTION OF RECORDS UPON DISMISSAL OR ACQUITTAL

SECTION.
40-32-101. Destruction or release of records.

40-32-101. Destruction or release of records. — (a)(1) All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, or a no true bill returned by a grand jury, or a verdict of not guilty returned by a jury or a conviction which has by appeal been reversed, shall, upon petition by that person to the court having jurisdiction in such previous action, be removed and destroyed without cost to such person; however, the cost for destruction of records shall apply where the charge or warrant was dismissed in any court as a result of the successful completion of diversion program according to §§ 40-15-102 — 40-15-105; provided, however, that such cost for destruction shall not exceed twenty-five dollars ($25.00).

(2) All public records of a person required to post bond under the provisions of § 38-3-109 or § 38-4-106, shall be removed and destroyed as required by this chapter upon the expiration of any bond required, if no surety on the bond is required to fulfill the obligations of the bond.

(3) For purposes of this section, "court" also includes any court exercising juvenile jurisdiction.

(b) Public records, for the purpose of expunction only, shall not include arrest histories, investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys general that are maintained as confidential records for law-enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of human services which are confidential under state or federal law and which are required to be maintained by state or federal law for audit or other purposes. Whenever an order of expunction issues under this section directed to the department of human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefor. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law.

(c)(1) Release of such confidential records or information contained therein other than to law-enforcement agencies for law-enforcement purposes shall be a misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or his agent for purposes of audit investigation; the comptroller or his agent having such access shall protect the confidential nature of any such records which are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to such attorney upon request. [Acts 1973, ch. 318, § 1; 1975, ch. 193, § 1; 1977, ch. 161, § 1; 1978 (Adj. S.), ch. 736, § 1; 1980 (Adj. S.), ch. 892, § 2; 1982 (Adj. S.), ch. 756, § 1; T.C.A., § 40-4001; Acts 1987, ch. 335, §§ 2, 4.]

CRIMINAL SENTENCING REFORM ACT OF 1989

40-35-313. Probation — Conditions — Discharge — Expungement from official records. — (a)(1) If any person who has not previously been convicted of a felony or a Class A misdemeanor is found guilty or pleads guilty to a misdemeanor which is punishable by imprisonment or a Class C, D or E felony, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for a period of time not less than the period of the maximum sentence for the misdemeanor with which he is charged, or not more than the period of the maximum sentence of the felony with which he is charged, on condition that the defendant pay, in addition to the payment of ten dollars ($10.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant, any or all additional costs of the defendant's supervision, counseling or treatment in a specified manner, based upon the defendant's ability to pay. Such payment shall be made to the clerk of the court in which proceedings against such defendant were pending, to be sent to the agency, department, program, group or association responsible for the supervision of such defendant, unless such defendant is found to be indigent and without anticipated future funds with which to make such payment. Such clerk of the court collecting such payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of such proceeds as provided above.

(2) The provisions of this subsection relative to the payment of a supervision fee shall not apply to any person subject to the provisions of chapter 28, part 2 of this title. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. If, during the period of his probation, such person does not violate any of the conditions of the probation, then upon expiration of such period, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection is without court adjudication of guilt, but a non-public record thereof is retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection, or for the limited purposes provided in subsection (b). Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose, except as provided in subsection (b). Discharge and dismissal under this subsection may occur only once with respect to any person.

(b) Upon the dismissal of such person and discharge of the proceedings against him under subsection (a), such person may apply to the court for an order to expunge from all official records (other than the non-public records to be retained by the court under subsection (a)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. Each application shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expungement. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged, it shall enter such order. The effect of such order is to restore such person, in the

contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose, except when the person who has availed himself of the privileges of expungement then assumes the role of plaintiff in a civil action based upon the same transaction or occurrence as the expunged criminal record. In that limited situation, notwithstanding any provision of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, the non-public records are admissible for the following purposes:

(1) A plea of guilty is admissible into evidence in the civil trial as a judicial admission; and

(2) A verdict of guilty by a judge or jury is admissible into evidence in the civil trial as either a public record or is admissible to impeach the truthfulness of the plaintiff. In addition, the non-public records retained by the court, as provided in subsection (a), shall constitute the official record of conviction and are subject to the subpoena power of the courts of civil jurisdiction. [Acts 1989, ch. 591, § 6; 1990, ch. 980, §§ 25, 26.]

BANKS AND FINANCIAL INSTITUTIONS

CHAPTER 6

PAWNBROKERS

45-6-206. Eligibility requirements for license. — (a) To be eligible for a pawnbroker's license, an applicant must:

(1) Be of good moral character;

(2) Have net assets, as defined herein, of at least seventy-five thousand dollars ($75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker

(3) Show that the business will be operated lawfully and fairly within the purpose of this part; and

(4) Produce satisfactory evidence that the applicant(s) has/have been a bona fide resident(s) of the state of Tennessee for at least two (2) years next preceding the date of the application.

(b) Despite a person's eligibility for a pawnbroker's license under subsection (a), the county clerk shall find ineligible an applicant who has a prior felony conviction within ten (10) years next preceding which:

(1) Directly relates to the duties and responsibilities of the occupation of a pawnbroker; or

(2) Otherwise makes the applicant presently unfit for a pawnbroker's license.

(c) If an applicant for a pawnbroker's license is a business entity, the eligibility requirements of subsections (a) and (b) apply to each operator or beneficial owner, and as to a corporation, to each officer, shareholder, and director. [Acts 1988, ch. 724, § 6.]

PART 2—TENNESSEE STATE RACING COMMISSION

4-36-202. Eligibility for appointment and membership. — To be eligible for appointment to and membership on the commission, a person shall:

(1) Have been a legal resident of this state for five (5) years immediately preceding the appointment, and shall be more than thirty (30) years of age;

(2) Be of such character and reputation as to promote public confidence in the administration of racing within this state;

(3) Not directly or indirectly or in any capacity own or have any interest in any racetrack where a race meeting may be held, including but not limited to an interest as owner, lessor, lessee, operator, manager, concessionaire, stockholder or employee;

(4) Not be a public official or public employee;

(5) Not have been convicted of any gambling or gaming offense under the federal law or the laws of this state or any other state or of an offense which is punishable as a felony under the federal law or the laws of this state or any other state;

(6) Not wager or cause a wager to be placed upon the outcome of any race at a race meeting which is under the jurisdiction and supervision of the commission;

(7) Not accept any pecuniary or other form of reward or gift from any association or any licensee of the commission; and

(8) Have no pecuniary interest or engage in any private employment in a business which does business with any association. [Acts 1987, ch. 311, § 5.]

Chapter 7

Public Records

10-7-504. Confidential records. — (a)(1) The medical records of patients in state hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as confidential and shall not be open for inspection by members of the public.

(2) All investigative records of the Tennessee bureau of investigation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the drivers' license issuance division of the department of safety relating to bogus drivers' licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; however, such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except those directly involved in the investigation in the Tennessee bureau of investigation itself and the governor himself. Provided that the bureau, upon written request by an authorized person of a state governmental agency, is authorized to furnish and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an authorized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including but not restricted to national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or his parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the state department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(5)(A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under his supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under his supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the attorney general's office are not subject to inspection or copying in the office of the attorney general, pro-

vided such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for the provisions of subdivision (a)(5)(B), the books, records and materials made confidential or privileged by this subdivision shall be disclosed to the public only in the discharge of the duties of the office of the attorney general.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the rules of civil procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) [Deleted by 1988 amendment.]

(9) All investigative records and reports of the internal affairs division of the department of correction or of the department of youth development shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction or of the department of youth development shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. The release of reports and records shall be in accordance with the Tennessee Rules of Civil Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(10) Official health certificates, collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture, shall be treated as confidential and shall not be open for inspection by members of the public.

(11)(A) The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(11), unless the context otherwise requires:

(i) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships;

(iii) "Proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University, and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(iv) "Trade secrets" means manufacturing processes, materials used therein, and costs associated with the manufacturing process of a person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University.

(b) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted, or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any provision of the law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or mental retardation. Provided, however, the provisions of this section shall not apply to a record concerning an adoption or a record maintained by the department of health and environment's office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years old on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years of the creation date of such records. [Acts 1957, ch. 285, § 2; 1970, ch. 531, §§ 1, 2; 1973, ch. 99, § 1; 1975, ch. 127, § 1; 1976, ch. 552, § 1; 1976, ch. 777, § 1; 1977, ch. 152, § 3; 1978, ch. 544, § 1; 1978, ch. 890, § 2; T.C.A., § 15-305; Acts 1983, ch. 211, § 1; 1984, ch. 947, § 2; 1985, ch. 421, §§ 1-4; 1985 (1st E.S.), ch. 5, § 29; 1987, ch. 118, § 2; 1987, ch. 337, § 20; 1988, ch. 783, § 1; 1988, ch. 894, § 2; 1989, ch. 75, § 1; 1989, ch. 278, § 27.]

10-7-505. Violations. — Any official who shall violate the provisions of §§ 10-7-503 — 10-7-506 shall be deemed guilty of a misdemeanor. [Acts 1957, ch. 285, § 3; 1975, ch. 127, § 2; 1977, ch. 152, § 4; T.C.A., § 15-306.]

10-7-506. Right to make copies of public records. — In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof, or his authorized deputy; provided, however, the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats. [Acts 1957, ch. 285, § 4; T.C.A., § 15-307.]

10-7-507. Records of convictions of traffic and other violations — Availability. — Any public official having charge or custody of or control over any public records of convictions of traffic violations or any other state, county or municipal public offenses shall make available to any citizen, upon request, during regular office hours, a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. Such official is authorized to fix a charge or fee per copy that would reasonably defray the cost of producing and delivering such copy or copies. [Acts 1974 (Adj. S.), ch. 581, § 1; T.C.A., § 15-308.]

CHAPTER 35
PRIVATE PROTECTIVE SERVICES

62-35-107. Action upon applications — Investigations — Approval or denial of licenses. — (a) Upon receipt of an application for a license, the commissioner shall:

(1) Conduct an investigation to determine whether the statements made in the application are true;

(2) Compare, or request that the Tennessee bureau of investigation compare, the fingerprints submitted with the application to fingerprints filed with the Tennessee bureau of investigation; and

(3) Submit the fingerprints to the federal bureau of investigation for a search of its files to determine whether the individual fingerprinted has any recorded convictions.

(b) The commissioner shall issue a license, in a form which he shall prescribe, to qualified applicants upon receipt of a nonrefundable, nonproratable fee in accordance with the schedule promulgated by the commissioner.

(c) If an application for a license is denied, the commissioner shall notify the applicant in writing and shall set forth the grounds for denial. If such grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the required correction.

(d) An application shall be accompanied by a notarized statement sworn to by the applicant as to the number of employees in service. Making a false statement shall be punishable by a civil penalty of five hundred dollars ($500) and assessment of the maximum application fee. [Acts 1987, ch. 436, § 7; 1988, ch. 717, §§ 1, 3; 1989, ch. 523, § 187.]

37-10-207. Children's fingerprint card file. — The Tennessee bureau of investigation shall maintain a separate fingerprint card file for "Children" which shall consist of the "Children" fingerprint cards submitted to it pursuant to § 37-10-206 together with any latent prints believed to be children's prints which have been submitted to it for purposes of identifying missing children. Once each year the bureau shall remove and return to the parent or destroy all fingerprint cards from the children's fingerprint file for children who have become eighteen (18) years of age, unless the child has been reported missing or the child requests in writing that his/her fingerprint remain in the file. Also, the bureau shall destroy any child's fingerprint card upon written request of the parent. The bureau is also authorized to receive "children" fingerprint cards or copies thereof from the federal bureau of investigation when the prints may have been sent directly to the bureau without having also been sent to the Tennessee bureau of investigation as herein provided. The bureau shall not file any of the children's fingerprints authorized herein in any other fingerprint card file. The bureau shall only search the children's fingerprint card file for the purpose of trying to locate and/or identify children who have been reported as missing children and the file shall never be searched for the purpose of identifying a child as having committed a crime unless the parent so requests in writing. [Acts 1985, ch. 158, § 7.]

MICHIE'S TENNESSEE CODE ANNOTATED

TITLE 26 PROFESSIONS, BUSINESSES AND TRADES

CHAPTER 26 PRIVATE INVESTIGATORS

62-26-104. Investigation of applicant.

(a) Upon receipt of the application, the clerk shall forward it to the district attorney general representing the county in which the application is made.

(b) The district attorney general shall have a reasonable time in which to ascertain whether the applicant has been convicted of a felony or two (2) misdemeanors in any state or federal court, and shall submit his findings to the clerk. [Acts 1978, ch. 691,§ 4; T.C.A., § 62-2604; Acts 1983, ch. 43, § 4.]

62-26-105. Issuance of license — Identification card. — (a)(1) If the applicant has not been convicted of a felony or two (2) misdemeanors, and received a sentence of six (6) months or more for each conviction, the clerk shall issue him a license as a private investigator.

(2) This license shall be valid throughout the state of Tennessee for a period of three (3) years from date of issuance.

(3) If the applicant has been convicted of a felony or two (2) misdemeanors, and received a sentence of six (6) months or more for each conviction, the clerk shall reject his application. Provided, however, a licensed private detective as of March 31, 1983, who has had prior to March 31, 1983, two (2) such misdemeanor convictions shall not be prevented from having his license renewed.

(b)(1) Upon issuance of a license, the clerk shall also issue an identification card which shall be valid for the same period as such license.

(A) The identification card shall bear the full name and address of the investigator, his social security number, his date of birth, a recent color photograph of the licensee, the issuance and expiration dates of the license and a line for his signature.

(B) Such cards shall be numbered consecutively as issued by the clerk.

(2) The identification card, as provided in subdivision (b)(1), is to be signed by the private investigator upon its receipt and is to be carried on his person at all times when he is engaged in any activities in the practice of his profession.

(3) It is unlawful for any private investigator knowingly to permit any other person to carry and use his identification card.

(4) If the license of a private investigator is revoked, as provided for in this chapter, it shall be the duty of the private investigator to surrender his license and identification card to the clerk who issued them within ten (10) days of the revocation.

(5)(A) If an identification card as provided by this chapter is lost, misplaced, destroyed or stolen, the private investigator shall immediately report that fact to the clerk who issued the identification card and apply for reissuance of an identification card on such forms as the clerk may provide.

(B) After taking reasonable steps to determine the disposition of the original identification card, the clerk shall issue a replacement identification card to the private investigator, which shall bear the same information as the original identification card. The numbering of the replacement identification card shall be the same as the original, except that it shall have a letter "R" affixed to the end of that number.

(C) The clerk shall collect a nonrefundable fee of five dollars ($5.00) for the reissuance and shall note the reissuance in the records maintained on the licenses as identification cards. For his services, the clerk shall receive such fee. [Acts 1978, ch. 691, § 5; 1979, ch. 328, §§ 1, 5, 6; T.C.A., § 62-2605; Acts 1983, ch. 43, § 5.]

62-26-106. Maintenance of records. — (a) The clerk shall maintain records of all applications made to him for licenses and the disposition of each.

(b) The clerk shall also maintain records of the issuance, reissuance and revocation of licenses and identification cards. [Acts 1978, ch. 691, § 6; 1979, ch. 328, § 2; T.C.A., § 62-2606.]

62-26-107. Clerk's compensation. — For his services, the clerk shall receive the application fee as provided in § 62-26-103. [Acts 1978, ch. 691, § 7; T.C.A., § 62-2607.]

62-26-204. License required [Effective January 1, 1991]. — (a) Except as otherwise provided in this part, it is unlawful for any person to act as an investigations company or private investigator, without first having obtained a license from the commissioner.

(b) However, all investigation companies and private investigators holding a license under part 1 [repealed] of this chapter shall continue in effect until their expiration. Holders of such licenses may thereafter obtain the equivalent license under this part by complying with the terms and conditions for renewal prescribed herein.

(c) Every private investigator licensed in accordance with this part shall maintain a place of business in this state at an investigations company which has been duly licensed by the commissioner.

(d) In the event an applicant for an investigations company license maintains more than one (1) place of business within the state, he shall apply for and obtain an additional investigations company license for each branch office. [Acts 1990, ch. 780, § 5.]

62-26-205. Investigations company license — Application [Effective January 1, 1991]. — (a) An application for an investigations company license shall be filed with the commissioner on the prescribed form. The application shall include:

(1) The full name and business address of the applicant; or

(A) If the applicant is a partnership, the name and address of each partner; or

(B) If the applicant is a corporation, the name and address of the qualifying agent;

(2) The name under which the applicant intends to do business;

(3) The address of the principal place of business and all branch offices of the applicant within this state;

(4) As to each individual applicant; or, if the applicant is a partnership, as to each partner; or, if the applicant is a corporation, as to the qualifying agent, the following information:

(A) Full name;

(B) Date and place of birth;

(C) All residences during the immediate past five (5) years;

(D) All employment or occupations engaged in during the immediate past five (5) years;

(E) Three (3) sets of classifiable fingerprints;

(F) Three (3) credit references from lending institutions or business firms with whom the subject has established a credit record; and

(G) A list of all convictions and pending charges of the commission of a felony or misdemeanor in any jurisdiction;

(5) If the applicant is a corporation, the following information:
(A) The correct legal name of the corporation;
(B) The state and date of incorporation;
(C) The date the corporation qualified to do business in this state;
(D) The address of the corporate headquarters, if located outside of this state; and
(E) The names of two (2) principal corporate officers other than the qualifying agent, and the business address, residence address and the office held by each in the corporation; and
(6) Such other information as the commissioner may reasonably require.
(b) The application shall be subscribed and sworn to:
(1) By the applicant, if the applicant is an individual;
(2) By each partner, if the applicant is a partnership; or
(3) By the qualifying agent, if the applicant is a corporation.
(c) Any individual signing the application must be at least twenty-one (21) years of age. [Acts 1990, ch. 780, § 6.]

62-26-206. Investigations company license — Applicants — Requirements [Effective January 1, 1991]. — Each individual applicant; or, if the applicant is a partnership, each partner; or, if the applicant is a corporation, the qualifying agent, must:
(1) Be at least twenty-one (21) years of age;
(2) Be a citizen of the United States or a resident alien;
(3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared him competent;
(4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;
(5) Be of good moral character; and
(6)(A) Possess at least three (3) years of experience as a manager, supervisor, or administrator with an investigations company;
(B) Possess at least three (3) years experience satisfactory to the commissioner, with any federal, United States military, state, county, or municipal law enforcement agency; or
(C) Pass an examination to be administered at least twice annually by the commissioner, designed to measure knowledge and competence in the investigations company business. [Acts 1990, ch. 780, § 7.]

62-26-207. Private investigator license — Applicants — Requirements [Effective January 1, 1991]. — Each applicant for a private investigator license must:

(1) Be at least twenty-one (21) years of age;

(2) Be a citizen of the United States or a resident alien;

(3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared him competent;

(4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;

(5) Be of good moral character; and

(6)(A) Possess at least three (3) years of experience as a private investigator;

(B) Possess at least three (3) years of experience satisfactory to the commissioner, with any federal, United States military, state, county or municipal law enforcement agency; or

(C) Pass an examination to be administered at least twice annually by the commissioner, designed to measure knowledge and competence in the investigations field. [Acts 1990, ch. 780, § 8.]

62-26-208. Commissioner — Investigation of applications — Issuance of license — Notification of denial — Identification card [Effective January 1, 1991]. — (a) Upon receipt of an application for a license, accompanied by a nonrefundable, nonproratable application fee as set by the commissioner for a license, the commissioner shall:

(1) Conduct an investigation to determine whether the statements made in the application are true;

(2) Compare, or request that the Tennessee bureau of investigation compare, the fingerprints submitted with the application to fingerprints filed with the Tennessee bureau of investigation; and

(3) Submit the fingerprints to the federal bureau of investigation for a search of its files to determine whether the individual fingerprinted has any recorded convictions.

(b) The commissioner shall issue a license, in a form which he shall prescribe, to qualified applicants upon receipt of a nonrefundable, nonproratable fee in accordance with the schedule promulgated by the commissioner.

(c) If an application for a license is denied, the commissioner shall notify the applicant in writing and shall set forth the grounds for denial. If such grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the required correction.

(d) The commissioner shall issue with every private investigator license an identification card that shall contain at least the following information:

(1) Name;

(2) Photograph;

(3) Physical characteristics;

(4) Private investigator license number; and

(5) Expiration date of license.

(e) The identification card shall be issued in a wallet-sized card and shall be permanently laminated.

(f) The identification card shall be carried on the person of the licensee when engaged in the activities of the licensee. [Acts 1990, ch. 780, § 9.]

(Rules 1395—1—1—.08, continued)

(i) Department of Corrections shall immediately report all escapes of prisoners to TBI so that fugitives from justice investigation and information files can be set up and maintained by TBI for the exeution of its duties in relation thereto.

(j) In addition to NCIC programs files, TBI will construct confidential crime data files consistent with dimensions of criminal activities. Data for these files will be obtained from CHR files, NCIC program file, interaction of TBI files and records, arrest records, UCR information, information from Federal agencies and confidential sources.

(k) Any individual is entitled to a certified copy of his/her criminal history record based upon his/her criminal history record identified by fingerprints. Therefore, in order for any person to obatin his/her criminal history record, the applicant must submit a copy of his/her fingerprints to TBI for identification of the record and pay the required fee therefor.

(2) NCIC Programs — Interaction by qualfied agencies with all NCIC program files is authorized, which now appear as follows:

(a) Vehicle File

(b) License Plate File

(c) Boat File

(d) Gun File

(e) Article File

(f) Securities File

(g) Wanted Person File

(h) Missing Person File

(i) Canadian Warrant File

(j) Interstate Identification Index

(k) U.S. Secret Service Protective File

(l) Unidentified Person File

(m) Originating Agency Identifier (ORI) File

Compliance with all NCIC rules and regulations is required for any use of these files.

(3) All terminal agencies shall fully participate in all NCIC, UCR and crime data programs to the extent of their generation of or action upon data relating to crimes, criminals and criminal activities, which will be reduced to formats by TBI for submission of data.

(4) Missing Children.

(a) The TBI shall establish, maintain, and manage a file of "Missing Children".

(Rules 1395—1—1—.08, continued)

(h) All information received from TBI criminal history files relating to child sexual abuse is confidential and will retain that status, and its use must be limited to the specific purpose for which its acquisition was authorized. Said data will not be released to any other agency, corporation, person or entity other than those lawfully working on criminal cases or in cooperation with the Department of Human Services pursuant to Chapter 478.

(6) Child Care Agency Employees.

(a) Chapter 478 of the Public Acts of 1985 does not require the fingerprinting of applicants. Consequently, absolute certainty of identification of criminal history records supplied for anyone for whom a fingerprint is not submitted cannot be provided and the accuracy of the identification of the criminal history data supplied concerning the applicant will always be subject to the serious error of misidentification. TBI does not assume responsibility for any error of misidentification resulting from a failure to supply fingerprints. Notwithstanding that applicant prints are not required for criminal history searches, TBI will accept applicant prints for such searches.

(b) The Department of Human Services shall be authorized to access, for retrieval purposes only, criminal history information relating to the persons described in Section 27 and 28 of Chapter 478 of the Public Acts of 1985.

(c) The Department of Human Services shall structure and manage its personnel carrying out this function so as to limit access to the criminal history files of TBI to the unit and personnel who are actually charged with the responsibility of enforcing Chapter 478. No access shall be granted to any other personnel or unit within the Department of Human Services. Use of said information is subject to audit by TBI.

(7) Other TCIC/NCIC Programs.

(a) All criminal justice agencies which have been identified by NCIC and TCIC as being agencies authorized to handle data in relation to any of the programs and files maintained by NCIC shall be entitled to access the information in relation to those NCIC programs from both NCIC and TCIC files. Privacy and confidentiality status shall be maintained in accordance with Section 1395—1—1—.08 (a) 3.

(b) All criminal justice agencies having authority to arrest persons shall timely report to TCIC and NCIC name indices and available information concerning any person, wanted on a felony charge supported by an arrest warrant, who is not in custody, and will immediately remove that entry from the computer files when the person has been arrested or the warrant dismissed or withdrawn.

Authority: T.C.A. §§10—7—504, 37—10—102, 37—10—203, 37—10—205, 38—6—110, 38—6—109, 38—10—101, 39—32—101, 39—32—104, 40—32—101 and 40—32—104. ***Administrative History:*** *Original rule filed October 30, 1986; effective January 27, 1987.*

1395—1—1—.09 AUTOMATED FINGERPRINT INFORMATION SYSTEM (AFIS)

(1) Arrestee Fingerprints.

(a) All law enforcement agencies, state and local, and any other agency having arrest powers shall fingerprint all persons arrested on all felony cases and any misdemeanor cases which involve charges relating to sex crimes against children. The fingerprint shall be taken upon a form supplied by the Federal Bureau of Investigation, and/or the Tennessee Bureau of Investigation, and shall consist of a minimum of two (2) copies. The agency making the arrest shall send the two (2) copies to the Tennessee Bureau of Investigation, one to be entered in its AFIS system and the other to be forwarded to the FBI. In addition, the submitting agency may keep any additional copies which it desires to take for its own files.

(Rules 1395—1—1—.09, continued)

(b) Department of Corrections shall furnish to the TBI a copy of the fingerprint of each person committed by final disposition to custody of the Department of Corrections.

(c) As an integral part of the interactive operation of AFIS and TCIS, TBI will establish a criminal history file for each person whose fingerprints are received and entered into the AFIS system and will thereafter, through the operation of all systems, update the criminal history file for new charges and final dispositions.

(d) In order to verify the continuing identification of the person whose identification is originally established by the fingerprints, the Bureau will assign a unique number to each person which will be designated as the state identification number (SID). Final dispositions will be made to the correct file on the basis of that number. Other departments, and specifically the Department of Corrections, are authorized to use the state identification number in any management and control system while performing any duties required by law to be performed by that agency.

(2) Police Applicants. All fingerprints taken by any agency from applicants for police work in those agencies which are governed by the Police Officer Standards laws and rules and regulations shall submit two (2) copies of the fingerprints of each applicant to the TBI for processing through AFIS.

(3) Regulatory Agencies.

(a) State governmental agencies which issue licenses or permits to any person, corporation, partnership, or other entity to engage in an authorized activity affecting the rights, property, or interests of the public or segments thereof, may make written inquiry of the TBI to request criminal history data for the limited purpose of determining if such license or permit should be issued. The written request for such information (if not accompanied by regulation fingerprint cards) must include:

1. complete and correct name of applicant;

2. date of birth;

3. sex;

4. race;

5. Social Security number.

Upon the basis of this information, the criminal history files of TBI will be searched for criminal history information relating to the applicant. Since the data furnished will not be based upon the certainty of fingerprint identification, the possibility of errors and mistakes exist and the Bureau cannot assume responsibility for information furnished pursuant to the requests.

(b) Requests for criminal history records of applicants for a private investigator license must be accompanied by two (2) copies of the fingerprints of the applicants.

(c) Section 36—6—103 (d) authorizes the cost to be assessed for furnishing criminal history records searches for all agencies and persons other than police applicants or police work relating to performance of duties relating directly to law enforcement. The charge will be assessed to each requesting agency or person irrespective of whether the request is manual or made through a terminal interfaced to TIES. Each agency requesting or making such searches should obtain payment from the applicant in amount authorized by said Section.

(Rules 1395—1—1—.09, continued)

(4) Missing Children's Fingerprints. The TBI shall maintain a separate fingerprint file for Missing Children which shall consist of fingerprints submitted to it pursuant to T.C.A. §37—10—206, together with any latent prints believed to be those of missing children. Once each year the TBI will purge this file of fingerprints of children who have become eighteen (18) years of age, unless the child has been reported missing or the child requests in writing that his/her fingerprints remain in the file. The TBI will also destroy any child's fingerprint record in this file upon written request of the custodial parent or legal guardian. The Bureau shall only search the Missing Children Fingerprint File for the purpose of trying to locate/identify children who have been reported as missing children or victims of crime. These fingerprints shall not be included in any other file, and this file shall not be searched for the purpose of the identifying a child as having committed a crime unless the custodial parent or legal guardian so requests in writing, or as authorized by order of a court of record.

Authority: T.C.A. §§37—10—207, 38—6—103 and 38—10—101. Administrative History: Original rule filed October 30, 1986; effective January 27, 1987.

1395—1—1—.10 CERTIFICATION OF RECORDS.

(1) It is the purpose of these rules relating to certification to provide the certainty of the official authorization of records of the Bureau whenever official attestation, sealing, and certification of the TBI records, reports, documents, and actions are required by law, including orders of the courts, but not to create any greater or additional coverage of certification than authorized by law.

(2) Every report of the Forensic Services Division rendered or administered in connection with any case in a criminal, juvenile, or municipal court, or when otherwise required by law, dealing with controlled substances, drugs and narcotics; or alcohol or drug content of blood, breath or urine shall bear the following certification:

CERTIFICATION

I certify and attest that this document is the proper record it purports to be, and that the fee therefor is prescribed by T.C.A. §38—6—103.

/s/_____

Designated Representative of Director TBI (T.C.A. §§38—6—107 and/or 55—10—410)

[T.C.A. §55—10—410 applies to drug or alcohol content of blood, breath, or urine]

(3) The following persons shall be responsible for the certification of any Forensic Services Division report prepared at their facility:

(a) TBI Assistant Director for Forensic Services

(b) Regional Crime Lab Supervisor (Knoxville)

(c) Regional Crime Lab Supervisor (Chattanooga)

(4) The certification of criminal histories, when required by law, shall bear the certification in (2) above, and shall be the responsibility of:

(a) TBI Assistant Director for Information Services, or

(b) Special Agent in Charge, Identification and Records Unit.

WILLIAM M. LEECH, JR.
ATTORNEY GENERAL & REPORTER

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MICHAEL E. TERRY

February 28, 1984

Mr. Arzo Carson, Director
Tennessee Bureau of Investigation
4950 Linbar Drive
Nashville, Tennessee 37211

Dear Director Carson:

By recent letter, a copy of which is attached, you have requested informal advice concerning release of criminal history files to governmental non-law enforcement agencies, specifically to Commissioner John C. Neff, Commissioner of the Department of Commerce and Insurance.

You have concluded and I concur that there is no authority permitting you to furnish Commissioner Neff with criminal arrest histories or similar confidential records of the T.B.I. Indeed, T.C.A. § 40-15-106(b), (c)(1), and § 40-32-101(b), (c)(1), expressly prohibit release of such confidential records other than to other law enforcement agencies or for audit investigations by the comptroller. Those statutes, which you reference in your letter, expressly make such release a misdemeanor. Additionally, as you are no doubt aware, § 10-7-504 makes your investigative records confidential and not open to inspection by members of the public. They may be disclosed to the public only in compliance with subpoena or order of a court of record. They may be provided to members of the General Assembly upon direction by a duly approved resolution of either house or of a standing or joint committee of either house. Finally, that statute prohibits providing such records to any member of the executive branch except those persons directly involved in an investigation in the T.B.I. itself, and the governor himself. I have also enclosed two prior

letters to you which discuss potential problems in release of such information. They specifically discuss our prior discussion that absence of statutory authorization prevents dissemination of criminal history information to other than law enforcement agencies.

I hope that this informal advice has proved helpful. If you should require additional information, please do not hesitate to contact me.

Sincerely,

JENNIFER HEXTON SMALL
Assistant Attorney General

JHS/jc

Attachments

TEXAS

GOVERNMENT CODE

TITLE 4. EXECUTIVE BRANCH

CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS

SUBCHAPTER D. ADMINISTRATIVE DIVISION

Tex. Gov't Code § 411.042 (1987)

§ 411.042. Bureau of Identification and Records

(a) The director shall appoint, with the advice and consent of the commission, a chief of the bureau of identification and records to be the executive officer of the bureau. The chief and at least one assistant must be recognized identification experts with at least three years' actual experience.

(b) The bureau of identification and records shall:

(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons convicted of a felony within the state and of all well-known and habitual criminals;

(2) collect information concerning the number and nature of offenses known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice;

(3) make ballistic tests of bullets and firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state; and

(c) The bureau chief shall offer assistance and, if practicable, instruction to sheriffs, chiefs of police, and other peace officers in establishing efficient local bureaus of identification in their districts.

Texas Revised Civil Statutes

Art. 4413(14). The Bureau of Identification and Records

(1) It shall be the duty of the Director to appoint, with the advice and consent of the Commission, a Chief of the Bureau of Identification and Records, who shall be the executive officer. The Chief of the Bureau and at least one assistant shall be recognized identification experts, and with at least three years' actual experience. This Bureau shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of a felony within the State, and also of all well known and habitual criminals wheresoever the same may be procured. The Bureau shall collect information concerning the number and nature of offenses known to have been committed in this State, of the legal steps taken in connection therewith, and such other information as may be useful in the study of crime and the administration of justice. It shall be the duty of the Bureau to co-operate with the bureaus in other states, and with the Department of Justice in Washington, D. C. It shall be the duty of the Chief of the Bureau to offer assistance, and, when practicable, instruction, to sheriffs, chiefs of police, and other peace officers in establishing efficient local bureaus of identification in their districts.

(2) The Bureau shall make ballistic tests of bullets and firearms, and chemical analyses of bloodstains, cloth, materials and other substances, for the officers of the State charged with law enforcement.

Texas Code Criminal Procedure

CHAPTER FIFTY-FIVE—EXPUNCTION OF CRIMINAL RECORDS

Acts 1979, 66th Leg., p. 1333, ch. 604, which by § 1 amended this Chapter 55, provided in § 3:

"Any law or portion of a law that conflicts with Chapter 55, Code of Criminal Procedure, 1965, as amended, is repealed to the extent of the conflict."

Article 55.01. Right to expunction

A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if each of the following conditions exist:

(1) an indictment or information charging him with commission of a felony has not been presented against him for an offense arising out of the transaction for which he was arrested or, if an indictment or information charging him with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(2) he has been released and the charge, if any, has not resulted in a final conviction and, is no longer pending and there was no court ordered supervision under Article 42.13, Code of Criminal Procedure, 1965, as amended, nor a conditional discharge under Section 4.12 of the Texas Controlled Substances Act (Article 4476—15, Vernon's Texas Civil Statutes); and

(3) he has not been convicted of a felony in the five years preceding the date of the arrest.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Art. 55.02. Procedure for Expunction

Section 1. (a) A person who is entitled to expunction of records and files under this chapter may file an ex parte petition for expunction in a district court for the county in which he was arrested.

(b) The petitioner shall include in the petition a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

Sec. 2. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition by certified mail, return receipt requested, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

Sec. 3. (a) If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction and directing any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. Any petitioner or agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases. When the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to each official or agency or other entity of this state or of any political subdivision of this state named in the petition that there is reason to believe has any records or files that are subject to the order. The clerk shall also send a certified copy by certified mail, return receipt requested, of the order to any central federal depository of criminal records that there is reason to believe has any of the records, together with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the proceeding under this article, be destroyed or returned to the court.

(b) All returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

Sec. 4. (a) If the state establishes that the petitioner is still subject to conviction for an offense arising out of the transaction for which he was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against him for the offense, the court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(b) Unless the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested, the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

Sec. 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) The court may give the petitioner all records and files returned to it pursuant to its order.

(c) If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the petitioner unless the order permits retention of a record under Section 4 of this article and the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Art. 55.03. Effect of Expunction

After entry of an expunction order:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the petitioner may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the petitioner or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Art. 55.04. Violation of Expunction Order

Section 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

Sec. 3. An offense under this article is a Class B misdemeanor.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Art. 55.05. Notice of Right to Expunction

On release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights under this chapter and a copy of the provisions of this chapter.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

Texas Education Code

Chapter 21

§ 21.917. Access to Police Records of Employment Applicants

(a) A school district is entitled to obtain criminal history record information that relates to an applicant for employment with the district if, at the time of the request for the information, the district submits to the custodian of the information a signed statement from the employment applicant authorizing the district to obtain the information.

(b) A school district may obtain information under this section from any law enforcement agency, including a police department or the Department of Public Safety, or from the Texas Department of Corrections.

(c) A school district may use information obtained under this section only for the purpose of evaluating applicants for employment.

Added by Acts 1981, 67th Leg., p. 1867, ch. 444, § 1, eff. Aug. 31, 1981.

CHAPTER 60. CRIMINAL HISTORY RECORD SYSTEM

Art. 60.01. Definitions. In this chapter:

(1) "Arrest charge code" means a numeric code assigned to each offense category to be designated by the department.

(2) "Centralized criminal history record information system" means the enhanced computerized criminal history system managed by the Texas Department of Criminal Justice.

(3) "Computerized criminal history" means the data base containing arrest, disposition, and other criminal history maintained by the Department of Public Safety.

(4) "Council" means the Criminal Justice Policy Council.

(5) "Disposition" means an action that results in the termination, transfer to another jurisdiction, or indeterminate suspension of the prosecution of a criminal charge.

(6) "Incident number" means a unique number assigned to a specific person during a specific arrest.

(7) "Release" means the termination of jurisdiction over an individual by the criminal justice system.

(8) "State identification number" means a unique number assigned by the department to each person whose name appears in the centralized criminal history record information system.

(9) "Uniform incident fingerprint card" means a multiple part form containing a unique incident number with space for information relating to the charge or charges for which a person is being arrested, the person s fingerprints, and other information relevant to the arrest.

Art. 60.02. Information systems. (a) The Texas Department of Criminal Justice is responsible for recording data and establishing a data base for a centralized criminal history record information system. The council shall provide advice for the timely and effective implementation of this article.

(b) The Department of Public Safety is responsible, with cooperation from the council, for recording data and maintaining a data base for a computerized criminal history system that serves as the record creation point for criminal history information maintained by the state.

(c) The computerized criminal history system and the centralized criminal history record information system shall be established and maintained to supply the state with systems:

(1) that provide law enforcement officers with an accurate criminal history record depository;

(2) that provide criminal justice system agencies with an accurate criminal history record depository for operational decision making;

(3) from which accurate criminal justice system modeling can be conducted;

(4) that improve the quality of data used to conduct impact analyses of proposed legislative changes in the criminal justice system; and

(5) that improve the ability of interested parties to analyze the functioning of the criminal justice system.

(d) The data bases must contain the information required by this chapter.

(e) The Department of Public Safety has the sole responsibility for designating the state identification number for each person whose name appears in each data base.

(f) The Texas Department of Criminal Justice is responsible for the operation and maintenance of the centralized criminal history record information system. Data received by the Texas Department of Criminal Justice that is required by the department for the computerized criminal history record information system shall be reported to the Department of Public Safety not later than the seventh day after the date on which the Texas Department of Criminal Justice receives the data.

(g) The Department of Public Safety is responsible for the operation of the computerized criminal history system and shall develop the necessary

interfaces in the system to accommodate inquiries from a statewide automated fingerprint information system, if such a system is implemented by the department.

(h) Whenever possible, the reporting of information relating to dispositions and subsequent offender processing data shall be conducted electronically.

(i) The Department of Public Safety and the Texas Department of Criminal Justice, with advice from the council, shall develop biennial plans to improve the reporting and accuracy of the computerized criminal history system and the centralized criminal history record information system and to develop and maintain monitoring systems capable of identifying missing information.

(j) At least once during each five-year period, the Texas Department of Criminal Justice, with advice from the council, shall examine the records and operations of the centralized criminal history record information system and of the computerized criminal history system to ensure the accuracy of information in the systems. The Texas Department of Criminal Justice may examine the public records of the agencies required to report information to the Department of Public Safety or the Texas Department of Criminal Justice. The Texas Department of Criminal Justice shall submit to the legislature a report that summarizes the findings of each examination and contains recommendations for improving the systems.

Art. 60.03. Interagency cooperation; confidentiality. (a) Each agency listed in Article 60.02(a) of this code shall provide access to the agency's criminal history record information system to other criminal justice agencies, including the council. The access granted by this subsection does not grant an agency or the council the right to add, delete, or alter data maintained by another agency.

(b) Neither a criminal justice agency nor the council may disclose to the public information in an individual's criminal history record if the record is protected by state or federal law or regulation.

Art. 60.04. Compatibility of data. (a) Data supplied to the computerized criminal history and the centralized criminal history record information systems must be compatible with the systems and must contain both incident numbers and state identification numbers.

(b) A discrete submission of information under any article of this chapter must contain, in conjunction with information required, the defendant's name and state identification number.

Art. 60.05. Types of information collected. (a) Together the computerized criminal history and the centralized criminal history record information systems must contain but are not limited to the following types of information for each arrest for a felony or a misdemeanor not punishable by fine only:

(1) information relating to offenders;
(2) information relating to arrests;
(3) information relating to prosecutions;
(4) information relating to the disposition of cases by courts;
(5) information relating to sentencing; and
(6) information relating to the handling of offenders received by a correctional agency, facility, or other institution.

(b) Information relating to an offender must include:

(1) the offender's name, including other names by which the offender is known;

(2) the offender's date of birth;

(3) the offender's sex; and

(4) the offender's state identification number.

(c) Information relating to an arrest must include:

(1) the name of the offender and the offender's state identification number, if known;

(2) the name of the arresting agency;

(3) the arrest charge by name, arrest charge code, and incident number;

(4) the level of the arrest charge or degree of offense charged;

(5) the date of the arrest;

(6) the exact disposition of the case by a law enforcement agency following the arrest; and

(7) the date of disposition of the case by the law enforcement agency.

(d) Information relating to a prosecution must include:

(1) each charged offense by name, arrest charge code, and incident number;

(2) the level of the offense charged or the degree of the offense charged for each offense in Subdivision (1) of this subsection; and

(3) if the case was disposed of by the prosecutor, the nature and date of the disposition and each charged offense disposed of, by name, arrest charge code, and incident number.

(e) Information relating to the disposition of a case must include:

(1) the final pleading to each charged offense and the level of the offense;

(2) a listing of charged offenses disposed of by the court and:

(A) the date of disposition; and

(B) a listing of each offense and the arrest charge code, name, and incident number;

(3) a listing of offenses for which the defendant was convicted by the arrest charge code, name, and incident number; and

(4) the date of conviction.

(f) Information relating to sentencing must include for each sentence:

(1) the sentencing date;

(2) the sentence for each offense by name, arrest charge code, and incident number;

(3) if the defendant was sentenced to imprisonment:

(A) the place of imprisonment;

(B) the length of sentence for each offense; and

(C) if multiple sentences were ordered, whether they were ordered to be served consecutively or concurrently;

(4) if the defendant was sentenced to a fine, the amount of the fine;

(5) if a sentence other than fine or imprisonment was ordered, a description of the sentence ordered;

(6) if court costs were ordered and if so the amount of the costs; and

(7) if fees, costs, and similar monetary penalties other than those described by Subdivisions (4) and (6) of this subsection were ordered, the

amount for each.

(g) Sentencing information must also include the following information about each probation or other alternative to confinement ordered:

(1) each conviction for which sentence was ordered but was probated, suspended, or otherwise not imposed, by name, arrest charge code, and incident number;

(2) whether a portion of a fine or other cost was probated or otherwise not imposed and if so:

(A) for each offense, the amount of the fine that was not imposed; and

(B) for each offense, the amount of the court costs or other costs or fees that was not imposed; and

(3) if a sentence or portion of a sentence of imprisonment was not imposed:

(A) the offense, the sentence, and the amount of the sentence not imposed; and

(B) a statement of whether a return to confinement or other imprisonment was a condition of probation or an alternative sentence.

(h) Information relating to the handling of offenders must include the following information about each institutionalization, confinement, or execution of an offender:

(1) the date of the institutionalization or confinement;

(2) if the defendant was sentenced to death:

(A) the scheduled date of execution;

(B) if the defendant was executed, the date of execution; and

(C) if the death sentence was commuted, the sentence to which the sentence of death was commuted and the date of commutation;

(3) the date the defendant was released from institutionalization or confinement and whether the release was a discharge or a release on parole or mandatory supervision; and

(4) if the offender is released on parole or mandatory supervision:

(A) the offense for which the offender was convicted by name, arrest charge code, and incident number;

(B) the latest possible expiration date of the sentence; and

(C) the earliest possible expiration date of the sentence.

(i) Data elements not needed for the functioning of the computerized criminal history system shall be maintained in the centralized criminal history record information system.

Art. 60.06. Duties of agencies. (a) Each criminal justice agency shall:

(1) compile and maintain records needed for reporting data required by the Texas Department of Criminal Justice and the Department of Public Safety;

(2) transmit to the Texas Department of Criminal Justice and the Department of Public Safety, when and in the manner the Texas Department of Criminal Justice and the Department of Public Safety direct, all data required by the Texas Department of Criminal Justice and the Department of Public Safety, other than reports concerning the identity of a juvenile offender or the offender's parents;

(3) give the Texas Department of Criminal Justice or its accredited agent access to the agency for the purpose of inspection to determine the

completeness and accuracy of data reported; and

(4) cooperate with the Department of Public Safety and the Texas Department of Criminal Justice so that the Department of Public Safety and the Texas Department of Criminal Justice may properly perform their duties under this chapter.

(b) Information on an individual that consists of an identifiable description and notation of an arrest, detention, indictment, information, or other formal criminal charge and a disposition of the charge, including sentencing, correctional supervision, and release that is collected and compiled by the Department of Public Safety and the Texas Department of Criminal Justice from criminal justice agencies and maintained in a central location is not subject to public disclosure except as authorized by federal or state law or regulation.

(c) Subsection (b) of this section does not apply to a document maintained by a criminal justice agency that is the source of information collected by the Texas Department of Criminal Justice. Each criminal justice agency shall retain documents described by this subsection.

(d) An official of an agency may not intentionally conceal or destroy any record with intent to violate this section.

(e) The duties imposed on a criminal justice agency under this article are also imposed on district court and county court clerks.

Art. 60.07. Uniform incident fingerprint card. (a) The Department of Public Safety, in consultation with the council, shall design, print, and distribute to each law enforcement agency in the state a uniform incident fingerprint card.

(b) The incident card must:

(1) be serially numbered with an incident number in such a manner that the individual incident of arrest may be readily ascertained; and

(2) be a multiple part form that can be transmitted with the offender through the criminal justice process and that allows each agency to report required data to the department or the council.

Art. 60.08. Reporting. (a) The Texas Department of Criminal Justice shall, by rule, develop reporting procedures that ensure that the offender processing data is reported from the time a defendant is convicted until the time a defendant is released.

(b) The arresting agency shall prepare a uniform incident fingerprint card and initiate the reporting process when an individual is arrested for a felony or a misdemeanor not punishable by fine only.

(c) The clerk of the court exercising jurisdiction over a case shall report the disposition of the case to the council.

(d) Information or data required by this chapter to be reported to the Texas Department of Criminal Justice or the Department of Public Safety shall be reported promptly but not later than the 30th day after the date on which the information or data is received by the individual responsible for reporting it except in the case of an arrest. An arrest shall be reported to the Texas Department of Criminal Justice or the Department of Public Safety not later than the seventh day after the date of the arrest.

Art. 60.09. Local data advisory boards. (a) The commissioners court of each county may create local data advisory boards to, among other duties:

(1) analyze the structure of local automated and manual data systems to identify redundant data entry and data storage;

(2) develop recommendations for the commissioners to improve the local data systems;

(3) develop recommendations, when appropriate, for the effective electronic transfer of required data from local agencies to state agencies; and

(4) any related duties to be determined by the commissioners court.

(b) Local officials responsible for collecting, storing, reporting, and using data may be appointed to the local data advisory board.

(c) The council and the Department of Public Safety shall, to the extent that resources allow, provide technical assistance and advice on the request of the local data advisory board.

Texas Human Resources Code
Chapter 111
Title 110A
Public Offices, etc.

§ 111.058. Criminal History Record Information

The commission may obtain criminal history record information from the Board of Pardons and Paroles, Texas Department of Corrections, and the Texas Department of Public Safety if the records relate to an applicant for rehabilitation services or to a client of the agency. The Board of Pardons and Paroles, Texas Department of Corrections, and the Texas Department of Public Safety upon request shall supply the commission criminal history record information applying to applicants for rehabilitation services or clients of the commission. The commission shall treat all criminal history record information as privileged and confidential and for commission use only.

Added by Acts 1979, 66th Leg., p. 2435, ch. 842, art. 2, § 7, eff. Sept. 1, 1979.

Texas Revised Civil Statutes Annotated

Art. 6252–13c. Eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses

Section 1. The definitions contained in the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) shall apply to this Act.

Sec. 2. This Act shall not apply to the Supreme Court of Texas or to persons licensed or seeking to be licensed under its authority on behalf of the judicial department of government or to any person who seeks to become or is a peace officer as defined in Article 2.12, Code of Criminal Procedure, 1965.

Sec. 3. All agencies of this state and its political subdivisions with the duty and responsibility of licensing and regulating members of particular trades, occupations, businesses, vocations, or professions shall have the authority to obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for or holding a license from the requesting agency.

Sec. 4. (a) A licensing authority may suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(b) In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors that may be considered under Subsection (b) of this section, the licensing authority, in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;

(6) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person; and

(7) it shall be the responsibility of the applicant to the extent possible to secure and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(d) Proceedings held before a state licensing authority to establish factors contained in this section are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(e) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

Added by Acts 1981, 67th Leg., p. 694, ch. 267, § 1, eff. Sept. 1, 1981.

Art. 6252–13d. Suspension, revocation, or denial of license to persons with criminal backgrounds; guidelines and application of law

Section 1. [Adds art. 6252–13c]

Sec. 2. If a licensing authority suspends or revokes a valid license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license, the licensing authority shall notify the person in writing:

(1) of the reasons for the suspension, revocation, denial, or disqualification;

(2) of the review procedure provided by Section 3 of this Act; and

(3) of the earliest date that the person may appeal.

Sec. 3. (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to be examined for a license by a licensing authority, who has exhausted administrative appeals, may file an action in a district court of the county in which the licensing authority is located for review of the evidence presented to the licensing authority and its decision.

(b) The person must begin the judicial review by filing a petition with the court within 30 days after the licensing authority's decision is final and appealable.

Sec. 4. (a) Each licensing authority, shall issue within six months after the effective date of this Act guidelines relating to the actual practice of the authority in carrying out Section 1 of this Act. Amendments to the guidelines, if any, shall be issued annually. These guidelines shall state the reasons particular crimes are considered to relate to particular licenses and any other criteria that affect the decisions of the authority.

(b) The guidelines required by Subsection (a) of this section and issued by state licensing authorities shall be filed with the office of the secretary of state for publication in the Texas Register. Local and county licensing authorities shall post their guidelines at the county courthouse or publish them in a newspaper of countywide circulation.

Sec. 5. This Act shall not apply to those persons licensed by the Texas State Board of Medical Examiners, State Board of Pharmacy, State Board of Dental Examiners, or The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), and who have been convicted of a felony under the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes) or the Texas Dangerous Drug Act (Article 4476–14, Vernon's Texas Civil Statutes).

Acts 1981, 67th Leg., p. 695, ch. 267, §§ 2 to 5, eff. Sept. 1, 1981.

TEXAS

Open Records Act

Art. 6252-17a. Access by public to information in custody of governmental agencies and bodies

Declaration of policy

Section 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

Definitions

Sec. 2. In this Act:

(1) "Governmental body" means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members;

(B) the commissioners court of each county and the city council or governing body of each city in the state;

(C) every deliberative body having rulemaking or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city;

(D) the board of trustees of every school district, and every county board of school trustees and county board of education;

(E) the governing board of every special district;

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds.. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof;

(G) the Judiciary is not included within this definition.

(2) "Public records" means the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information.

Public information

Sec. 3.

Text of subsec. (a) effective until January 1, 1986

(a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas [1] are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act; [2]

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas; [3]

(16) the audit working papers of the State Auditor;

(17) the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code; and

(18) information contained on or derived from triplicate prescription forms filed with the Department of Public Safety pursuant to Section 3.09 of the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes).

Text of subsec. (a) effective January 1, 1986

(a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of

official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas [1] are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act; [2]

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas; [3]

(16) the audit working papers of the State Auditor; and

(17) the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

(b) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from individual members or committees of the legislature to use for legislative purposes.

(c) The custodian of the records may in any instance within his discretion make public any information contained within Section 3, Subsection (a) 6, 9, 11, and 15.

(d) It is not intended that the custodian of public records may be called upon to perform general research within the reference and research archives and holdings of state libraries.

Application for public information

Sec. 4. On application for public information to the custodian of information in a governmental body by any person, the custodian shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body. If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act. Nothing in this Act shall authorize any person to remove original copies of public records from the offices of any governmental body without the written permission of the custodian of the records.

Custodian of public records described

Sec. 5. (a) The chief administrative officer of the governmental body shall be the custodian of public records, and the custodian shall be responsible for the preservation and care of the public records of the governmental body. It shall be the duty of the custodian of public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying; that the records are carefully protected and preserved from deterioration, alteration, mutilation, loss, removal, or destruction; and that public records are repaired, renovated, or rebound when necessary to preserve them properly. When records are no longer currently in use, it shall be within the discretion of the agency to determine a period of time for which said records will be preserved.

(b) Neither the custodian nor his agent who controls the use of public records shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested; and the custodian or his agent shall give, grant, and extend to the person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this Act.

Specific information which is public

Sec. 6. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by, governmental bodies upon completion;

(2) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of governmental bodies;

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law;

(4) the names of every official and the final record of voting on all proceedings in governmental bodies;

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates;

(6) the name, place of business, and the name of the city to which local sales and use taxes are credited, if any, for the named person, of persons reporting or paying sales and use taxes under the Limited Sales, Excise, and Use Tax Act; [1]

(7) description of an agency's central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(8) statements of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(9) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(10) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency;

(11) each amendment, revisions, or repeal of 7, 8, 9 and 10 above;

(12) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(13) statements of policy and interpretations which have been adopted by the agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information currently regarded by agency policy as open to the public.

[1] V.T.C.A. Tax Code, § 151.001 et seq.

Attorney general opinions

Sec. 7. (a) If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney

general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

(b) The attorney general shall forthwith render a decision, consistent with standards of due process, to determine whether the requested information is a public record or within one of the above stated exceptions. The specific information requested shall be supplied to the attorney general but shall not be disclosed until a final determination has been made. The attorney general shall issue a written opinion based upon the determination made on the request.

Writ of mandamus

Sec. 8. If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

Cost of copies of public records

Sec. 9. (a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal size shall not be excessive. The State Board of Control shall from time to time determine the actual cost of standard size reproductions and shall periodically publish these cost figures for use by agencies in determining charges to be made pursuant to this Act.

(b) Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar record keeping systems, shall be set upon consultation between the custodian of the records and the State Board of Control, giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records.

(c) It shall be the policy of all governmental bodies to provide suitable copies of all public records within a reasonable period of time after the date copies were requested. Every governmental body is hereby instructed to make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records.

(d) The charges for copies made in the district clerk's office and the county clerk's office shall be as otherwise provided by law.

(e) No charge shall be made for one copy of any public record requested from state agencies by members of the legislature in performance of their duties.

(f) The charges for copies made by the various municipal court clerks of the various cities and towns of this state shall be as otherwise provided by ordinance.

Distribution of confidential information prohibited

Sec. 10. (a) Information deemed confidential under the terms of this Act shall not be distributed.

(b) A custodian of public records, or his agent, commits an offense if, with criminal negligence, he or his agent fails or refuses to give access to, or to permit or provide copying of, public records to any person upon request as provided in this Act.

(c) It is an affirmative defense to prosecution under Subsection (b) of this section that the custodian of public records reasonably believed that the public records sought were not required to be made available to the public and that he:

(1) acted in reasonable reliance upon a court order or a written interpretation of this Act contained in an opinion of a court of record or of the attorney general issued under Section 7 of this Act;

(2) requested a decision from the attorney general in accordance with Section 7 of this Act, and that such decision is pending; or

(3) within three working days of the receipt of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with such decision of the attorney general, and that such cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (b) of this section that the defendant is the agent of a custodian of public records and that the agent reasonably relied on the written instruction of the custodian of public records not to disclose the public records requested.

(e) Any person who violates Section 10(a) or 10(b) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed $1,000, or by both such fine and confinement. A violation under this section constitutes official misconduct.

Bond for payment of costs for preparation of public records or cash prepayment

Sec. 11. A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the head of the department or agency as a condition precedent to the preparation of such record where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid.

Penalties

Sec. 12. Any person who wilfully destroys, mutilates, removes without permission as provided herein, or alters public records shall be guilty of a misdemeanor and upon conviction shall be fined not less than $25 nor more than $4,000, or confined in the county jail not less than three days nor more than three months, or both such fine and confinement.

Procedures for inspection of public records

Sec. 13. Each governmental body may promulgate reasonable rules of procedure by which public records may be inspected efficiently, safely, and without delay.

Interpretation of this Act

Sec. 14. (a) This Act does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law; provided that such records shall then be available to any person.

(b) This Act does not authorize the withholding of information or limit the availability of public records to the public, except as expressly so provided.

(c) This Act does not give authority to withhold information from individual members or committees of the Legislature of the State of Texas to use for legislative purposes.

(d) This Act shall be liberally construed in favor of the granting of any request for information.

(e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93–380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

Severability

Sec. 15. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Acts 1973, 63rd Leg., p. 1112, ch. 424, eff. June 14, 1973. Sec. 14(e) added by Acts 1975, 64th Leg., p. 809, ch. 314, § 1, eff. May 27, 1975; Sec. 3(a) amended by Acts 1979, 66th Leg., p. 807, ch. 366, § 1, eff. June 6, 1979; Sec. 10 amended by Acts 1979, 66th Leg., p. 906, ch. 414, § 1, eff. Aug. 27, 1979; Sec. 3(a) amended by Acts 1981, 67th Leg., p. 2317, ch. 570, § 6, eff. Jan. 1, 1982.

RULES ON FILE WITH SECRETARY OF STATE

Issued By The
Texas Department of Public Safety
Austin, Texas

AUGUST, 1982

TEXAS DEPARTMENT OF PUBLIC SAFETY
Identification and Criminal Records

Review of Personal Criminal History Record

§27.1 Right of Review.

(a) It is the policy of the Department of Public Safety that an individual with a criminal history record on file with this Department has the right to access and review this record.

(b) The procedure to obtain this information for individuals appearing at Department of Public Safety headquarters in Austin, Texas, is as follows:
  (1) Any individual requesting access to his criminal history record must submit a written request to the Identification and Criminal Records Division, Texas Department of Public Safety, Box 4143, Austin, Texas 78765.
  (2) The individual will present the request to the Chief, Identification and Criminal Records Division, or his designee, Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Texas.
  (3) The individual will be fingerprinted to establish identification. A search will be conducted and if a record is located the arrest history is shown to the individual for review.
  (4) The individual requesting review of said record may make notes of the criminal history record. If the individual feels that the record is incorrect or incomplete, it is the individual's responsibility to contact the agency submitting the record in question. The individual may, for the proper fee, obtain a copy of that portion of the record if it is determined that there is reason to challenge. The individual will be advised that the record is for review and challenge only. It is the responsibility of the agency submitting the record to determine the validity of said record and make corrections or deletions that may be required. Official notification to the Department must be made by the agency requesting any corrections or deletions. Upon receipt of such correction or deletion request from the reporting agency, the Department will immediately correct or change the record accordingly.

(c) The procedure to obtain this information in the event the individual is unable to appear personally at the Department of Public Safety headquarters in Austin, Texas, is as follows:
  (1) Any individual requesting access to his criminal history record must submit a written request for same to the Identification and Criminal Records Division, Texas Department of Public Safety, Box 4143, Austin, Texas 78765.
  (2) The individual must be fingerprinted by a criminal justice agency and said agency must identify the fingerprint card of the individual fingerprinted with the proper identifying data as required on the fingerprint card.
  (3) The written request and the fingerprint card will be mailed by the participating criminal justice agency to the Department of Public Safety.
  (4) The criminal history file will be searched by the Department and if a positive fingerprint identification is established on an existing criminal history record, a printout of said record will be obtained from the file.
  (5) The printout of said criminal history record, the submitted fingerprint card, and the original letter will be returned to the participating criminal justice agency. If no arrest record is found in the file, a notation of such fact will be made on the fingerprint card and the fingerprint card and the original letter will be returned to the participating criminal justice agen-

cy. In either event, the Department will mail a letter to the requesting individual advising that no record was found or that a copy of the criminal history record, if any, has been mailed to the participating criminal justice agency.

(6) It will then be the responsibility of the individual requesting said record to personally call for review of such record at that participating criminal justice agency. The participating criminal justice agency must determine that the person reviewing the criminal history record is the same person that was fingerprinted by that agency for the purpose of record review and challenge.

(7) The individual requesting review of said record may make notes of the criminal history record. After reviewing the said record and if the individual feels that the record is incorrect or incomplete, it is the individual's responsibility to contact the agency which originally submitted the record in question. The individual may, for the proper fee, obtain a copy of that portion of the record if it is determined that there is reason to challenge. The individual will be advised that the record is for review and challenge only. It then will be the responsibility of the agency originally submitting the record to determine the validity of said record and make any corrections or deletions that may be required. Official notification to the Department must be submitted by the agency requesting any corrections or deletions. Upon receipt of such correction or deletion request from the reporting agency, the Department of Public Safety will immediately correct or change the record accordingly.

(8) At the conclusion of the review, the participating criminal justice agency will destroy all remaining papers concerning this inquiry.

* * *

THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 14, 1976

The Honorable N. Alex Bickley
City Attorney
City Hall
Dallas, Texas 75201

The Honorable H. C. Perry
Chief of Police
City of Arlington
Box 231
Arlington, Texas 76010

The Hon. Lloyd W. Perkins
City Attorney
P. O. Box 1106
Sherman, Texas 75090

The Honorable Hank Anderson
County Attorney
Court House
Wichita Falls, Texas 76301

The Honorable Wilson E. Speir
Director, Texas Department of
Public Safety
Box 4087
Austin, Texas 78773

Open Records Decision No. 127

Re: Applicability of section 3(a)(8) (the law enforcement exception) of the Open Records Act to various records.

The Hon. Firmin Hickey, Jr.
Bellaire City Attorney
729 Bankers Mortgage Bldg.
708 Main Street
Houston, Texas 77002

The Hon. John C. Ross, Jr.
City Attorney
Room 203, City-County Bldg.
El Paso, Texas 79901

Gentlemen:

Each of you has requested our decision on whether information is excepted from required public disclosure under section 3(a)(8) of the Open Records Act, article 6252-17a, V.T.C.S. This exception is applicable to

> records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and

> notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement.

We have deferred decisions in those cases where an arguable claim was made that the requested information fell within section 3(a)(8), because the constitutionality of this section has been at issue in litigation.

In Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. -- Houston [14th Dist.] 1975, writ ref'd n.r.e. at 19 Tex. Sup. J. 300, May 1, 1976), the court held section 3(a)(8) constitutional, dealt with the scope of the exception in relation to the constitutional right of access to information concerning crime in the community, and decided the applicability of the exception to specific records and information held by the Houston Police Department.

The court gave detailed descriptions of various records sought and held that the police blotter, show-up sheet, and arrest sheet are public records available to the press and public. The court held that the offense report and personal history and arrest record ("rap sheet") are excepted from required public disclosure by section 3(a)(8), but also held that the public and press have a constitutionally protected right to access to information maintained by law enforcement agencies relating to crime and criminal activities and that this right extends affirmatively to the information contained on the first page of the offense report as described in the opinion.

In its per curiam opinion refusing the application for writ of error in this case, the Texas Supreme Court said:

> We agree with the opinion of the court below that neither the Texas Open Records Act nor the United States or Texas Constitutions requires disclosure of the complete records sought by the Houston Chronicle, and we therefore refuse the Chronicle's application for writ of error, no reversible error. Since the City of Houston has not filed an application for writ of error complaining of the court of civil appeals' judgment, it is the

> opinion of the majority of the court that we reserve the question as to whether the press and public have a statutory or constitutional right to obtain all of the information which the court of civil appeals has held to be public information. Houston Chronicle Publishing Co. v. City of Houston, 19 Tex. Sup. Ct. J. 300 (May 1, 1976).

While the Supreme Court's opinion indicates that a question remains as to some of the information held to be public by the Court of Civil Appeals, the opinion of the latter court is the most authoritative judicial interpretation of section 3(a)(8) of the Open Records Act available, and this office will follow that interpretation. See Attorney General Opinion H-373 (1974).

We have prepared the following summary of the decision of the Court of Civil Appeals as applied to specific records and information.

I. INFORMATION AVAILABLE TO PUBLIC

A. Police Blotter

1. Arrestee's social security number, name, alias, race, sex, age, occupation, address, police department identification number, and physical condition.
2. Name of arresting officer.
3. Date and time of arrest.
4. Booking information.
5. Charge.
6. Court in which charge is filed.
7. Details of arrest.
8. Notation of any release or transfer.
9. Bonding information.

B. Show-up Sheet (chronological listing of persons arrested during 24-hour period)

1. Arrestee's name, age, police department identification number.
2. Place of arrest.
3. Names of arresting officers.
4. Numbers for statistical purposes relating to modus operandi of those apprehended.

C. Arrest Sheet (similar chronological listing of arrests made during 24-hour period)
1. Arrestee's name, race, and age.
2. Place of arrest.
3. Names of arresting officers.
4. Offense for which suspect arrested.

D. Offense Report -- front page
1. Offense committed.
2. Location of crime.
3. Identification and description of complainant.
4. Premises involved.
5. Time of occurence.
6. Property involved.
7. Vehicle involved.
8. Description of weather.
9. Detailed description of offense.
10. Names of investigating officers.

II. INFORMATION NOT AVAILABLE TO PUBLIC

A. Offense Report -- all except front page
1. Identification and description of witnesses.
2. Synopsis of confession.
3. Officer's speculation as to suspect's guilt.
4. Officer's view of witness credibility.
5. Statements by informants.
6. Ballistics reports.
7. Fingerprint comparisons.
8. Blood and other lab tests.
9. Results of polygraph test.
10. Refusal to take polygraph test.
11. Paraffin test results.
12. Spectrographic or other investigator reports.

B. Personal History and Arrest Record
1. Identifying numbers.
2. Name, race, sex, aliases, place and date of birth and physical description with emphasis on scars and tattoos.

3. Occupation, marital status and relatives.
4. Mugshots, palm prints, fingerprints, and signature.
5. Chronological history of any arrests and disposition.

Your specific requests for decisions on the applicability of the section 3(a)(8) law enforcement records exception may now be considered in light of this decision.

Mr. Bickley of Dallas and Mr. Perry of Arlington have received requests for information on the names and addresses of burglary victims. This information is available on the first page of offense reports and is public. The requesting parties are entitled to access to these records. However, the city is not obligated to compile or extract this information if it can be made available by giving the requestor access to the records themselves. See Open Records Decision No. 87 (1975).

Mr. Perkins of Sherman has received a request for access to the original reports of driving while intoxicated offenses. The managing editor of the Sherman Democrat seeks access to the original records in order to perform his own compilation of DWI statistics. The form used for such reports is the Texas Department of Public Safety "DWI/DUID Traffic Case Report," form HP-21 (Rev. 1-72). Some of the information on the form is excepted from required public disclosure. This includes the item calling for the criminal record of the driver, the identification of witnesses, the information concerning chemical tests and results thereof, and, on the back of the form, the interview of the suspect.

The city is not required to provide access to those parts of the form containing information excepted from disclosure by section 3(a)(8).

The correspondence on this matter indicates that the requestor wishes to insure the authenticity and accuracy of the information the city has offered to compile. We believe that this problem of the method by which an agency must separate excepted information from public information appearing on the same page is an administrative problem which this office cannot resolve. Perhaps the availability of the desired information from the original blotter, show-up sheet, or arrest sheet will render the matter moot.

Mr. Anderson of Wichita Falls requests our decision concerning a request received by the sheriff from a private corporation asking for information as to "any record your department has on this individual." We understand this to be a request for a personal history and arrest record, or rap sheet, on a named individual. This information is excepted from disclosure by section 3(a)(8). Houston Chronicle Publishing Corp. v. City of Houston, 531 S.W.2d at 187-188.

Mr. Hickey requests our decision on behalf of the City of Bellaire in regard to a request received by the police department for access to the contents of the files concerning the requesting individual. We have said that the Open Records Act is a general public disclosure statute giving any member of the public access to governmental records without reference to his particular circumstances, motive or need. Open Records Decision Nos. 118 (1976), 108 (1975). The only special rights of access given by the Open Records Act are those afforded to governmental employees and to students to their own records. Secs. 3(a)(2); 3(a)(14). The individual here is afforded the same right of access by the Open Records Act that every other member of the public has to records held by the police department. However, we have said that the Open Records Act is but one means of securing information, either publicly or privately, and that the Act does not restrict a right of access based on special interest. Open Records Decision No. 106 (1975). See Attorney General Opinions H-249 (1974); H-231 (1974); Open Records Decision No. 111 (1975); No. 24 (1974); No. 18A at p. 3 (1974). In regard to access by an individual to criminal history record information maintained about him, see 42 U.S.C. § 3771(b); 28 C.F.R. §§ 20.21(g), 20.34.

The only decision we are authorized to make in this instance under section 7 of the Act is that the individual's criminal history record is excepted from required public disclosure by section 3(a)(8) of the Open Records Act. However, we note that the Act does not affect any special federal statutory right which an individual may have to information.

Mr. Ross of El Paso asks our decision on the applicability of section 3(a)(8) to information requested of the Police Department. The request is for photographs, and supplemental witness statements collected in connection with the investigation of an incident wherein a death occurred, apparently by carbon monoxide asphyxiation from a gas heater.

On the basis of the facts presented, it is our understanding that the incident investigated did not lead to any criminal charges being filed. However, the purpose of the investigation and the taking of photographs and statements of witnesses was to determine whether a crime may have occurred.

The information requested here is the type which the court in the Houston Chronicle case held to be excepted from required public disclosure, in that it consists of evidentiary matters. The court said:

> To open such material to the press and public in all cases might endanger the position of the State in criminal prosecutions by the use of such materials to the disadvantage of the prosecution. To have such materials open to the press and public in all cases might reveal the names of informants and pose the threat of intimidation of potential prosecution witnesses. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d at 187.

Police investigations of incidents such as this death by other than natural causes are rarely closed completely, and what initially appears to be an accident may later be found to have involved a criminal act. Cases are not always closed by prosecution or a determination that no crime was involved.

The Open Records Act excepts from required public disclosure records of law enforcement agencies "that deal with the detection and investigation of crime." We do not believe that this exception was intended to be read so narrowly that it only applies to those investigative records which in fact lead to prosecution. We believe that it was also intended to protect other valid interests such as maintaining as confidential the investigative techniques and procedures used in law enforcement and insuring the privacy and safety of witnesses willing to cooperate with law enforcement officers. These interests in non-disclosure remain even though there is no prosecution in a particular case.

It is our decision that the information requested is excepted from required public disclosure by section 3(a)(8).

Mr. Bickley of Dallas has received a request for all records of the City of Dallas and the Dallas Fire Department concerning a specified fire. Mr. Bickley contends that the investigatory records concerning this fire developed and maintained by the Arson Investigation Division of the Dallas Fire Department are excepted from required public disclosure by section 3(a)(8).

The records submitted clearly deal with the detection and investigation of crime. The issue is whether the Arson Investigation Division of the Dallas Fire Department is a "law enforcement agency" witin the meaning of section 3(a)(8). This distinct division of the Dallas Fire Department is made up of peace officers. Code of Criminal Procedure, article 2.12 provides:

> The following are peace officers:
>
> . . . .
>
> (7) each member of an arson investigating unit of a city, county or the state.

The primary purpose of the arson investigating unit is the detection and investigation of violations of the penal law.

We believe that the Arson Investigation Division of the Dallas Fire Department is a law enforcement agency within the meaning of section 3(a)(8), and that this exception is applicable to certain records held by this Division.

The information submitted with Mr. Bickley's letter includes completed forms designated "Dallas Fire-Department Investigation Fire Report" and "Investigation Report," witness statements and handwritten notes by investigators concerning witnesses' statements and the conduct of the investigation.

Guided by the Court's decision in the Houston Chronicle case that the press and the public have a right of access to information concerning crime in the community and to information relating to activities of law enforcement agencies, we believe that the press and public are entitled to access to information concerning fires in the community, including those involving arson. The Investigation Reports here include the time of the occurrence, the fire department's response, the location of the fire, how and by whom it was reported, a description of the building, estimates of the value of the building and its contents, whether and to what amount the property is insured by whom, and a description of any injuries or deaths that occurred with the name and age of the victim, nature of injury, conveyance and hospital, and date and time of death, as applicable. The investigation report also includes a detailed description of the cause and origin of the fire.

We believe the public is entitled to access to this information contained in the investigation reports.

However, certain portions of the reports include the investigator's opinion and conclusions concerning the names of suspects, the possible motive for an incendiary fire, evidence found, names of witnesses and summaries of their statements, and information concerning the description, background, and possible location of any suspect. We believe that this is the type of information the disclosure of which might impede an ongoing investigation or endanger the position of the State in criminal prosecutions, and as such is excepted from required public disclosure by section 3(a)(8). Of course, if formal charges are filed against a suspect, that information is public and should be disclosed.

Colonel Speir requests our decision on whether a Texas Department of Public Safety "Hit and Run Report" is excepted from public disclosure by section 3(a)(8). The requestor asked for information concerning a specific hit and run accident. The requestor was provided with a copy of the Department's "Texas Peace Officer's Accident Report," which is specifically made public under section 47, article 6701d, V.T.C.S. The requestor's specific request for the "Hit and Run Report" was denied on the ground that it is excepted by section 3(a)(8).

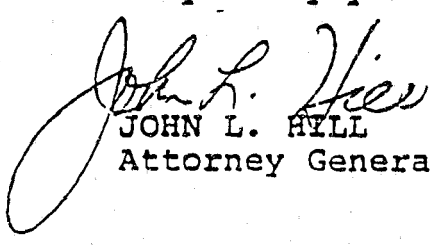
There is much duplication of information in the Accident Report and the front page of the Hit and Run Report. The only unique information in the Hit and Run Report is contained on the second page, and details the investigative steps taken in the particular case. This information on the second page is excepted from required public disclosure under section 3(a)(8) of the Open Records Act. In accordance with the Houston Chronicle decision, the front page of the report is public and should be made available.

Colonel Speir also requests our decision regarding whether a daily list of persons entering and leaving the Executive Mansion kept by the Department of Public Safety officers on duty is excepted from required public disclosure by section 3(a)(8).

The listing requested is compiled during each 24-hour period by the officer on duty on each of three shifts. It includes notations on the entry and exit of persons into and from the Mansion. The report is reviewed by the supervising sergeant and is normally disposed of by him. The Department of Public Safety officers are assigned to duty in the Executive Mansion for the purpose of providing security for the persons and property there. This listing is made in connection with this law enforcement purpose.

In Open Records Decision No. 22A (1974), we said that we believed that information which could assist an individual in simultaneously violating the law and avoiding detection is the type of information intended to be excepted from required public disclosure by section 3(a)(8) as an "internal record and notation maintained for internal use in matters relating to law enforcement." We believe that requiring disclosure of the listing and report involved here would disclose the security practices of the Department of Public Safety and could assist a person in simultaneously violating the law and avoiding detection. We believe that the requested information is excepted from required public disclosure by section 3(a)(8) of the Act.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:

DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

jwb

TEXAS
THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

September 24, 1976

The Honorable Wilson E. Speir
Director
Texas Department of Public Safety
5805 N. Lamar Boulevard
Austin, Texas 78773

Open Records Decision No.144

Re: Does the Open Records Act require disclosure of conviction information from files of Department of Public Safety.

Dear Col. Speir:

You have received a request to provide information from your files concerning convictions of persons since they were pardoned. The requestor supplied a list of approximately 650 names with a Texas Department of Corrections identification number and the date the person was pardoned.

You ask whether this information is excepted from required public disclosure by section 3(a)(8) of the Open Records Act, article 6252-17a, V.T.C.S., which excepts

> records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement.

The information requested is available from your files or from information exchange systems to which you have access in the form of personal history and arrest records or "rap sheets."

Personal history and arrest records, which may include conviction information, have been held to be excepted from required public disclosure by section 3(a)(8) of the Act.

Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177, 188 (Tex. Civ. App. -- Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. Sup. 1976); Open Records Decision No. 127 (1976) at 6.

The requesting party makes clear that the request is only for information concerning convictions, and does not extend to any information concerning arrests not resulting in prosecution or conviction. He notes that the information concerning convictions is public and available in the court records throughout Texas. He states that he is "seeking them from the Department of Public Safety because it is a central point of access for the information."

We have held that the Department of Public Safety may provide criminal history record information to certain state agencies to assist them in their licensing responsibilities, subject to applicable federal law and regulations. Attorney General Opinion H-683 (1975). Current federal regulations do not restrict a law enforcement agency's dissemination of its own conviction information [28 C.F.R. § 20.21(b)(4), as amended (1975); 41 Fed. Reg. 11714, 11715 (March 19, 1976)]; however, dissemination of criminal history record information, including convictions, from Department of Justice criminal history information systems (e.g. N.C.I.C.) is not permitted. 28 C.F.R. §§ 20.30, 20.33 (1975). In our Opinion H-683 we recognized but did not decide the issue of whether the public nature of conviction information when held by the court clerk of a particular court is transformed by virtue of the compilation of it in a centralized and vastly more accessible form. It is not necessary to decide this question here, except to say that even though conviction information may be a matter of public record where the conviction occured, the Open Records Act does not require a law enforcement agency to search its records and notations to disclose that conviction information in response to an inquiry by a member of the public or press.

The information requested is excepted from required public disclosure by section 3(a)(8) of the Act.

Very truly yours,

JOHN L. HILL
Attorney General of Texas

APPROVED:

DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

jwb

NONCRIMINAL JUSTICE AGENCIES AUTHORIZED BY LAW TO RECEIVE CRIMINAL HISTORY RECORD INFORMATION IN TEXAS

Prepared by

Crime Records Division

Texas Department of Public Safety

Revised March 1991

TEXAS ADJUTANT GENERAL
Texas Government Code, Section 431.037
Authorized: All Criminal History Record Information.
Members of the state military forces or employees of the Adjutant General's Department; and applicants for enlistment or appointment in the state military forces or employment with the Adjutant General's Department.

TEXAS ALCOHOLIC BEVERAGE COMMISSION
1. Texas Alcoholic Beverage Code, Sections 25.07 and 69.07.
Authorized: All Criminal History Record Information.
Applicants for wine and beer retailer's permits and retail dealer's on premises licenses.

2. Vernon's Civil Statutes, Article 179d, Section 13e.
Authorized: All Criminal History Record Information.
Licensing of bingo game operators and employees, commercial lessors, manufacturers, distributors, and representatives.

TEXAS BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES
Vernon's Civil Statutes, Article 4413(29bb), Sections 3A, 15, 39, and 49.
Authorized: All Criminal History Record Information.
Licensing of private security company operators, private security guards, private investigators, alarm systems installers and private security consultants.

TEXAS BOARD OF PUBLIC ACCOUNTANCY
Vernon's Civil Statutes, Article 41a-1, Section 21B.
Authorized: All Criminal History Record Information.
Applicants for certification as certified public accountants; applicants to take the uniform CPS examination; applicants to register under Section 14 of this Act.

TEXAS DEPARTMENT OF HUMAN SERVICES
1. Human Resources Code, Section 22.006.
Authorized: All Criminal History Record Information for selected offenses.
Investigation of owners and employees of child care facilities, residents of registered family homes, persons providing adoptive or foster care for children, DHS employees engaged in direct protective services for children and volunteers with Big Brothers/Big Sisters of America and the "I have a dream/Houston" program.

TEXAS DEPARTMENT OF HUMAN SERVICES (on behalf of the TEXAS DEPARTMENT OF HEALTH)
Human Resources Code, Chapter 106.
Authorized: All conviction data for selected offenses.
Applicants and employees of facilities serving the elderly and disabled; and nurses aides referred under nurses aide registry program.

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
Vernon's Civil Statutes, Article 5547-202, Section 2.28.
Authorized: All conviction data for selected offenses.
Applicants for employment required to come in direct contact with mentally ill patients or mentally retarded clients; employees of contractors who provide residential services who are required to come in direct contact with mentally ill patients or mentally retarded clients.

TEXAS DEPARTMENT OF LABOR AND STANDARDS
1. Vernon's Civil Statutes, Article 5221a-5, Section 3(b).
Authorized: All Criminal History Record Information.
Licensing of labor agents.

2. Vernon's Civil Statutes, Article 8501-1, Section 12.
Authorized: All Criminal History Record Information.
Licensing of professional boxers and wrestlers, referees, judges, seconds, time keepers, and match makers.

TEXAS EDUCATION AGENCY
Texas Education Code, Section 13.0321.
Authorized: All Criminal History Record Information.
Applicants for teaching certificates.

TEXAS EMPLOYMENT COMMISSION
Vernon's Civil Statutes, Article 5221b-1, Section 11-E.
Authorized: All Criminal History Record Information.
Applicants for employment is a security sensitive positions.

TEXAS INSTITUTIONS OF HIGHER EDUCATION (including private institutions)
Texas Education Code, Section 51.215.
Authorized: All Criminal History Record Information.
Applicants for employment in security sensitive positions.

TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER
Vernon's Civil Statutes, Article 5069-51.17A.
Authorized: All Criminal History Record Information.
Licensing of pawn brokers and certain persons employed by or in pawn shops.

TEXAS RACING COMMISSION
Vernon's Civil Statutes, Article 179e, Sections 5.03 through 5.04.
Authorized: All Criminal History Record Information.
Licensing of persons involved with racing with pari-mutuel wagering.

TEXAS REHABILITATION COMMISSION
Human Resources Code, Section 111.058.
Authorized: All Criminal History Record Information.
Applicants for rehabilitation services and clients of the commission.

TEXAS SCHOOL FOR THE BLIND 11.064
Texas Education Code, Section ~~11.66~~.
Authorized: All Criminal History Record Information.
Applicants or employees of the school engaged in direct delivery of care to children.

TEXAS SCHOOL FOR THE DEAF
Texas Education Code, Section 11.033.
Authorized: All Criminal History Record Information for selected offenses.
Applicants and employees of TSD who provide direct care for children.

TEXAS STATE AND LOCAL LICENSING/REGULATORY AGENCIES
Vernon's Civil Statutes, Article 6252-13c, Section 3(a).
Authorized: Texas conviction data only.
Licensing of particular trades, occupations, businesses, vocations, or professions.

TEXAS STATE BOARD OF INSURANCE (acting as Receiver of failed insurance agencies)
Texas Insurance Code, Article 21,28, Section 4(i).
Authorized: All Criminal History Record Information.
To investigate any matter relating to a receivership estate.

TEXAS STATE BOARD OF LAW EXAMINERS
Texas Government Code, Section 82.029.
Authorized: All Criminal History Record Information.
Applicants to practice law.

TEXAS STATE BOARD OF MEDICAL EXAMINERS
Vernon's Civil Statutes, Article 4495b, Section 2.09(h).
Authorized: All Criminal History Record Information.
Licensing of medical doctors and physicians.

TEXAS STRUCTURAL PEST CONTROL BOARD
Vernon's Civil Statutes, Article 135b-6, Section 6(d).
Authorized: All Criminal History Record Information.
Licensing of structural pest control business operators and certified applicators.

LOCAL AGENCIES AND EMPLOYERS

ADULT PROBATION DEPARTMENTS IN HIDALGO COUNTY
Code of Criminal Procedure, Article 42.12, Section 10(j-1).
Authorized: All Criminal History Record Information.
Applicants to the probation department.

LOCAL LAW ENFORCEMENT AGENCIES (to check on McGruff and other "safehouses")
Human Resources Code, Section 80.002.
Authorized: All Criminal History Record Information.
To investigate each adult residing in a house for whom an application for designation as a safehouse has been made.

MUNICIPAL FIRE DEPARTMENTS
Vernon's Civil Statutes, Article 6252-13c, Section 3(b).
Authorized: Texas conviction data only.
Applicants to be certified by the Commission on Fire Protection Person Standards and Education for beginning positions with municipal fire departments.

POLITICAL SUBDIVISIONS

Vernon's Civil Statutes, Article 6252-13c, Section 3(c).
Authorized: Texas conviction data only.
Local law enforcement agencies can provide to political subdivisions the record of conviction data to any political subdivision that either employs or has the duty and responsibility of licensing and regulating drivers of public transportation vehicles.

PRIVATE EMPLOYERS IN FEDERALLY SUBSIDIZED HOUSING FOR THE DISABLED AND ELDERLY

Human Resources Code, Chapter 135.
Authorized: All Criminal History Record Information for selected offenses.
To investigate an applicant for employment.

SCHOOL DISTRICTS

Texas Education Code, Section 21.917.
Authorized: All Criminal History Record Information.
Applicants for employment.

FEDERAL AGENCIES

US DEPARTMENT OF DEFENSE AGENCIES
Defense Investigative Service
Air Force Office of Special Investigations
Army Intelligence and Security Command
National Security Agency
OFFICE OF PERSONNEL MANAGEMENT
CENTRAL INTELLIGENCE AGENCY
FEDERAL BUREAU OF INVESTIGATION

Public Law 99-169 (Security Clearance Information Act of 1985)
Authorized: All Criminal History Record Information.
Applicants for federal security clearances, applicants for assignment to or retention in federal positions involving national security duties.

CHAPTER 26
CRIMINAL IDENTIFICATION

Section
77-26-1. Duties of board and director transferred to commissioner.
77-26-2. Control by commissioner—Compensation—Employment of personnel.
77-26-3. General duties and functions of bureau.
77-26-4. Identification systems.
77-26-5. Collection of information.
77-26-6. Regulations governing administration of bureau.
77-26-7. Peace officer status of commissioner and bureau employees.
77-26-8. Peace officers and magistrates to supply information.
77-26-9. Magistrates and court clerks to supply information.
77-26-10. Penal institutions and state hospital to supply information.
77-26-11. Adult probation and parole section to supply information.
77-26-12. Supplies and equipment for compliance by reporting agencies.
77-26-13. Assistance to law enforcement agencies—Investigation of crimes—Laboratory facilities.
77-26-14. Cooperation with agencies of any state or nation.
77-26-15. Admissibility in evidence of certified copies of bureau files.
77-26-16. Definitions—Restrictions on access, use and contents of bureau records—Challenging accuracy of records.
77-26-17. Communication systems.
77-26-18. Authority of officers and officials to take fingerprints, photographs and other data.
77-26-19. Refusal to provide information—False information—Misdemeanor.
77-26-20. Unauthorized removal, destruction, alteration or disclosure of records—Misdemeanor.

77-26-1. Duties of board and director transferred to commissioner.—Whenever any existing or continuing law names or refers to the board of managers, or the director of the bureau of criminal identification, it means the commissioner of public safety.

77-26-2. Control by commissioner—Compensation—Employment of personnel.—The state bureau of criminal identification shall be under the supervision and control of the commissioner of public safety. The commissioner shall receive no extra compensation or salary as head of the bureau but shall be reimbursed for expenses actually and necessarily incurred in the performance of his duties as supervisor of the bureau. The commissioner shall employ such personnel as may be required to properly discharge the duties of the bureau.

77-26-3. General duties and functions of bureau.—The bureau shall procure and file information relating to identification and activities of persons who are fugitives from justice, wanted or missing, or who have been arrested for or convicted of a crime under the laws of any state or nation and of persons believed to be involved in racketeering, organized crime or dangerous offenses. The bureau shall make a complete and systematic record and index of the same.

77-26-4. Identification systems.—The commissioner shall adopt systems of identification, including the fingerprint system, to be used by the bureau to facilitate the enforcement of the law.

77-26-5. Collection of information.—The commissioner and persons designated by him are authorized to call upon all law enforcement officers, the warden of the state prison, the keeper of any jail or correctional institution or superintendent of the state hospital to obtain information which will aid in establishing the records required to be kept, and all such officers shall furnish the information.

77-26-6. Regulations governing administration of bureau.—The commissioner shall have authority to promulgate regulations for the administration of the bureau.

77-26-7. Peace officer status of commissioner and bureau employees.—The commissioner and such employees as he designates shall be peace officers.

77-26-8. Peace officers, prosecutors, and magistrates to supply information to state and F.B.I. — Notification of arrest based on warrant.

(1) Every peace officer shall:

(a) cause fingerprints of persons he has arrested to be taken on forms provided by the bureau and the Federal Bureau of Investigation;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the bureau, which shall forward the F.B.I. copy to the Identification Division, Federal Bureau of Investigation.

(2) If, after fingerprints have been taken in accordance with Subsection (1), the prosecutor declines to prosecute, or investigative action as described in Section 77-2-3 is terminated, the prosecutor or law enforcement agency shall notify the bureau of this action within 14 working days.

(3) At the preliminary hearing or arraignment of a felony case, the prosecutor shall ensure that each felony defendant has been fingerprinted and an arrest and fingerprint form is transmitted to the bureau. In felony cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the sheriff of the county to:

(a) cause fingerprints of each felony defendant to be taken on forms provided by the bureau;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the bureau.

(4) If an arrest is based upon information about the existence of a criminal warrant of arrest or commitment under Rule 6, Utah Rules of Criminal Procedure, every peace officer shall notify the bureau of the service of each warrant of arrest or commitment, in a manner specified by the bureau without delay.

77-26-9. Magistrates and court clerks to supply information — Quality control — Training [Effective January 1, 1990].

(1) Every magistrate or clerk of a court responsible for court records in this state shall furnish the bureau with:

(a) information pertaining to all dispositions of criminal matters, including guilty pleas, convictions, acquittals, probations granted, or any other dispositions, within 30 days of the disposition and on forms provided by the bureau; and

(b) information pertaining to the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Sections 77-35-6 and 78-32-4, within one day of the action and in a manner provided by the bureau.

(2) To ensure quality control of all warrants of arrest or commitment in the statewide warrant system, the bureau shall conduct regular validation checks with every clerk of a court responsible for entering warrant information on the system.

(3) The bureau shall establish system procedures and provide training to all criminal justice agencies having access to warrant information.

77-26-11. Adult probation and parole section to supply information.

The adult probation and parole section of the state Department of Corrections shall furnish to the bureau information relating to the revocation or termination of probation or parole and shall upon request furnish the names, fingerprints, photographs, and other data on forms provided by the bureau.

77-26-11.5. Board of Pardons — Notification of action on a warrant [Effective January 1, 1990].

The chairman of the Board of Pardons shall provide to the bureau information regarding the issuance, recall, cancellation, or modification of any warrant issued by members of the board under Section 77-27-11 within one day of issuance.

77-26-16. Definitions — Restrictions on access, use and contents of bureau records — Challenging accuracy of records — Usage fees [Effective January 1, 1990].

(1) As used in this chapter:

(a) "Administration of criminal justice" means performance of any of the following: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(b) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of:

(i) arrests, detentions, indictments, informations or other formal criminal charges, and any disposition arising from any of them; and

(ii) sentencing, correctional supervision, and release.

(c) "Criminal justice agency" means courts, or a government agency or subdivision of it, which administers criminal justice under a statute, executive order, or local ordinance and which allocates greater than 50% of its annual budget to the administration of criminal justice.

(d) "Executive order" means an order of the president of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access to it.

(2) Dissemination of criminal history record and warrant of arrest information from bureau files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies and individuals as authorized by the commissioner for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; the agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data; and

(f) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution.

(3) Any criminal history record information obtained from bureau files may be used only for the purposes for which it was provided and may not be further disseminated.

(4) Criminal history record information contained in the bureau's computerized criminal history files may not include arrest or disposition data concerning individuals who have been acquitted, or their charges dismissed, or when no complaint against them has been filed, if they have had no prior criminal convictions.

(5) This section does not preclude the use of the Division of Data Processing central computing facilities for the storage and retrieval of criminal history record information. This information shall be stored in a manner so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(6) Direct access through remote computer terminals to criminal history record information in the bureau's files shall be limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(7) (a) The commissioner shall establish procedures so an individual may review criminal history record information regarding himself. A reasonable processing fee may be charged.

(b) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the bureau's computerized criminal history files regarding that individual. These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

(8) Authorized law enforcement agencies shall not be charged computer usage fees when accessing the statewide warrant file.

77-26-16.5. Procedures — Adjudicative proceedings.

The bureau and the commissioner shall comply with the procedures and requirements of Chapter 46b, Title 63, in their adjudicative proceedings.

77-26-17. Communication systems.—For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the bureau may operate and coordinate such communication systems as may be required in the conduct of its duties as herein set forth.

77-26-18. Authority of officers and officials to take fingerprints, photographs and other data.—To the end that officers and officials described in sections 77-26-8 through 77-26-11 may be enabled to transmit the information required of them in these sections, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs, and other related data of persons described in such sections.

77-26-19. Refusal to provide information—False information—Misdemeanor.—Any person who neglects or refuses to provide, or willfully withholds, any information under provisions of this chapter, or who willfully provides false information, or who willfully fails to do or perform any act so required to be done or performed by him under this chapter, or who shall

hinder or prevent another from doing an act so required to be done by that other, shall be guilty of a class B misdemeanor.

History: C. 1953, 77-26-19, enacted by L. 1980, ch. 15, § 2.

77-26-20. Unauthorized removal, destruction, alteration or disclosure of records—Misdemeanor.—Any person who, except by the authority of and in compliance with procedures as established by the commissioner, willfully removes, destroys, alters, mutilates or discloses the contents of any file or record of the bureau shall be guilty of a class B misdemeanor.

Chapter 18

77-18-2. Expungement and sealing of records.

(1) (a) A person convicted of any crime, except a capital felony, first degree felony, or second degree forcible felony as defined in Subsection 76-2-402(3), within this state may petition the convicting court for an expungement and for sealing of his record in that court. The person shall file both the petition and a certificate issued by the Utah Bureau of Criminal Identification, hereafter referred to as "bureau" in this section, indicating that there is no record with the bureau of an expungement regarding the petitioner. Both documents shall be served upon the prosecuting attorney. The court shall then set a date for a hearing and notify the prosecuting attorney for the jurisdiction of the date set for hearing. Persons having relevant information about the petitioner may testify at the hearing. The court in its discretion may request a written evaluation by the adult parole and probation section of the Department of Corrections, except that a written evaluation is required for any conviction of a sexual offense under Title 76.

(b) A person who at the time of petition for expungement has two or more convictions for any type of felony offense on his record, not arising out of a single criminal episode, or whose felony criminal record has been previously expunged is not eligible for expungement of any of those offenses regardless of type or degree of offense.

(c) The court shall enter an order to seal all records in the petitioner's case in the custody of that court or in the custody of any other court, agency, or official if the court finds:

(i) the petitioner has not been convicted of a felony or of a misdemeanor for a period of seven years in the case of a felony, six years in the case of an alcohol-related traffic offense under Title 41, five years in the case of a class A misdemeanor, or three years in the case of all other misdemeanors or an infraction under Title 76 after his release from incarceration, parole, or probation, whichever occurs last;

(ii) that no proceeding involving a crime is pending or being instituted against the petitioner; and

(iii) the petitioner has presented to the court a certificate issued by the bureau as described in Subsection (1)(a).

(d) The court shall issue to the petitioner a certificate stating the court's finding that he has satisfied the statutory requirements for expungement.

(e) The court may not expunge a capital felony, first degree felony, or second degree forcible felony conviction.

(2) (a) When a person has been arrested with or without a warrant, that individual, after one month if there have been no intervening arrests, may petition the court in which the proceeding occurred, or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging and sealing any and all records of arrest and detention which may have been made, if any of the following occurred:

(i) he was released without the filing of formal charges;

(ii) proceedings against him were dismissed, he was discharged without a conviction and no charges were refiled against him within 30 days, or he was acquitted at trial; or

(iii) the record of any proceedings against him has been sealed under Subsection (1).

(b) If the court finds that the petitioner is eligible for relief under this subsection, it shall issue its order granting the expungement and sealing.

(c) This subsection applies to all arrests and any proceedings which occurred before, as well as those which may occur after, April 27, 1987.

(d) The court shall enter an order to seal all records in the petitioner's case which are in the custody of that court, or any other court, or any state, county, or local entity, agency, or official.

(e) The petitioner shall distribute the orders of expungement and sealing to all affected agencies and officials including the court, the arresting agency, booking agency, Department of Corrections, and the bureau. The bureau shall forward a copy of the expungement order to the Federal Bureau of Investigation. The bureau shall provide a list of the agencies named in this subsection and clear written directions regarding the requirements of this section to the petitioner.

(3) The person who has received expungement and sealing of an arrest or conviction may answer an inquiring employer as though the arrest or conviction did not occur.

(4) The court may permit inspection of the sealed records only upon petition by the person who is the subject of those records and only to the persons named in the petition.

(5) (a) The bureau shall keep, index, and maintain all expunged and sealed records of arrests and convictions. Any agency or its employee who receives an expungement order may not divulge any information in the sealed expunged records. Employees of the bureau may not divulge any information contained in its index to any person or agency without a court order, except for certification of an applicant for peace officer status, or for use by the Board of Pardons.

(b) For judicial sentencing, a court may order any records sealed under this section to be opened and admitted into evidence. The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. At the end of the action or proceeding, the court shall order the records sealed again.

(6) A person who willfully violates any provision of this section is guilty of a class B misdemeanor.

(7) (a) The clerk of the court where the arrest, conviction, and expungement occurred may charge a fee of $50 under Section 78-3-16.5 or 78-4-24 for processing the expungement order.

(b) The bureau may charge a reasonable fee for processing the expungement order under Section 63-38-3.

77-27-21.5. Sex offender registration — Information system — Law enforcement and courts to report — Registration — Penalty — Temporary releases — Effect of expungement [Effective April 1, 1992].

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Register" means to comply with the rules of the department made under this section.

(c) "Sex offender" means any person convicted by this state of violating Section 76-7-102 or 76-9-702.5, or of committing or attempting to commit a felony under Part 4, Chapter 5, Title 76, Sexual Offenses, and any person convicted by any other state of an offense which if committed or attempted in this state would be punishable as one or more of these offenses. "Sex offender" also means all persons committed to a state mental hospital by reason of their mental incapacity and their commission or alleged commission of one or more offenses listed in this subsection.

(2) The department, to assist in investigating sex-related crimes and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, and maintain information on sex offenders and sex offenses;

(b) make information collected and developed under this section available to law enforcement agencies in this state and other states; and

(c) establish security systems to ensure that only authorized personnel may gain access to information gathered under this section.

(3) All law enforcement agencies shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(c), within three working days; and

(b) the arrest of a person suspected of violating any of the offenses listed in Subsection (1)(c), within five working days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(c), or any lesser included offense, the convicting court shall within ten working days forward a copy of the judgment and sentence to the department.

(5) All sex offenders in the custody of the department shall be registered by agents of the department upon:

(a) being placed on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) All sex offenders not in the custody of the department who are confined in a correctional facility not operated by or under contract to the department shall, upon release from confinement, be registered with the department by the sheriff of the county in which the offender is confined.

(7) All sex offenders confined in a state mental hospital shall be registered with the department by the hospital before September 1, 1987. All sex offenders committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(8) Any sex offender not registered under Subsection (5), (6), or (7) shall, before September 1, 1987, register with the office of the department nearest to his residence.

(9) All sex offenders shall, for the first five years after termination of sentence, again register within ten days of changing their place of habitation.

(10) An agency that registers a sex offender shall inform him of his duty to comply with the continuing registration requirements of this section.

(11) (a) A sex offender who knowingly fails to register under this section is guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation.

(b) Neither the court nor the Board of Pardons may release a person who violates this section from serving a term of at least 90 days and of completing probation of at least one year. This subsection supersedes any other provision of the law contrary to this section.

(12) Information collected under this section is classified as private, confidential, or protected under Chapter 2, Title 63, Government Records Access and Management Act, and is available to the following only in the performance of their duties:

(a) law enforcement agencies;

(b) the State Office of Education; and

(c) the department.

(13) (a) If a sex offender is to be temporarily sent outside a secure facility in which he is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This subsection does not apply to any person temporarily released under guard from the institution in which he is confined.

(14) Notwithstanding Section 77-18-2 regarding expungement, a person convicted of any offense listed in Subsection (1)(c) is not relieved from the responsibility to register under this section.

(15) The department may make rules necessary to implement this section.

LOCAL SCHOOL BOARDS

53A-3-410. Criminal background checks on school personnel — Notice — Payment of cost.

(1) A school district superintendent, the superintendent's designee, or their counterparts at a private school may require a potential employee or volunteer to submit to a criminal background check as a condition for employment or appointment and, where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.

(2) The applicant, volunteer, or employee shall receive written notice that the background check has been requested.

(3) Fingerprints of the individual shall be taken if necessary to assure accurate identification, and the Utah Bureau of Criminal Identification shall

release to the superintendent, the superintendent's designee, or their counterparts at a private school the person's record of all criminal convictions.

(4) The superintendent, local school board, or their counterparts at a private school shall consider only those convictions which are job-related for the employee, applicant, or volunteer.

(5) The district or private school shall pay the cost of the background check, and the revenue collected shall be credited to the Utah Bureau of Criminal Identification to offset its expenses.

(6) The bureau shall, upon request, seek additional information from regional or national criminal data files in responding to inquiries under this section.

(7) The applicant, volunteer, or employee shall have opportunity to respond to any information received as a result of the background check.

(8) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons.

(9) Information obtained under this part is confidential and may only be disclosed as provided in this section.

PUBLIC RECORDS LAW
Effective April 1992

63-2-59. Short title [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — Section 63-2-59 was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading, above.

63-2-60. Legislative intent [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — This section was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-61. Definitions [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — This section was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-62 to 63-2-71. [Repealed effective April 1, 1992.]

Repealed effective April 1, 1992. — Sections 63-2-62 to 63-2-71 were repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-73. Public records — Disposal by state agency without approval prohibited [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — This section was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-75 to 63-2-80. [Repealed effective April 1, 1992.]

Repealed effective April 1, 1992. — Sections 63-2-75 to 63-2-80 were repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-84 to 63-2-89. [Repealed effective April 1, 1992.]

Repealed effective April 1, 1992. — Sections 63-2-84 to 63-2-89 were repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

CHAPTER 2
GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

[Effective April 1, 1992]

PART 1
GENERAL PROVISIONS

[Effective April 1, 1992]

63-2-101. Short title [Effective April 1, 1992].

This chapter is known as the "Government Records Access and Management Act."

63-2-102. Legislative intent [Effective April 1, 1992].

(1) In enacting this act, the Legislature recognizes two fundamental constitutional rights:

(a) the right of privacy in relation to personal data gathered by governmental entities; and

(b) the public's right of access to information concerning the conduct of the public's business.

(2) It is the intent of the Legislature to:

(a) establish fair information practices to prevent abuse of personal information by governmental entities while protecting the public's right of easy and reasonable access to unrestricted public records; and

(b) provide guidelines of openness to government information and privacy of personal information consistent with nationwide standards.

63-2-103. Definitions [Effective April 1, 1992].

As used in this chapter:

(1) "Chronological logs" mean the regular and customary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

(2) "Classification," "classify," and their derivative forms mean the process of designating a record series or information within a record series as public, private, confidential, or protected.

(3) (a) "Computer program" means a series of instructions or statements that permit the functioning of a computer system in a manner

designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(4) "Confidential record" means a record containing data on individuals that is classified confidential as provided by Section 63-2-303. This definition of confidential does not apply in other sections of the code unless that section specifically refers to Chapter 2, Title 63, Government Records Access and Management Act.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) (a) "Governmental entity" means:

(i) the offices of the governor, lieutenant governor, state auditor, attorney general, state treasurer, the Board of Pardons, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, and every office, board, bureau, committee, state archives, department, advisory board, or commission in the executive branch that is publicly funded or that is established by the government to carry out the public's business;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch; or

(iv) any political subdivision of the state and any state-funded institution of higher education or public education.

(b) Notwithstanding Subsection 63-2-102 (6)(a)(iv), "governmental entity" does not mean a political subdivision that has adopted an ordinance or policy relating to information practices in accordance with Section 63-2-701.

(7) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(8) "Incident reports" mean records customarily created by law enforcement agencies and other public safety agencies about specific incidents and that normally include:

(a) the nature of the complaint, the incident, or offense;

(b) the agency's actions taken in response to the incident;

(c) any assessment of the injuries or damages suffered in the incident;

(d) the general scope of the agency's investigation of the incident;

(e) the name, address, and other identifying information about any person arrested or charged in connection with the incident;

(f) search warrants or arrest warrants issued in connection with the incident; and

(g) the identity of the officers and public safety personnel involved in investigating or prosecuting the incident.

(9) "Individual" means a human being.

(10) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(11) "Private record" means a record containing data on individuals that is classified private as provided by Section 63-2-302.

(12) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(13) "Protected record" means a record that is classified protected as provided by Section 63-2-304.

(14) "Public record" means a record that has not been appropriately classified private, confidential, or protected as provided in Section 63-2-302, 63-2-303, or 63-2-304 of this chapter or a record that is not restricted from disclosure as provided in Subsection 63-2-201 (3)(b).

(15) (a) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by a governmental entity;

(b) "Record" does not mean:

(i) temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working;

(ii) materials that are legally owned by an individual in his private capacity;

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity;

(iv) proprietary software;

(v) junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

(vii) personal notes or notes prepared by the judiciary as part of the deliberative process; or

(viii) computer programs as defined in Subsection (3) that are developed or purchased by or for any governmental entity for its own use.

(16) "Record series" means a group of records that may be treated as a unit for purposes of classification, description, management, or disposition.

(17) "Records committee" means the State Records Committee created in Section 63-2-501.

(18) "Records officer" means the individual designated by the chief administrative officer of each governmental entity to work with state archives in the care, maintenance, scheduling, disposal, and preservation of records.

(19) "Schedule," "scheduling," and their derivative forms mean the process of designating the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(20) "State archives" means the Division of Archives and Records Service created in Section 63-2-901.

(21) "State archivist" means the director of the state archives.

(22) "Summary data" means statistical records and compilations that contain data derived from private, confidential, or protected information but that do not disclose private, confidential, or protected information.

63-2-104. Administrative Procedures Act not applicable [Effective April 1, 1992].

Chapter 46b, Title 63, Administrative Procedures Act, does not apply to this chapter.

PART 2

ACCESS TO RECORDS

[Effective April 1, 1992]

63-2-201. Right to see public records and receive certified copies of public records [Effective April 1, 1992].

(1) Every person has the right to inspect and to take a copy of a public record during normal working hours, subject to Sections 63-2-203 and 63-2-204.

(2) All records are public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) records that are appropriately classified private, confidential, or protected as allowed by Sections 63-2-302, 63-2-303, and 63-2-304; and

(b) records to which access is restricted by another state statute, federal statute, or federal regulation, either directly or as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to see it;

(b) he identifies the record with reasonable specificity; and

(c) he pays the lawful fees.

(5) (a) A governmental entity is not required to create a record in response to a request.

(b) A governmental entity shall provide a record in a particular format if:

(i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for additional costs if the governmental entity actually incurs additional costs in providing the record in the requested format.

(c) Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(6) If a person requests more than 50 pages of records from a governmental entity, and if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may:

(a) provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or

(b) allow the requester to provide his own copying facilities and personnel to make the copies at the governmental entity's offices, and waive the fees for copying the records.

(7) A governmental entity that owns a copyright or patent affecting a record, and that offers the copyrighted or patented record for sale, may control by ordinance or policy the access, duplication, and distribution of the material based on terms the governmental entity considers to be in the public interest. Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the copyright or patent.

63-2-202. Access to private, confidential, and protected documents [Effective April 1, 1992].

(1) Upon request, a governmental entity shall disclose a record that is classified private to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record; or

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 30 days before the date the request is made; or

(e) any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

(2) (a) Upon request, a governmental entity shall disclose a record that is classified confidential to:

(i) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 30 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of confidential information as provided by Subsection (b); and

(ii) any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose confidential information from that record to any person, including the subject of a record.

(3) Upon request, a governmental entity shall disclose a record that is classified as protected to:

(a) the person who submitted the information in the record;

(b) any other individual who:

(i) has a power of attorney from the subject of the record; or

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 30 days prior to the date the request is made; or

(c) any person who has a court order signed by a judge from a Utah court other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

(4) A governmental entity may disclose a record classified private, confidential, or protected to another governmental entity, another state, the United States, or a foreign government only as provided by Section 63-2-206.

(5) Before releasing a record classified private, confidential, or protected, the governmental entity shall obtain evidence of the requester's identity.

(6) Nothing in this section prohibits a governmental entity from disclosing a record to persons other than those listed in Subsections (1), (2), and (3) if the governmental entity determines that disclosure is in the public interest.

63-2-203. Fees [Effective April 1, 1992].

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record or compiling a record in a form other than that maintained by the governmental entity as follows:

(a) Governmental entities subject to Section 63-38-3 shall establish fees using a cost formula determined by and in conjunction with the Office of Planning and Budget and the Division of Finance.

(b) Political subdivisions shall establish fees by ordinance.

(c) The judiciary shall establish fees by rules of the judicial council.

(2) A governmental entity may fulfill a request without charge when it determines that:

(a) releasing the record primarily benefits the public rather than an individual; or

(b) the individual requesting the record is the subject of the record.

(3) A governmental entity may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure; or

(b) inspecting a record.

(4) All money received by a state agency to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the state agency shall be retained by the state agency as a dedicated credit. Those funds shall be used to recover the actual cost and expenses incurred by the state agency in providing the requested record or record series.

(5) This section does not apply to fees established by other statutes.

63-2-204. Requests — Time limit for response and extraordinary circumstances [Effective April 1, 1992].

(1) A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, and a description of the records requested that identifies the record with reasonable specificity.

(2) A governmental entity may make rules in accordance with Chapter 46a, Title 63, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) Except as provided in Subsection (4), a governmental entity shall respond to a records request no later than ten business days after receiving the request by:

(a) approving the request and providing the record;

(b) denying the request;

(c) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or

(d) notifying the requester that because of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and specifying the earliest time and date when the records will be available.

(4) If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the governmental entity shall respond to a records request no later than five business days after receiving the request.

(5) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional number of days as specified in Subsection 63-2-204 (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3) or (4):

(a) another governmental entity is using the record, in which case the originating governmental entity shall immediately request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit and returning the record before the completion of the audit would impair the conduct of the audit;

(c) the request is for a voluminous quantity of records;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues requiring analysis of statutes, rules, ordinances, regulations, or case law;

(g) separating public information from private, confidential, or protected information requires extensive editing; or

(h) separating public information from private, confidential, or protected information requires computer programming.

(6) If a governmental entity claims that one of the extraordinary circumstances listed in Subsection (5) precludes approval or denial within the time specified in Subsection (3) or (4), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (5)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:

(i) disclose the public records that it has located;

(ii) provide the requester with an estimate of the amount of time it will take to finish the search; and

(iii) complete the search and disclose the requested records as soon as reasonably possible;

(d) for claims under Subsection (5)(f), the governmental entity shall either approve or deny the request within five days after the response time designated for the original request has expired;

(e) for claims under Subsection (5)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (5)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(7) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall immediately forward the request to the appropriate office. If the request is forwarded immediately, the time limit for response begins when the record is received by the office designated by rule.

(8) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

63-2-205. Denials [Effective April 1, 1992].

(1) If the governmental entity denies the request in whole or part, it shall send a notice of denial to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, confidential, or protected information;

(b) citations to the provisions of this chapter, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, confidential, or protected information;

(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity and then to either the records committee or district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.

(3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period in which to bring an appeal has expired or the end of the appeals process, including judicial appeal.

63-2-206. Sharing records [Effective April 1, 1992].

(1) A governmental entity may provide a record series classified private under Section 63-2-302, confidential under Section 63-2-303, or protected under Subsection 63-2-304 (1) or (2) to another governmental entity or government-managed corporation if the requesting governmental entity or government-managed corporation:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces or investigates civil or criminal law and the record is necessary to a proceeding or investigation; or

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose.

(2) A governmental entity may provide a record or record series that is classified private or confidential to another governmental entity if the requesting governmental entity:

(a) certifies that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) certifies that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) certifies that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series classified protected under Subsection 63-2-304 (1) or (2) to another governmental entity if:

(a) the record is necessary to the performance of the governmental entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) Notwithstanding Subsection (2), a governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) obtain the recipient's written agreement that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity shall provide a private, confidential, or protected record to another governmental entity if the requesting entity:

(a) is entitled by law to inspect the record; or

(b) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds.

(7) Notwithstanding any other provision of this section, if a more specific state statute, federal statute, or federal regulation prohibits or requires sharing information, that statute or federal regulation controls.

(8) The provisions of this section do not apply to:

(a) records held by the Utah State Tax Commission that pertain to any person and that are gathered under authority of Title 59, Revenue and Taxation;

(b) records held by the Utah Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Chapter 6, Title 40, Board and Division of Oil, Gas and Mining; and

(c) records of publicly funded libraries as described in Subsection 63-2-302 (5).

PART 3

CLASSIFICATION

[Effective April 1, 1992]

63-2-301. Records that must be disclosed [Effective April 1, 1992].

Without limiting the records that a governmental entity may classify as public, a governmental entity shall classify the following records as public except to the extent they contain information expressly permitted to be classified as exempt from disclosure under the provisions of Subsection 63-2-201 (3)(b) or Section 63-2-302, 63-2-303, or 63-2-304:

(1) names, gender, gross compensation, job titles, job descriptions, job qualifications, business addresses, business telephone numbers, number of hours worked per pay period, and dates of employment of its former and present employees and officers excluding undercover law enforcement officers or investigative personnel if disclosure would impair the effectiveness of investigations or endanger any person's safety;

(2) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information classified as private, protected, or confidential;

(3) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Section 63-2-304;

(4) information contained in or compiled from a transcript, minutes, or report of a proceeding of a governmental entity including the records of all votes of each member of the governmental entity except as provided by Chapter 4, Title 52, Open and Public Meetings;

(5) laws;

(6) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are properly classified as private;

(7) records maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of State Lands and Forestry, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that evidence:

(a) titles or encumbrances to real property;

(b) restrictions on the use of real property;

(c) the capacity of persons to take or convey title to real property;

(d) tax status for real and personal property; or

(e) mineral production on government lands;

(8) records of the Department of Commerce pertaining to incorporations, mergers, name changes, and uniform commercial code filings;

(9) records containing data on individuals that would otherwise be classified as private if the individual who is the subject of the record has

given the governmental entity written permission to make the records available to the public;

(10) records that do not contain data on individuals if the public's interest in access outweighs the interest of the governmental entity or other persons who seek to prevent disclosure;

(11) original data in a computer program if the governmental entity chooses not to disclose the program;

(12) administrative staff manuals, instructions to staff, and statements of policy;

(13) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(14) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(15) records documenting the compensation that a governmental entity pays to a contractor or private provider;

(16) contracts entered into by a governmental entity;

(17) information in or taken from any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(18) records relating to assistance or incentives offered by or requested from a governmental entity, encouraging a person to expand or relocate a business in Utah, except the governmental entity may withhold the person's name and disclose only the size and nature of the business, using Standard Industrial Classification or a similar description of the business unless:

(a) the person has publicly announced its plans to expand or relocate in Utah; or

(b) ten days have elapsed since the person accepted the governmental entity's commitment to provide assistance or incentives;

(19) summary data;

(20) chronological logs and incident reports;

(21) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(22) empirical data contained in drafts if:

(a) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(b) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(23) drafts that are circulated to anyone other than a governmental entity or to anyone other than a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and

(24) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy.

63-2-302. Records that may be classified as private [Effective April 1, 1992].

A governmental entity may classify only the following records as private:

(1) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(2) records describing an individual's finances except that the following is public:

(a) records described in Section 63-2-301;

(b) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(c) records that may be disclosed in accordance with another statute;

(3) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(4) records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(5) records of publicly funded libraries that when examined alone or with other records identify a patron;

(6) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(7) records received or generated in a Senate or House ethics committee concerning any alleged violation of the rules on legislative ethics if the ethics committee meeting was closed to the public;

(8) information in any agency's personnel file, applications, nominations, recommendations, or proposals for public employment or appointment, except information relating to formal charges against the employee and disciplinary action unless such charges and action are not sustained or are shown to be groundless or except as the data is already classified as public;

(9) information comprising a personal recommendation or evaluation concerning an individual, or provided by the individual with respect to a third party if disclosure would constitute a clearly unwarranted invasion of privacy and disclosure is not in the public interest;

(10) records that would disclose military status; and

(11) records provided by the United States or by a governmental entity outside the state that are given with the requirement that the records be given private status.

History: C. 1953, 63-2-302, enacted by L. 1991, ch. 259, § 19.

Effective Dates. — Laws 1991, ch. 259, § 76 makes the act effective on April 1, 1992.

63-2-303. Records that may be classified as confidential [Effective April 1, 1992].

A governmental entity may classify a record as confidential only if:

(1) the record contains medical, psychiatric, or psychological data about an individual; and

(2) the governmental entity reasonably believes that releasing the record would be detrimental to the subject's mental health or to the safety of any individual.

63-2-304. Records that may be classified as protected [Effective April 1, 1992].

A governmental entity may classify only the following records as protected:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial or nonindividual financial information exchanged between a governmental entity and a person if:

(a) disclosure of the information would result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or national economy;

(4) test questions and answers to be used in future license, employment, or academic examinations;

(5) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted by a governmental entity after bidding has closed;

(6) records that would identify real property or the value of the real property under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the real property on the best terms possible; or

(b) potential sellers of the real property have already learned of the governmental entity's plans to acquire the property or of the governmental entity's estimated value of the real property;

(7) records compiled for civil enforcement or law enforcement purposes or for licensing, certification, or registration if release of the records would:

(a) interfere with enforcement proceedings or investigations for licensing, certification, or registration;

(b) deprive a person of a right to a fair trial or impartial hearing;

(c) disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(d) disclose investigative techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement efforts;

(8) records the disclosure of which would jeopardize the life or safety of an individual;

(9) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record-keeping systems;

(10) records relating to incarceration, probation, or parole, if the disclosure of the records would jeopardize the security of a governmental facility, or interfere with the supervision of an individual's incarceration, probation, or parole;

(11) records that would disclose audit techniques, procedures, and policies if disclosure would risk circumvention of an audit;

(12) records and audit workpapers that identify audit procedures and methods used by the Utah State Tax Commission to select tax returns for audit reviews or that disclose an auditor's mental impressions about an audit;

(13) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(14) records prepared by or on behalf of a governmental entity in anticipation of litigation that are not available under the rules of discovery, unless the records are otherwise classified as public;

(15) records disclosing an attorney's work product, including the mental impressions, or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(16) records of communications between a governmental entity and an attorney representing, retained or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(17) personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy;

(18) unnumbered bill requests that are designated as protected by the legislator who requests that the bill be prepared by the Office of Legislative Research and General Counsel;

(19) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(20) drafts, unless otherwise classified as public;

(21) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(22) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Division of Risk Management, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(23) communications between individuals sitting on a board or commission who are acting in a judicial capacity to the extent that the communications relate to the deliberative aspects of the adjudications;

(24) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(25) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(26) records of tenure evaluations, appointments, retention decisions, and promotions generated in a meeting closed in accordance with Chapter 4, Title 52, Open and Public Meetings;

(27) records of the governor's office, including, but not limited to, budget recommendations, legislative proposals and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(28) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas; and

(29) records provided by the United States or by a governmental entity outside the state that are given to the governmental entity with a requirement that they be given a protected status.

63-2-305. Procedure to determine classification [Effective April 1, 1992].

(1) If more than one provision of this chapter appear to govern the classification of a record, the governmental entity shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

(2) Nothing in Section 63-2-302, 63-2-303, or 63-2-304 requires a governmental entity to classify a record as private, confidential, or protected.

63-2-306. Duty to examine records and make classifications [Effective April 1, 1992].

(1) Beginning April 1, 1992, a governmental entity shall:

(a) examine all records or record series that it creates or to which it adds information after that date;

(b) classify those records or record series as provided by this chapter;

(c) designate a primary classification for each record or record series to indicate whether the majority of the information in the record series is public, private, confidential, or protected; and

(d) indicate whether information within a classification other than the primary classification is present in the record series, and list the appropriate classifications.

(2) A governmental entity is not required to reclassify any record or record series created before April 1, 1992, until:

(a) information is added to the record series; or

(b) a person requests access to the record or to a record within the record series.

(3) A governmental entity may reclassify a record or record series at any time.

(4) By July 1 of each year, beginning July 1, 1993, each governmental entity shall report to the state archives the classification for each record series that it created or classified during the previous calendar year.

63-2-307. Segregation of records [Effective April 1, 1992].

Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record in a record series that is classified as private, confidential, or protected, and the record contains information that standing alone would be public and intelligible, the governmental entity:

(1) shall allow access to public information in the record; and

(2) may deny access to information in the record if the information is exempt from disclosure, issuing a notice of denial as provided in Section 63-2-205.

63-2-308. Business confidentiality claims [Effective April 1, 1992].

(1) (a) Any person who provides to a governmental entity a record that he believes should be protected under Subsection 63-2-304 (1) or (2) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

(b) The claimant shall be notified by the governmental entity if a record claimed to be protected under Subsection 63-2-304 (1) or (2) is not classified protected or if a requester appeals denial of access to the record. The claimant shall then be allowed to provide further support for the claim of business confidentiality.

(2) The governmental entity may not disclose records claimed to be protected under Subsection 63-2-304 (1) or (2) but which it determines should be classified public until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2 (2).

PART 4

APPEALS

[Effective April 1, 1992]

63-2-401. Appeal to head of governmental entity [Effective April 1, 1992].

(1) Any person aggrieved by a governmental entity's determination under this chapter, including a person not a party to the governmental entity's proceeding, may appeal the determination within 30 days to the chief administrative officer of the governmental entity by filing a notice of appeal.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) In the case of a protected record, the chief administrative officer shall inform the claimant of business confidentiality under Section 63-2-308 of the appeal and allow the claimant to provide further support for the claim of business confidentiality.

(5) The chief administrative officer shall make a determination on the appeal within five business days of his receipt of the notice. If the chief administrative officer fails to make a determination within this time, that failure shall be considered the equivalent of an order denying the appeal.

(6) If the chief administrative officer affirms the denial in whole or in part, he shall send to the requester a written statement that the requester may appeal to the records committee or district court and provide the name and address of the executive secretary of the records committee.

63-2-402. Option for appealing a denial [Effective April 1, 1992].

(1) If the chief administrative officer of a governmental entity denies a records request under Section 63-2-401, the requester may:

(a) appeal the denial to the records committee as provided in Section 63-2-403; or

(b) petition for judicial review in district court as provided in Section 63-2-404.

(2) Any person aggrieved by a determination of the head of a governmental entity under this chapter, including persons not a party to the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63-2-403.

63-2-403. Appeals to the records committee [Effective April 1, 1992].

(1) A petitioner may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part; or

(b) 35 days after the original request if the governmental entity failed to respond to the request.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) No later than five days after receiving a notice of appeal, the executive secretary of the records committee shall:

(a) schedule a hearing for the records committee to discuss the appeal which shall be held within 30 days from the date of the filing of the appeal;

(b) send a copy of the notice of hearing to the petitioner; and

(c) forward a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(i) each member of the records committee;

(ii) the records officer and the chief administrative officer of the governmental entity from which the appeal originated; and

(iii) in the case of a protected record, the claimant of business confidentiality under Section 63-2-308.

(5) No later than ten business days after receiving the notice of appeal, the governmental entity may submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of its position. The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) Intervention in the records committee's proceeding shall be permitted using the procedures and standards specified in Section 63-46b-9.

(b) In the case of a protected record, the claimant of business confidentiality under Section 63-2-308 may provide reasons for its claim of business confidentiality.

(7) The records committee shall hold a hearing within 30 days of receiving the notice of appeal.

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9) (a) The records committee may review the disputed records in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) The records committee's review shall be de novo.

(11) (a) No later than three business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, confidential, or protected if the public interest in access outweighs a person's or governmental entity's interests in restricting access.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, confidential, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, confidential, or protected information;

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 35 days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if he considers the appeal denied.

63-2-404. Judicial review [Effective April 1, 1992].

(1) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order. The petition shall be filed no later than 30 days after the date of the records committee's order.

(2) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection 63-2-402 (1)(b). The requester shall file a petition no later than:

(a) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part; or

(b) 35 days after the original request if the governmental entity failed to respond to the request.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought a prior appeal to the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(5) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(6) The district court may review the disputed records in camera.

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

(b) determine all questions of fact and law without a jury; and

(c) decide the issue at the earliest practical opportunity.

(8) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, confidential, or protected if the public interest in access outweighs a person's or governmental entity's interests in restricting access.

PART 5

STATE RECORDS COMMITTEE

[Effective April 1, 1992]

63-2-501. State Records Committee created — Membership [Effective April 1, 1992].

There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(1) the state archivist;

(2) the state auditor;

(3) the director of the Division of State History;

(4) the attorney general or the attorney general's designee;

(5) one citizen member appointed for a four-year term by the governor upon the recommendation of the members of the records committee;

(6) one individual representing political subdivisions appointed by the governor for a four-year term; and

(7) one individual representing the news media appointed by the governor for a four-year term.

63-2-502. State Records Committee — Duties [Effective April 1, 1992].

(1) The records committee shall:

(a) meet at least once every three months to review and approve rules and programs for the collection, classification, and disclosure of records;

(b) review and approve retention and disposal of records;

(c) hear appeals from determinations of access as provided by Section 63-2-403; and

(d) appoint a chairman from among its members.

(2) The records committee may:

(a) make rules to govern its own proceedings as provided by Chapter 46a, Title 63, Utah Administrative Rulemaking Act; and

(b) reassign classification for any record series by a governmental entity if the governmental entity's classification is inconsistent with this chapter.

(3) The state archivist is the executive secretary to the records committee.

(4) Five members of the records committee are a quorum for the transaction of business.

(5) The state archives shall provide staff and support services for the records committee.

(6) Unless otherwise reimbursed, the citizen member and the representative of the news media shall receive a per diem as established by the Division of Finance in Section 63-1-14.5.

(7) If the records committee reassigns the classification of a record or record series under Subsection (2)(b), the governmental entity may appeal the reclassification to the district court.

PART 6

ACCURACY OF RECORDS

[Effective April 1, 1992]

63-2-601. Rights of individuals on whom data is maintained [Effective April 1, 1992].

(1) Each governmental entity shall file with the state archivist a statement explaining the purposes for which data on individuals are collected and used by that governmental entity. That statement is a public record.

(2) Upon request, each governmental entity shall explain to an individual:

(a) the reasons he is asked to furnish private or confidential information;

(b) the intended uses of the information; and

(c) the consequences for refusing to provide the information.

(3) A governmental entity may not use private, confidential, or protected data for purposes other than those given in the statement filed with the state archivist under Subsection (1) or for sharing records as specified in Section 63-2-206.

63-2-602. Subject of records allowed to inspect and make copies of private records [Effective April 1, 1992].

(1) Upon request, the governmental entity shall disclose to the subject the content of the information that is classified public and the context in which it is used.

(2) Upon request and a reasonable showing that the individual is the subject of a record classified private, the governmental entity shall disclose to the subject or to his authorized attorney the content of the information classified private and the context in which it is used.

63-2-603. Requests to amend a record — Appeals [Effective April 1, 1992].

(1) Subject to Subsection (7), an individual may contest the accuracy or completeness of any data on individuals classified as public or private concerning him by petitioning the governmental entity to amend the record. The petition shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) a brief statement explaining why the governmental entity should amend the record.

(2) The governmental entity shall either approve or deny the petition to amend no later than 30 days after the petition.

(3) If the governmental entity approves the petition, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.

(4) If the governmental entity denies the petition, it shall:

(a) inform the petitioner in writing; and

(b) provide a brief statement giving its reasons for denying the petition.

(5) If a governmental entity denies a petition to amend a record, the petitioner may submit a written statement contesting the information in the record. The governmental entity shall:

(a) file the petitioner's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and

(b) disclose the petitioner's statement along with the information in the record whenever the governmental entity discloses the disputed information.

(6) The petitioner may appeal the denial of the petition to amend a record to district court.

(7) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

PART 7

APPLICABILITY TO POLITICAL SUBDIVISIONS, THE JUDICIARY, AND THE LEGISLATURE

[Effective April 1, 1992]

63-2-701. Political subdivisions to enact ordinances in compliance with chapter [Effective April 1, 1992].

(1) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, access, appeals, management, and retention. The ordinance or policy shall comply with the criteria set forth in this section. If any political subdivision does not adopt and maintain an ordinance or policy on or before April 1, 1992, then that political subdivision is subject to this chapter. Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Section 63-2-201. Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

(2) Each ordinance or policy relating to information practices shall:

(a) provide standards for the classification of the records of the political subdivision as public, private, confidential, or protected in accordance with Sections 63-2-301, 63-2-302, 63-2-303, and 63-2-304;

(b) require the classification of the records of the political subdivision in accordance with those standards; and

(c) provide guidelines for establishment of fees in accordance with Section 63-2-203.

(3) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect or obtain records of the political subdivision and time limits for appeals. In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63-2-204 and Part 4 of this chapter if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

(4) The political subdivision shall establish an appeals process for persons aggrieved by classification or access decisions. The policy or ordinance shall provide for:

(a) an appeals board composed of the governing body of the political subdivision; or

(b) a separate appeals board composed of members of the governing body and the public, designated by the governing body.

(5) If the requester concurs, the political subdivision may also provide for an additional level of administrative review to the records committee in accordance with Section 63-2-403.

(6) Appeals of the decisions of the appeals boards established by political subdivisions shall be by petition for judicial review to the district court. The contents of the petition for review and the conduct of the proceeding shall be in accordance with Section 63-2-402.

63-2-702. Applicability to judiciary [Effective April 1, 1992].

(1) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall classify their records in accordance with Sections 63-2-301 through 63-2-304.

(2) On or before April 1, 1992, the Judicial Council shall:

(a) make rules governing requests for access, fees, classification, segregation, appeals of requests for access and retention, and amendment of judicial records; and

(b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in district court.

(3) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the judicial branch; and

(b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter.

63-2-703. Applicability to the Legislature [Effective April 1, 1992].

(1) The Legislature and its staff offices shall classify records in accordance with Sections 63-2-301 through 63-2-304 as public, private, confidential, or protected.

(2) (a) The Legislature is not subject to Part 4, 5, or 9 of this chapter. The Legislature, through the Legislative Management Committee, shall establish policies to handle requests for records and may establish an appellate board to hear appeals from denials of access.

(b) Policies shall include reasonable times for responding to access requests and time limits for appeals.

(3) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter.

PART 8

REMEDIES

[Effective April 1, 1992]

63-2-801. Criminal penalties [Effective April 1, 1992].

(1) Any public employee who knowingly releases private, confidential, or protected records or refuses to release public records in violation of this chapter is guilty of an infraction and may be subject to disciplinary action as provided by law.

(2) Notwithstanding Subsection (1), a public employee is not criminally liable for failure to comply with Section 63-2-204 unless he intended to deny access to public records unlawfully.

63-2-802. Injunction — Attorneys' fees [Effective April 1, 1992].

(1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.

(2) (a) A district court may assess against any governmental entity or political subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.

(b) In determining whether to award attorneys' fees under this section, the court shall consider:

(i) the public benefit derived from the case;

(ii) the nature of the requester's interest in the records; and

(iii) whether the governmental entity's or political subdivision's actions had a reasonable basis in law.

(c) Attorneys' fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.

(3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.

(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63-2-404 (2) if the fees and costs were incurred 20 or more days after the requester provided to the agency a statement of position that explained, as fully as possible, the basis for the requester's position.

(5) Claims for attorneys' fees as provided in this section or for damages are subject to Chapter 30, Title 63, Governmental Immunity Act.

63-2-803. No liability for certain decisions of a governmental entity [Effective April 1, 1992].

Neither the governmental entity nor any officer or employee of the governmental entity is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

PART 9

ARCHIVES AND RECORDS SERVICE

[Effective April 1, 1992]

63-2-901. Division of Archives and Records Service created — Duties [Effective April 1, 1992].

(1) There is created the Division of Archives and Records Service within the Department of Administrative Services.

(2) The state archives shall:

(a) administer the state's archives and records management programs, including storage of records, central microphotography programs, and quality control;

(b) apply fair, efficient, and economical management methods to the collection, creation, utilization, maintenance, retention, preservation, disclosure, and disposal of records and documents;

(c) establish standards, procedures, and techniques for the effective management and physical care of records;

(d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;

(e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;

(f) establish, maintain, and operate centralized microphotography lab facilities and quality control for the state;

(g) provide staff and support services to the records committee;

(h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter;

(i) provide access to public records deposited in the archives;

(j) provide assistance to any governmental entity in administering this chapter; and

(k) prepare forms for use by all governmental entities that include space for a person requesting access to a record to provide the following information:

(i) name and mailing address;

(ii) date and time of the request; and

(iii) a description of the records requested.

(2) The state archives may:

(a) establish a report and directives management program; and

(b) establish a forms management program.

(3) The executive director of the Department of Administrative Services may direct the state archives to administer other functions or services.

63-2-902. State archivist — Duties [Effective April 1, 1992].

(1) With the approval of the governor, the executive director of the Department of Administrative Services shall appoint the state archivist to serve as director of the state archives. The state archivist shall be qualified by archival training, education, and experience.

(2) The state archivist is charged with custody of the following:

(a) the enrolled copy of the Utah constitution;

(b) the acts and resolutions passed by the Legislature;

(c) all records kept or deposited with the state archivist as provided by law;

(d) the journals of the Legislature and all bills, resolutions, memorials, petitions, and claims introduced in the Senate or the House of Representatives; and

(e) oaths of office of all state officials.

(3) (a) The state archivist is the official custodian of all noncurrent records of permanent or historic value that are not required by law to remain in the custody of the originating governmental entity.

(b) Upon the termination of any governmental entity, its records shall be transferred to the state archives.

63-2-903. Duties of governmental entities [Effective April 1, 1992].

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter;

(2) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, access, and preservation of records;

(3) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to

protect the legal and financial rights of persons directly affected by the entity's activities;

(4) submit to the state archivist proposed schedules of records for final approval by the records committee;

(5) cooperate with the state archivist in conducting surveys made by the state archivist; and

(6) comply with rules issued by the Department of Administrative Services as provided by Section 63-2-904.

63-2-904. Rulemaking authority [Effective April 1, 1992].

The executive director of the Department of Administrative Services, with the recommendation of the state archivist, may make rules as provided by Chapter 46a, Title 63, Utah Administrative Rulemaking Act, to implement provisions of this chapter dealing with procedures for the collection, storage, classification, access, and management of public, private, confidential, and protected records.

63-2-905. Records declared property of the state — Disposition [Effective April 1, 1992].

All records created or maintained by a governmental entity of the state are the property of the state and shall not be mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter.

63-2-906. Certified and microphotographed copies [Effective April 1, 1992].

(1) Upon demand, the state archives shall furnish certified copies of a record in its exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating agency, the records committee, or a court of law. When certified by the state archivist under the seal of the state archives, the copy has the same legal force and effect as if certified by the originating governmental entity.

(2) The state archives may microphotograph records when it determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal force and effect as the original. Upon review and approval of the microphotographed film by the state archivist, the source documents may be destroyed.

(3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

63-2-907. Right to replevin [Effective April 1, 1992].

To secure the safety and preservation of records, the state archivist or his representative may examine all records. On behalf of the state archivist, the attorney general may replevin any records that are not adequately safeguarded.

63-2-908. Report on information practices [Effective April 1, 1992].

(1) On or before June 1 of each year, beginning June 1, 1993, the state archives shall prepare a report for the Legislature and governor containing the title and a summary description of each record series containing data on individuals. The state archives shall provide for public inspection of the title and a summary description of each record series that does not contain data on individuals.

(2) The report also shall contain a summary description of each ordinance enacted in compliance with Section 63-2-701 and any report of noncompliance with this chapter.

63-2-909. Records made public after 75 years [Effective April 1, 1992].

(1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the records' creation shall be presumed to be public 100 years after its creation.

(2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Chapter 44, Title 78, Uniform Unclaimed Property Act.

Chapter 117. Vermont Criminal Information Center

NEW SECTION

2051. Creation of center.
2052. Director.
2053. Cooperation with other agencies.
2054. Uniform reports.
2055. Files.
2056. Certified records.
2057. Information.
2058. [Repealed.]
2059. Relationship to departments of corrections and motor vehicles.

§ 2051. Creation of center

There shall be within the department of public safety a center to be known as the Vermont criminal information center. It shall be the official state repository for all criminal records, records of the commission of crimes, arrests, convictions, photographs, descriptions, fingerprints, and such other information as the commissioner deems pertinent to criminal activity.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2052. Director

The commissioner of public safety shall appoint a qualified person as director of the center.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2053. Cooperation with other agencies

(a) The center shall cooperate with other state departments and agencies, municipal police departments, sheriffs and other law enforcement officers in this state and with federal and international law enforcement agencies to develop and carry on a uniform and complete state, interstate, national and international system of records of criminal activities and information.

(b) All state departments and agencies, municipal police departments, sheriffs and other law enforcement officers shall cooperate with and assist the center in the establishment of a complete and uniform system of records relating to the commission of crimes, arrests, convictions, imprisonment, probation, parole, fingerprints, photographs, stolen property and other matters relating to the identification and records of persons who have or who are alleged to have committed a crime, who are missing persons or who are fugitives from justice.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2054. Uniform reports

(a) The center shall provide state departments and agencies, municipal police departments, sheriffs and other law enforcement officers with uniform forms for the reporting of the commission of crimes, arrests, convictions, imprisonment, probation, parole, fingerprints, missing persons, fugitives from justice, stolen property and such other matters as the commissioner deems relevant. The commissioner of public safety shall adopt regulations relating to the use, completion and filing of the uniform forms and to the operation of the center.

(b) A department, agency or law enforcement officer who fails to comply with the regulations adopted by the director with respect to the use, completion or filing of the uniform forms, after notice of failure to comply, shall be fined not more than $100.00. Each such failure shall constitute a separate offense.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2055. Files

The director of the center shall maintain such files as are necessary relating to the commission of crimes, arrests, convictions, disposition of criminal causes, probation, parole, fugitives from justice, missing persons, fingerprints, photographs, stolen property and such matters as the commissioner deems relevant.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2056. Certified records

Upon the request of a county or district court judge, the attorney general or a state's attorney, the center shall prepare the record of arrests, convictions or sentences of a person. The record, when duly certified by the commissioner of public safety or the director of the center, shall be competent evidence in the courts of this state. Such other information as is contained in the center may be made public only with the express approval of the commissioner of public safety.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2057. Information

From time to time but at least annually, the center shall publish information relating to criminal activity, arrests, convictions and such other information as the commissioner deems relevant.—

§ 2058. Repealed. 1971, No. 258 (Adj. Sess.), § 19, eff. July 1, 1972.

Former § 2058 was derived from 1969, No. 290 (Adj. Sess.), § 10.

§ 2059. Relationship to departments of corrections and motor vehicles

This chapter shall not apply to traffic offenses or any provisions of Title 23 or those sections of Title 32 which are administered by the commissioner of motor vehicles. Notwithstanding any other provisions of this chapter the department of corrections shall be only required to furnish statistical, identification and status data, and the provisions shall not extend to material related to case supervision or material of a confidential nature such as presentence investigation, medical reports or psychiatric reports.—Added 1973,

Executive Order

E.O. No. 31 SECURITY AND PRIVACY COMMITTEE T.3 App. X

X. Security and Privacy Committee

Executive Order No. 31

[Security and Privacy Committee]

WHEREAS, information pertaining to individuals and their involvement in the criminal justice system is maintained in and by the State of Vermont, and

WHEREAS, the rights of privacy of those individuals are affected by the manner in which that information is maintained and used, and

WHEREAS, the government of the United States of America has promulgated various regulations requiring adherence to certain standards in the maintenance and use of such information, and

WHEREAS, those rights to privacy can best be protected, and the federal requirements best complied with, by planning and implementing procedures specifically designed for use in the State of Vermont;

NOW THEREFORE, I, Thomas P. Salmon, by virtue of the power vested in me as Governor of Vermont and pursuant to 3 V.S.A. Chapter 41 do hereby order and direct that a committee, to be titled the Security and Privacy Committee, be established in order to:

1. Adopt policy positions on security and privacy issues concerning information systems at the State and local level;
2. Promulgate the State Plan as required by the Federal Regulations as set forth in 28 CFR Part 20 et seq.;
3. Seek, through appropriate methods, the implementation and enforcement of procedures designed to assure the security and privacy of publicly held personal information.

Dated June 9, 1976.

Title 1
Chapter 5
Public Records

§ 315. Statement of policy

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy.—Added 1975, No. 231 (Adj. Sess.).

§ 316. Access to public records and documents

(a) Any person may inspect or copy any public record or document of a public agency, on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during customary office hours.

(b) If a photocopying machine or other mechanical device maintained for use by a public agency is used by the agency to copy the public record or document requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) A public agency having photocopying or other mechanical copying facilities shall utilize those facilities to produce copies. If the public agency does not have such facilities, nothing in this section shall be construed to require the public agency to provide or arrange for photocopying service, to use or permit the use of copying facilities other than its own, to permit operation of its copying

facilities by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.

(d) A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.—Added 1975, No. 231 (Adj. Sess.).

§ 317. Definitions; public agency; public records and documents

(a) As used in this subchapter, "public agency" or "agency" means any agency, board, department, commission, committee, branch or authority of the state or any agency, board, committee, department, branch, commission or authority of any political subdivision of the state.

(b) As used in this subchapter, "public record" or "public document" means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:

(1) records which by law are designated confidential or by a similar term;

(2) records which by law may only be disclosed to specifically designated persons;

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege;

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of a person and the charge shall be public;

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his designated representative;

(8) test questions, scoring keys, and other examination in-

struments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it;

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

(11) student records at educational institutions funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93–380) and as amended;

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

(13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof;

(14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;

(15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees;

(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document.

(17) records of inter-departmental and intra-departmental communications in any County, City, Town, Village, Town School

District, Incorporated School District, Union School District, Consolidated Water District, Fire District, or any other political subdivision of the state to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with 1 V.S.A. § 312.

(18) Records of the office of internal investigation of the department of public safety, except as provided in section 1923 of Title 20.—Added 1975, No. 231 (Adj. Sess.); amended 1977,

§ 318. Procedure

(a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, he shall so certify in writing stating his reasons for denial of access to the record. Such certification shall be made within two business days, unless otherwise provided in division (5) of this subsection. The custodian shall also notify the person of his right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to him by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this division, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted his administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.—Added 1975, No. 231 (Adj. Sess.).

§ 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides, or has his personal place of business, or in which the public records are situated, or in the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a

case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden is on the agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d) The court may assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.—Added 1975, No. 231 (Adj. Sess.).

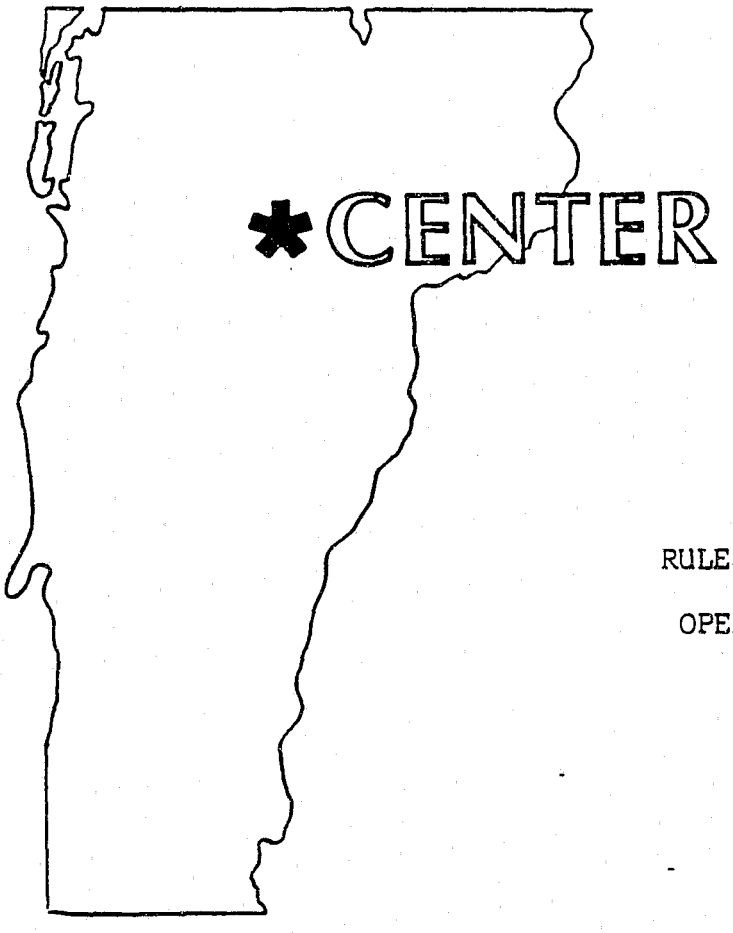
§ 320. Penalties

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the department of personnel if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the department recommends.

(b) In the event of noncompliance with the order of the court, the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.—Added 1975, No. 231 (Adj. Sess.).

VERMONT

CRIMINAL INFORMATION



RULES AND REGULATIONS GOVERNING THE OPERATION OF THE VERMONT CRIMINAL INFORMATION CENTER

1979

DEPARTMENTAL MEMORANDUM

VERMONT

DEPARTMENT OF PUBLIC SAFETY
VERMONT

DATE 31 October 1979

TO: All Criminal Justice System Agencies; Office of the Defender General

FROM: Warren M. Cone, Commissioner

SUBJECT: VCIC Regulations

The Department of Public Safety has adopted RULES AND REGULATIONS GOVERNING THE OPERATION OF THE VERMONT CRIMINAL INFORMATION CENTER. (a copy of which is attached to this memo) The regulations were effective 20 October 1979 and form the basic operating guidelines for VCIC as well as contributors to and users of record data maintained within the center.

It is important to note that selected sections of the regulations will not become effective until 31 March 1980. These are (a) Incident Reports; (b) revised arrest reports; and, (c) reports of disposition. This was done to permit finalization of these report formats and to preclude disruption of the present IRS program. Undoubtedly there will be some problems associated with forms during this interim period. Your cooperation during this transitional time frame is essential to the maintenance of the record data at VCIC. The Director of VCIC, Sgt. Billy Chilton, and his staff will be available to answer any questions you may have with regard to implementation of regulatory requirements.

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VERMONT

VERMONT CRIMINAL INFORMATION CENTER

RULES AND REGULATIONS

SECTION 1 AUTHORITY

1.10 These regulations, entitled "RULES AND REGULATIONS GOVERNING THE OPERATION OF THE VERMONT CRIMINAL INFORMATION CENTER", have been promulgated and adopted under the authority of Title 20, Vermont Statutes Annotated, Section 2054 (a), pursuant to the provisions of Title 3, Vermont Statutes Annotated, Chapter 25 (as amended) and Department of Public Safety Rules of Practice dated 24 June 1969.

SECTION 2 PURPOSE AND APPLICABILITY

2.10 PURPOSE The regulations provide the essential guidelines governing the collection, storage and dissemination of criminal history record information.

2.20 APPLICABILITY All criminal justice and non-criminal justice agencies and persons who are users of, or contributors to, the information and services of the Vermont Criminal Information Center are subject to the conditions and provisions of the regulations.

(a) The regulations do not impose upon any agency or person prohibitions or restrictions regarding the collection, storage, dissemination and security of criminal history record information obtained from original documents of entry to which they are lawfully entitled from sources other than the VCIC.

(b) The records of persons, contained within the Vermont Criminal Information Center, may not be used for determinations of employment suitability except as such is permitted by these regulations. This section shall not prohibit the acquisition and use of such information from sources other than VCIC.

SECTION 3 DESCRIPTION

3.10 THE VERMONT CRIMINAL INFORMATION CENTER, hereinafter VCIC, is the official state repository for all criminal records and the records of the commission of crimes (20 VSA § 2051).

3.20 FILES AND RECORDS The files and records maintained within VCIC shall include, but not be limited to:

(a) Incident/Offense Reports
(b) Arrest/Arraignment Reports
(c) Disposition (Adjudication) Reports
(d) Fingerprint Records
(e) Photographs
(f) Descriptions
(g) Information Request and Dissemination Records which shall contain as a minimum:

(1) Name of Requestor
(2) Agency Name
(3) Purpose of Inquiry
(4) Date of Inquiry

(h) Missing persons information
(i) Wanted Persons
(j) Release, probation and parole information
(k) Personal review of records forms

3.30 VERMONT WARRANT SYSTEM. VCIC shall be responsible for the operation of the Vermont Warrant System and shall provide a central index file of all outstanding warrants that have been issued by the State of Vermont.

SECTION 4 DEFINITIONS

4.10 As used in these regulations:

(a) INCIDENT/OFFENSE REPORT. Standardized report concerning the occurrence of a crime or criminal activity. Minimum elements required include:

(1) Agency Identification (Code)
(2) City/Town Code
(3) Calendar Year of Incident/Offense
(4) Incident/Offense Report Number
(5) Offense Code
(6) Complainant Last Name
(7) Date of Occurance
(8) Time of Occurance (24 Hour Time, AM, PM, or unknown)
(9) Case Status (Invest., Closed, Unfound, Citation or Other)
(10) Case Origin (Uniform or Non-Uniform)
(11) Must be submitted to VCIC within (10) working days of occurance

(b) ARREST/ARRAIGNMENT REPORT. Standardized report of the arrest and arraignment of persons. Minimum elements required include:

(1) Agency Identification (Code)
(2) City/Town code
(3) Year of Arrest
(4) Arrest Number
(5) Incident/Offense number
(6) Calendar Year of Incident/Offense
(7) Date of Arrest
(8) Arrested with Warrant (Yes or No)
(9) Time of Arrest (24 Hour time)
(10) Name of Subject (Last, First and Middle)
(11) Address
(12) U.S. Citizen (Yes or No)
(13) Maiden Name (Married Female Only)
(14) Aliases
(15) Place of Birth (City/Town, and State)
(16) Sex Identification (Male or Female)
(17) Date of Birth
(18) Marital Status
(19) Physical Description (Height, Weight, Build, Hair, Eyes, Race, Complexion and Identifying Scars, Marks or Tatoos)
(20) Statute Citation and Offense Charged
(21) Police Disposition (Released, Citation, Lodged, Immediate Arraignment or Other)
(22) Arraignment Date
(23) Plea at Arraignment (Guilty, Nolo, Not Guilty or Pro Forma Not Guilty)

4.10 cont'd

(24) Docket Number
(25) Bail Data (Amount in Dollars, Cash, Per Centum, Personal Recognizance or Confined for Lack of Bail)
(26) Charge at Arraignment - Statute Citation
(27) Disposition by States Attorney (entry required for VCIC use only if disposed of other than by prosecution subsequent to arraignment).
(28) Must be submitted to VCIC within (10) working days of arraignment date.
(29) No agency shall submit reports of arrest to the VCIC prior to the arraignment of the subject.

(c) DISPOSITION REPORT. Standardized report of the adjudication of an offense whether by court action, action of the States Attorney or the Attorney General. Disposition Reports shall be forwarded to the VCIC within 10 working days of the effective date of such action. Minimum elements required include:

(1) Name of Subject
(2) Docket Number
(3) Incident/Offense Number
(4) Date of Birth (Age)
(5) Place of Birth
(6) Arresting Agency (Code)
(7) Name of Offense (Statute Citation)
(8) Arraignment Date
(9) Arraignment Plea (Guilty, Nolo, Not Guilty or Pro Forma Not Guilty)
(10) Bail Data (Date Bail Set, Personal Recognizance, Appearance Bond Amount - Deposit, or Cash Surety Amount).
(11) Amended to: Name of Offense (Statute Citation)
(12) Plea Agreement
(13) Dismissal Information (by Prosecutor or Court and Date of Dismissal)
(14) Plea Information (Guilty or Nolo and Date of Plea)
(15) Transferred to Juvenile Court
(16) Verdict Information (Guilty or Not Guilty and Date)
(17) Judgement Information (Guilty or Not Guilty and Date)
(18) Fine Information (Amount)
(19) Term Information (Minimum Years, Months or Days - Maximum Years, Months or Days, Split to Serve,Suspended, Make Restitution and Amount or Other)
(20) Final Disposition Date

(d) PHOTOGRAPHS. Mugshots and photographs of other subject matter: Mugshots are to be submitted to VCIC as required by section 11.10 (d)

4.10 cont'd

(e) FINGERPRINT RECORDS shall be each of several types of standardized fingerprint record forms currently in common use throughout the Vermont criminal justice system. Fingerprint cards shall accompany reports of arrest/arraignment as specified in section 11.10(d).

(f) PROBATION, PAROLE, RELEASE. In those cases where sentence is suspended and the offender is placed on probation, a final probation termination report shall be forwarded to the VCIC by the court having jurisdication within ten (10) working days of the effective date of such action. The report shall identify the individual by full name, date of birth, incident/ offense number, docket number, offense for which convicted and shall futher state probation termination date and conditions of closure, i.e., violation, satisfactory or unsatisfactory. Release from incarceration or parole shall be a report of the release provided by the Commissioner of Corrections. The report shall be forwarded to the Director of VCIC within ten (10) working days of the effective date of action and shall contain, as a minimum, the full name and date of birth of the individual, incident/ offense number, Corrections Department identification number, offense for which the individual was convicted and release or termination date.

(g) A CRIMINAL HISTORY RECORD is defined as all documentation representing an individual's contact (s) with the Vermont criminal justice system consisting of the elements described below. Out of state, other state, federal or international criminal record information shall not be included as part of a Vermont criminal history record:

(1) IDENTIFICATION DATA: full name; date of birth; physical description and other agency, federal, state identification numbers.

(2) ARREST/ARRAIGNMENT DATA: full name; date of birth; physical description; date of arrest; offense(s) charged in clear language and appropriate statutory citation; arraignment date; police disposition.

(3) JUDICIAL DISPOSITION DATA: Full name; date of birth; conviction date to include probation information, fines assessed and confinement awarded; statute citation; nonconviction data (see section 6.20); disposition date; mittimus date; probation case termination date and type (violation, satisfactory or unsatisfactory).

(4) CUSTODY/SUPERVISION DATA: full name, date of birth; physical description; Department of Corrections identification number; release from sentenced incarceration (date and type of release); parole termination date and type (expiration or revocation).

4.10 cont'd

(h) Criminal justice agencies shall be:

(1) Courts, and;

(2) Governmental agencies, divisions or sub-units thereof, which perform the administration of justice pursuant to a statute, executive order, municipal charter or ordinance and allocate 50%, or more, of the funds budgeted and appropriated annually to them for criminal justice administration purposes.

(3) The administration of criminal justice shall be defined as any of the following activities: detection, apprehension, adjudication, correctional supervision, or rehabilitation of accused persons, or criminal offenders, criminal identification, collection, storage and dissemination of criminal history record information and nonconviction data but shall not include criminal defense functions, crime prevention activities and programs, drug addiction treatment, or similar programs unless these have been specifically charged with the rehabilitation of offenders by statute or executive order.

(i) NON-CRIMINAL JUSTICE or other agencies and individuals (to include public and private agencies, corporation, companies, associations or boards and commissions) may be authorized to receive criminal history record information and nonconviction data. Non-criminal justice agencies and individuals are defined as any agency, or employee thereof, not specifically engaged in any activity as defined in Section 4.10(h) (3). The regulations permit other public or private agencies to have access to criminal history record information and nonconviction data to implement a statute, ordinance, municipal charter, or executive order that refers to criminal conduct and contains exclusions or requirements based on such conduct.

(j) AUTHORIZED AGENT. A duly authorized representative or employee of the agencies defined by section 4.10(h) & (i).

(k) MASTER CRIMINAL INDEX. A standardized form or format used by VCIC to record or reference the record of each transaction relating to a person's contact with the criminal justice system.

(l) AGENCY. An agency or department of federal, state or local government; also a corporation or company, governmental subunit, also boards, commissions and committees.

(m) COMMISSIONER. The commissioner of the Department of Public Safety.

4.10 cont'd

(n) DIRECTOR. The Director of the Vermont Criminal Information Center.

(o) NONCONVICTION DATA. Arrest/arraignment information without disposition, or information that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(p) DISCLOSURE: Disclosure of the criminal history record information and nonconviction data also includes acknowledgement of the existence or non-existence of such data.

(q) DISSEMINATION shall be defined as the disclosure, release or transmission of information by an agency or individual to another agency or individual.

(r) AN EXECUTIVE ORDER is defined as an order by the President of the United States or Chief Executive of a state which has the force and effect of law and is published in a manner permitting regular public access thereto. Orders by chief executives of political subdivisions of a state are not executive orders within the meaning of these regulations.

(s) COURT shall mean any court in the State of Vermont or any court of the United States as such is or may be defined by rule, order or statute.

(t) ADJUDICATION DATE shall mean the date of dismissal, acquittal or date sentence imposed, except in cases of deferred sentence wherein the date deferred sentence is imposed shall be the adjudication date. Decisions not to prosecute, subsequent to arraignment, shall be reported within 10 days of such action by the prosecutor.

(u) NLETS: National Law Enforcement Telecommunications System.

(v) NCIC: National Crime Information Center

SECTION 5 DIRECTOR

5.10 APPOINTMENT AND ACCOUNTABILITY. The Director of the Vermont Criminal Information Center shall be appointed by the Commissioner of Public Safety (20 VSA S 2052).

5.20 DUTIES AND RESPONSIBILITY. The Director shall be responsible for the overall operation of the Vermont Criminal Information Center, supervision and direction of all staff personnel and delegation of intermediate supervisory responsibilities as he deems appropriate. The Director shall, with approval of the Commissioner:

(a) Serve as liaison between VCIC and the various state and local agencies which comprise the Vermont criminal justice community.

(b) Consult with the Attorney General (or his representative) on all legal matters involving these regulations or beyond the scope of these regulations but relative to VCIC.

(c) Compile and maintain a record of all contributors to VCIC files and records.

(d) Compile, publish and distribute a manual for all in-state user/contributor agencies entitled "STANDARD OPERATING PROCEDURE VCIC" (or similar title).

(e) Compile, publish, or otherwise make available, statistical data relative to the commission of crimes within the State of Vermont. Such publications shall be prepared and forwarded to the Commissioner by September 1 of each year for the previous fiscal year ending 30 June.

(f) Prepare an annual report on the operation and status of the Vermont Criminal Information Center for the Commissioner of Public Safety.

(g) Establish hours of operation of VCIC to provide for reasonable availability of information to all users on a timely basis. Scheduling shall be at the Director's discretion.

SECTION 6 CRIMINAL HISTORY RECORD INFORMATION-DISSEMINATION

6.10 This section provides the essential guidelines for the dissemination of criminal history record information to both criminal justice and noncriminal justice agencies and individuals.

(a) Covered information shall consist of criminal history record information, as defined in Section 4, and nonconviction data discussed in Section 6.20, and defined by Section 4.10(0).

(b) These regulations do not apply to:

(1) "Wanted" posters
(2) Original records of entry such as police blotters and court records of public judicial proceedings which are available from originating police agencies and courts; or,
(3) Published court opinions; or,
(4) Records of traffic offenses maintained by the Commissioner of Motor Vehicles.

6.20 NONCONVICTION DATA: Record data, relative to an arrest which subsequently did not result in a conviction based upon that arrest, and, wherein the individual has no record of previous or subsequent arrests and convictions within this state, shall not be deemed a criminal history record. Record data which falls within the foregoing category shall be prefaced: CRIMINAL JUSTICE INFORMATION ONLY-NO CRIMINAL HISTORY RECORD. Similarly, arrests pending adjudication shall also be treated as nonconviction data per Section 4.10(0). In those cases of arrest where a conviction does not result from such arrest, but, there exists records of prior or subsequent Vermont arrests and convictions, relative to the individual, nonconviction data may be included as criminal history record information.

6.30 INFORMATION DISSEMINATION

(a) Criminal justice agencies, and agents thereof, may obtain criminal history record information and nonconviction data from the VCIC. All requests shall be by full name and date of birth of the subject. The requestor shall state his/her name and the name of the agency represented and shall clearly state the specific purpose for which the information will be used or further disseminated. If the purpose of the request is for use in a current investigation, the requestor shall give the case number or other similar identification. A criminal justice agency is not prohibited from requesting criminal history record information from VCIC concerning candidates for employment specifically within the criminal justice agency. Further dissemination of such information to non-criminal justice agencies or persons is prohibited. Inquiry may be made by telephone, in writing or by computer terminal. Telephone inquiry, however, shall be restricted to in-state (Vermont) criminal justice agencies only and the Vermont Crime Information Center shall employ a

6.30 cont'd

call-back system to identify the agency and caller based upon a listing of authorized telephone numbers and persons provided to, and approved by, the Director. Use of private, party line and phone booth telephone numbers is prohibited. All telephone authorization lists shall be in the form of a request addressed to the Director, on agency letterhead, properly signed by a department head or equivalent authority.

(1) The VCIC may refuse to disseminate criminal history record and nonconviction information if, in the discretion of the Director: the purpose of the request lacks proper justification; the identity of the requestor as an authorized agency or person cannot be satisfactorily established; the proposed use of information requested is inconsistent with or prohibited by these regulations, state or federal law, municipal ordinance, charter, other regulation or executive order; is inconsistent with the provisions of Rule 16, Vermont Rules of Criminal Procedure; is prohibited by court order or rule.

(2) Upon satisfactory identification of an individual appearing in person at the VCIC, criminal history record information and nonconviction data may be released.

(3) Written requests shall be on agency letterhead, signed by a department head, or equivalent authority.

(4) Computer terminal inquiries by in-state terminal, NLETS and NCIC terminal shall be deemed to have satisfied the requirement for written requests. In-state terminal requests shall require automatic terminal identification as part of the system design.

(5) Criminal history record information and nonconviction data obtained from the VCIC shall only be valid for time and date issued.

(6) The director may decline to disseminate record data which he has determined to be inaccurate until such time as errors have been corrected.

(7) Information requests from any prosecutor shall be forwarded directly to the requestor by registered mail, return receipt requested, or conveyed by hand upon personal appearance at VCIC.

(8) The VCIC shall refuse to forward criminal history record information and nonconviction data to other than the original requestor.

(b) Non-criminal justice agencies, and agents thereof, may be entitled to criminal history record information and nonconviction data from VCIC as follows:

(1) Where ever a statute, executive order, municipal charter or ordinance denys licensing or other civil rights to a person convicted of a crime (§ 4.10(i)).

(2) All requests shall be by full name and date of birth of the individual about whom information is requested.

(3) The purpose of the request, use of information or further dissemination shall be clearly stated.

(4) The requesting agency may be required to provide the Director with a copy of their authority to obtain criminal record information.

(5) The requesting agency shall maintain a file of requests and responses from VCIC and shall make such files and records available to VCIC for audit purposes (§ 14.30).

(6) The requesting agency shall agree not to disclose the contents of any record data or logs to any person for any purpose except as provided herein.

6.40 Disclosure of criminal record information by VCIC is not prohibited for purposes of international travel, i.e., obtaining visas, passports or other recognized international travel documents. The Director may provide both conviction and nonconviction information for the purposes of this section.

6.50 Dissemination records shall be maintained by the Director concerning all requests for criminal history record and nonconviction information. These records shall include:

(a) Name of requesting agency, department or individual initiating request.
(b) Date of request.
(c) Name and date of birth of individual concerned in the request for information.
(d) Reason for the request.

6.51 Records of information dissemination shall be considered confidential.

6.60 CRIMINAL HISTORY RECORD EXTRACT

(a) A certified extract copy of criminal history record

6.60 cont'd

information shall consist of a record of the entries representing an individual's contact(s) with the criminal justice system, i.e., arrests, dispositions and correctional supervision data. Such records, when properly attested to by the Director or the Commissioner, shall represent a certified criminal history record extract and shall be deemed to satisfy the requirements of Title 20, VSA § 2056 unless otherwise specified by the court or prosecutor.

(b) A non-certified criminal history record extract shall consist of the identical elements specified in 6.60 (a), but does not require the certification of the Director or Commissioner. Such record data shall be satisfactory for the purposes of non-criminal justice agencies and all criminal justice agencies as specified by Title 20, VSA § 2056.

(c) The sources of all criminal history record information maintained by the VCIC shall be original documents of entry, or copies thereof acceptable to the Director, or micrographic copies of such documents produced by the VCIC.

6.70 INFORMATION SECURITY

(a) The Department shall conduct a background investigation of all persons who are applicants for employment or transferees seeking employment within VCIC, or routinely required to access criminal history and nonconviction data contained in VCIC for the purpose of providing security clearance. This requirement is inclusive of permanent classified, temporary or permanent part-time employees.

(b) Other individuals may be granted admittance to the VCIC or access to information contained therein on the following basis:

(1) Visitors to the Center, as approved by the Commissioner or the Director, shall be provided with a visitor pass or other suitable identification which must be prominently displayed upon their person at all times while in the VCIC.

(2) All visitor pass identification will be obtained from the VCIC at the time the individual is admitted and must be returned to VCIC upon departure, except that individual Department of Public Safety employee identification, issued by the Commissioner, shall be retained by the employee.

SECTION 7 SECURITY OF COMPUTERIZED CRIMINAL INFORMATION SYSTEMS

7.10 SECURITY CONCEPTS WITH SHARED COMPUTER SYSTEMS. The constraints of budgets and program cost effectiveness considerations may tend to preclude systems which must rely on dedicated hardware for information security. The alternative is a shared system concept with an effective employee screening program and physical plant and software security methods and procedures.

7.20 PERSONNEL SCREENING AND SECURITY. Due to the nature of material contained in a criminal history record information system, it shall be necessary to restrict access to such data, programs and storage devices, to the minimum number of persons required to effectively and efficiently operate and maintain the system. In order to satisfy the security requirements of these regulations, the Commissioner of Budget and Management shall provide to the Commissioner of Public Safety a list of persons having direct or other access to the criminal history record information system, its operational programs and tape or other storage, for the purpose of providing security clearances for these persons.

(a) Should any individual, whose name has been submitted to the Commissioner of Public Safety for clearance, fail to qualify for security clearance as the result of a background investigation conducted by the Department of Public Safety, the Commissioner of Budget and Management shall submit an alternate.

(b) Disqualification shall be on the following basis:

(1) The individual has a criminal history record.

(2) The individual is known to associate regularly and frequently with persons having criminal records.

(c) The Commissioner of Budget and Management and the Commissioner of Public Safety shall jointly maintain an accurate current listing of security clearances issued.

(d) Upon permanent reassignment of persons with a security clearance to an area not involved with criminal data, the security clearance shall become invalid effective with the date of such assignment.

(e) Secure terminal access codes shall be a provision of the criminal records information system software design. Access codes shall be amended immediately upon reassignment, termination or other of VCIC or Data Processing personnel having access to such information.

7.30 SECURITY COOPERATION. The Commissioner of Public Safety and the Commissioner of Budget and Management shall cooperate in the development of an environment of informational and physical security suitable to the specialized requirements of criminal history record information.

7.40 PROGRAM SECURITY. Program safeguards shall be designed to restrict access and detect any breach of security as follows:

(a) Criminal history record data entry and file maintenance shall be restricted to VCIC.

(b) Direct on-line access of criminal history record information shall not normally be possible from any terminal facility except VCIC. The capability to unlock remote terminals to permit direct access shall be controlled at VCIC.

(c) All unauthorized attempts to access criminal history information shall:

(1) Produce an automatic notation of the date of inquiry or access and terminal identification on the criminal history record queried.

(2) Detect and store a record of all unauthorized attempts or penetrations of any criminal history record information system, program or file.

(d) The design and documentation of the security program shall be restricted to the minimum number of employees outside VCIC essential to its operation and maintenance.

7.50 The unauthorized disclosure of criminal history record information by VCIC or other Public Safety employees shall be cause for immediate dismissal. (see section 13.21).

7.60 The knowledgeable attempt by any agency employee outside VCIC to directly access criminal history information may result in suspension of that agency's terminal privileges.

SECTION 8 RECORD ACCESS AND APPEAL

8.10 Any person, who has reason to believe that the VCIC maintains criminal history records or nonconviction data concerning him may request an opportunity to view this information and may request a copy of reports and forms which constitute the record.

8.11 Information requests shall be in writing, addressed to the Director or the Commissioner. Requestor shall include full name and date of birth.

8.12 Proper identification of the requestor shall be required prior to the release of the acknowledgement of any information by VCIC. To that end the following procedure shall govern:

(a) Appearance in person may require fingerprint verification for proper identification. If fingerprints are required, they shall be taken by the State Police.

(b) Information requests, wherein personal appearance is or would be a hardship may be acknowledged in writing by the Director. A hardship is defined as follows:

(1) Requestor is presently incarcerated (proceed as defined in § 8.70).
(2) Requestor is presently a resident of another state or country.
(3) Requestor is physically incapacitated and unable to travel; such incapacity shall be defined by the requestor, and;
(4) Other cases as may be determined by the Director or Commissioner.

8.13 In those cases where the requestor cannot travel due to hardship determination, except as provided in §8.70, the identity of the requestor may be established by any of the following alternative methods:

(a) The chief of police of the town or city of the requestor's residence, may attest to the requestor's identity as a person known to him or;

(b) Any law firm or attorney, duly licensed to practice law in the state of requestor's residence, may attest to the requestor's identity as a person known to him, or;

(c) Any court of law in the state of requestor's residence may attest to the requestor's identity as a person known to the court.

8.20 INDIVIDUAL RIGHTS UNDER REVIEW. A person granted permission to review his file information shall have the right to:

(a) Make notes concerning file information reviewed.

(b) Obtain a non-certified criminal record extract of file information reviewed:

(1) The Director shall have the right to charge each person the reasonable cost of providing photostats or other copies of documents, and all copies may be retained by VCIC until payment is made.

(2) Copies of criminal history record documents shall be for the express use of the individual.

(c) Examine the records of review and inquiry relative to his file.

8.30 RIGHT TO CHALLENGE. An individual who believes that information contained in his VCIC file is inaccurate may challenge the items of alleged discrepancy.

(a) The Director shall investigate all alleged discrepancy(ies) within 72 hours of notification.

(b) A challenge found to be valid by investigation shall be processed by the Director as follows:

(1) VCIC ERROR. Correct the discrepancy and notify the individual by certified mail within 72 hours. (See Section 8.60).

(2) CONTRIBUTING AGENCY ERROR. Within 72 hours:

(i) Notify the individual by certified mail of the results of the investigation and the name of the agency responsible for providing the incorrect information.

(ii) Notify the originating agency by certified mail identifying the discrepancy and request correction within 10 working days.

8.40 INVALID CHALLENGE - NOTIFICATION. The Director shall notify, by certified mail, any person whose challenge has been determined to be invalid as a result of an investigation. Such notice shall advise the individual that no apparent error exists. The decision of the Director may be appealed as provided for in section 8.50.

8.50 RIGHT OF APPEAL. Any person, dissatisfied with a decision of the Director concerning information contained in their record file, may appeal to the Commission of Public Safety to initiate a formal proceeding to hear the matter in dispute. Proceedings shall be in accordance with the "RULES OF PRACTICE" adopted by the Department of Public Safety, effective July 1969, and filed with the Secretary of State.

(a) The individual shall, by certified mail, notify the Commissioner of Public Safety that he has challenged certain information contained in his record in VCIC, and;

(b) That the Director of VCIC has disputed or otherwise claimed the challenge to be invalid, and;

(c) Pursuant to Rule 5, Department of Public Safety "Rules of Practice", and these regulations, he is petitioning for a formal proceeding to resolve the matter.

(d) The petition must include the specific details of the challenge and reasons for the claim that information is in error.

(e) The Commissioner, upon receipt of a notice of appeal shall, within 7 working days, set a date for hearing the appeal, but such date shall not be greater that 30 consecutive days from date of receipt, and;

(1) Within 30 consecutive days from the date of hearing, the Commissioner shall render findings upon the matter(s) in dispute and notify the petitioner by certified mail.

(2) In the event the challenge is found invalid, the petitioner shall be informed that the disputed information may only be changed by court order.

(3) In the event the challenge is found valid, the Director of VCIC shall be notified to proceed in accordance with section 8.30 and 8.60, RECORD CORRECTION.

8.60 RECORD CORRECTION. The Director shall notify all agencies and persons, who have received erroneous information, of the correction to be affected. This will be accomplished within 24 hours of receipt of notification that a change or correction is required. This section shall apply to changes authorized by the Director, the originating agency, the Commissioner or by court order.

8.70 RIGHT OF REVIEW BY PERSONS CONFINED. A person confined to a Vermont, other state or federal institution, resulting from a Vermont conviction, shall have the right to review his record by making application to the Vermont Commissioner of Corrections, through the superintendent, or principal administrator, of the institution in which he is incarcerated.

(a) The Commissioner of Corrections shall request, in writing, that the Director of VCIC provide a non-certified criminal history record extract for the individual named.

(b) The Director shall, within 72 hours, deliver the record data in person or, by certified mail, to the Commissioner of Corrections.

(c) The rights to challenge and appeal, as defined by sections 8.30 and 8.50, are applicable.

8.80 LIMITATIONS ON FREQUENCY OF ACCESS. The Director of VCIC may impose limitations on the frequency of access under the following conditions.

(a) There have been no system contacts involving the individual since the last review, as far as VCIC records then indicate.

(b) In the opinion of the Director, the frequency of requests by any one individual is excessive and disruptive of regular work schedules at the center.

8.90 RESEARCH AND STATISTICS. The records contained within VCIC may be made available to any criminal justice, non-criminal justice agency or person for research and statistical purposes at the discretion of the Director and Commissioner of Public Safety. Access to VCIC files and records shall be granted under the following conditions.

(a) The information must be reasonably available at VCIC within the existing files and systems of access.

(b) Activity shall be performed at VCIC in accordance with a schedule approved by the Director.

(c) File data will not be removed from VCIC under any circumstances.

(d) No copies of file data will be made under any circumstances.

(e) Information which might describe or otherwise identify, directly or indirectly, any particular person(s) shall not be included in any notes or other material.

(f) The disclosure of privileged information by any person engaged in research and statistical work is prohibited. Violation of the provisions of this Subsection shall result in:

(1) Immediate revocation of access authority.

SECTION 9 JUVENILE RECORDS

9.10 Juvenile offender records shall be excluded from VCIC files, except that, information concerning persons under the age of eighteen years shall be included when the individual is both adjudicated and receives disposition as an adult.

9.20 Arrest and arraignment data, relative to an individual sixteen years of age, but under eighteen years, may be accepted by VCIC for entry into the records system. However, in the event proceedings are subsequently transferred to juvenile court, such information shall be expunged from the system, marked "JUVENILE RECORDS" and forwarded to the court having jurisdiction for proper disposition.

9.30 No criminal history record concerning juveniles, juvenile offenses or acts of delinquency shall be converted from manual to computerized form except that information relating to proceedings in which a juvenile is both adjudicated and receives disposition as an adult shall be converted.

9.40 All juvenile records, which may presently exist within VCIC, and from which the individual's identity is ascertainable, shall be expunged from the system effective with the adoption of these regulations.

9.50 Juvenile data by age, sex and type of offense is not precluded from VCIC. Such information is of statistical value and may be maintained within VCIC for this purpose.

SECTION 10 EXPUNGEMENT, SEALING AND EXECUTIVE PARDONS

10.10 VCIC procedures, pursuant to the receipt of a court ordered expungement or sealing order, or an executive pardon, are dependent upon the content of such order or pardon.

10.20 FORWARDING DELETED RECORDS. All deleted materials shall be forwarded in a single package by registered mail, return receipt requested, deliver to addressee only to:

(a) The court issuing the order in cases of expungement sealing order, or;

(b) The Governor's Office in cases of executive pardon.

10.30 VCIC shall respond to all further inquiries with respect to the offense(s) subject to the expungement, sealing order or executive pardon, NO RECORD.

SECTION 11 REPORTING REQUIREMENTS

11.10 Reporting agencies, shall be courts and criminal justice agencies as such are defined in Section 4.10(h) (1) and (2). The forms and documents required are:

(a) Incident/Offense Report (§ 4.10 (a)).

(b) Arrest/Arraignment Report (§ 4.10 (b)).

(c) Disposition Report (§ 4.10(c)).

(d) Fingerprints shall be required in every instance of the arrest of an individual for any offense, the maximum sentence for which, by Vermont Statute, is one year or longer or the maximum fine is $100.00 or more. Motor vehicle offenses are excluded except operation without consent of owner; careless and negligent driving death resulting; leaving the scene of an accident; driving under the influence of alcohol or any other drug, which are covered offenses within the context of this section. Additionally, fingerprints shall be taken in every instance of individuals apprehended as fugitives from justice and in every case involving incarceration. One of each original completed fingerprint card shall be forwarded to the VCIC with the arrest/arraignment report within 10 working days following arraignment of the subject. The Director shall be responsible for distribution of materials so received. The Director shall be responsible for processing all R-84 fingerprint record forms in cases of conviction and shall provide arresting agencies with a copy of the disposition report in every instance. Nothing in this section shall be construed as a prohibition against the retention of duplicate materials or copies of materials which the arresting agency has determined to be vital or essential to its system of records. It is recommended that photographs(mugshots) accompany reports of arrest and arraignment and fingerprint cards when ever possible.

(e) Parole termination shall be reported to the VCIC by the Commissioner of the Department of Corrections within 10 working days of the effective date of such action. Minimum data elements shall be:

(1) Name of person (first name, middle name, last name)
(2) Date of birth.
(3) Date of termination.
(4) Type of termination(expiration or revocation).

(f) Probation termination (see section 4.10(f)).

(g) Release from incarceration or parole (see section 4.10(F))

(h) Reports of persons missing. Such reports shall be on forms provided by the Director.

(i) Reports of persons wanted shall be on forms provided by the Director.

(j) Reports of property stolen shall be on forms provided by the Director.

11.20 TIME REQUIREMENTS. Unless otherwise specified, all reports and documents required for submission to the VCIC shall be forwarded within ten (10) working days from date of transaction. Pre-trial confinements will be reported on the arrest/arraignment report; confinement for lack of bail and persons released on probation by the court shall be reported on the disposition report.

11.30 INCIDENT/OFFENSE REPORTS shall be submitted to the VCIC relative to each occurrence of crimes falling within the following classifications:

(a) Criminal Homicide:
  (1) Murder and nonnegligent manslaughter
  (2) Manslaughter by negligence
(b) Forcible Rape:
  (1) Rape by force
  (2) Attempts to commit forcible rape
(c) Robbery:
  (1) Firearm
  (2) Knife or cutting instrument
  (3) Other dangerous weapon
  (4) Strong-arm (i.e., fist, feet, hands).
(d) Aggravated assault:
  (1) Firearm
  (2) Knife or cutting instrument
  (3) Other dangerous weapon
  (4) Hands, feet, fist - aggravated injury
(e) Burglary:
  (1) Forcible entry
  (2) Unlawful entry - no force
  (3) Attempted forcible entry
(f) Larceny - Theft (except motor vehicle theft)
(g) Motor vehicle theft:
  (1) Autos
  (2) Trucks and buses
  (3) Other vehicles
(h) Other assaults which do not result in serious or aggravated injury to the victim.
  (1) Simple assault
  (2) Minor assault
  (3) Assault and battery
  (4) Injury by culpable negligence
  (5) Resisting or obstructing an officer

(6) Intimidation
(7) Coercion
(8) Hazing
(9) All attempts to commit above

(i) Arson
(j) Forgery and counterfeiting
(k) Fraud
(l) Embezzlement
(m) Stolen property including buying, receiving, possessing as well as attempts.
(n) Vandalism
(o) Weapons, carrying, possessing; generally regulatory offenses
(p) Prostitution
(q) Sex Offenses:
(1) Adultery and fornication
(2) Incest
(3) Indecent exposure
(4) Indecent liberties
(5) Seduction
(6) Sodomy
(7) Statutory rape (no force)

(r) Narcotic drug law violations
(s) Gambling:
(1) Bookmaking
(2) Numbers, lottery
(3) All other
(t) Offenses against the family and children:
(1) Desertion, abandonment or nonsupport of wife or children.
(2) Neglect or child abuse
(3) Nonpayment of alimony
(u) Driving under the influence of alcohol or any other drug
(v) Liquor law violations
(w) Disorderly conduct
(x) All other statutory violations not otherwise included in the above.

11.40 QUALITY CONTROL. Each agency required to submit reports and other documents to VCIC shall ensure that:

(a) All materials are clearly legible and suitable for microfilming or other reproduction as required by the Director.
(b) Information submitted is both accurate and complete.
(c) Person identification is accurate and complete.
(d) Time frames for submission are strictly observed.

SECTION 12 INVESTIGATIVE REPORTS

12.10 Reports of the investigation and detection of crime are not a requirement for VCIC files and records.

(a) Exception: Fire investigations conducted by the Department of Public Safety as a function of the office of State Fire Marshal (20 VSA § 2681, 2635, 2831, and 2833) shall be forwarded to VCIC for processing (statistical data) and file storage.

(b) Fire investigation reports may be disseminated by VCIC in accordance with 20 VSA § 1815, except that:

(1) In no instance will a fire investigation report be released in a criminal case until prosecution, if any, has been completed, unless:

(2) Written consent from the prosecuting attorney having jurisdiction in the case has been provided the Director of VCIC or:

(3) A court order directing the release of information is obtained.

12.11 INDIVIDUAL REVIEWS PROHIBITED. Fire investigation reports shall not be subject to individual review as defined in Section 8 of these regulations.

SECTION 13 SANCTIONS - EMPLOYEE REQUIREMENTS

13.10 NON-COMPLIANCE Failure to comply with the provisions of these regulations, after notice of failure to comply, shall subject the agency, department or law enforcement officer to the provisions of Title 20 VSA § 2054(b).

13.20 UNAUTHORIZED DISCLOSURE of criminal history record information by an employee of VCIC or other employee of the Department of Public Safety, shall be cause for dismissal, subject to existing State personal regulations, the Vermont State Employees Labor Relations Act and state employee labor contracts in effect at the time.

13.21 UNAUTHORIZED DISCLOSURE of criminal history record information by criminal justice agencies (or agents or employees thereof) shall be cause for the suspension of that agency's access privileges.

(a) Such suspension, if invoked, shall remain in effect until the agency has satisfied the Director that appropriate corrective action has been taken. Notification of action taken shall be in writing to the Director. If suspension of access has not been invoked and the agency has failed to notify the Director of corrective action within 14 working days of the Director's notice to the agency of a disclosure violation, suspension shall be mandatory for a period of not less than 30 consecutive days, and shall continue in effect until the Director has been satisfied as to the corrective action taken by the agency.

(1) The Director shall cause to be published monthly a listing of agencies suspended or reinstated.

(b) Should an agency, suspended per 13.21 (a), feel that such action is unwarranted or has been unduly extended despite attempts to satisfy the Director's requirement for corrective action, the agency may appeal the matter to the Commissioner.

(c) Second offense disclosure violation within a calendar year (January-December) by any criminal justice agency shall be cause for immediate suspension of access privileges and the matter shall be referred to the Attorney General for appropriate action. Notification shall be in writing to the agency with a copy to the Attorney General. Reinstatement of access privileges shall occur only upon notification to the Director by the Attorney General that the matter has been resolved to the satisfaction of the State.

(d) An agency whose privilege of access to VCIC record information has been suspended is not relieved of reporting responsibilities during the suspension period.

13.22 UNAUTHORIZED DISCLOSURE* by NON-CRIMINAL justice agencies shall subject such agencies to the same procedures as outlined in 13.21(a) (d) above.

13.30 VCIC EMPLOYMENT - CRIMINAL RECORDS CHECK. The Personnel Officer of the Department of Public Safety shall, prior to employment of any person within VCIC, inform the applicant, candidate or transferee that a criminal records check will be required. Upon notification to the individual that a record check will be made, he/she may decline employment within VCIC without prejudice to availability elsewhere in state government. No notation shall be made upon their application for employment.

13.31 DENIAL OF EMPLOYMENT WITHIN VCIC: Employment within the VCIC may be denied to certain individuals, if, in the opinion of the Director of VCIC, and upon examination of the applicant's background, there exists a reasonable concern for information security should the person be employed.

13.32 Denial of employment within VCIC shall be mandatory in cases where there has been a conviction at the time for the following offenses, or there has been an arrest pending disposition involving:

(a) Perjury
(b) Murder
(c) Sex Crime
(d) Robbery with a weapon
(e) Assault with a weapon
(f) Arson, including bombing threats

13.33 Denial of employment based on convictions for, or arrests pending disposition of other criminal acts, will be considered and evaluated on a case by case basis. (Minor traffic violations excluded.)

* See Section 4.10(P)

SECTION 14 USER REQUIREMENTS AND RECORDS

14.10 All agencies who obtain criminal history record information from the VCIC shall maintain a record of such requests as follows:*

(a) Date of request
(b) Name of person (employee)making the request
(c) Reason for the request
(d) Names and addresses of all persons and agencies to whom criminal record information obtained from VCIC was given and the reason .

14.20 The director of VCIC shall provide record forms to all using agencies and shall compile a list of such user agencies for the purpose of information dissemination use audits.

14.30 Requesting agencies shall maintain request records (or forms) on a calendar year basis and each form, record or set of forms or records, shall be maintained by the using agency for a period of three (3) years from the year-date of such form or record.

(a) Requesting agencies shall make any such form or record, as defined in this section of the regulations, available for audit or inspection by the Director of VCIC or his authorized representative upon request.

(b) The Director of VCIC or the Commissioner of Public Safety may, for the purposes of audit, direct by letter authority any employee of the Department of Public Safety to perform the audit function.

(c) Any using agency may refuse to disclose any record of dissemination to any person who does not have in his/her possession such letter authority excuted by the Director of VCIC or the Commissioner of Public Safety.

14.40 Any agency or employee thereof, who is found to have violated the provisions of these regulations with respect to unauthorized disclosure, shall be subject to the sanctions defined by Section 13.

*Any record obtained from VCIC which has been identified as NONCONVICTION data shall be clearly marked on the record form.

§ 881. Examination of public records

Public records defined

(a) When used in this chapter "public records" includes all records and documents of or belonging to this Territory or any branch of government in such Territory or any department, board, council or committee of any branch of government.

Citizens right to examine

(b) Every citizen of this Territory shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential. The right to copy records shall include the right to make photographs or photographic copies while the records are in the possession of the lawful custodian of the records.

All rights under this section are in addition to the right to obtain certified copies of records under section 882 herein.

Supervision

(c) Such examination and copying shall be done under the supervision of the lawful custodian of the records or his authorized designee. The lawful custodian may adopt and enforce reasonable rules and regulations regarding such work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for such work, but if it is impracticable to do such work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for such work. All expenses of such work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or his authorized deputy in supervising the records during such work.

Hours when available

(d) The rights of citizens under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m., Monday through Friday, excluding legal holidays, unless the citizen exercising such right and the lawful custodian agree on a different time.

Enforcement of rights

(e) The provisions of this chapter and all rights of citizens under this chapter may be enforced by mandamus or injunction whether or not any other remedy is also available.

Penalty

(f) It shall be unlawful for any person to deny or refuse any citizen of this Territory any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars.

Confidential records

(g) The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release information:

1. Personal information in records, regarding a student, prospective student, or former students of a public or nonpublic school or educational institution maintaining such records.

2. Hospital records and medical records of the condition, diagnosis, care or treatment of a patient or former patient, including outpatients.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers investigative reports, except where disclosure is authorized elsewhere in this Code.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Information regarding negotiations with a prospective beneficiary for investment incentive benefits.

9. Criminal identification files of the Department of Public Safety. However, records of current and prior arrests shall be public records.

10. Personal information in confidential personnel records of the Division of Personnel or other department or agency where same may be kept.

Injunction to restrain examination

(h) In accordance with the rules of civil procedure the district court may grant an injunction restraining the examination (including copying) of a specific public record, if the petition supported by affidavit shows and if the court finds that such examination would clearly not be in the public interest and would substantially and irreparably injure any person or persons. The district court shall take into account the policy of this chapter that free and open

examination of public records is generally in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Such injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond. Reasonable delay by any person in permitting the examination of a record in order to seek an injunction under this section is not a violation of this chapter, if such person believes in good faith that he is entitled to an injunction restraining the examination of such record.—Amended Dec. 6, 1972, No. 3346, Sess. L. 1972, p. 520.

VIRGINIA

Code of Virginia

CHAPTER 23.

CENTRAL CRIMINAL RECORDS EXCHANGE.

Sec.

19.2-387. Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police.

19.2-388. Duties and authority of Exchange.

19.2-389. Dissemination of criminal history record information.

19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court; Exchange may receive, etc., material submitted by other agencies.

19.2-391. Records to be made available to Exchange by state officials and agencies; duplication of records.

19.2-392. Fingerprints and photographs by police authorities.

§ 19.2-387. Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police. — (a) The Central Criminal Records Exchange shall operate as a separate division within the Department of State Police and shall be the sole criminal record keeping agency of the State, except for the Division of Motor Vehicles.

(b) The Superintendent of State Police is hereby authorized to employ such personnel, establish such offices and acquire such equipment as shall be necessary to carry out the purposes of this chapter and is also authorized to enter into agreements with other state agencies for services to be performed for it by employees of such other agencies. (Code 1950, § 19.1-19.1:1; 1970, c. 101; 1975, c. 495.)

§ 19.2-388. Duties and authority of Exchange. — It shall be the duty of the Central Criminal Records Exchange to receive, classify and file criminal history record information as defined in § 9-169 and other records required to be reported to it by § 19.2-390. The Exchange is authorized to prepare and furnish to all state and local law-enforcement officials and agencies, to clerks of circuit courts and district courts, and to corrections and penal officials, forms which shall be used for the making of such reports. (Code 1950, § 19.1-19.2; 1968, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1982, c. 33.)

§ 19.2-389. Dissemination of criminal history record information. — A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants;

2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government which are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9-169 at his costs;

12. The Commissioner of the Department of Social Services for the conduct of investigations with respect to applicants for a license to operate a child-caring institution, child-care center, child-placing agency, independent foster home, family day-care home or family day-care system as defined in § 63.1-195 pursuant to § 63.1-198 and employees of and volunteers at such facilities, caretakers in homes approved by family day-care systems, and foster parents and adoptive parents approved by child-placing agencies pursuant to § 63.1-198.1, subject to the limitations set out in subsection E;

13. The school divisions of the Counties of Chesterfield, Fairfax and Prince William and the Cities of Alexandria and Manassas for the purpose of screening individuals who accept public school employment pursuant to § 22.1-296.2; and

14. As otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case, and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to assure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

E. Criminal history information provided to the Commissioner of the Department of Social Services pursuant to subdivision A 12 shall be limited to convictions on file with the Exchange for any offense specified in §§ 63.1-198.1 and 63.1-199. The information provided to the Commissioner shall not be disseminated except as provided in §§ 63.1-198 and 63.1-198.1. (Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1977, c. 626; 1978, c. 350; 1979, c. 480; 1981, c. 207; 1985, c. 360; 1987, cc. 130, 131; 1988, c. 851; 1989, c. 544; 1990, c. 766.)

§ 22.1-296.2. Fingerprinting required.—As a condition of employment, any school board under an urban county executive form of government *or in any county having a population in excess of 100,000 which has adopted the county executive form of government and any city having a population in excess of 15,000 which is surrounded by such county having the county executive form of government* shall require any individual who accepts a position after July 1, 1989, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the school board whether or not the applicant has ever been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, failing to secure medical attention for an injured child, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, neglect of children as set out in §

18.2-371.1, or obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, or an equivalent offense in another state. The Central Criminal Records Exchange shall not disclose information to the school board regarding charges or convictions of any crimes not specified in this section. If an applicant is denied employment because of information appearing on his criminal history record, the school board shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant. The information provided to the school board shall not be disseminated except as provided in this section.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court; Exchange may receive, etc., material submitted by other agencies. — (a) Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest on a charge of treason or of any felony or of any offense punishable as a misdemeanor under Title 54, or Class 1 and 2 misdemeanors under Title 18.2, except an arrest for a violation of Article 2, of Chapter 7 of Title 18.2 (§ 18.2-266 et seq.), for violation of Article 2 of Chapter 9 of Title 18.2 (§ 18.2-415), or § 18.2-119 or any similar ordinance of any county, city or town. Such reports shall contain such information as shall be required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau.

For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until after a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal. Upon such conviction, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city, and it shall be the duty of such law-enforcement officer, or his designee who may be the arresting officer, to insure that such report is completed after a determination of guilt. The court shall require the officer to complete the report immediately following his conviction, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him.

(b) The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency, nolle prosequi, acquittal, or conviction of, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in paragraph (a) of this section. In the case of offenses not required to be reported to the Exchange by paragraph (a) of this section, the reports of any of the foregoing dispositions

shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.1-135.1. No such report of conviction in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction has been nullified in any manner, he shall also make a report of that fact, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange, any reversal or other amendment to a prior sentence reported to the Exchange. For each such report made by a clerk of a circuit court, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

(c) In addition to those offenses enumerated in paragraph (a) of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

(d) Corrections officials responsible for maintaining correctional status information, as required by the rules and regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange.

(e) Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section shall adopt procedures reasonably designed at a minimum (i) to insure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

(f) Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling. (Code 1950, § 19.1-19.3; 1966, c. 669; 1968, c. 724; 1970, c. 191; 1971, Ex. Sess., c. 107; 1974, c. 575; 1975, cc. 495, 584; 1976, cc. 336, 572, 771; 1978, cc. 467, 825; 1979, c. 378; 1981, c. 529; 1982, cc. 33, 535.)

§ 19.2-391. Records to be made available to Exchange by state officials and agencies; duplication of records. — Each state official and agency shall make available to the Central Criminal Records Exchange such of their records as are pertinent to its functions and shall cooperate with the Exchange in the development and use of equipment and facilities on a joint basis, where feasible. No state official or agency shall maintain records which are a duplication of the records on deposit in the Central Criminal Records Exchange, except to the extent necessary for efficient internal administration of such agency. (Code 1950, § 19.1-19.4; 1966, c. 669; 1975, c. 495.)

§ 19.2-392. Fingerprints and photographs by police authorities. — All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of any person arrested by them and charged with a felony or with any misdemeanor or arrest for which is to be reported by them to the Central Criminal Records Exchange, or when a person pleads guilty or is found guilty after being summoned in accordance with § 19.2-74. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records. (Code 1950, § 19.1-19.6; 1968, c. 722; 1975, c. 495; 1978, c. 825.)

CHAPTER 23.1.

EXPUNGEMENT OF CRIMINAL RECORDS.

Sec.	
19.2-392.1.	Statement of policy.
19.2-392.2.	Expungement of police and court records.
19.2-392.3.	Disclosure of expunged records.
19.2-392.4.	Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments.

§ 19.2-392.1. Statement of policy. — The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, an education and to obtain credit. This chapter is intended to protect the innocent persons who are arrested from unwarranted damage which may occur as a result of being arrested. (1977, c. 675.)

§ **19.2-392.2. Expungement of police and court records.** — A. If a person is charged with the commission of a crime and

1. Is acquitted, or

2. A nolle prosequi is taken or the charge is otherwise dismissed, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

B. The petition with a copy of the warrant or indictment if reasonably available shall be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

C. A copy of the petition shall be served on the Commonwealth's attorney of the city or county in which the petition is filed. The Commonwealth's attorney may file an objection or answer to the petition within twenty-one days after it is served on him.

D. *Hearing by court; granting or denial of expungement.* — The court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition.

E. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

F. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of Criminal Justice Services, which Department shall, pursuant to rules and regulations adopted pursuant to § 9-190 of this Code, direct the manner by which the appropriate expungement or removal of such records shall be effected.

G. Costs shall be as provided by § 14.1-113, but shall not be recoverable against the Commonwealth. (1977, c. 675; 1983, c. 394.)

§ **19.2-392.3. Disclosure of expunged records.** — A. It shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged.

B. Upon a verified petition filed by the Commonwealth's attorney alleging that the record is needed by a law-enforcement agency for purposes of employment application as an employee of a law-enforcement agency or for a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made of it.

C. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. (1977, c. 675; 1978, c. 713.)

§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments. — A. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.

B. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest or criminal charge against him that has been expunged.

C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation. (1977, c. 675.)

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms. — A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, and social security and/or any other identification number and (ii) requested and received criminal history record information by a telephone call to the State Police. Upon receipt of the request for a criminal history record information check, the State Police shall (i) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (ii) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (iii) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's call, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision B 1 of this subsection may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision B 1 of this subsection and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9-192, the State Police shall not maintain records longer than thirty days from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of twelve months.

4. Within twenty-four hours following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or

transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within twenty-four hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within ten days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of this Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9-192 or institute a civil action as provided in § 9-194, provided any such action is initiated within thirty days of such denial.

F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

G. For purposes of this section:

"Antique handgun or pistol" means any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (i) is not designed or redesigned for using rimfire or conventional center-fire fixed ammunition or (ii) uses rimfire or conventional center-fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any (i) handgun or pistol having a barrel length of less than five inches which expels a projectile by action of an explosion or (ii) semi-automatic center-fire rifle or pistol which expels a projectile by action of an explosion and is provided by the manufacturer with a magazine which will hold more than twenty rounds of ammunition or designed by the manufacturer to accommodate a silencer or bayonet or equipped with a bipod, flash suppresser or folding stock.

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section.

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq., (ii) purchases by or sales to any law-enforcement officer or agent of the United States, Commonwealth or any local government, (iii) antique hand guns or pistols or (iv) transactions in any

county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this section.

J. All licensed firearms dealers shall collect a fee of two dollars for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of five dollars shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police on the twentieth day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 1 misdemeanor. (1989, c. 745; 1990, cc. 594, 692.)

CHAPTER 27.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES; BOARD.

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ARTICLE 1.

General Provisions.

§ 9-167. Department created. — On and after July one, nineteen hundred eighty-two, the Criminal Justice Services Commission, the Division of Justice and Crime Prevention and the Council on Criminal Justice are abolished and there is hereby created a Department of Criminal Justice Services in the executive department. (1981, c. 632.)

§ 9-168. Board established; Committee on Training established; appointment; terms; vacancies; members not disqualified from holding other offices; designation of chairman; expenses; meetings; reports. — A. There is hereby created the Criminal Justice Services Board. The Board shall be composed of twenty-one members as set out below. Five members of the Board shall be as follows: the Chief Justice of the Supreme Court of Virginia, or his designee; the Attorney General of Virginia, or his designee; the Superintendent of the Department of State Police; the Director of the Department of Corrections; and the Executive Secretary of the Supreme Court of Virginia. In those instances in which the Executive Secretary of the Supreme Court of Virginia, the Superintendent of the Department of State Police, or the Director of the Department of Corrections will be unavoidably absent from a board meeting, he may appoint a member of his staff to represent him at the meeting. Twelve members shall be appointed by the Governor from among residents of this Commonwealth who are representative of the broad categories of State and local governments, criminal justice systems, and law-enforcement agencies, including but not limited to, police officials, sheriffs, Commonwealth's attorneys, defense counsel, the judiciary, correctional and rehabilitative activities, and other locally elected and appointed administrative and legislative officials, provided that among these twelve members there shall be two sheriffs representing the Virginia State Sheriffs Association selected from among names submitted by the Association; two representatives of the Chiefs of Police Association selected from among names submitted by the Association; one Commonwealth's Attorney selected from among names submitted by the Association for Commonwealth's Attorneys; one person who is a mayor, city or town manager, or member of a city or town council representing the Virginia Municipal League selected from among names submitted by the League; and one person who is a county executive, manager, or member of a county board of supervisors representing the Virginia Association of Counties selected from among names submitted by the Association. The additional four members of the Board shall be members of the General Assembly appointed by

the chairmen of legislative committees as follows: one member of the Appropriations Committee of the House of Delegates; one member of the Committee on Finance of the Senate; one member of the Committee for Courts of Justice of the House of Delegates, and one member of the Committee for Courts of Justice of the Senate. The legislative members shall serve for the terms for which they were elected and shall serve as ex officio members without a vote.

B. There is further created a permanent Committee on Training under the Board which shall be the policy-making body responsible to the Board for effecting the provisions of subsections 2 through 11 of § 9-170 herein. The Committee on Training shall be composed of eleven members of the Board as follows: the Superintendent of the Department of State Police; the Director of the Department of Corrections; the Executive Secretary of the Supreme Court of Virginia; the two sheriffs representing the Virginia State Sheriffs Association; the two representatives of the Chiefs of Police Association; the Commonwealth's Attorney representing the Association for Commonwealth's Attorneys; the representative of the Virginia Municipal League; the representative of the Virginia Association of Counties; and one member designated by the Chairman of the Board from among the other appointments made by the Governor. The Committee on Training shall annually elect its chairman from among its members.

C. The members of the Board appointed by the Governor shall serve for terms of four years, provided that no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. Notwithstanding anything in this chapter to the contrary, the terms of members initially appointed to the Board by the Governor upon its establishment shall be: six for three years and six for four years. The Governor, at the time of appointment, shall designate which of the terms are respectively for three and four years. Any vacancy on the Board shall be filled in the same manner as the original appointment, but for the unexpired term.

D. The Governor shall appoint a chairman of the Board, and the Board shall designate one or more vice-chairmen from among its members, who shall serve at the pleasure of the Board.

E. Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Board shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

F. Members of the Board shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service and to receive such compensation as is provided in § 2.1-20.3.

G. The Board shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Board.

H. The Board shall report annually to the Governor and General Assembly on its activities, and may make such other reports as it deems advisable.

I. The Board may adopt bylaws for its operation. (1981, c. 632.)

§ **9-169. Definitions.** — The following words, whenever used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 of this Code, shall have the following meanings, unless the context otherwise requires:

1. *"Administration of criminal justice"* means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

2. *"Board"* means the Criminal Justice Services Board.

3. *"Criminal justice agency"* means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so.

4. *"Criminal history record information"* means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of this Code, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

5. *"Correctional status information"* means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

6. *"Criminal justice information system"* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

7. *"Department"* means the Department of Criminal Justice Services.

8. *"Dissemination"* means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

9. *"Law-enforcement officer"* means any full-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and shall include any member of the Enforcement or Inspection Division of the Department of Alcoholic Beverage Control vested with police authority, any police agent appointed under the provisions of § 56-353 or any game warden who is a full-time sworn member of the enforcement division of the Commission of Game and Inland Fisheries.

10. *"Conviction data"* means information in the custody of any criminal justice agency relating to a judgment of conviction and the consequences arising therefrom, in any court. (1981, c. 632; 1982, c. 419; 1983, c. 357.)

§ 9-170. Powers and duties of the Board and the Department. — The Department, under the direction of the Board which shall be the policy making body for carrying out the duties and powers hereunder, shall have the power to:

1. Promulgate rules and regulations, pursuant to Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of this Code, for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within this Commonwealth. Any proposed rules and regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer (i) in permanent positions, and (ii) in temporary or probationary status, and establish the time required for completion of such training;

3. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;

4. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subsection 2 above, prior to assignment of any such officers to undercover investigation work; provided, that failure to complete such training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;

5. Establish compulsory minimum training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53-168.1, and to establish the time required for completion of such training;

6. Establish compulsory minimum training standards for those persons employed as jailers or custodial officers under the provisions of Title 53, and to establish the time required for completion of such training;

7. Establish compulsory in-service and advanced training standards for those persons employed as jailers or custodial officers and corrections officers under the provisions of Title 53 of this Code;

7a. Establish compulsory minimum training standards for all dispatchers employed by or in any local law-enforcement agency. Such training standards shall apply only to dispatchers hired on or after July 1, 1982.

8. Consult and cooperate with counties, municipalities, agencies of this Commonwealth, other federal and state governmental agencies, and with universities, colleges, junior colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

9. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

10. Establish and maintain police training programs through such agencies and institutions as the Board may deem appropriate;

11. Establish compulsory minimum qualifications of certification and recertification for individuals instructing in criminal justice training schools approved by the Board;

12. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

13. Make recommendations concerning any matter within its purview pursuant to this chapter;

14. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, to nominate one or more of its members to serve upon the council or committee of any such system, and to participate when and as deemed appropriate in any such system's activities and programs;

15. Conduct such inquiries and investigations, as it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations shall have the authority to require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

16. Conduct audits as required by § 9-186;

17. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

18. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

19. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

20. Issue regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

21. The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the rules and regulations of the National Crime Information Center. Notwithstanding any other provision to the contrary in this chapter, the Central Criminal Records Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth, and the Department shall continue to be responsible for the management and operation of such exchange;

22. Develop a comprehensive statewide long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

23. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs; projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

24. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of gen-

eral local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

25. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

26. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

27. Do all things necessary on behalf of the Commonwealth of Virginia and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

28. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

29. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and to accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

30. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

31. Adopt and administer reasonable rules and regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein; and,

32. Perform such other acts as may be necessary or convenient for the effective performance of its duties. (1981, c. 632; 1982, c. 473.)

§ 9-171. **Administration of federal programs.** — The Criminal Justice Services Board is hereby designated as the supervisory board and the Department is designated as the planning and coordinating agency responsible for the implementation and administration of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, as well as any other

federal programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control throughout the Commonwealth. The Board shall continue the activities of and succeed the Council on Criminal Justice and the Department shall continue the activities of and succeed the Division of Justice and Crime Prevention. (1981, c. 632.)

§ 9-172. Plans and data from planning districts. — Each planning district commission shall prepare and submit to the Department plans and data for strengthening and improving law enforcement and the administration of criminal justice within the planning district which shall be subject to the approval of the Department for purposes of determining the eligibility of such planning district commission and local units of government therein to participate in funds and grants available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat 197) as amended, or such State or other federal funds as may be made available for like purposes. Such plans and data shall be prepared in accordance with rules and regulations adopted and administered by the Department and shall be updated periodically, as the Department may require. (1981, c. 632.)

§ 9-173. Exemptions of certain persons from certain training requirements. — The Director of the Department, with the approval of the Board, may exempt a chief of police or any law-enforcement officer or any courthouse and courtroom security officer, jailer, or custodial officer or corrections officer of the Commonwealth or any political subdivision who has had previous experience and training as a law-enforcement officer, courthouse and courtroom security officer, jailer or custodial officer or corrections officer with any law-enforcement or custodial agency, from the mandatory attendance of any or all courses which are required for the successful completion of the compulsory minimum training standards established by the Board. The exemption authorized by this section shall be available to all law-enforcement officers, courthouse and courtroom security officers, jailers and custodial officers, and corrections officers, regardless of any officer's date of initial employment, and shall entitle such officer exempted from compliance with compulsory minimum training standards pursuant to subsections 2, 5, and 6 of § 9-170 to be deemed in compliance with such sections and eligible for the minimum salary established by § 14.1-73.2, provided that such officer is otherwise qualified under § 14.1-73.2. (1981, c. 632.)

ARTICLE 1.1.

Detoxification Center Program.

§ 9-173.1. Establishment of programs; purpose; rules and regulations. — A. The Department of Criminal Justice Services shall promulgate rules and regulations, no later than October 1, 1982, the purpose of which shall be to make funds available to local units of government for establishing, operating and maintaining or contracting for local or regional detoxification center programs to provide an alternative to arresting and jailing public inebriates.

B. The Department of Criminal Justice Services shall promulgate rules and regulations for the implementation of such programs.

C. Detoxification center programs established or operated pursuant to this section shall be governed solely by the rules and regulations promulgated by the Department of Criminal Justice Services therefor. The Department of Criminal Justice Services shall establish a grant procedure to govern the award of funds as may be appropriated for such purposes to local units of government. (1982, c. 666.)

§ 9-173.2. Definitions. — The following terms, whenever used in this article, shall have the following meanings:

"Detoxification center program" means any program or procedure whereby a local governing body, or any combination of local governing bodies, establishes, operates or maintains or otherwise arranges or contracts for the establishment, operation or maintenance of a facility, whether operated by the locality or by a private agency, for the placement of public inebriates as an alternative to jailing such persons. A judge of the district court in the jurisdiction in which the facility will be located shall approve specific methods and means of transportation available to law-enforcement officers for transporting public inebriates to such programs.

"Public inebriate" means any person who is drunk in a public place and would be subject to arrest for drunkenness under § 18.2-388. (1982, c. 666.)

Article 2.

Department of Criminal Justice Services.

§ 9-174. Department of Criminal Justice Services. — There shall be a Department of Criminal Justice Services in the executive department responsible to the Secretary of Public Safety. The Department shall be under the supervision and management of a Director. (1981, c. 632.)

§ 9-175. Appointment of Director. — The Governor shall appoint the Director of the Department, subject to confirmation by the General Assembly, and he shall hold his office at the pleasure of the Governor. (1981, c. 632.)

§ 9-176. Powers of Director. — The Director of the Department shall have the following powers:

A. To accept grants from the United States government and agencies and instrumentalities thereof, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

B. To do all acts necessary or convenient to carry out the purpose of this chapter and to assist the Board in carrying out its responsibilities under § 9-170.

C. The Director shall be charged with executive and administrative responsibility to (i) carry out the specific duties imposed on the Department under § 9-170 and (ii) maintain appropriate liaison with federal, State and local agencies and units of government, or combinations thereof, in order that all programs, projects and activities for strengthening and improving law enforcement and the administration of criminal justice may function effectively from national to local levels.

D. The Director shall employ and fix the salaries of such personnel and enter into contracts for services as may be necessary in the performance of the Department's functions. The salaries of such personnel shall be fixed in accordance with the standards of classification of chapter 10 (§ 2.1-110 et seq.) of Title 2.1 of this Code.

E. The Director under the direction and control of the Governor shall exercise such powers and perform such duties as are conferred by law upon him, and he shall perform such other duties as may be required of him by the Governor, the Secretary of Public Safety, and the Board. (1981, c. 632.)

§ 9-177. Executive Director of the Board. — The Director shall be the Executive Director of the Board, but shall not be a member thereof. (1981, c. 632.)

§ 9-178. Vested with authority of Board. — The Director shall be vested with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board. (1981, c. 632.)

§ 9-179. Law-enforcement officers serving on July 1, 1971; officers appointed under § 56-353 prior to July 1, 1982. — The provisions of this chapter shall not be construed to require law-enforcement officers serving under permanent appointment on July 1, 1971, nor require officers serving under permanent appointment under the provisions of § 56-353 appointed prior to July 1, 1982, to meet the compulsory minimum training standards provided for in subsection 2 of § 9-170. Nor shall failure of any such officer to meet such standards make him ineligible for any promotional examination for which he is otherwise eligible, except that any law-enforcement officer designated under the provisions of § 53-168.1 to provide courthouse and courtroom security shall be required to meet the standards provided under subsection 5 of § 9-170. Any full-time deputy sheriff who is a law-enforcement officer and who is exempted from the compulsory minimum training standards under this section shall be eligible for the minimum salary established by § 14.1-73.2 of this Code. (1981, c. 632; 1982, c. 419.)

§ 9-180. Compliance with minimum training standards by officers employed after July 1, 1971 and by officers appointed under § 56-353 after July 1, 1982. — Every law-enforcement officer employed after July 1, 1971, and officers appointed under the provisions of § 56-353 after July 1, 1982, shall comply with the compulsory minimum training standards established by the Board within a period of time fixed by the Board pursuant to Chapter 1.1:1 of Title 9 of this Code (§ 9-6.14:1 et seq.). The Board shall have the power to require law-enforcement agencies of the Commonwealth and its political subdivisions to submit rosters of their personnel and pertinent data with regard to the training status of such personnel. (1981, c. 632; 1982, c. 419.)

§ 9-181. Forfeiture of office for failing to meet training standards; termination of salary and benefits; extension of term. — A. Every person required to comply with the training standards promulgated by the Board excluding private security services business personnel, who fails to comply with the standards within the time limits established by the rules and regulations promulgated by the Board shall forthwith forfeit his office, upon receipt of notice, as provided in subsection B hereof. Such forfeiture shall create a vacancy in the office and all pay and allowances shall cease.

B. Notice shall be by certified mail, in a form approved by the Board, to the officer failing to comply and the chief administrative officer of the agency

employing such officer. Notice shall be mailed to the State Compensation Board, if approval of that Board of the necessity of his office or compensation is required by law.

C. If the necessity for the officer or compensation of such officer is required by law to be approved by the State Compensation Board, that Board, upon receipt of notice as provided in subsection B hereof, shall notify the Comptroller, who shall cause payment of his compensation to cease forthwith as of the date of receipt by the State Compensation Board of the notice.

D. It shall be the duty of the chief administrative officer of any agency employing a person who fails to meet such training standards to enforce the provisions of §§ 9-180 and 9-181. Willful failure to do so shall constitute misfeasance of office, and, in addition, upon conviction, shall constitute a Class 3 misdemeanor. (1981, c. 632.)

§ 9-182. Compulsory minimum training standards for private security services business personnel. — A. The Board shall have the power to issue regulations pursuant to chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of this Code, establishing compulsory minimum training standards for persons employed by private security services businesses as armored car personnel, or as couriers, guards, guard dog handlers, private investigators or private detectives as the foregoing classifications are defined in § 54-729.27 and may include provisions in such regulations delegating to its staff the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and its regulations. In establishing by regulation compulsory minimum training standards for each of the foregoing classifications, the Board shall be guided by the policy of this section which is to secure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section and chapter 17.3 (§ 54-729.27 et seq.) of Title 54 of this Code. Such regulations may provide for exemption from such training for persons having previous employment as law-enforcement officers for a state or the federal government; provided no such exemption shall be granted to such persons having less than five continuous years of such employment, nor shall such exemption be provided for any person whose employment as a law-enforcement officer was terminated because of his misconduct or incompetence.

B. In promulgating its regulations establishing compulsory minimum training standards for persons employed by private security services businesses, the Board shall seek the advice of the Private Security Services Advisory Committee established pursuant to § 54-729.30. (1981, c. 632.)

§ 9-183. Direct operational responsibilities in law enforcement not authorized. — Nothing in this chapter shall be construed as authorizing the Department of Criminal Justice Services to undertake direct operational responsibilities in law enforcement or the administration of criminal justice. (1981, c. 632.)

ARTICLE 3.

Criminal Justice Information System.

§ 9-184. Application and construction of article. — A. This applies to original or copied criminal history record information, maintained by a criminal justice agency of (i) the Commonwealth of Virginia or its political subdivisions, and (ii) the United States or another state or its political subdivisions which exchange such information with an agency covered in (i), but only to the extent of that exchange.

B. The provisions of this article do not apply to original or copied (i) records of entry, such as police blotters, maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name, (ii) court records of public criminal proceedings, including opinions and published compilations thereof, (iii) records of traffic offenses disseminated to or maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses, (iv) statistical or analytical records or reports in which individuals are not identified and from which their identities cannot be ascertained, (v) announcements of executive clemency, pardons, or removals of political disabilities, (vi) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons, (vii) criminal justice intelligence information, or (viii) criminal justice investigative information.

C. Nothing contained in this article shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system. (1981, c. 632.)

§ 9-185. Establishment of Statewide criminal justice information system; duties of Board generally; assistance of other agencies. — The Board shall provide for the coordination of the operation of a Statewide comprehensive criminal justice information system for the exchange of criminal history record information among the criminal justice agencies of the State and its political subdivisions. The Board shall develop standards and goals for such system, define the requirements of such system, define system objectives, recommend development priorities and plans, review development efforts, coordinate the needs and interests of the criminal justice community, outline agency responsibilities, appoint ad hoc advisory committees, and provide for the participation of the Statewide comprehensive criminal justice information system in interstate criminal justice systems. The Board may request technical assistance of any State agency, board, or other body and such State entities shall render such assistance as is reasonably required. (1981, c. 632.)

§ 9-186. Annual audits. — A. The Board shall ensure that annual audits are conducted of a representative sample of State and local criminal justice agencies to ensure compliance with this article and the regulations of the Board. The Board shall issue such regulations as may be necessary for the conduct of audits, the retention of records to facilitate such audits, the determination of necessary corrective actions, and the reporting of corrective actions taken.

B. The results of such audits together with a summary of any necessary corrective actions shall be included in the Board annual report to the Governor and General Assembly. (1981, c. 632.)

§ 9-187. Information to be disseminated only in accordance with § 19.2-389. — Criminal history record information shall be disseminated, whether directly or through an intermediary, only in accordance with § 19.2-389. (1981, c. 632.)

§ 9-188. Regulations and procedures. — A. The Board shall issue regulations and procedures for the interstate dissemination of criminal history record information by which criminal justice agencies of the Commonwealth shall insure that the limitations on dissemination of criminal history record information set forth in § 19.2-389 are accepted by recipients and will remain operative in the event of further dissemination.

B. The Board shall issue regulations and procedures for the validation of an interstate recipient's right to obtain criminal history record information from criminal justice agencies of the Commonwealth. (1981, c. 632.)

§ 9-189. Participation of State and local agencies in interstate system; access to such system limited. — A. The Board shall regulate participation of State and local agencies in any interstate system for the exchange of criminal history record information and shall be responsible for assuring the consistency of such participation with the terms and purposes of this article. The Board shall have no authority to compel any agency to participate in any such interstate system.

B. Direct access to any such system shall be limited to such criminal justice agencies as are expressly designated for that purpose by the Board. (1981, c. 632.)

§ 9-190. Sealing of criminal history record information. — A. The Board shall adopt procedures reasonably designed (i) to insure prompt sealing or purging of criminal history record information when required by State or federal statute, regulation or court order, and (ii) to permit opening of sealed information under conditions authorized by law. (1981, c. 632.)

§ 9-191. Procedures to be adopted by agencies maintaining criminal justice information systems. — Each criminal justice agency maintaining and operating a criminal justice information system shall adopt procedures reasonably designed to insure:

A. The physical security of the system and the prevention of unauthorized disclosure of the information in the system;

B. The timeliness and accuracy of information in the system collected after November 1, 1976;

C. That all criminal justice agencies to which criminal offender record information is disseminated or from which it is collected are currently and accurately informed of any correction, deletion, or revision of such information;

D. Prompt purging or sealing of criminal offender record information when required by state or federal statute, regulation, or court order;

E. Use or dissemination of criminal offender record information by criminal justice agency personnel only after it has been determined to be the most accurate and complete information available to the criminal justice agency. (1981, c. 632.)

§ 9-192. Individual's right of access to and review and correction of information. — A. Any individual who believes that criminal history record information is being maintained about him by Central Criminal Records Exchange, or by the arresting law-enforcement agency in the case of offenses not required to be reported to such Exchange, shall have the right to inspect a copy of such criminal history record information at the Exchange or the arresting law-enforcement agency, respectively, for the purpose of ascertaining the completeness and accuracy of such information. The individual's right to access and review shall not extend to any information or data other than that defined in subsection 4 of § 9-169.

B. The Board shall issue regulations with respect to an individual's right to access and review criminal history record information about himself reported to Central Criminal Records Exchange or, if not reported to the Exchange, maintained by the arresting law-enforcement agency. Such regulations shall provide for public notice of the right of access; access to criminal history record information by an individual or an attorney-at-law acting for an individual; identification required; places and times for review; review of Virginia records by individuals located in other states; assistance in understanding the record; obtaining a copy for purposes of initiating a challenge to the record; procedures for investigation of alleged incompleteness or inaccuracy; completion or correction of records if indicated; and notification of the individuals and agencies to whom an inaccurate or incomplete record has been disseminated.

C. If an individual believes information maintained about him to be inaccurate or incomplete, he may request the agency having custody or control of the records to purge, modify, or supplement them. Should the agency decline to so act, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual may request, in writing, review by the Board. The Board or its designee shall, in each case in which it finds prima facie basis for a complaint, conduct a hearing at which the individual may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings and conclusions shall be issued. Should the record in question be found to be inaccurate or incomplete, the criminal justice agency or agencies maintaining such information shall purge, modify, or supplement it in accordance with the findings and conclusions of the Board. Notification of purging, modification, or supplementation of criminal history record information shall be promptly made by the criminal justice agency maintaining such previously inaccurate information to any individuals or agencies to which the information in question was communicated, as well as to the individual whose records have been ordered so altered.

D. Criminal justice agencies shall maintain records of all agencies to whom criminal history record information was disseminated and the date upon which such information was disseminated and such other record matter for the number of years required by rules and regulations of the Board.

E. Any individual or agency aggrieved by any order or decision of the Board may appeal such order or decision to the circuit court of the jurisdiction in which the Board has its administrative headquarters. (1981, c. 632.)

§ 9-193. Information not subject to review and correction of information. — A. Investigative information not connected with a criminal prosecution or litigation including investigations of rule infractions in correctional institutions, and background checks for security clearances shall not be subject to review and correction of information by data subjects.

B. Correctional information about an offender including counselor reports, diagnostic summaries and other sensitive information not explicitly classified as criminal history record information shall not be subject to review and correction of information by data subjects. (1981, c. 632.)

§ 9-194. Civil remedies for violation of this chapter or chapter 23 of Title 19.2. — A. Any person may institute a civil action in the circuit court of the jurisdiction in which the Board has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, for actual damages resulting from violation of this article or to restrain any violation thereof, or both.

B. Any person may bring an action in the circuit court of the jurisdiction in which the Board has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, against any person who has engaged, is engaged, or is about to engage in any acts or practices in violation of chapter 23 (§ 19.2-387 et seq.) of Title 19.2, chapter 27 (§ 9-167 et seq.) of Title 9 or rules or regulations of the Board to obtain appropriate, equitable relief.

C. This section shall not be construed as constituting a waiver of the defense of sovereign immunity. (1981, c. 632.)

§ 9-195. Criminal penalty for violation. — Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information to any agency or person in violation of this article or chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall be guilty of a Class 2 misdemeanor. (1981, c. 632.)

§ 9-196. Article to control over other laws; exceptions; application of chapter 1.1:1 of this title. — A. In the event any provisions of this article shall conflict with other provisions of law, the provision of this article shall control, except as provided in paragraph B hereof.

B. Notwithstanding the provisions of paragraph A hereof, this article shall not alter, amend, or supersede any provisions of the Code of Virginia relating to the collection, storage, dissemination, or use of records of juveniles.

C. Insofar as it is consistent with this article, chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of this Code shall control. (1981, c. 632.)

* * *

§ 52-8.3. Disclosure of criminal investigative records and reports; penalty. — Any person employed by a law-enforcement agency or other governmental agency within the Commonwealth who has or has had access in an official capacity to an official written record or report submitted in confidence to the Department of State Police relating to an ongoing criminal investigation, and who uses or knowingly permits another to use such record or report for any purpose not consistent with the exemptions permitted in § 2.1-342, or other provision of state law, shall be guilty of a Class 2 misdemeanor.

The provisions of this section shall not be construed to impede or prohibit full access to information concerning the existence of any criminal investigation or to other verbal disclosures permitted by state police operating procedures. (1981, c. 238.)

CHAPTER 7.

VIRGINIA PUBLIC RECORDS ACT.

Sec.
42.1-76. Legislative intent; title of chapter.
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42.1-79. Records management function vested in Board; State Library to be official custodian; State Archivist.
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42.1-81. Powers and responsibilities of Committee.
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42.1-85. Duties of State Librarian; agencies to cooperate.
42.1-86. Program to select and preserve important records; availability to public; security copies.
42.1-87. Where records kept; duties of agencies; repair, etc., of record books; agency heads not divested of certain authority.
42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance.
42.1-89. Petition and court order for return of public records not in authorized possession.
42.1-90. Seizure of public records not in authorized possession.
42.1-91. Development of disaster plan.

§ 42.1-76. Legislative intent; title of chapter. — The General Assembly intends by this act to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the State.

This chapter may be cited as the Virginia Public Records Act. (1976, c. 746.)

§ 42.1-77. Definitions. — As used in this chapter:

A. *"Agency"* shall mean all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and shall include the offices of constitutional officers.

B. *"Archival quality"* shall mean a quality of reproduction consistent with reproduction standards specified by the National Micrographics Association, American Standards Association or National Bureau of Standards.

C. *"Board"* shall mean the State Library Board.

D. *"Committee"* shall mean the State Public Records Advisory Committee.

E. *"Custodian"* shall mean the public official in charge of an office having public records.

F. *"State Librarian"* shall mean the State Librarian or his designated representative.

G. *"Public official"* shall mean all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the State government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the State government or its political subdivisions.

H. *"Public records"* shall mean all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps,

other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by any agency of the State government or its political subdivisions.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of public records as used in this chapter.

I. *"Archival records"* shall mean records of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of those services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "legal," "fiscal," and "historical" shall be defined as:

1. *"Administrative value"*: Records shall be deemed of administrative value if they have utility in the operation of an agency.

2. *"Legal value"*: Records shall be deemed of legal value when they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

3. *"Fiscal value"*: Records shall be deemed of fiscal value so long as they are needed to document and verify financial authorizations, obligations and transactions.

4. *"Historical value"*: Records shall be deemed of historical value when they contain unique information, regardless of age, which provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry. (1976, c. 746; 1977, c. 501; 1981, c. 637.)

§ 42.1-78. Confidentiality safeguarded. — Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter and no provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. (1976, c. 746; 1979, c. 110.)

§ 42.1-79. Records management function vested in Board; State Library to be official custodian; State Archivist. — The archival and records management function shall be vested in the State Library Board. The State Library shall be the official custodian and trustee for the State of all public records of whatever kind which are transferred to it from any public office of the State or any political subdivision thereof.

The State Library Board shall name a State Archivist who shall perform such functions as the State Library Board assigns. (1976, c. 746.)

§ 42.1-80. State Public Records Advisory Committee created; members; chairman and vice-chairman; compensation. — There is hereby created a State Public Records Advisory Committee. The Committee shall consist of ten members. The Committee membership shall include the Secretary of Administration and Finance, the State Librarian, the State Health Commissioner, the State Highway and Transportation Commissioner, the Director of the Division of Automated Data Processing, the Auditor of Public Accounts, the Executive Secretary of the Supreme Court, or their designated representatives and three members to be appointed by the Governor from the State at large. The gubernatorial appointments shall include two clerks of

courts of record and a member of a local governing body. Those members appointed by the Governor shall remain members of the Committee for a term coincident with that of the Governor making the appointment, or until their successors shall be appointed and qualified. The Committee shall elect annually from its membership a chairman and vice-chairman. Members of the Committee shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. (1976, c. 746; 1977, c. 501.)

§ **42.1-81. Powers and responsibilities of Committee.** — The Committee shall have responsibility for proposing to the State Library Board rules, regulations and standards, not inconsistent with law, for the purpose of establishing uniform guidelines for the management and preservation of public records throughout the State. The Committee shall have the power to appoint such subcommittees and advisory bodies as it deems advisable. The Committee shall be assisted in the execution of its responsibilities by the State Librarian. (1976, c. 746.)

§ **42.1-82. Duties and powers of Library Board.** — The State Library Board shall with the advice of the Committee:

A. Issue regulations designed to facilitate the creation, preservation, storage, filing, microfilming, management and destruction of public records by all agencies. Such regulations shall establish procedures for records management containing recommendations for the retention, disposal or other disposition of public records; procedures for the physical destruction or other disposition of public records proposed for disposal; and standards for the reproduction of records by photocopy or microphotography processes with the view to the disposal of the original records. Such standards shall relate to the quality of film used, preparation of the records for filming, proper identification of the records so that any individual document or series of documents can be located on the film with reasonable facility and that the copies contain all significant record detail, to the end that the photographic or microphotographic copies shall be of archival quality.

B. Issue regulations specifying permissible qualities of paper, ink and other materials to be used by agencies for public record purposes. The Board shall determine the specifications for and shall select and make available to all agencies lists of approved papers, photographic materials, ink, typewriter ribbons, carbon papers, stamping pads or other writing devices for different classes of public records, and only those approved may be purchased for use in the making of such records, except that these regulations and specifications shall not apply to clerks of courts of record.

C. Provide assistance to agencies in determining what records no longer have administrative, legal, fiscal or historical value and should be destroyed or disposed of in another manner. Each public official having in his custody official records shall assist the Board in the preparation of an inventory of all public records in his custody and in preparing a suggested schedule for retention and disposition of such records. No land or personal property book shall be destroyed without having first offered it to the State Library for preservation.

All records created prior to the Constitution of nineteen hundred two that are declared archival may be transferred to the archives. (1976, c. 746; 1977, c. 501; 1981, c. 637.)

§ 42.1-83. Program for inventorying, scheduling, microfilming records; records of counties and cities; storage of records. — The State Library Board shall formulate and execute a program to inventory, schedule, and microfilm official records of counties and cities which it determines have permanent value and to provide safe storage for microfilm copies of such records, and to give advice and assistance to local officials in their programs for creating, preserving, filing and making available public records in their custody.

Any original records shall be either stored in the State Library or in the locality at the decision of the local officials responsible for maintaining public records. Any original records shall be returned to the locality upon the written demand of the local officials responsible for maintaining local public records. Microfilm shall be stored in the State Library but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records. (1972, c. 555; 1976, c. 746.)

§ 42.1-84. Same; records of agencies and subdivisions not covered under § 42.1-83. — The State Library Board may formulate and execute a program of inventorying, repairing, and microfilming for security purposes the public records of the agencies and subdivisions not covered under the program established under § 42.1-83 which it determines have permanent value, and of providing safe storage of microfilm copies of such records. (1976, c. 746.)

§ 42.1-85. Duties of State Librarian; agencies to cooperate. — The State Librarian shall administer a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of public records consistent with rules, regulations or standards promulgated by the State Library Board, including operations of a records center or centers. It shall be the duty of the State Librarian to establish procedures and techniques for the effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices, including the use of space, equipment, and supplies employed in creating, maintaining and servicing records.

It shall be the duty of any agency with public records to cooperate with the State Librarian in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. (1976, c. 746.)

§ 42.1-86. Program to select and preserve important records; availability to public; security copies. — In cooperation with the head of each agency, the State Librarian shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and for the protection of the rights and interests of persons. He shall provide for preserving, classifying, arranging and indexing so that such records are made available to the public and shall make or cause to be made security copies or designate as security copies existing copies of such essential public records. Security copies shall be of archival quality and such copies made by photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium and shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Such security copies shall be preserved in such place and manner of safekeeping as prescribed by the State Library Board and provided by the Governor. Those public records deemed unnecessary for the transaction of the business of any agency, yet deemed to be of administrative, legal, fiscal or historical value, may be transferred with

the consent of the State Librarian to the custody of the State Library. No agency shall destroy, discard, sell or give away public records without first offering them to the State Library for preservation. (1976, c. 746; 1980, c. 365.)

§ 42.1-87. Where records kept; duties of agencies; repair, etc., of record books; agency heads not divested of certain authority. — Custodians of public records shall keep them in fireproof safes, vaults or in rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to cooperate with the State Library in complying with rules and regulations promulgated by the Board. Each agency shall establish and maintain an active and continuing program for the economic and efficient management of records.

Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the State may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty. (1976, c. 746.)

§ 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance. — Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to the State Library, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or State Librarian to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor. (1976, c. 746.)

§ 42.1-89. Petition and court order for return of public records not in authorized possession. — The State Librarian or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public

records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures. (1975, c. 180; 1976, c. 746.)

§ 42.1-90. Seizure of public records not in authorized possession. — A. At any time after the filing of the petition set out in § 42.1-89 or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 180; 1976, c. 746.)

§ 42.1-91. Development of disaster plan. — The State Library shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § 44-146.16. This plan shall be coordinated with the Office of Emergency Services and copies shall be distributed to all agency heads. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. (1981, c. 637.)

CHAPTER 21.

VIRGINIA FREEDOM OF INFORMATION ACT.

Sec.
2.1-340. Short title.
2.1-340.1. Policy of chapter.
2.1-341. Definitions.
2.1-341.1. Notice of chapter.
2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.
2.1-343. Meetings to be public except as otherwise provided; minutes; information as to time and place.
2.1-344. Executive or closed meetings.
2.1-345. Agencies to which chapter inapplicable.
2.1-346. Proceedings for enforcement of chapter.
2.1-346.1. Violations and penalties.

§ 2.1-340. Short title. — This chapter may be cited as "The Virginia Freedom of Information Act." (1968, c. 479.)

§ 2.1-340.1. **Policy of chapter.** — By enacting this chapter the General Assembly ensures the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. Committees or subcommittees of public bodies created to perform delegated functions of a public body or to advise a public body shall also conduct their meetings and business pursuant to this chapter. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless the public body specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all reports, documents and other material shall be available for disclosure upon request.

This chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person.

Any ordinance adopted by a local governing body which conflicts with the provisions of this chapter shall be void. (1976, c. 467; 1989, c. 358.)

§ 2.1-341. **Definitions.** — The following terms, whenever used or referred to in this chapter, shall have the following meanings, unless a different meaning clearly appears from the context:

"Executive meeting" or *"closed meeting"* means a meeting from which the public is excluded.

"Meeting" or *"meetings"* means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, as a body or entity, or as an informal assemblage of as many as three members or [illegible] less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the body or entity. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.1-343.1 or as may specifically be provided in Title 54.1 for the summary suspension of professional licenses.

"Official records" means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

"Open meeting" or *"public meeting"* means a meeting at which the public may be present.

"Public body" means any of the groups, agencies or organizations enumerated in the definition of "meeting" as provided in this section, including any committees or subcommittees of the public body created to perform delegated functions of the public body or to advise the public body.

"Scholastic records" means those records, files, documents, and other materials containing information about a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution, but, for the purpose of access by a student, does not include (i) financial records of a parent or guardian nor (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute. (1968, c. 479; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358.)

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter. — A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of this Commonwealth, representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting in or into this Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.

2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.

3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceeding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate circuit court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with this petition, however, the public body shall make reasonable efforts to reach an agreement with the requestor concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records; however, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The public body may

require the advance payment of charges which are subject to advance determination.

In any case where a public body determines in advance that search and copying charges for producing the requested documents are likely to exceed $200, the public body may, before continuing to process the request, require the citizen requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. The period within which the public body must respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the citizen requesting the information.

Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at reasonable cost.

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen.

Failure to make any response to a request for records shall be a violation of this chapter and deemed a denial of the request.

B. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Memoranda, correspondence, evidence and complaints related to criminal investigations; reports submitted to the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity; and all records of persons imprisoned in penal institutions in this Commonwealth provided such records relate to the imprisonment. Information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions of this chapter.

2. Confidential records of all investigations of applications for licensees and all licenses made by or submitted to the Alcoholic Beverage Control Board or the State Lottery Department.

3. State income, business, and estate tax returns, personal property tax returns, scholastic records and personnel records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical

records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in subsection A of this section. No such summaries or data shall include any patient identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institutions of higher education.

5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

7. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

9. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public

contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requestor's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

11. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

14. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.

15. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services and records, documents and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

16. Vendor proprietary information software which may be in the official records of a public body. For the purpose of this section, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of this Commonwealth.

17. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information have not been publicly released, published, copyrighted or patented.

18. Financial statements not publicly available filed with applications for industrial development financings.

19. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

20. Confidential proprietary records, voluntarily provided by private business to the Division of Tourism of the Department of Economic Development, used by that Division periodically to indicate to the public statistical information on tourism visitation to Virginia attractions and accommodations.

21. Information which meets the criteria for being filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), regardless of how or when it is used by authorized persons in regulatory processes.

22. Documents as specified in § 58.1-3.

23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

24. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

25. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual

employment discrimination complaints made to the Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

26. Fisheries data which would permit identification of any person or vessel, except when required by court order as specified in § 28.1-23.2.

27. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

28. Documents and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to members on standards of conduct, or both.

29. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

30. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

31. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional facility or institution, as follows:

(i) Security manuals, including emergency plans that are a part thereof;

(ii) Engineering and architectural drawings of correctional facilities, and operational specifications of security systems utilized by the Department, provided the general descriptions of such security systems, cost and quality shall be made available to the public;

(iii) Training manuals designed for correctional facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;

(iv) Internal security audits of correctional facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional facility or institution;

(v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;

(vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;

(vii) Logs or other documents containing information on movement of inmates or employees; and

(viii) Documents disclosing contacts between inmates and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Department, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. Personal information, as defined in § 2.1-379 of the Code, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, or (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs. However, access to one's own information shall not be denied.

34. Documents regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Official records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which

cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the building code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee; however, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in this Commonwealth. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is $10,000 or less. (1968, c. 479; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478.)

§ 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting. — Except as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345, all meetings shall be public meetings, including meetings and work sessions during which no votes are cast or any decisions made. Notice including the time, date and place of each meeting shall be furnished to any citizen of this Commonwealth who requests such information. Requests to be notified on a continual basis shall be made at least once a year in writing and include name, address, zip code and organization of the requestor. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter.

Minutes shall be recorded at all public meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative interim study commissions and committees, including the Virginia Code Commission, (iii) study committees or commissions appointed by the Governor, or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board. (1968, c. 479; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358.)

§ 2.1-343.1. Electronic communication meetings prohibited; exception, experimental program. — A. It is a violation of this chapter for any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government to conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled.

B. Public bodies of the Commonwealth, as provided in the definition of "meeting" in § 2.1-341, but excluding any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government, may conduct any meeting, except executive or closed meetings held pursuant to § 2.1-344, wherein the public business is discussed or transacted through telephonic or video means. For the purposes of subsections B through G of this section, "public body" shall mean any state legislative body, authority, board, bureau, commission, district or agency of the Commonwealth and shall exclude those of local governments.

Meetings conducted through telephonic or video means shall be on an experimental basis commencing on July 1, 1989, and ending on June 30, 1991. The Director of the Department of Information Technology shall submit an evaluation of the effectiveness of meetings by telephonic or video means by public bodies of the Commonwealth prior to January 1, 1992, to the Governor and the General Assembly.

C. Notice of any meetings held pursuant to this section shall be provided at least thirty days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify the location or locations for the meeting. All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

Thirty-day notice shall not be required for telephonic or video meetings continued to address an emergency situation as provided in subsection F of this section or to conclude the agenda of a telephonic or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

The public body shall provide the Director of the Department of Information Technology with notice of all public meetings held through telephonic or video means pursuant to this section.

D. An agenda and materials which will be distributed to members of the public body and which have been made available to the staff of the public body in sufficient time for duplication and forwarding to all location sites where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by telephonic or video means shall be recorded as required by § 2.1-343. Votes taken during any meeting conducted through telephonic or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a telephonic medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be preserved by the public body for a period of three years following the date of the meeting and shall be available to the public.

E. No more than twenty-five percent of all meetings held annually by a public body, including meetings of any ad hoc or standing committees, may be held by telephonic or video means. Any public body which meets by telephonic or video means shall file with the Director of the Department of Information Technology by July 1 of each year a statement identifying the total number of meetings held during the preceding fiscal year, the dates on which the meetings were held and the number and purpose of those conducted through telephonic or video means.

F. Notwithstanding the limitations imposed by subsection E of this section, a public body may meet by telephonic or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. As used in this subsection "emergency" means an unforeseen circumstance rendering the [illegible] requirements of this section, or by § 2.1-343 of this chapter, impossible or impracticable and which circumstance requires immediate

action. Public bodies conducting emergency meetings through telephonic or video means shall comply with the provisions of subsection D requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The basis for the emergency shall be stated in the minutes.

G. The provisions of this section establish a two-year experimental program designed to evaluate the effectiveness of meetings by telephonic or video means by public bodies of the Commonwealth. Meetings by telephonic or video means shall be prohibited on and after July 1, 1991, unless the provisions of this section pertaining to the termination of this experimental program are amended and reenacted by the General Assembly. (1984, c. 252; 1989, c. 358.)

§ 2.1-344. **Executive or closed meetings.** — A. Public bodies are not required to conduct executive or closed meetings. However, should a public body determine that an executive or closed meeting is desirable, such meeting shall be held only for the following purposes:

1. Discussion or consideration of or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body, and evaluation of performance of departments or schools of state institutions of higher education where such matters regarding such specific individuals might be affected by such evaluation. Any teacher shall be permitted to be present during an executive session or closed meeting in which there is a discussion or consideration of a disciplinary matter which involves the teacher and some student or students and the student or students involved in the matter are present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters concerning any student or students of any state institution of higher education or any state school system. However, any such student and legal counsel and, if the student is a minor, the student's parents or legal guardians, shall be permitted to be present during the taking of testimony or presentation of evidence at an executive or closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property, or of plans for the future of a state institution of higher education which could affect the value of property owned or desirable for ownership by such institution.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating in the community.

6. The investing of public funds where competition or bargaining is involved, where if made public initially the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by counsel.

8. In the case of boards of visitors of state institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-

raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a state institution of higher education shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and the Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests or examinations or other documents excluded from this chapter pursuant to § 2.1-342 B 9.

12. Discussion, consideration or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in executive session.

13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have a detrimental effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting or executive session.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the Department of Commerce or Department of Health Professions conducted pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.

16. Discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivisions 37 and 38 of subsection B of § 2.1-342.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the open meeting. Nothing in this section shall be construed to

require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 of this section applies. However, such business or industry must be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same regulations for holding executive or closed sessions as are applicable to any other public body. (1968, c. 479; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478.)

§ 2.1-344.1. Call of closed or executive meetings; certification of proceedings. — A. No meetings shall become an executive or closed meeting unless the public body proposing to convene such meeting shall have taken an affirmative recorded vote in open session to that effect, by motion stating specifically the purpose or purposes which are to be the subject of the meeting, and reasonably identifying the substance of the matters to be discussed. A statement shall be included in the minutes of the open meeting which shall make specific reference to the applicable exemption or exemptions from open meeting requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters contained in such motion shall be set forth in those minutes. A general reference to the provisions of this chapter or authorized exemptions from open meeting requirements shall not be sufficient to satisfy the requirements for an executive or closed meeting.

B. The notice provisions of this chapter shall not apply to executive or closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such executive or closed meeting for the purpose of interviewing candidates the public body shall announce in an open meeting that such executive or closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter.

C. The public body holding an executive or closed meeting shall restrict its consideration of matters during the closed portions only to those purposes specifically exempted from the provisions of this chapter.

D. At the conclusion of any executive or closed meeting convened hereunder, the public body holding such meeting shall reconvene in open session immediately thereafter and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of the member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter, and (ii) only such public business matters as were identified in the motion by which the executive or closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of subdivisions (i) and (ii) above, shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D, above, to receive the affirmative vote of a majority of the members of the public body present during a closed or executive session shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce this chapter.

F. A public body may permit nonmembers to attend an executive or closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic which is a subject of the meeting.

G. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any executive or closed meeting, except at a public meeting for which notice was given as required by § 2.1-343.

H. Minutes may be taken during executive or closed sessions of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure. (1989, c. 358.)

§ 2.1-345. Public bodies to which chapter inapplicable. — The provisions of this chapter shall not be applicable to the Virginia Parole Board, petit juries, grand juries, and the Virginia State Crime Commission. (1968, c. 479; 1971, Ex. Sess., c. 1; 1973, c. 461; 1974, c. 332; 1977, c. 677; 1979, c. 369; 1989, c. 358.)

§ 2.1-346. Proceedings for enforcement of chapter. — Any person, including the Commonwealth's attorney acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause, addressed to the court of record of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.1-343 shall not preclude any person from enforcing his or her rights and privileges conferred by this chapter.

Any petition alleging denial of rights and privileges conferred by this chapter by a board, bureau, commission, authority, district or agency of the state government or by a standing or other committee of the General Assembly, shall be addressed to the Circuit Court of the City of Richmond. A petition for mandamus or injunction under this chapter shall be heard within

seven days of the date when the same is made; provided, if the petition is made outside of the regular terms of the circuit court of a county which is included in a judicial circuit with another county or counties, the hearing on the petition shall be given precedence on the docket of such court over all cases which are not otherwise given precedence by law. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorney's fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position. The court may also impose appropriate sanctions in favor of the public body as provided in § 8.01-271.1. (1968, c. 479; 1976, c. 709; 1978, c. 826; 1989, c. 358.)

§ 2.1-346.1. Violations and penalties. — In a proceeding commenced against members of public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1, 2.1-344 or § 2.1-344.1, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than $25 nor more than $1,000, which amount shall be paid into the State Literary Fund. (1976, c. 467; 1978, c. 826; 1984, c. 252; 1989, c. 358.)

CHAPTER 26.

PRIVACY PROTECTION ACT OF 1976.

Sec.
2.1-377. Short title.
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2.1-379. Definitions.
2.1-380. Administration of systems including personal information.
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Sec.
2.1-384. Systems to which chapter inapplicable.
2.1-384.1. Exception for State retirement systems.
2.1-385. Disclosure of social security number.
2.1-386. Injunctive relief.

§ 2.1-377. Short title. — This chapter may be cited as the "Privacy Protection Act of 1976." (1976, c. 597.)

§ 2.1-378. Findings; purpose of chapter. — A. The General Assembly finds:

1. That an individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;

2. That the increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;

3. That an individual's opportunities to secure employment, insurance, credit and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and

4. That in order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

B. The purpose of this chapter is to ensure safeguards for personal privacy by record-keeping agencies of the Commonwealth and her political subdivisions by adherence to the following principles of information practice:

1. There should be no personal information system whose existence is secret.

2. Information should not be collected unless the need for it has been clearly established in advance.

3. Information should be appropriate and relevant to the purpose for which it has been collected.

4. Information should not be obtained by fraudulent or unfair means.

5. Information should not be used unless it is accurate and current.

6. There should be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There should be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

8. Any agency holding personal information should assure its reliability and take precautions to prevent its misuse.

9. There should be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.
10. The Commonwealth or any agency or political subdivision thereof should not collect personal information except as explicitly or implicitly authorized by law. (1976, c. 597.)

§ 2.1-379. Definitions. — As used in this chapter:
1. The term *"information system"* means the total components and operations of a record-keeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.
2. The term *"personal information"* means all information that describes, locates or indexes anything about an individual including his real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. The term does not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.
3. The term *"data subject"* means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.
4. The term *"disseminate"* means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.
5. The term *"purge"* means to obliterate information completely from the transient, permanent, or archival records of an organization.
6. The term *"agency"* means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns and regional governments and the departments and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship. (1976, c. 597; 1983, c. 372.)

§ 2.1-380. Administration of systems including personal information.

Chapter does not render personal information confidential. Indeed, the act does not generally prohibit the dissemination of information. Instead, it requires certain procedural

steps to be taken in the collection, maintenance, use, and dissemination of such data. Hinderliter v. Humphries, — Va. —, 297 S.E.2d 684 (1982).

Burden is on plaintiff to establish lack of necessity or improper purpose for dissemination. Hinderliter v. Humphries, — Va. —, 297 S.E.2d 684 (1982).

Since public officials presumed to obey the law. — There is a presumption that public officials will obey the law, and there is nothing in this chapter that reverses such presumption or imposes the ultimate burden of proof on defendants sued under it. Consequently, the presumption stands until rebutted by contrary evidence. Hinderliter v. Humphries, — Va. —, 297 S.E.2d 684 (1982).

§ 2.1-380.1. Administration of systems including personal information; military recruiters to have access to student information, school buildings, etc. — If a public school board or public institution of higher education provides access to its buildings and grounds and the student information directory to persons or groups which make students aware of occupational or educational options, the board or institution shall provide access on the same basis to official recruiting representatives of the military forces of the Commonwealth and the United States for the purpose of informing students of educational and career opportunities available in the military. (1981, c. 377.)

§ 2.1-381. Same; dissemination of reports. — Any agency maintaining an information system that disseminates statistical reports or research findings based on personal information drawn from its system, or from other systems shall:

1. Make available to any data subject or group, without revealing trade secrets, methodology and materials necessary to validate statistical analysis, and

2. Make no materials available for independent analysis without guarantees that no personal information will be used in any way that might prejudice judgments about any data subject. (1976, c. 597.)

§ 2.1-382. Rights of data subjects. — A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences which are known to the agency of providing or not providing such information.

2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing such information, however documented permission for dissemination in the hands of such other agency or organization will satisfy this requirement. Such notice may be given on applications or other data collection forms prepared by data subjects.

3. Upon request and proper identification of any data subject, or of his authorized agent, grant such subject or agent the right to inspect, in a form comprehensible to such individual or agent:

(a) All personal information about that data subject except as provided in § 2.1-342 (b)(3).

(b) The nature of the sources of the information.

(c) The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority.

4. Comply with the following minimum conditions of disclosure to data subjects:

(a) An agency shall make disclosures to data subjects required under this chapter, during normal business hours.

(b) The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable standard charges for document search and duplication.

(c) The data subject shall be permitted to be accompanied by a person or persons of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting permission to the organization to discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

(a) The agency maintaining the information system shall investigate, and record the current status of that personal information.

(b) If, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely nor necessary to be retained, it shall be promptly corrected or purged.

(c) If the investigation does not resolve the dispute, the data subject may file a statement of not more than 200 words setting forth his position.

(d) Whenever a statement of dispute is filed, the organization maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

(e) The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

(f) Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

B. Nothing in this section or found elsewhere in this chapter shall be construed so as to require an agency to disseminate any recommendation or letter of reference from or to a third party which is a part of the personnel file of any data subject nor to disseminate any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's qualifications or aptitude for employment, retention, or promotion, (iii) qualifications for any license or certificate issued by any public body.

As used in this subsection, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subsection shall prohibit the release of test scores or results as provided by law, or to limit access to individual records as is provided by law, however, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. Minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

C. Neither any provision of this chapter nor any provision of Chapter 21 (§ 2.1-340 et seq.) of this title shall be construed as denying public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in this Commonwealth whatsoever. The provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is $10,000 or less.

D. Nothing in this section or in this chapter shall be construed to require an agency to disseminate information derived from tax returns in violation of §§ 2.1-342 and 58-46 of this Code. (1976, c. 597; 1978, c. 810; 1979, cc. 683, 688, 689; 1983, c. 372.)

§ 2.1-383. Agencies to report concerning systems operated or developed; publication of information. — Every agency shall make report of the existence of any information system which it operates or develops which will include a description of the nature of the data in the system and purpose for which it is used. An inventory listing or similar display of such information shall be made available for inspection by the general public in the office of the head of each agency. Copies of such information shall be provided upon request and a fee shall be charged for the same sufficient to cover the reasonable costs of reproduction. (1976, c. 597; 1977, c. 279; 1979, c. 683.)

§ 2.1-384. Systems to which chapter inapplicable. — The provisions of this chapter shall not be applicable to personal information systems:

1. Maintained by any court of this Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9-184 through 9-196;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required to be licensed by law in this Commonwealth to engage in the practice of any professional occupation, in which case the names and addresses of persons applying for or possessing any such license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing such licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided such disseminating agency is reasonably assured that the use of such information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission and the Department of Alcoholic Beverage Control;
7. Maintained by the Department of State Police, police departments of cities, counties, and towns, and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of

Title 23, and which deal with investigations and intelligence gathering relating to criminal activity;

8. Maintained by the Virginia Port Authority as provided in § 62.1-134.1 or § 62.1-132.4; and

9. Maintained by the Virginia Division of Tourism in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Division of Tourism is reasonably assured that the use of such information will be so limited. (1976, c. 597; 1979, c. 685; 1980, c. 752; 1981, cc. 461, 464, 504, 589; 1982, c. 225; 1983, c. 289.)

§ 2.1-385. Disclosure of social security number. — On or after July one, nineteen hundred seventy-seven, it shall be unlawful for any agency to require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because such individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or State law. (1976, c. 597.)

§ 2.1-386. Injunctive relief. — Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency which has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the circuit court of any county or city wherein the person or agency made defendant resides or has a place of business. In the case of any successful proceeding by an aggrieved party, the person or agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorney's fees as determined by the court. (1976, c. 597.)

Chapter 10

Child Welfare, Homes, Agencies and Institutions

§ 63.1-198.1. (Effective January 1, 1988) Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license. — On or after January 1, 1988, a child-caring institution, child-care center, child-placing agency, independent foster home, family day-care home or family day-care system licensed in accordance with the provisions of this chapter shall not hire for compensated or voluntary employment nor shall child-placing agencies approve as foster or adoptive parents or family day-care systems approve as caretakers persons who have been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, failing to secure medical attention for an injured child, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, neglect of children as set out in § 18.2-371.1, or obscenity offenses as set out in § 18.2-374.1 or § 18.2-379.

Any person desiring to work at a licensed facility shall provide the hiring facility and the Commissioner with a sworn statement or affirmation disclosing whether or not the applicant has ever been convicted of or is the subject of pending charges for any offense specified in this section within the Commonwealth or any equivalent offense outside the Commonwealth. Further dissemination of the information provided is prohibited. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. Any person desiring to work at a licensed facility shall also obtain, within fifteen days after he commences work as a compensated employee or as a volunteer, a certificate from the Commissioner indicating that (i) a criminal records check was conducted at the request of the Commissioner in accordance with § 19.2-389 and (ii) no information with respect to convictions for offenses specified in this section was obtained. Failure to obtain a certificate from the Commissioner for each employee or volunteer or the disclosure statement required by this section shall be grounds for suspension or revocation of the license issued pursuant to this chapter. If an applicant is denied employment because of convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties.

The provisions of this section shall not apply to a parent-volunteer of a child attending such licensed facility whether or not such parent-volunteer will be alone with any child in the performance of his duties.

A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child in a program of care which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section or § 63.1-198.2. (1985, c. 360; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693.)

REGULATIONS RELATING TO
CRIMINAL HISTORY RECORD INFORMATION USE AND SECURITY

PART I.

GENERAL.

Pursuant to the provisions of Section 9-170(1), 9-170(15), 9-170(16), 9-170(17), 9-170(21) and Section 9-184 through Section 9-196 of the Code of Virginia, the Criminal Justice Services Board hereby promulgates Regulations Relating to Criminal History Record Information Use and Security.

The purpose of these regulations is to assure that state and local criminal justice agencies maintaining criminal history record information establish required record keeping procedures to ensure that criminal history record information is accurate, complete, timely, electronically and physically secure, and disseminated only in accordance with federal and state legislation and regulations. Agencies may implement specific procedures appropriate to their particular systems, but at a minimum shall abide by the requirements outlined herein.

1.1. DEFINITIONS.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Access" means the ability to obtain, directly or through an intermediary, criminal history record information contained in manual or automated files.

"Board" means the Criminal Justice Services Board, as defined in Section 9-168 of the Code of Virginia.

"Central Criminal Records Exchange (CCRE)" means the repository in this Commonwealth which receives, identifies, maintains, and disseminates individual criminal history records, in accordance with Section 9-170(22) of

the Code of Virginia.

"**Conviction data**" means information in the custody of any criminal justice agency relating to a judgement of conviction, and the consequences arising therefrom, in any court.

"**Correctional status information**" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"**Criminal history record information**" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (Section 16.1-226 et seq.), of Title 16.1, of the Code of Virginia, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"**Criminal history record information area**" means any office, room, or space in which criminal history record information is regularly collected, processed, stored, or disseminated to an authorized user. This area includes computer rooms, computer terminal workstations, file rooms and any other rooms or space in which the above activities are carried out.

"**Criminal intelligence information**" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity.

"Criminal investigative information" means information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

"Criminal justice agency" means a court or any governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, which is used for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

"Director" means the chief administrative officer of the Department.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a right and need to know the information.

"Expunge" means to remove, in accordance with a court order, a criminal history record, or a portion of a record, from public inspection or normal access.

"Modify" means to add or delete information from a record to accurately reflect the reported facts of an individual's criminal history record. (See

Section 9-192(C) of the Code of Virginia.) This may include eradicating, supplementing, updating, and correcting inaccurate and erroneous information.

"Seal" means to physically prevent access to a criminal history record, or portion of a criminal history record.

PART II.

CRIMINAL HISTORY RECORD INFORMATION USE.

2.1. APPLICABILITY.

These regulations govern originals and copies of manual or automated criminal history record information which are used, collected, stored, or disseminated by state or local criminal justice agencies or other agencies receiving criminal history record information in the Commonwealth. The regulations also set forth the required procedures that ensure the proper processing of the expungement of criminal history record information. The provisions of these regulations apply to the following groups, agencies and individuals:

A. State and local criminal justice agencies and subunits of these agencies in the Commonwealth;

B. The United States Government or the government of another state or its political subdivisions which exchange such information with criminal justice agencies in the Commonwealth, but only to the extent of that exchange;

C. Noncriminal justice agencies or individuals who are eligible under the provisions of Section 19.2-389 of the Code of Virginia to receive limited criminal history record information.

D. The provisions of these regulations do not apply to :

1. original or copied records of entry, such as police blotters, maintained by a criminal justice agency on a chronological basis and permitted

to be made public, but only if such records are not indexed or accessible by name;

2. offense and dispatch records maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name or do not contain criminal history record information;

3. court records of public criminal proceedings, including opinions and published compilations thereof;

4. records of traffic offenses; disseminated to or maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses;

5. statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable;

6. announcements of executive clemency;

7. posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

8. criminal justice intelligence information or criminal justice investigative information.

Nothing in these regulations shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system.

2.2. COLLECTION.

A. RESPONSIBILITY.

Responsibility for collecting and updating criminal history record information rests with:

1. State officials and criminal justice agencies having the power to arrest, detain, or hold convicted persons in correctional facilities;
2. Sheriffs of cities or counties;
3. Police officials of cities, counties and towns;
4. Other local law enforcement officers or conservators of the peace who have the power to arrest for a felony (see Section 19.2-390 of the Code of Virginia);
5. Clerks of court and court agencies or officers of the court; and
6. Other criminal justice agencies or agencies having criminal justice responsibilities which generate criminal history record information.

B. REPORTABLE OFFENSES.

The above officials and their representatives are required to submit to the Central Criminal Records Exchange, on forms provided by the Central Criminal Records Exchange, a report on every arrest they complete for:

1. Treason;
2. Felonies or offenses punishable as a misdemeanor under Title 54.1 of the Code of Virginia;
3. Class 1 and 2 misdemeanors under Title 18.2 (except an arrest for a violation of Article 2 (Section 18.2-266 et seq.) of Chapter 7 of Title 18.2; violation of Article 2 (Section 18.2-415) of

Chapter 9 of Title 18.2, or 18.2-119; or violation of any similar ordinance of a county, city or town.)

In addition to those offenses enumerated above, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or correctional institution.

The chief of police, sheriff, or criminal justice agency head is responsible for establishing a system to ensure that arrest forms are completed and submitted in a timely and accurate fashion.

C. **TIMELINESS OF SUBMISSION.**

1. **ARRESTS:** Arrest reports for all offenses noted above, except as provided in this section, and a fingerprint card for the arrested individual shall be forwarded to the Central Criminal Records Exchange in accordance with the time limits specified by the Department of State Police. A copy of the Central Criminal Records Exchange arrest form shall also be sent to the local court (a copy of the form is provided for the courts) at the same time.

The link between the arrest report and the fingerprint card shall be established according to Central Criminal Records Exchange requirements. Arrests that occur simultaneously for multiple offenses need only be accompanied by one fingerprint card.

2. **NONCONVICTIONS:**

For arrests except as noted in subdivision 3.a below, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days from the date the order is entered by the presiding judge.

3. CONVICTIONS:

a. For persons arrested and released on summonses under Section 19.2-74 of the Code of Virginia, the chief law-enforcement officer or his designee who may be the arresting officer, shall furnish fingerprint cards and a completed copy of the Central Criminal Records Exchange form, to the Central Criminal Records Exchange. The form shall be completed immediately upon conviction unless an appeal is noted. In the case of an appeal, officials responsible for reporting the disposition of charges shall report the conviction within 30 days after final action of the case.

b. For arrests except as noted in subdivision 3.a. above, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days after occurence of the disposition.

4. FINAL DISPOSITION: State correctional officials shall submit to the Central Criminal Records Exchange the release status of an inmate of the state correctional system within 20 days of the release.

D. UPDATING AND ACCURACY.

Arresting officers and court clerks noted above are responsible for notifying the Central Criminal Records Exchange in a timely fashion, and always within 30 days, of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated. In the case of correctional status or release information, correctional officials are responsible for notifying the Central Criminal Records Exchange within the

same time limits of updates or changes in correctional status information. Forms for updating and correcting information are provided by the Central Criminal Records Exchange.

Each criminal justice agency is required to supply timely corrections of criminal history record information the agency has provided to a criminal justice or noncriminal justice agency for a period of two years after the date of dissemination.

E. LOCALLY MAINTAINED AND NON-REPORTABLE OFFENSES.

Criminal history record information generated by a criminal justice agency and maintained in a locally used and maintained file, including criminal history record information on offenses not required to be reported to the Central Criminal Records Exchange but maintained in local files, as well as criminal history record information maintained by the Central Criminal Records Exchange, shall adhere to the standards of collection, timeliness, updating and accuracy as required by these regulations. Arrests shall be noted and convictions or adjudications recorded within 30 days of court action or the elapse of time to appeal.

2.3. DISSEMINATION.

A. AUTHORIZATION

No criminal justice agency or individual shall confirm or deny the existence or non-existence of a criminal history record to persons or agencies that would not be eligible to receive the information. No dissemination of a criminal history record is to be made to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.

Criminal history record information or portions of an individual's record both maintained and used by criminal justice agencies and eligible recipients, maintained either at the Central Criminal Records Exchange, or by the originating criminal justice agency, or both, shall only be disseminated as provided by Section 19.2-389 of the Code of Virginia.

Upon receipt of a request for criminal history record information, by personal contact, mail, or electronic means from an agency or individual claiming to be authorized to obtain such information, the person responding to the request shall determine whether the requesting agency or individual is authorized to receive criminal history record information.

Criminal justice agencies shall determine what positions in their agency require regular access to criminal history record information as part of their job responsibilities. These positions will be exempt from the dissemination rules below. Use of criminal history record information by a member of a criminal justice agency not occupying a position authorized to receive criminal history record information, or for a purpose or activity other than one for which the person is authorized to receive criminal history record information, will be considered a dissemination and shall meet the provisions of this section. If the user of criminal history record information does not meet the procedures in subsection B., the use of the information will be considered an unauthorized dissemination.

The release of criminal history record information to an individual or entity not included in Section 19.2-389 of the Code of Virginia is unlawful and unauthorized. An individual or criminal justice agency that releases criminal history record information to a party which does not clearly belong to one of the categories of agencies and individuals authorized to receive the

information as outlined in Section 19.2-389 of the Code is subject to being denied access to state and national criminal history record information on a temporary or permanent basis and to the administrative sanctions described in Section 2.8 of these regulations. Unlawful dissemination contrary to the provisions of these regulations is also a Class 2 misdemeanor (See Section 9-195 of the Code of Virginia).

B. PROCEDURES FOR RESPONDING TO REQUESTS.

A criminal justice agency disseminating criminal history record information shall adhere to the procedures set forth below:

1. ALLOWABLE RESPONSES TO REQUESTS.

Local and regional criminal justice agencies may respond to requests for criminal history record information in two ways:

a. For offenses required to be reported to the Central Criminal Records Exchange (CCRE), they may refer the requester to the Central Criminal Records Exchange, which will directly provide the requester with the information, or shall themselves query the Central Criminal Records Exchange to obtain the most accurate and complete information available and provide the information to the requester. (See Section 19.2-389 of the Code of Virginia.)

It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to information requests. The local law-enforcement agency may directly provide criminal history record information to the requester without making an inquiry to the Central Criminal Records Exchange or referring the requester to the Central Criminal Records Exchange if time is of the essence and the normal response time of the Exchange would exceed the necessary time period. (See Section 19.2-389 of the Code of Virginia.) Under circumstances where an inquiry to the Exchange is

not made, the record provided by the local law-enforcement agency should be accompanied by an appropriate disclaimer indicating that the record may not be complete.

b. For nonreportable offenses (those offenses not reported to the Central Criminal Records Exchange), the law-enforcement agency shall provide the information requested, following the dissemination procedures as required by the regulations below.

2. PRIOR TO DISSEMINATION.

Prior to disseminating criminal history record information a criminal justice agency shall:

a. VERIFY REQUESTER IDENTITY.

(1) INDIVIDUAL REQUESTER:

For an individual requesting his own record and not known to the person responding to the request, the individual shall provide proper identification, to include at least two of the following, one of which must be a photo identification: (i) a valid passport, (ii) drivers' license with photo, (iii) social security card, (iv) birth certificate, or (v) military identification, if there is more than one name match. Fingerprints or other additional information shall be required if the disseminating criminal justice agency deems it appropriate or necessary to ensure a match of the record and the requesting subject.

(2) CRIMINAL JUSTICE AGENCIES:

For personnel of criminal justice agencies requesting a record, the requester shall provide valid agency identification unless the disseminator recognizes the requesting individual as having previously been authorized to receive the information for the same purpose.

(3) **NONCRIMINAL JUSTICE AGENCIES OR INDIVIDUALS:**

For an individual requesting the record of another, as in the case of an attorney requesting the record of his client, the individual shall provide a sworn written request from the record subject naming the requester as a recipient, as provided in Section 19.2-389(A) of the Code of Virginia. Identification of the attorney or individual shall also be required unless the attorney or individual is known to the official responding to the request.

b. **VERIFY RECORD SUBJECT IDENTITY.**

Because serious harm could come from the matching of criminal history record information to the wrong individual, verification procedures shall be carefully managed, particularly when dissemination will be to noncriminal justice recipients. The following verification methods are the only acceptable methods:

(1) **INDIVIDUAL REQUESTERS:** The verification requirements for individuals requesting their own records and for individual requesters with sworn requests from the subject of the information shall be the same as the requirements for noncriminal justice agencies as described below. Only when information supplied and information in the Central Criminal Records Exchange or local files satisfactorily match shall information be disseminated.

(2) **CRIMINAL JUSTICE AGENCIES:** Criminal history record information which reasonably corresponds to the name, aliases, and physical identity of the subject can be disseminated to a legitimate requester when time is of the essence or if criminal justice interests will be best served by the dissemination. This includes the dissemination of records with similar but not identical name spellings, similar physical characteristics, and similar but not identical aliases. When criminal history record information

s obtained in this manner and results in an apparent match between the identity of the subject and the record, the criminal history record should be verified using fingerprint identification prior to prosecution, adjudication or sentencing of the record subject. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange.

(3) **NONCRIMINAL JUSTICE AGENCIES:** Full name, date of birth, race, and sex of the record subject, must be provided by the requester for a criminal history record to be disseminated. Fingerprint identification may be required prior to dissemination if there is any doubt as to the match. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange. Information supplied by the requester and available through the Central Criminal Records Exchange (or in the local files where the request is for criminal history record information maintained only locally) must match to the satisfaction of the disseminator, or the dissemination shall not be made.

c. **NOTIFY REQUESTER OF COSTS AND RESTRICTIONS.**

The official responsible for aiding the requester shall notify the requester of the costs involved and of restrictions generally imposed on use of the data, or be reasonably assured that the requester is familiar with the costs and restrictions, prior to beginning the search for the requested criminal history record information, and shall obtain the consent of the requester to pay any charges associated with the dissemination.

3. **LOCATING AND DISSEMINATING INFORMATION REQUESTED.**

Once a request for a criminal history record has been made, and the responsible official is satisfied as to the legitimacy of the request and the

identity of the subject and has informed the requester of costs and restrictions, the responsible official conducting the search for the record shall supply the information after querying the Central Criminal Records Exchange. However, if time is of the essence, or the offenses in a criminal history record are not required to be reported to Central Criminal Records Exchange, the responsible official may directly supply the information (Section 19.2-389 of the Code of Virginia).

4. INSTRUCTIONS REGARDING DISSEMINATION TO REQUESTERS.

The disseminated record must be accompanied by one of the three following messages in printed form, whichever matches the category of the requester:

a. RECORD SUBJECTS:

Record subjects have a right to receive and disseminate their own criminal history record information, subject to these regulations and Section 19.2-389(11) of the Code of Virginia. If a record subject or his attorney complies with the requirements of these sections, he shall be given the requested criminal history record information. However, if an agency or individual receives a record from the record subject, that agency or individual shall not further disseminate the record. The following printed message shall accompany the criminal history record information disseminated to a record subject:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

b. CRIMINAL JUSTICE AGENCIES:

The following printed message shall accompany the criminal history record information disseminated to a criminal justice agency:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

c. NONCRIMINAL JUSTICE AGENCIES AND INDIVIDUALS OTHER THAN RECORD SUBJECTS:

Even with the sworn consent of the record subject, only criminal history record information that is conviction data shall be disseminated to a noncriminal justice agency or individual in compliance with the existing laws and shall not be disseminated further. The following printed message shall accompany the criminal history record information disseminated to an individual or a noncriminal justice agency receiving criminal history record information:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

5. MAINTAINING A DISSEMINATION LOG.

A record of any dissemination shall be maintained at the disseminating criminal justice agency or shall be accessible electronically for a period of at least two years from the date of the dissemination.

The dissemination log must list all requests for criminal history record information. The log may be automated or manual.

Records will include the following information on each dissemination:

a. Date of inquiry;

b. Requesting agency name and address;

c. Identifying name and number (either FBI or state identification number of record subject, or notification of "no record found");

d. Name of requester within the agency requesting criminal history record information; and

e. Name of disseminator (officer or civilian who provides the criminal history record information to the requester).

6. REPORTING UNAUTHORIZED DISSEMINATIONS.

While individual criminal justice agencies are not expected to audit agencies who receive criminal history record information that they provide, in order to identify unauthorized releases, they shall notify the Department of any violations observed of the above dissemination regulations. The Department will investigate and respond to the violation in a manner deemed appropriate by the Department.

A criminal justice agency which knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log to ensure that disseminations are being appropriately managed.

7. INTERSTATE DISSEMINATION.

Interstate dissemination of criminal history record information shall be subject to the procedures described herein. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and these regulations, as if the agency were within the jurisdiction of the Commonwealth.

8. FEES.

Criminal justice agencies may charge a reasonable fee for search and copying time expended when dissemination of criminal history record information is requested by a noncriminal justice agency or individual. The criminal justice agency shall post the schedule of fees to be charged, and shall obtain approval from the requester to pay such costs prior to initiating the search.

2.4. ACCESS AND REVIEW.

A. WHO CAN REVIEW.

An individual or his attorney, upon providing proper identification and in the case of an attorney representing a client, with a sworn written request from the record subject, shall have the right to inspect criminal history record information being maintained on that individual by the Central Criminal Records Exchange or other criminal justice agencies. Completing a request form may be required by the Central Criminal Records Exchange or the local criminal justice agency.

B. REVIEW AT LOCAL LAW-ENFORCEMENT AGENCY OR CENTRAL CRIMINAL RECORDS EXCHANGE.

An individual or his attorney may review the individual's criminal history record arising from arrests for felonies and Class 1 and 2 misdemeanors maintained in the Central Criminal Records Exchange by applying at any law-enforcement agency having terminal capabilities on the Virginia Criminal Information Network or to the Central Criminal Records Exchange of the Virginia Department of State Police, during normal working hours. An individual or his attorney may review the individual's criminal history record regarding offenses not required to be reported to the Central Criminal Records Exchange at the arresting law-enforcement agency. The law-enforcement agency to which the request is directed shall inform the individual or his attorney of the procedures associated with the review.

Individuals shall be provided at cost, one copy of their record. If no record can be found, a statement shall be furnished to this effect.

C. TIMELINESS AND COMPLETENESS.

An individual requesting his own record shall be advised when the record

will be available. In no case shall the time between request and availability of the record exceed one week, except where fingerprint identification is required; then it shall not exceed 30 days. Criminal justice agencies should seek to provide the record as soon as reasonably possible unless there are questions of identification.

The criminal justice agency locating an individual's criminal history record information shall examine its own files and shall contact the Central Criminal Records Exchange for the most up-to-date criminal history record information, and supply both to the requester.

D. ASSISTANCE.

The criminal justice agency to which the request is directed shall provide reasonable assistance to the individual or his attorney to help understand the record.

The official releasing the record shall also inform the individual of his right to challenge the record.

2.5. CHALLENGE.

Individuals who desire to challenge their own criminal history record information must complete documentation provided by the criminal justice agency maintaining the record and forward it to the Central Criminal Records Exchange or the criminal justice agency maintaining the record. A duplicate copy of the form and the challenged record may be furnished to the individual initiating the challenge or review. The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the Central Criminal Records Exchange or the criminal justice agency maintaining the record. For offenses not required to be reported to the Exchange, the challenge shall be made at the arresting law-enforcement agency or the

criminal justice agency maintaining the records.

A challenge will be processed as described below.

A. RECORDS MAINTAINED BY THE CENTRAL CRIMINAL RECORDS EXCHANGE.

1. MESSAGE FLAGS.

If the challenge is made of a record maintained by the Central Criminal Records Exchange, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD". A challenged record shall carry this message when disseminated while under challenge.

2. REVIEW AT EXCHANGE.

The Central Criminal Records Exchange shall compare the information contained in the repository files as reviewed by the individual with the original arrest or disposition form. If no error is located, the Central Criminal Records Exchange shall forward a copy of the challenge form, a copy of the Central Criminal Records Exchange record and other relevant information to the criminal justice agency or agencies which the Central Criminal Records Exchange records indicate as having originated the information under challenge, and shall request them to examine the relevant files to determine the validity of the challenge.

3. EXAMINATION.

The criminal justice agency or agencies responsible for originating the challenged record shall conduct an examination of their source data, the contents of the challenge, and information supplied by the Central Criminal Records Exchange for discrepancies or errors, and shall advise the Central Criminal Records Exchange of the results of the examination.

4. CORRECTION.

If any modification of a Central Criminal Records Exchange record is

required, the Exchange shall modify the record and shall then notify the criminal justice agency in which the record was originally reviewed of its action, and supply it and other agencies involved in the review with a copy of the corrected record.

5. NOTIFICATION BY CENTRAL CRIMINAL RECORDS EXCHANGE.

The Central Criminal Records Exchange shall also provide notification of the correction to all recipients of the record within the last 24 months.

6. NOTIFICATION BY OTHER CRIMINAL JUSTICE AGENCIES.

Criminal justice agencies which have disseminated an erroneous or incomplete record shall in turn notify agencies which have received the disseminated record or portion of the record in the last two years from the date of the Central Criminal Records Exchange modification of the record. Notification shall consist of sending a copy of the original record, and corrections made, to the recipients of the erroneous record noted in the dissemination log for the two-year period prior to the date of correction by the Central Criminal Records Exchange. (See Section 9-192(C) of the Code of Virginia.) The criminal justice agency in which the review and challenge occurred shall notify the individual or his attorney of the action of the Central Criminal Records Exchange.

7. APPEAL.

The record subject or his attorney, upon being told of the results of his record review, shall also be informed of his right to review and appeal those results.

B. RECORDS MAINTAINED BY A CRIMINAL JUSTICE AGENCY OTHER THAN THE CENTRAL CRIMINAL RECORDS EXCHANGE.

1. MESSAGE FLAGS.

If a challenge is made of a record maintained by a criminal justice agency, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD". A disseminated record shall contain this message while under challenge.

2. EXAMINATION AND CORRECTION AGENCY.

If the challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the validity of the challenge. If the review demonstrates that modification is in order, the modification shall be completed and the erroneous information destroyed. If the challenged record pertains to disposition information, the arresting agency shall compare contents of the challenge with information originally supplied by the Clerk of the Court.

3. REVIEW BY CLERK OF COURT.

If no error is found in the criminal justice agency's records, the arresting agency shall forward the challenge to the Clerk of the Court that submitted the original disposition. The Clerk of the Court shall examine the court records pursuant to the challenge and shall, in turn, notify the arresting agency of its findings. The arresting agency shall then proceed as described in Subsection B.2. of this section.

4. NOTIFICATION.

The criminal justice agency in which the challenge occurred shall notify the individual or his attorney of the action taken, and shall notify the Central Criminal Records Exchange and other criminal justice agencies

receiving the erroneous information of the necessary corrections if required, as well as the noncriminal justice agencies to which it has distributed the information in the last 24 months, as noted in its dissemination log.

5. **CORRECTION.**

The Central Criminal Records Exchange will correct its records, and notify agencies who received erroneous information within the past 24 months. The agencies will be requested to correct their files and to notify agencies which have the disseminated information, as provided in subsection A.6. of this section.

6. **APPEAL.**

The record subject or his attorney, upon receiving the results of the record review, shall be informed of the right to review and appeal.

C. **ADMINISTRATIVE REVIEW OF CHALLENGE RESULTS.**

1. **REVIEW BY CRIMINAL JUSTICE AGENCY HEAD.**

After the aforementioned review and challenge concerning a record either in the Central Criminal Records Exchange or another criminal justice agency, the individual or his attorney may, within 30 days, request in writing that the agency head of the criminal justice agency in which the challenge was made, review the challenge if the individual is not satisfied with the results of the review and challenge.

2. **THIRTY-DAY REVIEW.**

The criminal justice agency head or his designated official shall review the challenge by reviewing the action taken by the agency, the Central Criminal Records Exchange, and other criminal justice agencies, and shall notify the individual or his attorney in writing of the decision within 30 days of the receipt of the written request to review the challenge. The

criminal justice agency head shall also notify the individual of the option to request an administrative appeal through the Department within 30 days of the postmarked date of the notification of the decision. This notification of the appeal shall include the address of the Department of Criminal Justice Services.

3. CORRECTION AND NOTIFICATION.

If required, correction and notification shall follow the procedures outlined in subsections A and B of this section.

4. NOTIFICATION OF THE DEPARTMENT.

A copy of the notice required in Subsection C.2. of this section shall be forwarded to the Department by the criminal justice agency at the same time it is provided to the individual.

D. ADMINISTRATIVE APPEAL.

1. DEPARTMENTAL ASSESSMENT.

The individual or his attorney challenging his record, within 30 days of the postmark of his notification of the decision of the administrative review, may request that the Director of the Department of Criminal Justice Services review the challenge and conduct an informal hearing. The Director may designate a hearing officer for this purpose.

2. DETERMINATION OF MERITS OF CASE.

The Director or his designee shall contact the criminal justice agencies involved and request any and all information needed. Criminal justice agencies shall supply the information requested in a timely manner, to allow the Department to respond to the individual within 30 days. The Director will then rule on the merits of a hearing and notify the individual or his attorney that such hearing will or will not be held.

3. HEARING.

The hearing, if held, shall be conducted within 30 days of the receipt of the request, and the decision of the hearing officer communicated to the individual or his attorney within 30 days of the hearing.

4. FINDING.

If the Director or the hearing officer determines that correction and modification of the records is required, correction of the record and notification of all involved parties, shall proceed according to the procedures outlined in subsections A and B of this section.

5. REMOVAL OF A CHALLENGE DESIGNATION.

When records and relevant action taken by the criminal justice agencies involved are deemed to be correct, the Department shall notify the affected criminal justice agencies to remove the challenge designation from their files.

E. DEPARTMENT NOTIFICATION FOLLOWING CORRECTIONS.

For audit purposes, the Central Criminal Records Exchange shall annually forward the names and addresses of the agencies which originated erroneous record information or received erroneous information from the Exchange in that year to the Department of Criminal Justice Services.

The Department shall ensure at its next audit that all records in originating and recipient agencies have been corrected as required and that all erroneous information is destroyed.

2.6. EXPUNGEMENT AND SEALING.

A. RESPONSIBILITY OF THE DIRECTOR.

The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order. Upon receipt of a court order,

petition and other supporting documents for the expungement of a criminal history record, the Director of the Department, pursuant to Section 19.2-392.2 of the Code of Virginia, shall by letter with an enclosed copy of the order, direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record, to remove the electronic or manual record or portion thereof from its repository and place it in a physically sealed, separate file. The file shall be properly indexed to allow for later retrieval of the record if required by court order, and the record shall be labeled with the following designation: "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."

B. RESPONSIBILITY OF AGENCIES WITH A RECORD TO BE EXPUNGED.

The record named in the Department's letter shall be removed from normal access. The expunged information shall be sealed but remain available, as the courts may call for its reopening at a later date. (See Section 19.2-392.3 of the Code of Virginia.) Access to the record shall be possible only through a name index of expunged records maintained either with the expunged records or in a manner that will allow subsequent retrieval of the expunged record as may be required by the court or as part of the Department's audit procedures. Should the name index make reference to the expunged record, it shall be apart from normally accessed files.

C. PROCEDURE FOR EXPUNGEMENT AND SEALING OF HARD COPY RECORDS.

1. The expungement and sealing of hard copy original records of entry (arrest forms) is accomplished by physically removing them from a file, and filing them in a physically secure location elsewhere, apart from normally accessed files. This file should be used only for expunged records and should be accessible only to the manager of records.

2. If the information to be expunged is included among other information that has not been expunged on the same form or piece of paper, the expunged information shall be obliterated on the original or the original shall be retyped eliminating the expunged information. The expunged information shall then be placed in the file for expunged records, in its original or copied form, and shall be accessible only to the manager of records.

3. If the expunged information is located on a criminal history record provided by the Central Criminal Records Exchange (i.e. "RAP sheet"), the criminal history record information shall be destroyed, and a new copy, not containing the expunged data, shall be obtained when necessary.

D. PROCEDURE FOR EXPUNGING AUTOMATED RECORDS.

Should the record to be expunged be maintained in an automated system, the Central Criminal Records Exchange or the agency known to possess such a record shall copy the automated record onto an off-line medium such as tape, disk or hard copy printouts. The expunged record, regardless of the type of medium on which it is maintained, shall then be kept in a file used for expunged records and sealed from normal use, accessible only to the manager of records. No notification that expunged data exists shall be left in the normally accessed files.

E. DEPARTMENT TO BE NOTIFIED FOLLOWING EXPUNGEMENT.

Upon receipt of a request from the Department to expunge and seal a record, the affected agency or agencies shall perform the steps above, and notify the Department of their action in writing within 120 days of their receipt of the request.

F. EXPUNGEMENT ORDER NOT RECEIVED BY DEPARTMENT.

Should a court ordered expungement be directed to a criminal justice agency other than the Department, the directed criminal justice agency shall comply as outlined herein and advise the Director without delay of such order. The Director shall, upon receipt of such notification, obtain a copy of the order from the appropriate circuit court.

2.7. AUDIT.

The Department shall annually conduct an audit of a random representative sample of state and local criminal justice agencies to ensure and verify adherence to these regulations and to ensure that criminal history records are accurate and complete.

The audits may include, but will not be limited to: (i) examination of record accuracy, (ii) completeness, (iii) timely submission of information, (iv) evidence of dissemination limitations and adequate dissemination logs, (v) security provisions, (vi) evidence of notification of the individual's right of access and challenge, (vii) appropriate handling of record challenges, (viii) timely modification of erroneous records, (ix) evidence of timely notifications of required changes, and (x) appropriate notifications of the Department as required.

2.8. ADMINISTRATIVE SANCTIONS.

Discovery of violations or failure to comply with these regulations in whole or in part will occasion the following sanctions. Additional criminal penalties and other sanctions may be invoked as provided in Section 2.3. should the violation involve an unauthorized dissemination.

A. LAW-ENFORCEMENT AGENCIES.

1. Should a law-enforcement agency fail to comply with these

regulations, a letter will be forwarded by the Department to either the chief of police or sheriff, citing the problem and notifying the police department or the sheriff's department that the matter will be referred to the chief official of the locality or commonwealth's attorney, respectively, if a satisfactory result is not forthcoming. The criminal justice agency shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the offices of the city, county or town manager or the local commonwealth's attorney requesting resolution of the matter within 30 days.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the Department, the matter will be referred to the Criminal Justice Services Board and the Office of the Attorney General for action.

B. COURTS.

1. Should a court or officer of the court fail to comply with these regulations, a letter will be forwarded by the Department to the court, citing the problem and notifying the court clerk that the matter will be referred to the chief judge of the locality and the local commonwealth's attorney if a satisfactory result is not forthcoming. The court shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the chief judge requesting resolution of the matter within 30 days. The Executive Secretary of the Supreme Court of Virginia will also be notified.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the Department, the matter will be referred to the Criminal Justice Services Board and the Chief Justice of Virginia.

PART III

CRIMINAL HISTORY RECORD INFORMATION SECURITY.

3.1 APPLICABILITY.

These regulations are applicable to criminal justice information systems operated within the Commonwealth of Virginia. These regulations on security are not applicable to court records or other records expressly excluded by Section 9-184 (B) of the Code of Virginia.

These regulations establish a minimum set of security standards which shall apply to any manual or automated record keeping system which collects, stores, processes, or disseminates criminal history record information.

Where individuals or noncriminal justice agencies are authorized to have direct access to criminal history record information pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice, the service support agreement will embody the restrictions on dissemination and the security requirements contained in these regulations and the Code of Virginia.

3.2. RESPONSIBILITIES.

In addition to those responsibilities mandated by state and federal laws, the Department of State Police shall have the responsibility for the implementation of these regulations in regard to the operation of the Central Criminal Records Exchange.

The implementation of these regulations, except as set forth in the above

paragraph, shall be the responsibility of the criminal justice agency as designated and authorized by the county or municipality in cases of political subdivisions. Nothing in these regulations shall be deemed to affect in any way the exercise of responsibility conferred on counties and municipalities of the state under Title 15.1 of the Code of Virginia. The determination of the suitability of the actual procedures instituted by the criminal justice agency will be the subject of study in any audit by the Department, mandated by Section 9-186 of the Code of Virginia.

3.3. **PHYSICAL ACCESS.**

Access to areas in which criminal history record information is collected, stored, processed or disseminated shall be limited to authorized persons. Control of access shall be ensured through the use of locks, guards or other appropriate means. Authorized personnel shall be clearly identified.

Procedures shall be established to detect an unauthorized attempt or access. Furthermore, a procedure shall be established to be followed in those cases in which an attempt or unauthorized access is detected. Such procedures shall become part of the orientation of employees working in criminal history record information area(s) and shall be reviewed periodically to ensure their effectiveness.

Criminal justice agencies shall provide direct access to criminal history record information only to authorized officers or employees of a criminal justice agency and, as necessary, to other authorized personnel essential to the proper operation of the criminal history record information system.

Each criminal justice agencies shall institute, where computer processing is not utilized, procedures to ensure that an individual or agency authorized to have direct access is responsible for: (i) the physical security of

criminal history record information under its control or in its custody, and (ii) the protection of this information from unauthorized access, disclosure or dissemination.

Procedures shall be instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters.

For criminal justice agencies that have their criminal history files automated, it is highly recommended that "backup" copies of criminal history information be maintained, preferably off-site. Further, for larger criminal justice agencies having automated systems, it is recommended that the criminal justice agencies develop a disaster recovery plan. The plan should be available for inspection and review by the Department.

System specifications and documentation shall be carefully controlled to prevent unauthorized access and dissemination.

3.4. PERSONNEL.

In accordance with applicable laws, ordinances, and regulations, the criminal justice agency shall:

A. Screen and have the right to reject for employment, based on good cause, personnel to be authorized to have direct access to criminal history record information;

B. Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to this information where these personnel violate the provisions of the regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information; and

C. Ensure that employees working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations. Designated employees shall be briefed on their roles and responsibilities in protecting the information resources in the criminal justice agency. Special procedures connected with security shall be reviewed periodically to ensure their relevance and continuing effectiveness.

3.5. **TELECOMMUNICATIONS.**

In those systems where terminal access of criminal history record information is permitted, terminal devices must be secure. Terminal devices capable of receiving or transmitting criminal history record information shall be attended during periods of operation. In cases in which the terminal is unattended, the device shall, through security means, be made inoperable.

Telecommunications facilities used in connection with the terminal shall also be secured. The terminal device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the terminal operator may be required. Equipment associated with the terminal device shall be reasonably protected from possible tampering or tapping. In cases in which a computer system provides terminal access to criminal history record information, the use of dial-up lines shall be prohibited to access criminal history record information.

3.6. **COMPUTER OPERATIONS.**

Where computerized data processing is employed, effective and technologically advanced software and hardware design shall be instituted to prevent unauthorized access to this information.

Computer operations, whether dedicated or shared, which support criminal

justice information systems shall operate in accordance with procedures developed or approved by the participating criminal justice agencies.

Criminal history record information shall be stored by the computer in a manner that cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by noncriminal justice terminals.

Operational programs shall be used that will prohibit inquiry, record updates, or destruction of records, from terminals other than criminal justice system terminals which are so designated.

The destruction of records shall be limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

Operational programs shall be used to detect and log all unauthorized attempts to penetrate criminal history record information systems, programs or files.

Programs designed for the purpose of prohibiting unauthorized inquiries, unauthorized record updates, unauthorized destruction of records, or for the detection and logging of unauthorized attempts to penetrate criminal history record information systems shall be known only to the criminal justice agency employees responsible for criminal history record information system control or individuals and agencies which pursuant to a specific agreement with the criminal justice agency to provide security programs. The program(s) shall be kept under maximum security conditions.

Criminal justice agencies having automated criminal history record files

should designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures.

The criminal justice agency shall have the right to audit, monitor, and inspect procedures established pursuant to these rules and regulations.

3.7. EFFECTIVE DATE:.

These regulations shall be effective on and after January 1, 1990 and until amended or rescinded.

3.8. ADOPTED:

July 27, 1977

3.9. AMENDED:

October 4, 1989

Robert E. Shepherd, Jr.

Robert E. Shepherd, Jr.
Chairman
Criminal Justice Services Board

November 9, 1989
Date

REGULATIONS GOVERNING THE PRIVACY AND SECURITY OF CRIMINAL HISTORY RECORD INFORMATION CHECKS FOR FIREARM PURCHASE

PART I.
GENERAL.

Pursuant to the provisions of Section 18.2-308.2:2 of the Code of Virginia, criminal history record information checks are required prior to the sale, rental, trade or transfer of certain firearms. A criminal history record information check shall be requested by licensed dealers from the Department of State Police to determine the legal eligibility of a prospective purchaser to possess or transport certain firearms under state or federal law. The Department of Criminal Justice Services hereby promulgates the following regulations governing these criminal history record information checks as required under Section 18.2-308.2:2(H) of the Code of Virginia. The purpose of these regulations is to ensure that criminal history record information checks are conducted in a manner which ensures the integrity of criminal history record information, guarantees individual rights to privacy, and supports the needs of law enforcement, while allowing nearly instantaneous sales of firearms to the law abiding public.

§ 1.1. DEFINITIONS.

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly dictates otherwise:

"Antique handgun or pistol" means any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1893, and any replica of such a handgun or pistol, provided such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or; (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

"Criminal History Record Information" means records and data collected by criminal justice agencies on adult individuals, consisting of notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arising therefrom.

"Criminal History Record Information Check" (also "criminal history record check" and "record check") means a review of a potential purchaser's criminal history record information, to be conducted by the Department of State Police at the initiation of a dealer in order to establish a prospective purchaser's eligibility to possess or transport a firearm, as defined herein, under state or federal law.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. Section 921 et seq.

"Dealer Identification Number" (DIN) means a unique identifying number assigned by the Department of State Police to each individual dealer as defined in Section 18.2-308.2:2(G) of the Code of Virginia, in order to identify such dealers when they request criminal history record information to determine the eligibility of a prospective purchaser to possess or transport a firearm.

"Department" means the Virginia Department of State Police.

"Firearm" means (i) any handgun or pistol having a barrel length of less than five inches which expels a projectile by action of an explosion, or; (ii) any semi-automatic centerfire rifle or pistol which expels a projectile by action of an explosion and is provided by the manufacturer with a magazine which will hold more than 20 rounds of ammunition, or is designed by the manufacturer to accommodate a silencer or bayonet or is equipped with a bipod, flash suppressor or folding stock.

"Handgun" means any firearm including a pistol or revolver designed to be fired by the use of a single hand.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any member of the Regulatory Division of the Department of Alcoholic Beverage Control vested with police authority, any police agent appointed under Section 56-353 of the Code of Virginia (provides railroad officials with the authority to appoint police agents), or any game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Prospective purchaser" means an individual who intends to buy, rent, trade, or transfer a firearm or firearms as defined herein, and has notified a dealer of this intent.

"Resident of Virginia" means a person who resides and has a present intent to remain within the Commonwealth, as shown by an ongoing physical presence and a residential address within Virginia. If a person does not reside in Virginia, but is on active duty as a member of the U. S. Armed Forces and Virginia is the person's permanent duty station, the person shall, for the purposes of these regulations, be considered a resident of Virginia.

"Transfer" means to sell, rent, trade, or transfer a firearm as defined herein.

"Virginia Firearms Transaction Record Form" means the form issued by the Department of State Police provided to dealers and required for requesting a criminal history record check, also known as "SP-65", the "VFTR form" or the "VFTR".

PART II.
REGULATIONS.

§ 2.1. APPLICABILITY OF REGULATIONS CONCERNING CRIMINAL HISTORY RECORD CHECKS FOR FIREARM PURCHASE.

A. These regulations apply to:

1. All licensed dealers in firearms;

2. The Department of State Police.

B. These regulations shall not apply to:

1. Transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. Section 921 et seq.;

2. Purchases by or sale to any law enforcement officer or agent of the United States, Commonwealth or any local government;

3. Antique handguns or pistols; or

4. Transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than Section 18.2-308.2:2 of the Code of Virginia.

§ 2.2. RESPONSIBILITIES OF DEALERS.

It shall be the responsibility of dealers that transfer firearms in Virginia to comply with the following:

A. Register with the Department and obtain from the Department a Dealer Identification Number (DIN) and the toll-free telephone number to participate in the criminal history record check program.

B. Prior to transferring any firearm, determine if the firearm is a "firearm" as defined in these regulations and Section 18.2-308.2:2 of the Code of Virginia.

C. Complete the VFTR form.

D. Request a criminal history record information check prior to the transfer of any such firearm.

E. Maintain required forms and records according to the procedures outlined in these regulations.

F. Deny the transfer of a firearm if advised by the Department of State Police that the prospective purchaser is ineligible to possess such a firearm and the Department disapproved the transfer of a firearm to the prospective purchaser.

G. Allow the Department of Criminal Justice Services access to all forms and records required by these regulations.

§ 2.3. RESPONSIBILITIES OF THE DEPARTMENT OF STATE POLICE.

A. The Department of State Police shall operate a telephone and mail response system to provide dealers in firearms (as defined herein) with information on the legal eligibility of prospective purchasers to possess or transport firearms covered under these regulations. This information shall be released only to authorized dealers. Prior to the release of the information, the identity of the dealer and the prospective purchaser should be reasonably established.

B. In no case shall the Department release to any dealer actual criminal history record information as defined herein. The dealer shall only receive from the Department a statement of the Department's approval or disapproval of the transfer, and an approval code number, if applicable, unique to the transaction. A statement of approval or disapproval shall be based on the Department's review of the prospective purchaser's criminal history record information and restrictions on the transfer of firearms to felons enumerated in Section 18.2-308.2 of the Code of Virginia or federal law. This statement shall take one of the following two statuses: (i) approval with an approval code number, (ii) disapproval with no approval code number.

C. The Department shall provide to dealers a supply of VFTR forms, a DIN, and a toll-free number to allow access to the telephone criminal history record check system available for approval of firearms purchases by Virginia residents.

D. The Department shall supply all dealers in the Commonwealth with VFTR forms in a manner which allows the Department to use the forms to identify dealers and monitor dealers' use of the system to avoid illegal access to criminal history records and other Department information systems.

E. The Department shall hire and train such personnel as are necessary to administer criminal history record information checks, insure the security and privacy of criminal histories used in such records checks, and monitor the record check system.

F. Allow the Department of Criminal Justice Services access to all forms and records required by these regulations.

§ 2.4. PREPARING FOR A CRIMINAL HISTORY RECORDS CHECK.

A. GENERAL PROCEDURES.

1. If any firearm which a prospective purchaser intends to obtain in transfer is a firearm as defined herein, the dealer shall request that the Department of State Police conduct a criminal history record check on the purchaser. The dealer may obtain the required record check from the Department for purchasers who are residents of Virginia by telephoning the Department, using the provided toll-free number, and requesting the record check. For purchasers who are out-of-state residents, the dealer may only request the record check from the Department by mail or delivery. However, Virginia residents may, if they elect, request the dealer to obtain a record check by mail. The initial required steps of completion of the VFTR, obtaining consent of the purchaser, determining residency and verifying identity are common to both telephone and mail methods of obtaining the record check.

2. The dealer shall request a criminal history record check and obtain the prospective purchaser's signature on the consent portion of the form for each new transfer of a firearm or firearms to a given purchaser. One record check is sufficient for any number of firearms in a given transfer, but once a transaction has been completed, no transfer to the same purchaser shall proceed without a new records check.

3. A criminal history record check shall be conducted prior to the actual transfer of a firearm.

B. COMPLETING SECTION A OF THE VIRGINIA FIREARMS TRANSACTION RECORD: OBTAINING CONSENT FOR A CRIMINAL HISTORY RECORD INFORMATION CHECK FOR FIREARMS PURCHASE.

As a condition of any sale, the dealer shall advise the prospective purchaser to legibly complete and sign Section A of a VFTR form.

1. The dealer shall require the prospective purchaser to complete Section A of the VFTR form in the prospective purchaser's own handwriting, and without the dealer's assistance. The purchaser shall answer the questions listed and shall complete the items that establish residency and describe identity, including name, sex, height, weight, race, date of birth and place of birth.

2. If the prospective purchaser cannot read or write, Section A of the VFTR form may be completed by any person other than the dealer or any employee of the dealer according to the procedures specified on the reverse side of the VFTR form.

3. The dealer shall also obtain the prospective purchaser's signature or, if he cannot read or write, his mark, following the consent paragraph at the bottom of Section A, which shall certify that the information supplied by the purchaser in Section A is true and correct.

C. COMPLETING SECTION B OF THE VIRGINIA FIREARMS TRANSACTION RECORD: ESTABLISHING PURCHASER IDENTITY AND RESIDENCY AND DEALER IDENTITY.

Prior to making a request for a criminal history record information check, the dealer shall complete all of Section B of the VFTR form for which the dealer is responsible. Information recorded on the VFTR form shall be sufficient to: (i) reasonably establish a prospective purchaser's identity and determine the residency of the prospective purchaser; and (ii) identify the dealer.

1. IDENTIFY PROSPECTIVE PURCHASER AND DETERMINE RESIDENCY.

a. The dealer shall determine residency and verify the prospective purchaser's identity as required in Section B of the VFTR, by requiring at least two forms of identification. Only the forms of identification listed below shall be acceptable forms of identification. At least one of the following forms of identification shall include a recent photograph of the prospective purchaser. Accordingly, the dealer shall require the prospective purchaser to furnish one form of identification that contains a recent photograph of the prospective purchaser and at least one other form of identification included in the list below:

(1) a valid and current Virginia driver's license or photo identification card provided by the Virginia Department of Motor Vehicles or another state's issuing authority;
(2) a military identification card;
(3) an immigration card;
(4) an employment identification card, provided the card shows at least the prospective purchaser's name and place of employment;
(5) a passport;
(6) a voter registration card;

(7) evidence of paid personal property tax or real estate taxes;
(3) a current automobile registration;
(9) a hunting or fishing license;
(10) a social security card; or
(11) other identification allowed as evidence of residency by Part 178.124 of Title 27, Code of Federal Regulations, and ATF Ruling 79-7.

b. The dealer will ensure that the forms of identification support the listing of the identifying characteristics and the resident's address as supplied by the prospective purchaser in Section A.

c. If the dealer discovers any unexplained discrepancy between the two forms of identification (different birth dates, different names), the dealer shall not request a criminal history record check until the prospective purchaser can be adequately identified with two acceptable forms of identification as required.

d. The dealer shall name and identify on the VFTR form the documents used to verify the prospective purchaser's identity and residence, and shall record all pertinent identifying numbers on the VFTR form.

e. While the dealer is required to collect sufficient information to establish the prospective purchaser's identity and residency from the documents listed above, in no case is the dealer authorized to collect more information on the prospective purchaser than is reasonably required to establish identity and state of residence.

2. **IDENTIFY DEALER.** The dealer or his employee shall note on Section B of the form:

a. the dealer's or employee's signature;
b. his position title (owner, employee);
c. the trade or corporate name and business address; and
d. the dealer's federal firearms license number.

§ 2.5. PROCEDURES FOR REQUESTING A CRIMINAL HISTORY RECORD INFORMATION CHECK BY TELEPHONE (VIRGINIA RESIDENTS ONLY).

A. Once the prospective purchaser has completed Section A of the VFTR form and the dealer has completed the necessary portions of the VFTR form and determined that the prospective purchaser is a resident of Virginia, the dealer shall call the Department of State Police and request a criminal history record information check by telephone for the firearm transfer. The dealer shall use the toll-free number provided by the Department of State Police. However, no provision of these regulations shall prohibit a Virginia resident from obtaining a written record check through the dealer for any firearm transfer.

B. The dealer shall identify himself to the Department by providing his DIN and the printed number on the upper right-hand corner of the VFTR form prepared by the prospective purchaser.

C. The dealer shall allow the Department to verify this identifying information. The Department of State Police may disapprove a firearm purchase if the Department determines that the identifying information supplied by the dealer is incomplete, incomprehensible or in error, raises a reasonable doubt as to the origin of the call, or is otherwise unusable.

D. The dealer shall then supply to the Department over the telephone all identifying data on the prospective purchaser which is recorded on Section A of the VFTR, in the order requested by the Department. This information shall be transmitted to the Department in a discrete and confidential manner, assuring to the extent possible that the identifying data is not overheard by other persons in the dealer's place of business. If the dealer cannot provide sufficient information to allow the Department to conduct a criminal history record check, the Department will not accept the request on the basis of insufficient information to conduct a check. The Department may adopt procedures to appropriately address such occurrences.

E. The Department of State Police will respond to the dealer's request for a criminal history record check by consulting the criminal history record information indexes and files, during the dealer's call. In the event of electronic failure or other difficulties, the Department shall immediately advise the dealer of the reason for such delay and provide to the dealer an estimate of the length of such delay.

F. If no evidence of a criminal record or other information is found that would preclude the purchaser from possessing or transporting a firearm under state or federal law, the Department will immediately notify the dealer that the transfer may proceed, and will provide the dealer with a unique approval code number, which the dealer shall enter in a clear, visible, and convenient manner on the original of the VFTR form.

G. If the initial search discloses that the prospective purchaser may not be eligible to possess a firearm, the Department will notify the dealer that a further check must be completed before the end of the dealer's next business day, to determine if the prospective purchaser has a criminal record that makes him ineligible to possess or transport a firearm under state or federal law. This statement of ineligibility shall then be communicated by the dealer to the prospective purchaser in a discrete and confidential manner, recognizing the individual's rights to the privacy of this information.

H. In any circumstance in which the Department must return the dealer's telephone call, whether due to electronic or other failure or in order to allow a further search, the dealer shall await the Department's call and make no transfer of a firearm to the individual whose record is being checked until:

1. The dealer receives notification of approval of the transfer by telephone from the Department; or

2. The Department fails to disapprove the transaction of the prospective purchaser before the end of the next business day.

3. Exception: If the Department knows at the time of the dealer's telephone call that it will not be able to respond to the request by the end of the dealer's next business day, it will so notify the dealer. Upon receiving notification, the dealer shall note in a clear and visible manner on the VFTR that the Department was unable to respond. The dealer may in such cases complete the transfer immediately after his telephone call.

I. In the event that the Department is unable to immediately respond to the dealers' request for a criminal history record check and the prospective purchaser is also unable to await the Department's response to the dealer's request and the Department ultimately approves of the transfer, the dealer may transfer any firearm or firearms, as listed on the VFTR form that initiated the request for a record check, to the prospective purchaser, after the receipt of the approval of the transfer from the Department. The actual transfer of the firearm shall be accomplished in a timely manner. A second record check shall not be required provided that the actual transfer of the firearm occurs within a time period specified by the Department.

J. If the dealer is notified by the Department that the prospective purchaser is not eligible to possess or transport a firearm or firearms under state or federal law, and the transfer is disapproved, and if he is so notified before the end of the next business day after his accepted telephone request, the dealer shall not complete the transfer.

K. Within 24 hours of any transfer of a firearm covered by these regulations to a resident of Virginia on the basis of a telephone inquiry, the dealer shall send by mail or shall deliver to the Department the appropriate copies of the VFTR other than the original, with Sections A and B properly completed. No information on the type, caliber, serial number, or characteristics of the firearms transferred shall be noted on the copies of the VFTR submitted to the Department, but the forms shall otherwise be complete. The dealer shall note the date of mailing on the form, or shall have the form date stamped or receive a dated receipt if the dealer delivers the form.

L. **AFTER SALE CHECK.**

1. Following the receipt of the required copies of a completed VFTR form recording a transfer to a Virginia resident, the Department shall immediately initiate a search of all data bases in order to verify that the purchaser was eligible to possess or transport the firearm(s) under state or federal law.

2. If the search discloses that the purchaser is ineligible to possess or transport a firearm, the Department shall inform the chief law-enforcement officer in the jurisdiction where the transfer occurred and the dealer of the purchaser's ineligibility without delay. The Department shall mark "disapproved" on a copy of the VFTR submitted by the dealer after the transfer and return the form by mail to the dealer.

§ 2.6. PROCEDURES FOR REQUESTING A CRIMINAL HISTORY RECORD CHECK BY MAIL (REQUIRED FOR ALL NON-VIRGINIA RESIDENTS).

A. All transfers of firearms to non-Virginia residents require a written request for a record check. For non-Virginia residents, a criminal history record check for firearm transfer cannot be conducted by telephone. However, at the request of a Virginia resident, a dealer may request a record check by mail for any firearm transfer. In either case, the dealer shall follow the procedures as set forth below.

B. If a prospective purchaser is not a resident of Virginia or cannot supply sufficient information to establish or verify residency, the dealer shall obtain a record check by mailing or delivering a completed VFTR form to the Department.

C. The dealer shall mail or deliver to the Department the appropriate copies of the completed VFTR form according to procedures established by the Department (which shall not describe, list, or note the actual firearms to be transferred) within 24 hours of the prospective purchaser's signing and dating of the consent paragraph in Section A of the VFTR form. This shall be evidenced by the dealer's notation of the mailing date on the VFTR, if mailed, or the date stamp of the Department on the VFTR form or a receipt provided to the deliverer, if delivered. The original of the completed VFTR form shall be retained at the dealer's place of business.

D. The Department will initiate a search only upon receipt of the appropriate copies of the VFTR form at Department headquarters. The Department may challenge and refuse to accept any VFTR form if there is an unreasonable, extended time period between the date of the mailing and the date of the receipt of the copies of the form at the Department.

E. Following its search of Virginia and national criminal history record indexes and files, the Department will return to the dealer a copy of the VFTR form, marked "approved," or "not approved". When a dealer receives approval, he may transfer any firearm or firearms, as listed on the VFTR form that initiated the request for a record check, to the prospective purchaser, after his receipt of the approval. The actual transfer of the firearm shall be accomplished in a timely manner. A second record check shall not be required provided that the actual transfer of the firearm occurs within a time period specified by the Department. If the transfer is disapproved, he is not authorized to transfer any firearm to the prospective purchaser.

F. In the case of written requests for a criminal history record check, initiated by the submission of VFTR forms, the dealer shall wait up to 10 days after the mailing date (noted on the form) or delivery date stamp (if not mailed) of the request for written approval from the Department, prior to transferring a firearm as defined herein.

G. However, if 10 days elapse from the date the VFTR form was mailed (as noted on the VFTR form) or delivered to the Department of State Police (as indicated by the date stamped by the Department), and the Department has not responded to the request initiated by the form by approving or disapproving the transaction proposed, the dealer may complete the transfer to the prospective purchaser on his next business day, after the tenth day, or thereafter, and not be in violation of the law or these regulations. After completion of the transfer in this case, as in all cases, any new or further transfer of firearms not listed on the VFTR form that initiated the request for a records check to the same purchaser will require a new criminal history records check.

§ 2.7. PROPER USE OF THE COMPONENTS OF THE CRIMINAL HISTORY RECORD CHECK SYSTEM: FORMS, RECORDS, TOLL-FREE TELEPHONE NUMBER AND DIN.

A. The VFTR forms will be provided to the dealer by the Department. VFTR forms shall not be transferred from one dealer to another. All VFTR forms partially completed, torn, defaced or otherwise rendered unusable shall be marked "VOID" and disposed of in a manner which will not allow their reuse. All unused forms shall remain the property of the Department of State Police and shall be returned to the Department in the event that a dealer ceases to engage in the transfer of firearms in a manner which is regulated by the Department of Criminal Justice Services.

B. The dealer will retain the original of the VFTR form for his own files.

C. The dealer shall keep all blank and completed VFTR originals, and all returned copies in a secure area, which will restrict access to the information contained on the VFTR forms to authorized employees only.

D. The Department shall retain a copy of all VFTR forms received from dealers according to the procedures outlined below.

REGULATIONS GOVERNING THE PRIVACY AND SECURITY OF CRIMINAL HISTORY RECORD INFORMATION CHECKS FOR FIREARM PURCHASE

a. **APPROVED TRANSFERS:** Thirty days after the Department has notified the dealer of an approved transfer, the Department shall destroy the VFTR form still in its possession and all identifiable information collected pertaining to a prospective purchaser.

b. **DISAPPROVED TRANSFERS:** VFTR forms recording a transfer that was not approved shall be maintained by the Department in a separate file, maintained by name of the prospective purchaser.

(1) The information contained in these forms shall be used by the Department for legitimate law enforcement purposes only, and shall be governed by existing regulations concerning the privacy and security of criminal history record information.

(2) The Department may maintain any other printouts or reports with these copies of the VFTR form, provided they are treated as criminal history record information.

E. The Department of State Police shall maintain a running log of all requests for criminal history record information checks for firearms transfer, which shall include the following:

1. DIN and name of requester;
2. Dealer's Transaction Number;
3. Approval Code Number, if sale is approved;
4. Date of telephone request or mailing or delivery date of mail request;
5. Notation of type of record request - either telephone or mail request;
6. Approved or Not Approved status; and
7. Date of clearance from Department file through mailing of VFTR form to the dealer or other final action.

F. A log shall be retained at the Department on each request which leads to approvals of firearm transfers for 12 months from the date of each request.

G. Requests which lead to disapprovals shall be maintained by the Department on a log for a period of two years from the date the request was accepted by the Department for processing.

H. The Department shall monitor and distribute all VFTR forms in an appropriate manner to ensure their proper control and use. This includes designing, redesigning, numbering, distributing, tracking, and processing all VFTR forms.

I. No dealer shall provide his DIN or the toll-free number to another party for any reason.

J. The DIN's and the toll-free number may be changed periodically to ensure that these numbers are not improperly used by unauthorized dealers or unauthorized parties.

§ 2.8. AUDITS.

A. The Department of State Police shall continuously observe compliance with requirements regarding VFTR form completion, notification of the Department of State Police following firearm transfers, forms management and storage, and confidentiality and proper use of the DIN and the toll-free telephone number for Virginia resident telephone record checks.

B. The Department of State Police shall notify the Department of Criminal Justice Services if a dealer has used or may have used the criminal history record information check system improperly in a manner that may jeopardize the confidentiality and security of criminal history record information systems.

C. Upon such notification, the Department of Criminal Justice Services shall audit the dealership in question and recommend corrective action without delay.

1. Pending the outcome of an audit, the Department may invalidate a particular DIN to ensure the continuous integrity of the criminal history record information. Prior to such invalidation, the Department shall notify the dealer orally, telephonically or in writing of the reasons for such invalidation and allow the dealer the opportunity to respond. The Department shall also notify the Department of Criminal Justice Services when a DIN has been invalidated.

2. Should the results of an audit reveal that the provisions of these regulations have not been violated, the Department of Criminal Justice Services shall advise the Department to immediately reinstate the invalidated DIN.

3. Should the results of an audit reveal minor violations of the provisions of these

regulations, the Department of Criminal Justice Services may notify the Department to monitor all future requests of the dealer for criminal history record checks for a period not to exceed ninety days. In the event that the DIN of the dealer has been invalidated, the Department of Criminal Justice Services shall also notify the Department to reinstate the invalidated DIN. Any additional violations that may occur during this time period shall be reported to the Department of Criminal Justice Services. Occurrences of additional violations shall invoke the provisions of these regulations for the handling of major or repeated violations, as outlined below, and may result in a subsequent audit of the dealer.

4. Should the results of an audit reveal major or repeated violations of the provisions of these regulations, the Department of Criminal Justice Services shall advise the Department to invalidate the DIN if not invalidated previously and that the invalidated DIN should not be reinstated until the dealer submits a written request to the Department of Criminal Justice Services for reinstatement of the DIN. The request shall demonstrate to the reasonable satisfaction of the Department of Criminal Justice Services that corrective action has been taken by the dealer to comply with the provisions of these regulations.

5. Should the results of an audit reveal that the privacy and security of criminal history record information has been compromised, the Department of Criminal Justice Services shall send written notification to the dealer, the office of the local commonwealth's attorney and the Department.

D. The Department of Criminal Justice Services shall annually audit the Department of State Police to ensure the following:

1. That records, VFTR's and other materials, except for the maintenance of the log as outlined above, on purchasers found to be eligible to possess or transport firearms (approved) are being routinely destroyed 30 days from the notification, mailing or delivery date of the accepted request for a records check; and

2. That VFTR's and other materials gathered on persons found to be ineligible to purchase a firearm (disapproved) are governed by the regulations for criminal history record information.

3. That logs recording the approvals and disapprovals of firearm transfers are being correctly maintained according to the provisions of these regulations.

REGULATIONS GOVERNING THE PRIVACY AND SECURITY OF CRIMINAL HISTORY RECORD INFORMATION CHECKS FOR FIREARM PURCHASE

EFFECTIVE DATE:

These regulations shall be effective on November 1, 1990 and until amended or rescinded.

ADOPTED:

August 3, 1990

Lindsay G. Dorrier, Jr., Chairman
Criminal Justice Services Board

October 16, 1990
DATE

WASHINGTON

SENTENCING REFORM ACT OF 1981

9.94A.230 Vacation of offender's record of conviction. (1) Every offender who has been discharged under RCW 9.94A.220 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A-.220; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.220; and (f) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under RCW 9.94A.220.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. [1987 c 486 § 7; 1981 c 137 § 23.]

CHAPTER 10.97

WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

Section

10.97.010 Declaration of policy.
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10.97.050 Unrestricted dissemination of certain information—Dissemination of other information to certain persons or for certain purposes—Records of dissemination, contents.
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10.97.080 Inspection of information by subject—Limitations—Rules governing—Challenge of records and correction of information—Dissemination of corrected information.
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10.97.100 Fees for dissemination of information.
10.97.110 Action for injunction and damages for violation of chapter—Measure of damages—Action not to affect criminal prosecution.
10.97.120 Penalty for violation of chapter—Criminal prosecution not to affect civil action.

10.97.010 Declaration of policy

The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter.

Added by Laws 1977, Ex.Sess., ch. 314, § 1.

10.97.020 Short title

This chapter may be cited as the Washington State Criminal Records Privacy Act.

Added by Laws 1977, Ex.Sess., ch. 314, § 2.

10.97.030 Definitions. For purposes of this chapter, definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release. The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130 as now existing or hereafter amended;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330 as now existing or hereafter amended;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or acquittal except when the acquittal is due to a finding of not guilty by reason of insanity pursuant to chapter 10.77 RCW and the person was committed pursuant to chapter 10.77 RCW: *Provided, however,* That a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination. [1990 c 3 § 128; 1979 ex.s. c 36 § 1; 1979 c 158 § 5; 1977 ex.s. c 314 § 3.]

Index, part headings not law——Severability——Effective dates——Application——1990 c 3: See RCW 18.155.900 through 18.155.902.

10.97.050 Unrestricted dissemination of certain information——Dissemination of other information to certain persons or for certain purposes——Records of dissemination, contents. (1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain

the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

(8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concerning sex offenders as provided in RCW 4.24.550. [1990 c 3 § 129; 1977 ex.s. c 314 § 5.]

Index, part headings not law——Severability——Effective dates——Application——1990 c 3: See RCW 18.155.900 through 18.155.902.

10.97.040 Dissemination of information shall state disposition of charge—Current and complete information required—Exceptions

No criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the request for the information: *Provided, however,* That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination: *Provided further,* That when another criminal justice agency requests criminal history record information, the disseminating agency may disseminate specific facts and incidents which are within its direct knowledge without furnishing disposition data as otherwise required by this section, unless the disseminating agency has received such disposition data from either: (1) the state patrol, or (2) the court or other criminal justice agency required to furnish disposition data pursuant to RCW 10.97.045.

No criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the Washington state patrol for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:

(1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section is technically or physically incapable of responding within the required time;

(2) The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of the agency which disseminates the information;

(3) The full information requested and to be disseminated is contained in a criminal history record information summary re-

ceived from the identification section by the agency which is to make the dissemination not more than thirty days preceding the dissemination to be made;

(4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency which makes the dissemination;

(5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought; or

(6) A person who is the subject of the record requests the information and the agency complies with the requirements in RCW 10.97.080 as now or hereafter amended.

Added by Laws 1977, Ex.Sess., ch. 314, § 4. Amended by Laws 1979, Ex.Sess., ch. 36, § 2.

10.97.045 Disposition of criminal charge data to be furnished agency initiating criminal history record and state patrol

Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under RCW 43.43.745.

Added by Laws 1979, Ex.Sess., ch. 36, § 6.

10.97.060 Deletion of certain information, conditions

Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to

the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of non-conviction data shall be deleted upon the request of the person who is the subject of the record: *Provided, however,* That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

(1) The disposition was a deferred prosecution or similar diversion of the alleged offender;

(2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;

(3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event.

Added by Laws 1977, Ex.Sess., ch. 314, § 6.

10.97.070 Discretionary disclosure of suspect's identity to victim

(1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall

not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process.

Added by Laws 1977, Ex.Sess., ch. 314, § 7.

10.97.080 Inspection of information by subject — Limitations — Rules governing — Challenge of records and correction of information — Dissemination of corrected information

All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.17 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to he accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information.

10.97.090 Administration of Act by state patrol—Powers and duties

The Washington state patrol is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act.[1] The Washington state patrol may adopt any rules and regulations necessary for the performance of the administrative functions provided for in this chapter.

The Washington state patrol shall have the following specific administrative duties:

(1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;

(2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and

(3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems.

Added by Laws 1977, Ex.Sess., ch. 314, § 9. Amended by Laws 1979, Ex.Sess., ch. 36, § 4.

[1] This chapter.

10.97.100 Fees for dissemination of information

Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies.

Added by Laws 1977, Ex.Sess., ch. 314, § 10.

10.97.110 Action for injunction and damages for violation of chapter—Measure of damages—Action not to affect criminal prosecution

Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter.

Added by Laws 1977, Ex.Sess., ch. 314, § 11. Amended by Laws 1979, Ex.Sess., ch. 36, § 5.

10.97.120 Penalty for violation of chapter—Criminal prosecution not to affect civil action

Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law.

Enacted by Laws 1977, Ex.Sess., ch. 314, § 12.

Chapter 10.98

CRIMINAL JUSTICE INFORMATION ACT

Sections

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10.98.030 Source of conviction histories.
10.98.040 Definitions.
10.98.050 Fingerprints, identifying data, and disposition reports from various officials.
10.98.060 Arrest and fingerprint form.
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10.98.080 State identification number, furnishing of.
10.98.090 Disposition forms——Coding.
10.98.100 Compliance audit of disposition reports.
10.98.110 Tracking of felony cases.
10.98.130 Reporting of admissions and releases by local jails——Information required.
10.98.140 Criminal justice information——Forecasting, felons, sentences.
10.98.150 Release of information on suspected or convicted felons.
10.98.160 Procedures, development considerations——Executive committee, review and recommendations.

(1987 Ed.)

10.98.010 Purpose. The purpose of this chapter is to provide a system of reporting and disseminating felony criminal justice information that provides: (1) Timely and accurate criminal histories for filing and sentencing under the sentencing reform act of 1981, (2) identification and tracking of felons, and (3) data for state-wide planning and forecasting of the felon population. [1984 c 17 § 1.]

10.98.020 Short title. This chapter may be known and cited as the criminal justice information act. [1984 c 17 § 2.]

10.98.030 Source of conviction histories. The Washington state patrol *identification and criminal history section as established in RCW 43.43.700 shall be the primary source of felony conviction histories for filings, plea agreements, and sentencing on felony cases. [1984 c 17 § 3.]

10.98.040 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Arrest and fingerprint form" means the reporting form prescribed by the *identification and criminal history section to initiate compiling arrest and identification information.

(2) "Chief law enforcement officer" includes the sheriff or director of public safety of a county, the chief of police of a city or town, and chief officers of other law enforcement agencies operating within the state.

(3) "Department" means the department of corrections.

(4) "Disposition" means the conclusion of a criminal proceeding at any stage it occurs in the criminal justice system. Disposition includes but is not limited to temporary or permanent outcomes such as charges dropped by police, charges not filed by the prosecuting attorney, deferred prosecution, defendant absconded, charges filed by the prosecuting attorney pending court findings such as not guilty, dismissed, guilty, or guilty——case appealed to higher court.

(5) "Disposition report" means the reporting form prescribed by the *identification and criminal history section to report the legal procedures taken after completing an arrest and fingerprint form. The disposition

report shall include but not be limited to the following types of information:

(a) The type of disposition;

(b) The statutory citation for the arrests;

(c) The sentence structure if the defendant was convicted of a felony;

(d) The state identification number; and

(e) Identification information and other information that is prescribed by the *identification and criminal history section.

(6) "Fingerprints" means the fingerprints taken from arrested or charged persons under the procedures prescribed by the Washington state patrol *identification and criminal history section.

(7) "Prosecuting attorney" means the public or private attorney prosecuting a criminal case.

(8) "Section" refers to the Washington state patrol section on *identification and criminal history.

(9) "Sentence structure" means itemizing the components of the felony sentence. The sentence structure shall include but not be limited to the total or partial confinement sentenced, and whether the sentence is prison or jail, community supervision, fines, restitution, or community service. [1985 c 201 § 1; 1984 c 17 § 4.]

10.98.050 Fingerprints, identifying data, and disposition reports from various officials. (1) It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy–two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney. [1987 c 450 § 6; 1985 c 201 § 2; 1984 c 17 § 5.]

10.98.060 Arrest and fingerprint form. The arrest and fingerprint form shall include but not be limited to the following:

(1) Unique numbers associated with the arrest charges. The unique numbering system may be controlled by the local law enforcement agency, however the section shall approve of the numbering system and maintain a current catalog of approved local numbering systems. The purpose of the unique numbering system is to allow tracking of arrest charges through disposition;

(2) An organization code;

(3) Date of arrest;

(4) Local identification number;

(5) The prescribed fingerprints;

(6) Individual identification information and other information prescribed by the section. [1984 c 17 § 6.]

10.98.070 Participation in national crime information center interstate identification index. The section shall be the sole recipient of arrest and fingerprint forms described in RCW 10.98.060, fingerprint forms described in RCW 43.43.760, and disposition reports for forwarding to the federal bureau of investigation as required for participation in the national crime information center interstate identification index. The section shall comply with national crime information center interstate identification index regulations to maintain availability of out–of–state criminal history information. [1984 c 17 § 7.]

10.98.080 State identification number, furnishing of. The section shall promptly furnish a state identification number to the originating agency and to the prosecuting attorney who received a copy of the arrest and fingerprint form. In the case of juvenile felony–like adjudications, the section shall furnish, upon request, the state identification number to the juvenile information section of the administrator for the courts. [1985 c 201 § 3; 1984 c 17 § 8.]

10.98.090 Disposition forms——Coding. (1) In all cases where an arrest and fingerprint form is transmitted to the section, the originating agency shall code the form indicating which agency is initially responsible for reporting the disposition to the section. Coding shall include but not be limited to the prosecuting attorney, district court, municipal court, or the originating agency.

(2) In the case of a superior court or felony disposition, the prosecuting attorney shall promptly transmit the completed disposition form to the section. In the case of a felony conviction, the prosecuting attorney shall attach a copy of the judgment and sentence form to the disposition form transmitted to the section. In the case of a lower court disposition, the district or municipal court shall promptly transmit the completed disposition form to the section. For all other dispositions the originating agency shall promptly transmit the completed disposition form to the section.

(3) Until October 1, 1985, the prosecuting attorney, upon a felony conviction, shall also forward a copy of the judgment and sentence form to the department. [1985 c 201 § 4; 1984 c 17 § 9.]

10.98.100 Compliance audit of disposition reports. The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal offender record information described in RCW 43.43.705. The section shall prepare listings of all arrests charged and listed in the criminal offender record

information for which no disposition report has been received and which has been outstanding for more than nine months since the date of arrest. Each prosecuting attorney, district and municipal court, and originating agency shall be furnished a list of outstanding disposition reports. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. Within forty–five days, the prosecuting attorney, district and municipal court, and originating agency shall provide the section with a current disposition report for each outstanding disposition. The section shall assist prosecuting attorneys with the compliance audit by cross–checking outstanding cases with the administrator for the courts and the department of corrections. The section may provide technical assistance to prosecuting attorneys, district or municipal courts, or originating agencies for their compliance audits. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations. [1985 c 201 § 5; 1984 c 17 § 10.]

10.98.110 Tracking of felony cases. (1) The department shall maintain records to track felony cases following convictions in Washington state and felony cases under the jurisdiction of Washington state pursuant to interstate compact agreements.

(2) Tracking shall begin at the time the department receives a disposition form from a prosecuting attorney and shall include the collection and updating of felons' criminal records from conviction through completion of sentence.

(3) The department of corrections shall collect information for tracking felons from its offices and from information provided by county clerks, the Washington state patrol *identification and criminal history section, the office of financial management, and any other public or private agency that provides services to help individuals complete their felony sentences. [1987 c 462 § 2; 1984 c 17 § 11.]

10.98.130 Reporting of admissions and releases by local jails——Information required. Local jails shall report to the office of financial management and that office shall transmit to the department the information on all persons convicted of felonies or incarcerated for noncompliance with a felony sentence who are admitted or released from the jails and shall promptly respond to requests of the department for such data. Information transmitted shall include but not be limited to the state identification number, whether the reason for admission to jail was a felony conviction or noncompliance with a felony sentence, and the dates of the admission and release. [1987 c 462 § 3; 1984 c 17 § 13.]

Effective dates——1987 c 462: See note following RCW 13.04.116.

10.98.140 Criminal justice information——Forecasting, felons, sentences. (1) The section, the department, and the office of financial management shall be the primary sources of information for criminal justice forecasting. The information maintained by these agencies shall be complete, accurate, and sufficiently timely to support state criminal justice forecasting.

(2) The office of financial management shall be the official state agency for the sentenced felon jail forecast. This forecast shall provide at least a six–year projection and shall be published by December 1 of every even–numbered year beginning with 1986. The office of financial management shall seek advice regarding the assumptions in the forecast from criminal justice agencies and associations.

(3) The sentencing guidelines commission shall keep records on all sentencings above or below the standard range defined by chapter 9.94A RCW. As a minimum, the records shall include the name of the offender, the crimes for which the offender was sentenced, the name and county of the sentencing judge, and the deviation from the standard range. Such records shall be made available to public officials upon request. [1987 c 462 § 4; 1985 c 201 § 6; 1984 c 17 § 14.]

Effective dates——1987 c 462: See note following RCW 13.04.116.

10.98.150 Release of information on suspected or convicted felons. The section and the department shall provide prompt responses to the requests of law enforcement agencies and jails regarding the status of suspected or convicted felons. Dissemination of individual identities, criminal histories, or the whereabouts of a suspected or convicted felon shall be in accordance with chapter 10.97 RCW, the Washington state criminal records privacy act. [1984 c 17 § 15.]

10.98.160 Procedures, development considerations——Executive committee, review and recommendations. In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrator for the courts, local law enforcement agencies, jailers, the sentencing guidelines commission, the board of prison terms and paroles, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. An executive committee appointed by the heads of the department, the Washington state patrol, and the office of financial management shall review and provide recommendations for development and modification of the section, the department, and the office of financial management's felony criminal information systems. [1987 c 462 § 5; 1984 c 17 § 16.]

Chapter 43.43
Washington State Patrol

43.43.700. Identification and criminal history section—Established—Powers and duties generally

There is hereby established within the Washington state patrol a section on identification and criminal history hereafter referred to as the section.

In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

The section shall obtain from whatever source available and file for record the fingerprints, palmprints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government.

The section shall also contain like information concerning persons, over the age of eighteen years, who have been found, pursuant to a dependency proceeding under chapter 13.34 RCW in which the person was a party, to have sexually molested, sexually abused, or sexually exploited a child.

Amended by Laws 1984, ch. 17, § 17, eff. Feb. 21, 1984; Laws 1985, ch. 201, § 7.

43.43.705. Receipt of data—Furnishing of information—Procedure—Definitions—Appeals

Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies, or to the department of social and health services, hereinafter referred to as the "department", a transcript of the criminal offender record information or dependency record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through 43.43.800 the following words and phrases shall have the following meanings:

"Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

"Dependency record information" includes and shall be restricted to identifying data regarding a person, over the age of eighteen, who was a party to a dependency proceeding brought under chapter 13.34 RCW and who has been found, pursuant to such dependency proceeding, to have sexually molested, sexually abused, or sexually exploited a child.

Applications for information shall be by a data communications network used exclusively by criminal justice agencies or the department or in writing and information applied for shall be used solely in the due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3).

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3). The applicant may appeal such determination and denial of information to the advisory council created in RCW 43.43.785 and the council may direct that the section furnish such information to the applicant.

Amended by Laws 1985, ch. 201, § 8.

43.43.710. Availability of information

Information contained in the files and records of the section relative to the commission of any crime by any person shall be considered privileged and shall not be made public or disclosed for any personal purpose or in any civil court proceedings except upon a written order of the judge of a court wherein such civil proceedings are had. All information contained in the files of the section relative to criminal records and personal histories of persons arrested for the commission of a crime shall be available to all criminal justice agencies and, for the sole purpose of investigating the cause of fires under RCW 48.48.060(2) where the cause is suspected to be arson, to the director of community development, through the director of fire protection, upon the filing of an application as provided in RCW 43.43.705.

Dependency record information contained in the files and records of the section shall be considered privileged and shall not be made public. Dependency record information may be disclosed as authorized by this chapter or may be disclosed to the same extent that information regarding dependency proceedings may generally be disclosed, as authorized by applicable laws or court rules.

Although no application for information has been made to the section as provided in RCW 43.43.705, the section may transmit such information in the chief's discretion, to such agencies as are authorized by RCW 43.43.705 to make application for it.

Amended by Laws 1985, ch. 201, § 9; Laws 1986, ch. 266, § 87, eff. April 3, 1986.

43.43.715. Cooperation with other criminal justice agencies

The section shall, consistent with the procedures set forth in this 1972 act,[1] cooperate with all other criminal justice agencies, and the department, within or without the state, in an exchange of information regarding convicted criminals and those suspected of or wanted for the commission of crimes, and persons who are the subject of dependency record information, to the end that proper identification may rapidly be made and the ends of justice served.

Amended by Laws 1985, ch. 201, § 10.

43.43.725. Records as evidence

Any copy of a criminal offender record, photograph, fingerprint, or other paper or document in the files of the section, including dependency record information, certified by the chief or his designee to be a true and complete copy of the original or of information on file with the section, shall be admissible in evidence in any court of this state pursuant to the provisions of RCW 5.44.040.

Amended by Laws 1985, ch. 201, § 11.

43.43.730. Record—Inspection—Requests for purge or modification—Appeals. (1) Any individual shall have the right to inspect criminal offender record information, or dependency record information, on file with the section which refers to him. If an individual believes such information to be inaccurate or incomplete, he may request the section to purge, modify or supplement it and to advise such persons or agencies who have received his record and whom the individual designates to modify it accordingly. Should the section decline to so act, or should the individual believe the section's decision

to be otherwise unsatisfactory, the individual may appeal such decision to the superior court in the county in which he is resident, or the county from which the disputed record emanated or Thurston county. The court shall in such case conduct a de novo hearing, and may order such relief as it finds to be just and equitable.

(2) The section may prescribe reasonable hours and a place for inspection, and may impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them: *Provided*, That the section may charge a reasonable fee for fingerprinting. [1985 c 201 § 12; 1977 ex.s. c 314 § 16; 1972 ex.s. c 152 § 7.]

43.43.735. Photographing and fingerprinting—Powers and duties of law enforcement agencies and courts—Other data

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all persons lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor: *Provided*, That an exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all persons lawfully arrested, or all persons who are the subject of dependency record information.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons lawfully arrested for the commission of any criminal offense, or all persons who are the subject of dependency record information, when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he is charged.

(4) It shall be the duty of the court having jurisdiction over the dependency action to cause the fingerprinting of all persons who are the subject of dependency record information and to obtain other necessary identifying information, as specified by the section in rules promulgated pursuant to chapter 34.04 RCW to carry out the provisions of this subsection.

(5) The court having jurisdiction over the dependency action may obtain and record, in addition to fingerprints, the photographs, palmprints, soleprints, toeprints, or any other identification data of all persons who are the subject of dependency record information, when in the discretion of the court it is necessary for proper identification of the person.

Amended by Laws 1985, ch. 201, § 13.

43.43.740. Furnishing of data to section—Time limitation—Retention of data

Except as provided in RCW 43.43.755 relating to the fingerprinting of juveniles:

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state to furnish within seventy-two hours from the time of arrest to the section the required sets of fingerprints together with other identifying data as may be prescribed by the chief, of any person lawfully arrested, fingerprinted, and photographed pursuant to RCW 43.43.735.

(2) Law enforcement agencies may retain and file copies of the fingerprints, photographs, and other identifying data and information obtained pursuant to RCW 43.43.735. Said records shall remain in the possession of the law enforcement agency as part of the identification record and are not returnable to the subjects thereof.

(3) It shall be the duty of the court having jurisdiction over the dependency action to furnish dependency record information, obtained pursuant to RCW 43.43.735, to the section within seven days, excluding Saturdays, Sundays, and holidays, from the date that the court enters a finding, pursuant to a dependency action brought under chapter 13.34 RCW, that a person over the age of eighteen, who is a party to the dependency action, has sexually molested, sexually abused, or sexually exploited a child.

(4) The court having jurisdiction over the dependency action may retain and file copies of the fingerprints, photographs, and other identifying data and information obtained pursuant to RCW 43.43.735. These records shall remain in the possession of the court as part of the identification record and are not returnable to the subjects thereof.

Amended by Laws 1985, ch. 201, § 14.

43.43.745 Convicted persons, fingerprinting required, records——Furloughs, information to section, notice to local agencies——Arrests, disposition information——Convicts, information to section, notice to local agencies——Registration of sex offenders. (1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of corrections shall notify, forty-eight hours prior to the beginning of such furlough, the section that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the

prisoner will be on furlough status. In the case of an emergency furlough the forty-eight hour time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough. Upon receipt of furlough information pursuant to the provisions of this subsection the section shall notify the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest attachment of the Washington state patrol in the county wherein the furloughed prisoner shall be residing and such other criminal justice agencies as the section may determine should be so notified.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: *Provided*, That the chief shall promulgate rules pursuant to chapter 34.05 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state indeterminate sentence review board, or is discharged from custody on expiration of sentence, the department of corrections shall promptly notify the section that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his release or discharge, and shall additionally notify the section of change in residence or conditions of release or discharge of persons on active parole supervision, and shall notify the section when persons are discharged from active parole supervision.

Local law enforcement agencies may require persons convicted of sex offenses to register pursuant to RCW 9A.44.130. In addition, nothing in this section shall be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from registration pursuant to RCW 9A.44.130 which source may include any officer or other agency or subdivision of the state. [1990 c 3 § 409; 1985 c 346 § 6; 1973 c 20 § 1; 1972 ex.s. c 152 § 10.]

43.43.760. Personal identification—Requests—Purpose—Applicants—Fee

(1) Whenever a resident of this state appears before any law enforcement agency and requests an impression of his fingerprints to be made, such agency may comply with his request and make the required copies of the impressions on forms marked "Personal Identification". The required copies shall be forwarded to the section and marked "for personal identification only".

The section shall accept and file such fingerprints submitted voluntarily by such resident, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or other similar circumstances. Upon the request of such person, the section shall return his identification data.

43.43.705 Receipt of data—Furnishing of information—Procedure —Definitions—Appeals

Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies a transcript of the criminal offender record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through 43.43.800 the following words and phrases shall have the following meanings:

"Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

Applications for information shall be by a data communications network used exclusively by criminal justice agencies or in writing and information applied for shall be used solely in the due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3).

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3). The applicant may appeal such determination and denial of information to the advisory council created in RCW 43.43.785 and the council may direct that the section furnish such information to the applicant. [Added by Laws 1st Ex Sess 1972 ch 152 § 2, effective February 25, 1972; Amended by Laws 1st Ex Sess 1977 ch 314 § 14.]

43.43.710 Availability of information

Information contained in the files and records of the section relative to the commission of any crime by any person shall be considered privileged and shall not be made public or disclosed for any personal purpose or in any civil court proceedings except upon a written order of the judge of a court wherein such civil proceedings are had. All information contained in the files of the section relative to criminal records and personal histories of persons arrested for the commission of a crime shall be available to all criminal justice agencies and, for the sole purpose of investigating the cause of fires under RCW 48.48.060(2) where the cause is suspected to be arson, to the state fire marshal, upon the filing of an application as provided in RCW 43.43.705.

Although no application for information has been made to the section as provided in RCW 43.43.705, the section may transmit such information in the

chief's discretion, to such agencies as are authorized by RCW 43.43.705 to make application for it.

[Added by Laws 1st Ex Sess 1972 ch 152 § 3, effective February 25, 1972; Amended by Laws 1st Ex Sess 1977 ch 30 § 1, ch 314 § 15; Laws 1st Ex Sess 1979 ch 36 § 7.]

43.43.715 Cooperation with other criminal justice agencies

The section shall, consistent with the procedures set forth in *this 1972 act, cooperate with all other criminal justice agencies, within or without the state, in an exchange of information regarding convicted criminals and those suspected of or wanted for the commission of crimes, to the end that proper identification may rapidly be made and the ends of justice served. [Added by Laws 1st Ex Sess 1972 ch 152 § 4, effective February 25, 1972.]

43.43.720 Local identification and record systems—Assistance

At the request of any criminal justice agency within this state, the section may assist such agency in the establishment of local identification and records systems. [Added by Laws 1st Ex Sess 1972 ch 152 § 5, effective February 25, 1972.]

43.43.725 Records as evidence

Any copy of a criminal offender record, photograph, fingerprint, or other paper or document in the files of the section, certified by the chief or his designee to be a true and complete copy of the original or of information on file with the section, shall be admissible in evidence in any court of this state pursuant to the provisions of RCW 5.44.040. [Added by Laws 1st Ex Sess 1972 ch 152 § 6, effective February 25, 1972.]

43.43.730 Records—Inspection—Requests for purge or modification —Appeals

(1) Any individual shall have the right to inspect criminal offender record information on file with the section which refers to him. If an individual believes such information to be inaccurate or incomplete, he may request the section to purge, modify or supplement it and to advise such persons or agencies who have received his record and whom the individual designates to modify it accordingly. Should the section decline to so act, or should the individual believe the section's decision to be otherwise unsatisfactory, the individual may appeal such decision to the superior court in the county in which he is resident, or the county from which the disputed record emanated or Thurston county. The court shall in such case conduct a de novo hearing, and may order such relief as it finds to be just and equitable.

(2) The section may prescribe reasonable hours and a place for inspection, and may impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them: *Provided*, That the section may charge a reasonable fee for fingerprinting. [Added by Laws 1st Ex Sess 1972 ch 152 § 7, effective February 25, 1972; Amended by Laws 1st Ex Sess 1977 ch 314 § 16.]

43.43.735 Photographing and fingerprinting—Powers and duties of law enforcement agencies—Other data

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all persons lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor: *Provided*, That an exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all persons lawfully arrested.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toe prints, or any other identification data of all persons lawfully arrested for the commission of any criminal offense, when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he is charged. [Added by Laws 1st Ex Sess 1972 ch 152 § 8, effective February 25, 1972.]

43.43.740 Furnishing of data to section—Time limitation—Retention of data

Except as provided in RCW 43.43.735 relating to the fingerprinting of juveniles:

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state to furnish within seventy-two hours from the time of arrest to the section the required sets of fingerprints together with other identifying data as may be prescribed by the chief, of any person lawfully arrested, fingerprinted, and photographed pursuant to 43.43.735.

(2) Law enforcement agencies may retain and file copies of the fingerprints, photographs and other identifying data and information obtained pursuant to RCW 43.43.735. Said records shall remain in the possession of the law enforcement agency as part of the identification record and are not returnable to the subjects thereof. [Added by Laws 1st Ex Sess 1972 ch 152 § 9, effective February 25, 1972.]

43.43.745 Convicted persons, fingerprinting required, records—Furloughs, information to section, notice to local agencies —Arrests, disposition information—Convicts, information to section, notice to local agencies

(1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of social and health services shall notify, forty-eight hours prior to the beginning of such furlough, the section that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the forty-eight hour time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough. Upon receipt of furlough information pursuant to the provisions of this subsection the section shall notify the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest attachment of the Washington state patrol in the county wherein the furloughed prisoner shall be residing and such other criminal justice agencies as the section may determine should be so notified.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: *Provided*, That the chief shall promulgate rules pursuant to chapter 34.04 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state board of prison terms and paroles, or is discharged from custody on expiration of sentence, the department of social and health services shall promptly notify the section that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his release or discharge, and shall additionally notify the section of change in residence or conditions of release or discharge of persons on active parole supervision, and shall notify the section when persons are discharged from active parole supervision.

No city, town, county, or local law enforcement authority or other agency thereof may require that a convicted felon entering, sojourning, visiting, in transit, or residing in such city, town, county, or local area report or make himself known as a convicted felon or make application for and/or carry on his person a felon identification card or other registration document. Nothing herein shall, however, be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense

when such information is obtained from a source other than from such requirement which source may include any officer or other agency or subdivision of the state. [Added by Laws 1st Ex Sess 1972 ch 152 § 10, effective February 25, 1972; Amended by Laws 1973 ch 20 § 1.]

43.43.750 Use of force to obtain identification information—Liability

In exercising their duties and authority under RCW 43.43.735 and 43.43.740, the sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may, consistent with constitutional and legal requirements, use such reasonable force as is necessary to compel an unwilling person to submit to being photographed, or fingerprinted, or to submit to any other identification procedure, except interrogation, which will result in obtaining physical evidence serving to identify such person. No one having the custody of any person subject to the identification procedures provided for in* this act, and no one acting in his aid or under his direction, and no one concerned in such publication as is provided for in RCW 43.43.740, shall incur any liability, civil or criminal, for anything lawfully done in the exercise of the provisions of *this act. [Added by Laws 1st Ex Sess 1972 ch 152 § 11, effective February 25, 1972.]

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43.43.755 Persons under age of eighteen years

(1) The recording of fingerprints, photographs and other identification data of any person under the age of eighteen shall be accomplished pursuant to Title 13 RCW as now or hereafter revised or supplemented.

(2) For the purpose of *this act, any person eighteen years or older shall be considered an adult when charged with the commission of any criminal offense, and his records shall not be subject to the restrictions in subsection (1) of this section. [Added by Laws 1st Ex Sess 1972 ch 152 § 12, effective February 25, 1972.]

43.43.760 Personal identification—Requests—Purpose—Applicants—Fee

(1) Whenever a resident of this state appears before any law enforcement agency and requests an impression of his fingerprints to be made, such agency may comply with his request and make the required copies of the impressions on forms marked "Personal Identification". The required

copies shall be forwarded to the section and marked "for personal identification only".

(2) The section shall accept and file such fingerprints submitted voluntarily by such resident, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or other similar circumstances. Upon the request of such person, the section shall return his identification data.

(3) Whenever any person is an applicant for appointment to any position or is an applicant for employment or is an applicant for a license to be issued by any governmental agency, and the law or a regulation of such governmental agency requires that the applicant be of good moral character or not have been convicted of a crime, or is an applicant for appointment to or employment with a criminal justice agency, the applicant may request any law enforcement agency to make an impression of his fingerprints to be submitted to the section. The law enforcement agency may comply with such request and make copies of the impressions on forms marked "applicant", and submit such copies to the section.

The section shall accept such fingerprints and shall cause its files to be examined and shall promptly send to the appointing authority, employer, or licensing authority indicated on the form of application, a transcript of the record of previous crimes committed by the person described on the data submitted, or if there is no record of his commission of any crimes, a statement to that effect.

Any law enforcement agency may charge a fee not to exceed five dollars for the purpose of taking fingerprint impressions or searching its files of identification for noncriminal purposes. [Added by Laws 1st Ex Sess 1972 ch 152 § 13, effective February 25, 1972.]

43.43.765 Reports of transfer, release or changes as to committed or imprisoned persons——Records. The principal officers of the jails, correctional institutions, state mental institutions and all places of detention to which a person is committed under chapter 10.77 RCW, chapter 71.06 RCW, or chapter 71.09 RCW for treatment or under a sentence of imprisonment for any crime as provided for in RCW 43.43.735 shall within seventy-two hours, report to the section, any interinstitutional transfer, release or change of release status of any person held in custody pursuant to the rules promulgated by the chief.

The principal officers of all state mental institutions to which a person has been committed under chapter 10.77 RCW, chapter 71.06 RCW, or chapter 71.09 RCW shall keep a record of the photographs, description, fingerprints, and other identification data as may be obtainable from the appropriate criminal justice agency. [1990 c 3 § 131; 1983 c 3 § 108; 1972 ex.s. c 152 § 14.]

43.43.770 Unidentified deceased persons

It shall be the duty of the sheriff or director of public safety of every county, or the chief of police of every city or town, or the chief officer of other law enforcement agencies operating within this state, coroners or medical examiners, to record whenever possible the fingerprints and such other identification data as may be useful to establish identity, of all unidentified dead bodies found within their respective jurisdictions, and to furnish to

the section all data so obtained. The section shall search its files and otherwise make a reasonable effort to determine the identity of the deceased and notify the contributing agency of the finding.

In all cases where there is found to exist a criminal record for the deceased, the section shall notify the federal bureau of investigation and each criminal justice agency, within or outside the state in whose jurisdiction the decedent has been arrested, of the date and place of death of decedent. [Added by Laws 1st Ex Sess 1972 ch 152 § 15, effective February 25, 1972.]

43.43.775 Interagency contracts

The legislative authority of any county, city or town may authorize its sheriff, director of public safety or chief of police to enter into any contract with another public agency which is necessary to carry out the provisions of *this act. [Added by Laws 1st Ex Sess 1972 ch 152 § 16, effective February 25, 1972.]

43.43.780 Transfer of records, data, equipment to section

All fingerprint cards, photographs, file cabinets, equipment, and other records collected and filed by the bureau of criminal identification, are now in the department of social and health services shall be transferrd to the Washington state patrol for use by the section on identification created by *this act. [Added by Laws 1st Ex Sess 1972 ch 152 § 17, effective February 25, 1972.]

43.43.785 Criminal justice services—Consolidation—Establishment of program

The legislature finds that there is a need for the Washington state patrol to establish a program which will consolidate existing programs of criminal justice services within its jurisdiction so that such services may be more effectively utilized by the criminal justice agencies of this state. The chief, with the advice of the state advisory council on criminal justice services created in RCW 43.43.790, shall establish such a program which shall include but not be limited to the identification section, all auxiliary systems including the Washington crime information center and the teletypewriter communications network, the drug control assistance unit, and any other services the chief deems necessary which are not directly related to traffic control. [Added by Laws 1st Ex Sess 1972 ch 152 § 18, effective February 25, 1972.]

43.43.790 Criminal justice services—Advisory council—Created—Membership—Terms—Vacancies

There is hereby created the Washington state advisory council on criminal justice services. The advisory council shall consist of eleven members, nine to be appointed by the governor. The chief of the Washington state patrol shall be a member and shall act as chairman and the secretary of the department of social and health services or his designee shall be an ex officio member.

The members of the initial council shall be appointed within thirty days of the effective date of this act. Of the members of the initial council, three shall be appointed for terms ending June 30, 1974, three shall be appointed for terms ending June 30, 1975 and three shall be appointed for terms ending June 30, 1973. Thereafter, each member of the council shall be appointed for a term of four years. Vacancies shall be filled within ninety days for the remainder of the unexpired term by appointment of the governor in the same manner as the original appointments. Each member of the council shall continue in office until his successor is appointed. [Added by Laws 1st Ex Sess 1972 ch 152 § 19, effective February 25, 1972.]

43.43.795 Criminal justice services—Advisory council—Meetings

The council shall meet not less than quarterly at a date and place of its choice, and at such other times as shall be designated by a chairman or upon the written request of a majority of the council. [Added by Laws 1st Ex Sess 1972 ch 152 § 20, effective February 25, 1972.]

2 Am Jur 2d Administrative Law §§ 227-229.

43.43.800 Criminal justice services—Advisory council—Duties—Technical advisory committees

The advisory council shall review the provisions of RCW 43.43.700 through 43.43.785 and the administration thereof and shall consult with and advise the chief of the state patrol on matters pertaining to the policies of criminal justice services program.

The council shall appoint technical advisory committees comprised of members of criminal justice agencies having demonstrated technical expertise in the various fields of specialty within the program. [Added by Laws 1st Ex Sess 1972 ch 152 § 21, effective February 25, 1972.]

43.43.810 Obtaining information by false pretenses—Unauthorized use of information—Falsifying records—Penalty

Any person who wilfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who wilfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this act, or any member, officer, employee or agent of the section, the council or any participating agency, who wilfully falsifies criminal offender record information, or any records relating thereto, shall for each such offense be guilty of a misdemeanor. [Added by

43.43.815 Transcript of conviction record to be furnished to employer—Request—Purposes—Notification to subject of record — Fees — Limitations — Injunctive relief, damages, attorneys' fees — Disclaimer of liability—Rules

(1) Notwithstanding any provision of RCW 43.43.7000 through 43.43.810 to the contrary, the Washington state patrol shall furnish a transcript of the conviction record, as defined in RCW 10.97.030, pertaining to any person of whom the Washington state patrol has a record upon the written request of any employer for the purpose of:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employee who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

(2) When an employer has received a conviction record under subsection (1) of this section, the employer shall notify the subject of the record of such receipt within thirty days after receipt of the record, or upon completion of an investigation under subsection (1) (c) of this section. The employer shall make the record available for examination by its subject and shall notify the subject of such availability.

(3) The Washington state patrol shall charge fees for disseminating records pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the Washington state patrol of disseminating such records.

(4) Information disseminated pursuant to this section or RCW 43.43.760 shall be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated and shall be used only as necessary for those purposes enumerated in subsection (1) of this section.

(5) Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this section, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this section, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in the action is entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of chapter 10.97 RCW.

(6) Neither the section, its employees, nor any other agency or employee of the state is liable for defamation, invasion of privacy, negligence, or any other claim in

connection with any dissemination of information pursuant to this section or RCW 43.43.760.

(7) The Washington state patrol may adopt rules and forms to implement this section and to provide for security and privacy of information disseminated pursuant hereto, giving first priority to the criminal justice requirements of chapter 43.43 RCW. Such rules may include requirements for users, audits of users, and other procedures to prevent use of criminal history record information inconsistent with this section.

(8) Nothing in this section shall authorize an employer to make an inquiry not otherwise authorized by law, or be construed to affect the policy of the state declared in RCW 9.96A.010, encouraging the employment of ex-offenders.

43.43.820 Stale records

Stale records shall be destroyed in a manner to be prescribed by the chief. [Added by Laws 1st Ex Sess 1972 ch 152 § 25, effective February 25, 1972.]

43.43.830 RCW 43.43.830 through 43.43.840—— Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means either:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons during the course of his or her employment or involvement with the business or organization. However, for school districts and educational service districts, prospective employee includes only noncertificated personnel; or

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age or developmentally disabled persons during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, or (iii) developmentally disabled persons.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains,

treats, supervises, or provides recreation to developmentally disabled persons or children under sixteen years of age, including school districts and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.030(2)(b) or in a domestic relations action under Title 26 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means criminal history record information as defined in RCW 10.97.030 relating to a crime against persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Disciplinary board final decision" means any final decision issued by the disciplinary board or the director of the department of licensing for the following business or professions:

(a) Chiropractic;
(b) Dentistry;
(c) Dental hygiene;
(d) Drugless healing;
(e) Massage;
(f) Midwifery;
(g) Osteopathy;
(h) Physical therapy;
(i) Physicians;
(j) Practical nursing;
(k) Registered nursing;
(l) Psychology; and
(m) Real estate brokers and salesmen.

(6) "Crime against persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree rape; first, second, or third degree statutory rape; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; or any of these crimes as they may be renamed in the future.

(7) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons to which the applicant has access during the course of his or her employment or involvement with the business or organization. [1987 c 486 § 1.]

43.43.832 Background checks——Disclosure of child abuse or financial exploitation activity. (1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol criminal identification system may disclose, upon the request of a business or organization as defined in RCW 43.43.830, an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudications of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.34 RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision. When necessary, applicants may be employed on a conditional basis pending completion of such a background investigation.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the department of social and health services, when considering persons for state positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults or when licensing or authorizing such persons or agencies pursuant to its authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to license or regulate a facility which handles vulnerable adults, must consider the information listed in subsection (1) of this section. However, when necessary, persons may be employed on a conditional basis pending completion of the background investigation. The state personnel board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees. [1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Index, part headings not law——Severability——Effective dates——Application——1990 c 3: See RCW 18.155.900 through 18.155.902.

43.43.834 Background checks by business, organiza-
[illegible] Limitation [illegible] Civil liability. (1) A business or organization shall not make an

inquiry to the Washington state patrol under RCW 43-.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer, that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:

(a) Convicted of any crime against children or other persons;

(b) Convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;

(c) Found in any dependency action under RCW 13-.34.040 to have sexually assaulted or exploited any minor or to have physically abused any minor;

(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;

(e) Found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult; or

(f) Found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence. [1990 c 3 § 1103. Prior: 1989 c 334 § 3; 1989 c 90 § 3; 1987 c 486 § 3.]

43.43.836 Disclosure to individual of own record——Fee. **An individual may contact the state patrol to ascertain whether that same individual has a civil adjudication, disciplinary board final decision, or conviction record. The state patrol shall disclose such information, subject to the fee established under RCW 43.43.838. [1987 c 486 § 4.]**

43.43.838 Background checks——Transcript of conviction record, disciplinary board decision, criminal charges, or civil adjudication——Finding of no evidence, identification document——Immunity——Rules. (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or civil adjudication record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

(a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general; or

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in RCW 74.15.030(2)(b).

After processing the request, if the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or adjudication record shows no evidence of a crime against children or other persons or, in the case of vulnerable adults, no evidence of crimes relating to financial exploitation in which the victim was a vulnerable adult, an identification declaring the showing of no evidence shall be issued to the applicant by the state patrol and shall be issued within fourteen working days of the request. Possession of such identification shall satisfy future background check requirements for the applicant for a two-year period unless the prospective employee is any current school district employee who has applied for a position in another school district.

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records: *Provided*, That no fee shall be charged to a nonprofit organization, including school districts and educational service districts, for the records check.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW. [1990 c 3 § 1104. Prior: 1989 c 334 § 4; 1989 c 90 § 4; 1987 c 486 § 5.]

43.43.840 Notification of state patrol of specific findings of physical or sexual abuse or exploitation of child——Notification of licensing agency of employment termination because of crimes against persons. (1) The supreme court shall by rule require the courts of the state to notify the state patrol of any dependency action under RCW 13.34.030(2)(b) or domestic relations action under Title 26 RCW in which the court makes specific findings of physical abuse or sexual abuse or exploitation of a child.

(2) The department of licensing shall notify the state patrol of any disciplinary board final decision that includes specific findings of physical abuse or sexual abuse or exploitation of a child.

(3) When a business or an organization terminates, fires, dismisses, fails to renew the contract, or permits the resignation of an employee because of crimes against persons, and if that employee is employed in a position requiring a certificate or license issued by a licensing agency such as the state board of education, the business or organization shall notify the licensing agency of such termination of employment. [1987 c 486 § 6.]

43.43.845 Crimes against children——Notification of conviction or guilty plea of school employee. (1) Upon a guilty plea or conviction of a person of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW 9A.64.030, the prosecuting attorney shall determine whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district. If the person is employed by a school district or holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person who has a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall immediately transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction to provide this information to the state board of education and the school district employing the individual who pled guilty or was convicted of the crimes identified in subsection (1) of this section. [1990 c 33 § 577; 1989 c 320 § 6.]

43.43.850 Crime intelligence unit—Created

There is hereby created in the Washington state patrol an organized crime intelligence unit which shall be under the direction of the chief of the Washington state patrol. [Added by Laws 1st Ex Sess 1973 ch 202 § 1, effective April 26, 1973.]

43.43.852 "Organized crime" defined

For the purposes of RCW 43.43.850 through 43.43.864 "organized crime" means those activities which are conducted and carried on by members of an organized, disciplined association, engaged in supplying illegal goods and services and/or engaged in criminal activities in contravention of the laws of this state or of the United States. [Added by Laws 1st Ex Sess 1973 ch 202 § 2, effective April 26, 1973.]

43.43.854 Powers and duties of crime intelligence unit

The organized crime intelligence unit shall collect, evaluate, collate, and analyze data and specific investigative information concerning the existence, structure, activities and operations of organized crime and the participants involved therein; coordinate such intelligence data into a centralized system of intelligence information; furnish and exchange pertinent intelligence data with law enforcement agencies and prosecutors with such security and confidentiality as the chief of the Washington state patrol may determine; develop intelligence data concerning the infiltration of organized crime into legitimate businesses within the state of Washington and furnish pertinent intelligence information thereon to law enforcement agencies and prosecutors in affected jurisdictions; and may assist law enforcement agencies and prosecutors in developing evidence for purposes of criminal prosecution of organized crime activities upon request. [Added by Laws 1st Ex Sess 1973 ch 202 § 3, effective April 26, 1973.]

43.43.856 Divulging investigative information prohibited—Confidentiality—Security of records and files

(1) On and after April 26, 1973 it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is authorized or required to do so by operation of state or federal law. Any person violating this subsection shall be guilty of a felony.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276).

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he deems to be in the public interest with the advice of the governor and the board. [Added by Laws 1st Ex Sess 1973 ch 202 § 4, effective April 26, 1973.]

43.43.858 Organized crime advisory board—Created—Membership—Meetings—Travel expenses

There is hereby created the organized crime advisory board of the state of Washington. The board shall consist of thirteen voting and two nonvoting members.

The lieutenant governor shall appoint four members of the senate judiciary committee to the board, no more than two of whom shall be from the same political party.

The governor shall appoint five members to the board. Two members shall be county prosecuting attorneys and shall be appointed from a list of four county prosecutors agreed upon and submitted to the governor by the elected county prosecutors. One member shall be a municipal police chief, and one member shall be a county sheriff, both of whom shall be appointed from a list of three police chiefs and three sheriffs agreed upon and submitted to the governor by the association of sheriffs and police chiefs (RCW 36.28A.010). One member shall be a retired judge of a court of record.

The United States attorneys for the western and eastern districts of Washington shall be requested to serve on the board as nonvoting members and shall not be eligible to serve as chairperson.

The speaker of the house shall appoint four members of the house judiciary committee to the board, no more than two of whom shall be from the same political party.

The members of the board shall be qualified on the basis of knowledge and experience in matters relating to crime prevention and security or with such other abilities as may be expected to contribute to the effective performance of the board's duties. The members of the board shall meet with the chief of the Washington state patrol at least four times a year to perform the duties enumerated in RCW 43.43.862 and to discuss any other matters related to organized crime. Additional meetings of the board may be convened at the call of the chairperson or by a majority of the members. The board shall elect its own chairperson from among its members. Legislative members shall receive reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 44.04.120 as now existing or hereafter amended, and the other members in accordance with RCW 43.03.050 and 43.03.060, as now existing or hereafter amended.

43.43.860 Organized crime advisory board—Terms of members

The term of each legislative member shall be two years and shall be conditioned upon such member retaining membership on the committee on which he was serving at the time of appointment and retaining membership in the same political party of which he was a member at the time of appointment.

The term of each nonlegislative member shall be two years and shall be conditioned upon such member retaining the official position from which he was appointed.

[Added by Laws 1st Ex Sess 1973 ch 202 § 6, effective April 26, 1973; Amended by Laws 1980 ch 146 § 15.]

43.43.862 Organized crime intelligence advisory board—Powers and duties

The board shall:

(1) Advise the governor on the objectives, conduct, management, and coordination of the various activities encompassing the overall state-wide organized crime intelligence effort;

(2) Conduct a continuing review and assessment of organized crime and related activities in which the organized crime intelligence unit of the Washington state patrol is engaged;

(3) Receive, consider and take appropriate action with respect to matters related to the board by the organized crime intelligence unit of the Washington state patrol in which the support of the board will further the effectiveness of the state-wide organized crime intelligence effort; and

(4) Report to the governor concerning the board's findings and appraisals, and make appropriate recommendations for actions to achieve increased effectiveness of the state's organized crime intelligence effort in meeting state and national organized crime intelligence needs. [Added by Laws 1st Ex Sess 1973 ch 202 § 7, effective April 26, 1973.]

43.43.864 Information to be furnished board—Security—Confidentiality

In order to facilitate performance of the board's functions, the chief of the Washington state patrol shall make available to the board all information with respect to organized crime and related matters which the board may require for the purpose of carrying out its responsibilities to the governor in accordance with the provisions of RCW 43.43.850 through 43.43.864. Such information made available to the board shall be given all necessary security protection in accordance with the terms and provisions of applicable laws and regulations and shall not be revealed or divulged publicly or privately by members of the board. [Added by Laws 1st Ex Sess 1973 ch 202 § 8, effective April 26, 1973.]

Public Records

42.17.250 Duty to publish procedures

(1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) rules of procedure;

(d) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. [Enacted Laws 1973 ch 1 § 25, effective January 1, 1973 (Initiative Measure No. 276 § 25).]

42.17.260 Documents and indexes to be made public

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records. To the extent required to prevent an unreasonable invasion of personal privacy, an agency shall delete identifying details when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) An agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(4) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(5) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law: *Provided, however*, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: *Provided further*, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.04 RCW. [Enacted Laws 1973 ch 1 § 26, effective January 1, 1973 (Initiative Measure No. 276 § 26); Amended by Laws 1st Ex Sess 1975 ch 294 § 14, effective July 2, 1975.]

42.17.270 Facilities for copying—Availability of public records

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [Enacted Laws 1973 ch 1 § 27, effective January 1, 1973 (Initiative Measure No. 276 § 27); Amended by Laws 1st Ex Sess 1975 ch 294 § 15, effective July 2, 1975.]

42.17.280 Times for inspection and copying

Public records shall be available for inspection and copying during the customary office hours of the agency: *Provided*, that if the agency does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a. m. to noon and from one o'clock p. m. to four o'clock p. m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency or its representative agree on a different time. [Enacted Laws 1973 ch 1 § 28, effective January 1, 1973 (Initiative Measure No. 276 § 28).]

42.17.290 Protection of public records—Public access

Agencies shall adopt and enforce reasonable rules and regulations, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies from honoring requests received by mail for copies of identifiable public records. [Enacted Laws 1973 ch 1 § 29, effective January 1, 1973 (Initiative Measure No. 276 § 29); Amended by Laws 1st Ex Sess 1975 ch 294 § 16, effective July 2, 1975.]

42.17.300 Charges for copying

No fee shall be charged for the inspection of public records. Agencies may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying. [Enacted Laws 1973 ch 1 § 30, effective January 1, 1973 (Initiative Measure No. 276 § 30).]

42.17.310 Certain personal and other records exempt. (Effective unless proposed constitutional amendment is approved by the electorate at the November 1990

general election.) (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy and its representatives as provided in RCW 69.41.044 and 69.41.280.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss

to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Effective March 1, 1991, the work and home addresses, other than the city of residence, of a person shall remain undisclosed or be omitted from all documents made available for public review if that person requests in writing, under oath, that these addresses be kept private because disclosure would endanger his or her life, physical safety, or property. This provision does not in any way restrict the sharing or collection of information by state and local governmental agencies required for the daily administration of their duties. The secretary of state shall administer this provision and establish the procedures and rules that are necessary for its operation. An agency that has not been furnished with a request for confidentiality of address information is not liable for damages resulting from its disclosure of the information. For purpose of service of process, the secretary of state shall serve as agent for each person who submits a request under this subsection. A request shall be of no force or effect if the requester does not include a statement, along with or part of the request, designating the secretary of state as agent of the requester for purposes of service of process.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40-.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1. Prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 1; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

Severability——1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date——Severability——1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Report——Severability——1989 c 279: See RCW 43.163.900 and 43.163.901.

Severability——1989 c 11: See note following RCW 9A.56.220.

Severability——1987 c 411: See RCW 69.45.900.

Severability——Effective date——1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Severability——1986 c 276: See RCW 53.31.901.

Severability——1984 c 143: See RCW 81.34.900.

Basic health plan records: RCW 70.47.150.

Exemptions from public inspection:

accounting records of special inquiry judge: RCW 10.29.090.

certificate submitted by physically or mentally disabled person seeking a driver's license: RCW 46.20.041.

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

examination reports of the supervisor of banking and supervisor of savings and loan associations: RCW 30.04.075, 32.04.220, 33.04.110.

local government joint self-insurance pool, liability reserves: RCW 48.62.110.

medical disciplinary board, reports required to be filed with: RCW 18.72.265.

organized crime:

advisory board files: RCW 10.29.030.

investigative information: RCW 43.43.856.

salary and fringe benefit survey information: RCW 28B.16.110, 41.06.160.

42.17.310 Certain personal and other records exempt. (Effective December 6, 1990, if proposed constitutional amendment is approved by the electorate at the November 1990 general election.) (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission

about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47-.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy and its representatives as provided in RCW 69.41.044 and 69.41.280.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Effective March 1, 1991, the work and home addresses, other than the city of residence, of a person shall remain undisclosed or be omitted from all documents made available for public review if that person requests in writing, under oath, that these addresses be kept private because disclosure would endanger his or her life, physical safety, or property. This provision does not in any way restrict the sharing or collection of information by state and local governmental agencies required for the daily administration of their duties. The secretary of state shall administer this provision and establish the procedures and rules that are necessary for its operation. An agency that has not been furnished with a request for confidentiality of address information is not liable for damages resulting from its disclosure of the information. For purpose of service of process, the secretary of state shall serve as agent for each person who submits a request under this subsection. A request shall be of no force or effect if the requester does not include a statement, along with or part of the request, designating the secretary of state as agent of the requester for purposes of service of process.

(cc) Financial information contained in applications and tenant information for the current use valuation granted by chapter 84.22 RCW.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40-.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; 1990 c 168 § 20. Prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.315 Certain records obtained by colleges, universities, libraries or archives exempt

Notwithstanding the provisions of RCW 42.17.260 through 42.17.340, as now or hereafter amended, no state college, university, library, or archive shall be required by chapter 42.17 RCW to make available for public inspection and copying any records or documents obtained by said college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to such records or documents: *Provided*, That this section shall not apply to any public records as defined in RCW 40.14.010. [Added by Laws 1st Ex Sess 1975 ch 294 § 22, effective July 2, 1975.]

42.17.320 Prompt responses required

Responses to requests for public records shall be made promptly by agencies. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action for the purposes of judicial review. [Enacted Laws 1973 ch 1 § 32, effective January 1, 1973 (Initiative Measure No. 276 § 32); Amended by Laws 1st Ex Sess 1975 ch 294 § 18, effective July 2, 1975.]

42.17.330 Court protection of public records

The examination of any specific public record may be enjoined if, upon motion and affidavit, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. [Enacted Laws 1973 ch 1 § 33, effective January 1, 1973 (Initiative Measure No. 276 § 33); Amended by Laws 1st Ex Sess 1975 ch 294 § 19, effective July 2, 1975.]

42.17.340 Judicial review of agency actions

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is required.

(2) Judicial review of all agency actions taken or challenged under RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section.

(3) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars for each day that he was denied the right to inspect or copy said public record. [Enacted Laws 1973 ch 1 § 34, effective January 1, 1973 (Initiative Measure No. 276 § 34); Amended by Laws 1st Ex Sess 1975 ch 294 § 20, effective July 2, 1975.]

Chapter 446-20 WAC
EMPLOYMENT—CONVICTION RECORDS

WAC

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WAC 446-20-010 General applicability. The regulations in this chapter shall apply to state and local criminal justice agencies in the state of Washington that collect and maintain or disseminate criminal history record information. The regulations shall also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies. The provisions of chapter 10.97 RCW do not generally apply to the courts and court record keeping agencies. The courts and court record keeping agencies have the right to request and receive criminal history record information from criminal justice agencies. The regulations are intended to cover all criminal justice records systems that contain criminal history record information, whether the systems are manual or automated. Chapter 10.97 RCW defines the rights and privileges relating to criminal history record information and should not be interpreted to redefine or amend rights or privileges relevant to any other kinds of records or information.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-010, filed 7/1/80.]

WAC 446-20-020 Definitions. (1) The definitions in RCW 10.97.030 shall apply to these regulations.

(2) "Nonconviction data" has the meaning set forth in RCW 10.97.030(2), but shall not include dismissals following a period of probation, or suspension, or deferral of sentence.

(3) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030(6), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-020, filed 7/1/80.]

WAC 446-20-030 Convictions under appeal or review. A conviction followed by an appeal or other court review may be treated as conviction information or as information pertaining to an incident for which a subject is currently being processed by the criminal justice system until such time as the conviction is reversed, vacated, or otherwise overturned by a court; but, notations of pending appeals or other court review shall be included as a part of a person's criminal record if the agency disseminating the record has received written confirmation of such proceedings from the court.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-030, filed 7/1/80.]

WAC 446-20-040 Deferred prosecutions. A deferred prosecution of an alleged offender does not become nonconviction data until there is a final decision to dismiss charges or not to prosecute.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-040, filed 7/1/80.]

WAC 446-20-050 Criminal justice agencies. (1) The following agencies shall be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations.

(a) The Washington state patrol, including the state identification section;

(b) Foreign, federal, state, and local governmental law enforcement agencies;

(c) The adult corrections division of the department of social and health services as specified in chapter 72.02 RCW, including institutions as specified in chapter 72.01 RCW and probation and parole services as specified in chapter 72.04A RCW;

(d) The board of prison terms and paroles;

(e) Courts at any level, if they exercise criminal jurisdiction, for the administration of criminal justice.

(2) Only that subunit of the following agencies which detects, prosecutes, or that work under the direction of the courts shall be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations:

(a) Federal, state and local prosecutorial, correctional programs, agencies or departments;

(b) The liquor control board as specified in RCW 66.44.010 (enforcement division);

(c) The department of labor and industries as specified in chapter 7.68 RCW (victims of crime compensation);

(d) The state fire marshal as specified in RCW 48.48.060(2);

(e) An agency or portion thereof that has been certified as a criminal justice agency pursuant to WAC 446-20-060.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-050, filed 7/1/80.]

WAC 446-20-060 Certification of agencies. (1) An agency that asserts a right to receive criminal history record information based on its status as a criminal justice agency shall show satisfactory evidence of its certification as a criminal justice agency prior to receiving such information. The Washington state patrol shall certify such an agency, based on a showing that the agency devotes a substantial portion of its annual budget to, and has as a primary function, the administration of criminal justice. Agencies which assert their right to be certified as a criminal justice agency shall submit a written request for certification to the Washington state patrol on the form provided under WAC 446-20-430.

(2) A noncriminal justice agency that asserts a right to receive nonconviction criminal history record information shall show satisfactory evidence of certification to receive such information. Certification by the Washington state patrol will be granted based upon statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to nonconviction criminal history record information, and which authorizes or directs that it be available or accessible for a specific purpose.

(3) The application shall include documentary evidence which establishes eligibility for access to criminal history record information.

(4) The Washington state patrol shall make a finding in writing on the eligibility or noneligibility of the applicant. The written finding, together with reasons for the decisions, shall be sent to the applicant.

(5) The Washington state patrol shall keep a current list of all agencies that have been certified to receive criminal history record information.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-060, filed 7/1/80.]

WAC 446-20-070 Inspection—Individual's right to review record. Every criminal justice agency shall permit an individual who is, or believes he may be, the subject of a criminal record maintained by that agency to come to the central records keeping office of that agency during its normal business hours and request to inspect said criminal history record.

To the extent that CHRI exists (which includes and shall be limited to identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions arising therefrom, including sentences, correctional supervision and release) is interfiled with other records of the department the agency may extract the CHRI for review.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-070, filed 7/1/80.]

WAC 446-20-080 Inspection—Forms to be made available. The criminal justice agency shall make available a request form to be completed by the person who is, or believes he may be, the subject of a criminal record maintained by that agency. The form shall be substantially equivalent to that set forth in WAC 446-20-400.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-080, filed 7/1/80.]

WAC 446-20-090 Inspection of record by the subject of record. (1) Any person desiring to inspect criminal history record information which pertains to himself may do so at the central records keeping office of any criminal justice agency or at the state identification section located at 3310 Capitol Boulevard, Tumwater, Washington, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect criminal history record information pertaining to himself shall first permit his fingerprints to be taken by the criminal justice agency for identification purposes, if requested to do so. The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, shall be allowed each individual to examine criminal history record information pertaining to himself.

(4) Visual examination only shall be permitted of such information unless the individual asserts his belief that criminal history record information concerning him is inaccurate, or incomplete; and unless he requests correction or completion of the information on a form furnished by the criminal justice agency, or requests expungement pursuant to RCW 10.97.060. Retention or reproduction of nonconviction data is authorized only when it is the subject of challenge.

(5) If any person who desires to examine criminal history record information pertaining to himself is unable to read or is otherwise unable to examine same because of a physical disability, he may designate another person of his own choice to assist him. The person about whom the information pertains shall execute, with his mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself by another person for the purpose of it being read or otherwise described to him. Such designated person shall then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

(6) Each criminal justice agency shall develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-090, filed 7/1/80.]

WAC 446-20-100 Inspection—Timeliness and manner of agency response. (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection shall not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection shall respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the identification section, the agency shall respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the identification section, the agency upon request of the subject of the record, shall forward the request to the identification section for processing.

(c) At the identification section the request shall cause a copy of all Washington state criminal history record information in the files of the identification section relating to the individual requester to be forwarded to the criminal justice agency submitting the request.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information from the identification section, the agency shall notify the requester at his designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-100, filed 7/1/80.]

WAC 446-20-110 Deletion—Notification. When a criminal justice agency deletes nonconviction data criminal history record information in accordance with RCW 10.97.060, the state identification section shall be notified of the deletion.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-110, filed 7/1/80.]

WAC 446-20-120 Challenge—Individual's right to challenge. A subject seeking to challenge the accuracy or completeness of any part of the criminal history record information pertaining to himself shall do so in writing, clearly identifying that information which he asserts to be inaccurate or incomplete. This includes only records generated by Washington state criminal justice agencies.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-120, filed 7/1/80.]

WAC 446-20-130 Challenge—Forms to be made available. Every criminal justice agency which authorizes individuals to use its facilities for the purpose of inspecting their criminal history record information shall provide an appropriate challenge form and the address of the agency whose record entry is being challenged. Such forms shall be substantially equivalent to that set forth in WAC 446-20-450.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-130, filed 7/1/80.]

WAC 446-20-140 Challenge—Agency to make determination. The agency which initiated the criminal history record information being challenged shall:

(1) Not later than ten business days after receiving the written challenge, acknowledge receipt of the challenge in writing; and

(2) Promptly, but in no event later than ten business days after acknowledging receipt of the challenge, either:

(a) Make any correction of any portion of the criminal history record information which the person challenging such information has designated as being inaccurate or incomplete.

(b) Inform the person challenging the criminal history record information, in writing, of the refusal to amend the criminal history record information, the reason for the refusal, and the procedures for review of that refusal.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-140, filed 7/1/80.]

WAC 446-20-150 Correction of erroneous information. (1) The originating agency must send information correcting the previously incorrect information to all agencies and persons to which the previously incorrect information was disseminated by the originating agency. This obligation shall be limited to disseminations made within one year of the date on which the challenge was initiated.

(2) Any criminal justice agency maintaining criminal history record information within the state shall adopt a procedure which, when significant information in a criminal history record maintained on an individual is determined to be inaccurate, leads to the dissemination of corrected information to every agency and person(s) to which the prior erroneous information was disseminated within the preceding one year.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-150, filed 7/1/80.]

WAC 446-20-160 Review of refusal to alter record. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review shall be in writing, and shall be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged shall complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he shall state his reasons in a written

decision, a copy of which shall be provided to the subject of the record. Denial by the agency head shall constitute a final decision under RCW 34.04.130.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-160, filed 7/1/80.]

WAC 446-20-170 Secondary dissemination. (1) Criminal justice agencies that receive state rap sheets from the identification section of the Washington state patrol may disseminate them further, "but only to the same extent to which the identification section itself would be authorized to make a dissemination in the first instance." Nonconviction data based on an incident that arose in the jurisdiction of that agency about to make the dissemination is not subject to this restriction, if the agency is otherwise authorized to disseminate such information.

(2) Noncriminal justice agencies certified to receive criminal history record information from whatever source may use it only for the specific purpose for which the agency is certified and shall not disseminate it further.

(3) Use of criminal history record information contrary to chapter 10.97 RCW or chapter 446-20 WAC may result in suspension or cancellation of certification.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-170, filed 7/1/80.]

WAC 446-20-180 Dissemination pursuant to contract for services. (1) Criminal history record information which includes nonconviction data may be disseminated pursuant to a contract to provide services, as set forth in RCW 10.97.050(5). The contract must contain provisions giving notice to the individual or agency to which the information is to be disseminated that the use of such information is subject to the provisions of chapter 10.97 RCW and these regulations, and federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(2) When a criminal justice agency uses an information system containing criminal history record information that is controlled and managed by a noncriminal justice agency, the noncriminal justice agency may disseminate criminal history record information only as authorized by the criminal justice agency. Authorization shall be established in a contract between the criminal justice agency and the noncriminal justice agency providing the management service or support. Any criminal justice agency entering a contract with a noncriminal justice agency shall require that the noncriminal justice agency and personnel who utilize criminal history record information, meet the same physical security and personnel standards as set forth by the Washington state patrol under RCW 10.97.090.

All programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to criminal history record information, and all personnel involved in the development, maintenance, or operation of an automated information system containing criminal history record information, are subject to the requirements of RCW 10.97.050(5) and these regulations. A statement to this effect shall be included in the contract.

The contract for support services shall be substantially similar to that set forth in WAC 446-20-440.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-180, filed 7/1/80.]

WAC 446-20-190 Dissemination—Research purposes. Criminal history record information which includes nonconviction data may be disseminated for research purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section shall be substantially similar to that set forth in WAC 446-20-420 (model transfer provisions).

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-190, filed 7/1/80.]

WAC 446-20-200 Disclosure to assist victim. A criminal justice agency may, but need not, disclose investigative information to "persons who have suffered physical loss, property damage, or injury compensable through civil action" as contemplated by RCW 10.97-.070. Disclosure may be made to the apparent victim; an attorney, parent or guardian acting for the victim or an executor or administrator of an estate of a decedent victim; an authorized agent of the victim; another law enforcement or criminal justice agency making inquiry on behalf of the victim; and/or, upon an appropriate showing, an indemnitor, assignee, insurer, or subrogee of the victim. Written capacity to act on behalf of the victim may be required by the agency. Investigative information which ". . . may be of assistance to the victim in obtaining civil redress" may include but is not limited to:

(1) The name, address, and other location information about a suspect, witness, and in the event of a juvenile, the suspect's parent or guardian;

(2) Copies of the incident report; and in person review of documents, photographs, statements, and other materials collected in the course of an investigation;

(3) The location of, and identity of receivers and custodians of stolen property and of property recovered as lost and found property;

(4) The progress of proceedings arising from the incident and the disposition of any prosecution or other action.

An agency making a disclosure is not expected to evaluate the merits of a victim's claim for civil relief. Disclosure merely indicates the information has been received and the agency reasonably believes the information may be useful to the recipient in seeking civil redress. Disclosure does not constitute an opinion or comment upon the existence or merits of a claim and it does *not* vouch for the accuracy or completeness of the information.

Disclosures made to victims under the authority of RCW 10.97.070 shall be considered in conjunction with RCW 42.17.310, The Public Disclosure Act (exemptions), chapter 46.52 RCW (Confidentiality of accident reports and statements), civil and criminal court rules governing discovery and other state and federal laws.

Criminal justice agencies are advised to consult with their own legal counsel in implementing the dissemination authorization of RCW 10.97.070.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-200, filed 7/1/80.]

WAC 446-20-210 Protection from accidental loss or injury. Criminal justice agencies (hereinafter, agency(s)) and noncriminal justice contractors, (hereinafter, contractor(s)) which collect, retrieve, and/or store and disseminate criminal history record information in manual and automated systems, shall institute procedures for the protection of criminal history record information from environmental hazards, including fire, flood, power failure, or other natural or man-made disasters, or in accordance with local fire, safety, and building codes.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-210, filed 7/1/80.]

WAC 446-20-220 Protection against unauthorized access. Criminal history record systems, whether dedicated to criminal justice purposes, or shared, will be designed and operated in accordance with procedures which will assure that:

(1) Access to criminal history record information facilities and system operating areas (whether for computerized or manual systems) and the content of data files and systems documentation, will be restricted to authorized personnel. These procedures may include use of guards, keys, badges, passwords, sign-in logs, or similar safeguards.

(2) All facilities which house criminal history record information shall be designed and constructed so as to reduce the possibility of physical damage to the information resulting from unauthorized access.

(3) Criminal history record information is stored in such a manner that will prevent modification, destruction, access, change, purging, or overlay of criminal history record information by unauthorized personnel.

(4) Operational programs are used in computerized systems that will prohibit inquiry, record updates, or destruction of records from any terminal other than those authorized to perform criminal history record information functions.

(5) The purging or destruction of records is limited to personnel authorized by the criminal justice agency or through contract with the noncriminal justice agency as required under WAC 446-20-180, and consistent with WAC 446-20-230.

(6) Refuse from the criminal history record information system installations is transferred and destroyed under such reasonably secure conditions as will effectively guard against unauthorized availability.

(7) Operational procedures are used in computerized systems to detect and store unauthorized attempts to penetrate any criminal history record information system, program or file, and that such information is made available only to criminal justice agency employees with responsibility for system security, or as authorized by WAC 446-20-180.

(8) The procedures developed to meet standards of subsections (4) and (7) of this section, are known only to authorized employees responsible for criminal history records information system control.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-220, filed 7/1/80.]

WAC 446-20-230 Personnel security. (1) Agencies and contractors which collect and retrieve, or are authorized to maintain or modify, criminal history record information shall: Identify those positions which are of such a sensitive nature that fingerprints of employees will be required and used to conduct a criminal record background investigation. Such background investigations will be the responsibility of the criminal justice agency and may consider the date, the disposition, number, and seriousness of any previous arrests or convictions. Decisions concerning employment will be the responsibility of the employing agency or contractor.

(2) When agency or contractor personnel violate the provisions of chapter 10.97 RCW or other security requirements established through administrative code for the collection, storage and dissemination of such information, agencies or contractors, as defined by subsection (1) of this section, shall initiate, or cause to be initiated, action that will ensure the integrity of records containing criminal history record information.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-230, filed 7/1/80.]

WAC 446-20-240 Personnel training. (1) Criminal justice agencies shall be required directly, or in cooperation with the criminal justice training commission to familiarize their employees and those of the contractors, with all federal, state, and local legislation, executive orders, rules, and regulations, applicable to such a system.

(2) Training to be provided shall include not only initial training, but continuing training, designed to maintain among criminal history record information system personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-240, filed 7/1/80.]

WAC 446-20-250 Contractor personnel clearances. (1) No personnel of a noncriminal justice agency shall be granted access to criminal history record information without appropriate security clearance by the contracting agency or agencies.

(2) To provide evidence of the person's security clearance, the grantor of such clearance may provide an authenticated card or certificate. Responsibility for control of the issuance, or revocation of such clearances shall rest with the grantor.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-250, filed 7/1/80.]

WAC 446-20-260 Auditing of criminal history record information systems. (1) Every criminal justice agency, including contractors authorized to collect, retrieve, maintain, and disseminate criminal history record

information pursuant to WAC 446-20-180, shall make its records available under RCW 10.97.090(3) to determine the extent of compliance with the following:

(a) Dissemination records as required under RCW 10.97.050(7);

(b) Security procedures as required by RCW 10.97.090(1); and

(c) Personnel standards as required by RCW 10.97.090(2).

(2) Personnel engaged in the auditing function shall be subject to the same personnel security requirement as required under WAC 446-20-230, 446-20-240, and 446-20-250, as employees who are responsible for the management and operation of criminal history record information systems.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-260, filed 7/1/80.]

WAC 446-20-270 Establishment of procedures. Every criminal justice agency which collects, retrieves, maintains, and/or disseminates criminal history record information shall establish written rules and regulations setting forth security and personnel procedures for authorized access to criminal history record information files or adopt administrative regulations promulgated by the Washington state patrol.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-270, filed 7/1/80.]

WAC 446-20-280 Employment—Conviction records. (1) A transcript of a conviction record will be furnished consistent with the provisions of chapter 202, Laws of 1982, upon the submission of a written request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints shall be submitted on cards of the type specified by the identification section, and shall contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a felony or gross misdemeanor under the laws of the United States or any state.

[Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-280, filed 10/22/82.]

WAC 446-20-290 Fees. A nonrefundable fee of ten dollars shall accompany each fingerprint card submitted pursuant to chapter 202, Laws of 1982, unless through prior arrangement an account is authorized and established. The Washington state identification section shall adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of this chapter are recovered.

[Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-290, filed 10/22/82.]

WAC 446-20-300 Privacy—Security. All employers or prospective employers receiving conviction records pursuant to chapter 202, Laws of 1982, shall comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

[Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-300, filed 10/22/82.]

WAC 446-20-310 Audits. All employers or prospective employers receiving conviction records pursuant to chapter 202, Laws of 1982, shall comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the record keeping system.

[Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-310, filed 10/22/82.]

WAC 446-20-400 Form of request to inspect record.

INSPECTION OF RECORD REQUEST
(RCW 10.97.080/WAC 446-20-070)

Agency .....
Agency No. .....
Date .....
Time .....

I, ..., request to inspect such criminal history record information pertaining to myself and maintained in the files of the above named agency.

I was born (Date of Birth), in (Place of Birth), and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.

(Fill in and check applicable box)

Because I am unable to read ☐; I do not understand English ☐; otherwise need assistance in reviewing my record ☐; I designate and consent that (Print Name), whose address is ....., assist me in examining the criminal history record information concerning myself.

Prints of right four fingers taken simultaneously (Signature or mark of Applicant)

(Address)

(Signature of Designee)

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-400, filed 7/1/80.]

WAC 446-20-410 Form of request to review refusal to modify record.

REQUEST FOR REVIEW OF REFUSAL TO MODIFY RECORD
(RCW 10.97.080/WAC 446-20-160)

DATE .....

I, (Print Name), request the head of (Agency Name), to review and make a final determination of my challenge to the accuracy or completeness of criminal history record information pertaining to myself and maintained by (Agency Name).

My challenge, a copy of which is attached, was made on (Date of Challenge), and was refused on (Date of Refusal). I request that my challenge be allowed and my record be modified in accordance with such challenge.

(Signature of Applicant)

(Address of Applicant)

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-410, filed 7/1/80.]

WAC 446-20-420 Model agreement for research, evaluative or statistical purposes.

AGREEMENT made this ..... day of ....., 198_, between ....., (hereinafter referred to as "RESEARCHER") and ....., (hereinafter referred to as "CRIMINAL JUSTICE AGENCY)"*

WHEREAS the RESEARCHER had made a written request to the CRIMINAL JUSTICE AGENCY dated ....., a copy of which is annexed hereto and made a part hereof, and

WHEREAS the CRIMINAL JUSTICE AGENCY has reviewed said written request and determined that it clearly specifies (1) the criminal history record information sought, and (2) the research, evaluative or statistical purpose for which the said information is sought,** and

WHEREAS the RESEARCHER represents that (he) (she) (it) is in receipt of, and is familiar with, the provisions of chapter 10.97 RCW, 28 CFR Part 22, including provisions for sanctions at Parts 22.24(c) and 22.29 thereof,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The CRIMINAL JUSTICE AGENCY will supply the following items of information to the RESEARCHER:

(Describe in detail)***

---

2. The RESEARCHER will:

(a) Use the said information only for the research, evaluative, or statistical purposes described in the above mentioned written request dated ....., and for no other purpose;

(b) Limit access to said information to the RESEARCHER and those of the RESEARCHER'S employees whose responsibilities cannot be accomplished without such access, and who have been advised of, and agreed to comply with, the provisions of this agreement, and of 28 CFR Part 22;****

(c) Store all said information received pursuant to this agreement in secure, locked containers;

(d) So far as possible, replace the name and address of any record subject with an alpha-numeric or other appropriate code;

(e) Immediately notify the CRIMINAL JUSTICE AGENCY in writing of any proposed material changes in the purposes or objectives of its research, or in the manner in which said information will be used.

3. The RESEARCHER will not:

(a) Disclose any of the said information in a form which is identifiable to an individual, in any project report or in any manner whatsoever, except pursuant to 28 CFR Part 22.24 (b)(1)(2).

(b) Make copies of any of the said information, except as clearly necessary for use by employees or contractors to accomplish the purposes of the research. (To the extent reasonably possible, copies shall not be made of criminal history record information, but information derived therefrom which is not identifiable to specific individuals shall be used for research tasks. Where this is not possible, every reasonable effort shall be made to utilize coded identification data as an alternative to names when producing copies of criminal history record information for working purposes.)

(c) Utilize any of the said information for purposes or objectives or in a manner subject to the requirement for notice set forth in 2.(e) until specific written authorization therefor is received from the CRIMINAL JUSTICE AGENCY.

4. In the event the RESEARCHER deems it necessary, for the purposes of the research, to disclose said information to any subcontractor, (he) (she) (it) shall secure the written agreement of said subcontractor to comply with all the terms of this agreement as if (he) (she) (it) were the RESEARCHER named herein.****

5. The RESEARCHER further agrees that:

(a) The CRIMINAL JUSTICE AGENCY shall have the right, at any time, to monitor, audit, and review the activities and policies of the RESEARCHER or its subcontractors in implementing this agreement in order to assure compliance therewith; and

(b) Upon completion, termination or suspension of the researcher, it will return all said information, and any copies thereof made by the RESEARCHER, to the CRIMINAL JUSTICE AGENCY, unless the CRIMINAL JUSTICE AGENCY gives its written consent to destruction, obliteration or other alternative disposition.

6. In the event the RESEARCHER fails to comply with any term of this Agreement the CRIMINAL JUSTICE AGENCY shall have the right to take such action as it deems appropriate, including termination of this Agreement. If the CRIMINAL JUSTICE AGENCY so terminates this Agreement, the RESEARCHER and any subcontractors shall forthwith return all the said information, and all copies made thereof, to the CRIMINAL JUSTICE AGENCY or make such alternative disposition thereof, as is directed by the CRIMINAL JUSTICE AGENCY. The exercise of remedies pursuant to this paragraph shall be in addition to all sanctions provided by law, and to legal remedies available to parties injured by disclosures.

7. INDEMNIFICATION. The RESEARCHER agrees to indemnify and hold harmless (CRIMINAL JUSTICE AGENCY) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (RESEARCHER) in the exercise or enjoyment of this agreement. Such indemnification shall include all costs of defending any such suit, including attorney fees.

WITNESS WHEREOF the parties have signed their names hereto this ..... day of ....., 198...

WASHINGTON

..... (CRIMINAL JUSTICE AGENCY)

by .....
(Name)

Title: .....

..... (RESEARCHERS)

by .....
(Name)

Title: .....

COMPLIANCE AGREEMENT of employee, consultant or subcontractor.

(I) (We), employee(s) of, consultant to, (and) (or) subcontractor of the RESEARCHER, acknowledge familiarity with the terms and conditions of the foregoing agreement between the CRIMINAL JUSTICE AGENCY and RESEARCHER, and agree to comply with the terms and conditions thereof in (my) (our) use and protection of the criminal history record information obtained pursuant to the foregoing agreement.

.....	.....
(date)	(signature)
.....	.....
(date)	(signature)

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-420, filed 7/1/80.]

WAC 446-20-430 Certification request.

INSTRUCTIONS

This form is for agencies requesting certification for access to Criminal History Record Information (hereinafter referred to as "CHRI").

REQUEST FOR CERTIFICATION

1. Agency making request:

a. Name: .....

b. Address: .....
Street City State Zip

c. Telephone Number: (.....) .....
Area Code

d. Official or employee who should be contacted concerning the application.

1) Name: .....
Last First Middle Title

2) Address: .....
Street City State Zip

3) Telephone Number: (.....) .....
Area Code

2. Cite specifically the statutory or regulatory provisions which establish your agency as a governmental agency, and the provisions which indicate your agency's need for CHRI.

.....
State/Federal Statute | Chapter/Title Number | Section Number | Paragraph Number

3. Attach a copy of the above provision(s) to this application and indicate, by marking, the specific language upon which you base your request.

4. State your agency's need for access to CHRI relative to the above cited provisions.

I hereby affirm that all facts and representations made in this document are true and accurate to the best of my knowledge, information and belief.

.....
Signature of person filling out form

.....
Title

.....
Date

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-430, filed 7/1/80.]

WAC 446-20-440 Contract for support services model agreement under WAC 446-20-180. (Some provisions may not be applicable in all cases and are noted accordingly.)

I. **General Provisions**

A. Parties: This agreement is made and entered into this ..... day of ....., 198.., by and between (____(head of agency)____), Administrator of (____(criminal justice agency)____) and (____(head of agency)____) of (Support Services Agency of "User").

B. Purpose of Agreement: This agreement authorizes (user) to collect, retrieve, maintain and/or disseminate criminal history record information (hereinafter, CHRI) pursuant to RCW 10.97.050(5), WAC 446-20-180, and the terms of this contract. In addition, it provides for the security and privacy of information in that dissemination to criminal justice agencies shall be limited for the purposes of the administration of justice and criminal justice agency employment. Dissemination to other individuals and agencies shall be limited to those individuals and agencies authorized by either the Washington state patrol, under chapter 10-.97 RCW or local ordinance, as specified by the terms of this contract, and shall be limited to the purposes for which it was given and may not be disseminated further.

II. **Duties of Criminal Justice Agency**

A. In accordance with federal and state regulations, (criminal justice agency) agrees to furnish complete and accurate criminal history information to user, pursuant to RCW 10.97.040.

B. (Criminal justice agency) shall specify and approve those individuals or agencies authorized to obtain CHRI, which includes nonconviction data, pursuant to RCW 10.97.050(4) or by local ordinance.

III. **Duties of User**

A. (User) will collect, retrieve, maintain and/or disseminate all information covered by the terms of this agreement in strict compliance with all present and future federal and state laws and regulations. In addition, all programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to CHRI and all personnel involved in the development, maintenance, or operation of an automated information system containing CHRI are subject to the requirements of RCW 10.97.050(5) and WAC 446-20-180.

B. (User) will obtain the assistance of the (criminal justice agency) to familiarize its personnel with and fully adhere to section 524(b) of the Crime Control Act 1973 (42 USC 3771(b)), 28 CFR Part 20, chapter 10.97 RCW and chapter 446-20 WAC, promulgated by the Washington state patrol.

C. (User) will disseminate CHRI only as authorized by chapter 10.97 RCW and as specified by (criminal justice agency) in this agreement.

D. (User) agrees to fully comply with all rules and regulations promulgated by the Washington state patrol, pursuant to RCW 10.97.090(2), regarding standards for the physical security, protection against unauthorized access and personnel procedures and safeguards.

E. (User) agrees to permit access to its records system for the purposes of an audit, as specified under RCW 10.97.090(3).

IV. **Suspension of Service**

(Criminal justice agency) reserves the right to immediately suspend furnishing information covered by the terms of this agreement to (User), when any terms of this agreement are violated. (Criminal justice agency) shall resume furnishing information upon receipt of satisfactory assurances that such violations have been fully corrected or eliminated.

V. **Cancellation**

Either (criminal justice agency) or (user) may cancel this agreement upon thirty days notice to the other party.

VI. **Indemnification**

User hereby agrees to indemnify and hold harmless (criminal justice agency) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (user) in the exercise or enjoyment of this agreement. Such indemnification shall include all costs of defending any suit, including attorney fees.

VII. Construction

This agreement shall be liberally construed to apply to both manual and automated information systems wherever and whenever possible.

(CRIMINAL JUSTICE AGENCY) (USER)

By: ..... By: .....
Title: ..... Title: .....
Date: ..... Date: .....

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-440, filed 7/1/80.]

WAC 446-20-450 CHRI challenge form.

CHRI CHALLENGE FORM

(REQUEST FOR MODIFICATION OF CHRI)
RCW 10.97.080/WAC 446-20-120

AGENCY ..... AGENCY CASE NO. .....

ADDRESS ..... DATE .....

.....

I, (Print Name), hereby acknowledge review this date, ..., of a copy of a CHRI rap sheet bearing agency number ....., or SID number ....., consisting of ..... page(s) and identified as a history of criminal offenses charged to me.

I challenge the following specific portion(s) of the CHRI as being inaccurate or incomplete:

Agency	Case No.	Date	Charge
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

and request modification to read:

I further request, if such modifications are determined to be valid, that all agencies who have received prior copies of the CHRI be advised of the modifications.

.....
(Signature of Challenger)

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-450, filed 7/1/80.]

Chapter 446-30 WAC
DISPOSITION OF VEHICLES SEIZED FOR ALTERED VEHICLE IDENTIFICATION NUMBERS--HEARINGS

WASHINGTON

446-30-010 Purpose.
446-30-020 Definitions.
446-30-030 Hearing officer.
446-30-040 Procedure.
446-30-050 Burden of proof.
446-30-060 Record.
446-30-070 Appeal.

WAC 446-30-010 Purpose. The purpose of this regulation is to provide administrative rules and standards for hearings conducted pursuant to chapter 124, Laws of 1974 1st ex. sess. (RCW 9.54.030(3)) relating to the disposition of motor vehicles, motorcycles, motor-driven cycles, trailers, vessels, motorboats, or component parts thereof impounded by the Washington state patrol.

[Order II, § 446-30-010, filed 11/22/74.]

WAC 446-30-020 Definitions. (1) The term "aggregate value" of an article or articles whose ownership is in question shall be the current market value of the article as determined by procedures set out in WAC 446-30-040(2) as of the time of the proposed disposition.

(2) The term "interested party" or "party in interest" is defined as a party claiming ownership or a right to possession of the article involved.

(3) The term "article" shall encompass the plural "articles" and includes motor vehicles, motorcycles, motor-driven cycles, trailers, vessels, motorboats, or component parts thereof.

[Order II, § 446-30-020, filed 11/22/74.]

WAC 446-30-030 Hearing officer. The hearing shall be conducted by a person appointed by the chief of the Washington state patrol. The hearing shall be conducted at a place within the state designated by the hearing officer who shall consider the convenience of the witnesses involved in the hearing, and the convenience of the parties in interest. The hearing officer, after having heard evidence submitted to him and having conducted a hearing in accordance with this chapter and chapter 446-08 WAC, shall decide whether a party in interest has presented a claim of ownership or right to possession of the article involved sufficient to award possession of the article to the party. If so, he shall order the article released to such party.

[Order II, § 446-30-030, filed 11/22/74.]

WAC 446-30-040 Procedure. Insofar as it is applicable, (1) Chapter 446-08 WAC, shall govern hearing procedure, and the service of notice of the hearing upon the person who held possession or custody of the article when it was impounded, and upon any other person who, prior to final disposition, notifies Headquarters, Washington state patrol, in writing of a claim of ownership or lawful right to possession thereof.

(2) In accordance with chapter 124, Laws of 1974 1st ex. sess. (RCW 9.54.030(3)), any person claiming ownership or right of possession hereunder may remove the matter to a court of competent jurisdiction if the aggregate value of the article involved is one hundred dollars or more. If the article involved is a component part or parts of a vehicle, then the right to remove the matter to a court of competent jurisdiction shall be conditioned on the component part or parts having an aggregate value

(d) In the event the fishing boat with respect to which an exemption is claimed is of a type used in the waters of Puget Sound or the Columbia River and the tributaries thereof, and is not practical for use in deep sea fishing, sellers should collect the retail sales tax upon all sales of such boats and component parts thereof and upon charges made for the repair of the same.

(e) It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(5) USE TAX.

(a) The use tax does not apply upon the use of watercraft or component parts thereof.

(b) The use tax does apply upon the actual use within this state of all other types of tangible personal property purchased at retail and upon which the sales tax has not been paid (see WAC 458-20-178) except on diesel fuel as noted below.

(6) DIESEL FUEL.

(a) The law provides for sales and use tax exemptions on diesel fuel for both commercial passenger fishing (charter boats for sport fishing) and commercial deep sea fishing operations.

(b) Neither retail sales nor use tax applies with respect to sales or use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing operations by persons who are regularly engaged in the business of such operations outside the territorial waters (three-mile limit) of this state. For purposes of this exemption a person is not regularly engaged in either business if the person has gross receipts from the extra territorial operations of less than five thousand dollars a year. For persons involved in both commercial deep sea fishing operations and commercial passenger fishing operations, the receipts from both shall be added together to determine eligibility for this exemption.

(c) This exemption is plenary in scope and it is not required that all of the diesel fuel purchased be used outside of the territorial waters of this state. If a person qualifies for the exemptions by virtue of operating a deep sea fishing vessel, and has the requisite amount of gross receipts from that activity, all diesel fuel purchases and uses by such person for such vessel are tax exempt.

(d) DIESEL FUEL EXEMPTION CERTIFICATES REQUIRED. Persons selling diesel fuel to such persons are required to obtain from the purchaser a certificate evidencing the exempt nature of the transaction. This certificate must identify the purchaser by name and address, and by the registered name and number of the watercraft with respect to which the purchase is made. It must contain a statement to the effect that the diesel fuel is for use by a person who is engaged in commercial deep sea fishing and/or commercial passenger fishing operations who has annual gross receipts therefrom of at least five thousand dollars. Blanket certificates covering all diesel fuel purchases for specified watercraft may be used, where appropriate. A seller of diesel fuel who accepts such a certificate in good faith shall not be liable for sales tax on the diesel fuel sold. Certificates must be retained by the sellers in their permanent records as evidence of the exempt nature of diesel sales to eligible buyers. It is a gross misdemeanor for a buyer to make a false certificate of exemption for the purpose of avoiding the tax.

(e) The certificate should be in substantially the following form:

DIESEL FUEL EXEMPTION CERTIFICATE

I HEREBY CERTIFY that diesel fuel which I will purchase from (name of dealer) will be used in the operation of a watercraft which is used in commercial deep sea or commercial passenger fishing operations outside the territorial waters of the state of Washington; that the registered name and number of the watercraft to which said purchase applies is (registered vessel name and number); that the owner(s) of said vessel has gross income, based on federal income tax returns, of not less than five thousand dollars a year from such extra territorial fishing operations; and that said sales are entitled to exemption under the provisions of chapter 494, Laws of 1987.

Dated ....., 19...

.....
(Name of Purchaser)

By .....
(Name of officer or agent)

Address .....

WSR 88-03-056
PROPOSED RULES
STATE PATROL
[Filed January 19, 1988]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Patrol intends to adopt, amend, or repeal rules concerning Washington State Patrol criminal records, implementing chapter 486, Laws of 1987, codified as RCW 43.43.838;

that the agency will at 1:30 p.m., Friday, February 26, 1988, in the DSHS Auditorium, Office Building #2, 12th and Adams Streets, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 17, 1988.

The authority under which these rules are proposed is section 5, chapter 486, Laws of 1987, codified as RCW 43.43.838(5).

The specific statute these rules are intended to implement is RCW 43.43.838.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before February 26, 1988.

Dated: January 19, 1988
By: George B. Tellevik
Chief

STATEMENT OF PURPOSE

Title: Criminal records; Employment—Conviction records; Child and adult abuse information.

Authority: Section 5, chapter 486, Laws of 1987, codified as RCW 43.43.838, allows the Washington State

Patrol to establish fees and adopt rules and forms to provide transcripts of conviction records of certain crimes against persons, of disciplinary board final decisions, and of civil adjudications. The transcripts may be provided to certain businesses and organizations; the State Board of Education; and the Department of Social and Health Services for specified purposes upon written request. These rules conform with the State Criminal Records Privacy Act (chapter 10.97 RCW).

Summary: Adoption of these rules will establish procedures for obtaining certain types of criminal conviction records, disciplinary board final decisions, and civil adjudications. These record checks are to be used only for making an initial employment or engagement decision. The intent of the legislation is to give employers considering the hiring of employees who work with children or developmentally disabled persons adequate information to prevent child and adult abuse.

Agency Personnel Responsible for Drafting: Sergeant James F. Dickerman, Washington State Patrol, Fiscal Office, General Administration Building, AX-12, Olympia, Washington 98504-0612, phone 753-6550; Implementation and Enforcement: Lieutenant Herb E. Howe, Washington State Patrol, Identification Section, P.O. Box 2527, QE-02, Olympia, Washington 98507-2527, phone 753-6827.

Agency Comments: Passage of chapter 486, Laws of 1987, gives employers, for the first time, a prescreening tool to use when considering the hiring of employees who will work with children and developmentally disabled persons. Similar legislation has been enacted by other states and provides a method to reduce abuse of children and developmentally disabled persons.

Government: Second Substitute Senate Bill 5063, chapter 486, Laws of 1987, enacted by the legislature of the state of Washington.

Small Business Economic Impact: Adoption of this act will have a minimal economic impact upon private business in our state. The record checks are optional, with a $10 fee being charged to private business for each request. Nonprofit organizations, school districts, and educational service districts are exempt from this fee. The only mandatory record check is by the State Board of Education upon initial application for certification. This mandatory record check is at the applicant's expense.

Request for criminal history record information forms and optional applicant fingerprint cards are provided at no cost by the State Patrol. The employer is required to provide a copy of the record check to the prospective employee (minimal cost of photocopying and mailing is estimated at 50 cents per applicant). The act allows dissemination of this information to businesses or organizations licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, or provides recreation to developmentally disabled persons or children under 16 years of age, including school districts and educational service districts. Record checks are for initial employment decisions only; an identification certificate is issued by the State Patrol to an applicant who has no record. Possession of such identification shall satisfy future background check requirements for the applicant.

A benefit that may be derived in time by the employer is a reduction in liability insurance costs, if the insurer does not experience a claim related to child abuse due to consistent and conscientious prescreening of prospective employees. Of even greater importance is that persons convicted of crimes against persons may be identified through this check prior to employment, thereby preventing other persons from being abused.

In conclusion, this act does not have an adverse economic impact on business. The increased public safety benefits that may be provided to young persons or developmentally disabled adults in the state of Washington far outweigh the minimal costs associated with implementing this type of record check.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-020 DEFINITIONS. (1) The definitions in RCW 10.97.030 shall apply to these regulations.

(2) "Nonconviction data" has the meaning set forth in RCW 10.97.030(2), but shall not include dismissals following a period of probation, or suspension, or deferral of sentence.

(3) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030(6), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

(4) The definitions as enumerated in chapter 486, Laws of 1987, "AN ACT Relating to child and adult abuse information", shall apply whenever applicable in these regulations.

NEW SECTION

WAC 446-20-285 EMPLOYMENT—CONVICTION RECORDS; CHILD AND ADULT ABUSE INFORMATION. After January 1, 1988, certain child and adult abuse conviction information will be furnished by the state patrol upon the submission of a written request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Certain convictions of crimes against persons;

(2) Department of licensing disciplinary board final decisions of specific findings of physical or sexual abuse or exploitation of a child; and

(3) Civil adjudications of child abuse.

This information will be furnished, consistent with the provisions of chapter 486, Laws of 1987, on an approved Request for Criminal History Information form available from the Washington State Patrol, P. O. Box 2527, Olympia, Washington, 98507-2527. Legible reproductions of this form will be allowable.

The state patrol shall also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) For positive identification, the Request for Criminal History Information form may be accompanied by fingerprint cards of a type specified by the Washington state patrol identification section, and shall contain a certification by the applicant: the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in chapter 486, Laws of 1987.

(b) The business or organization making such request shall not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the Request for Criminal History Information form. In the event of a possible match, where the applicant's name and date of birth as submitted varies from that of the record contained by the identification section, the right thumb fingerprint impression will be used for identification verification purposes only. An exact name and date of birth match will be required for dissemination of conviction information in the absence of

a fingerprint card or thumbprint impression for positive identification or verification of record.

(d) After processing a properly completed Request for Criminal History Information form, if the conviction record, disciplinary board final decision, adjudication record, or equivalent response from a federal law enforcement agency shows no evidence of crimes against persons, an identification declaring the showing of no evidence shall be issued to the applicant by the state patrol within fourteen calendar days of receipt of the request. Possession of such identification shall satisfy future background check requirements for the applicant.

(e) The business or organization shall notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(f) The business or organization shall be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

AMENDATORY SECTION (Amending Order 82-5, filed 10/22/82)

WAC 446-20-290 FEES. (1) A nonrefundable fee of ten dollars shall accompany each ((~~fingerprint card~~)) request for conviction records submitted pursuant to chapter 202, Laws of 1982 and chapter 486, Laws of 1987, unless through prior arrangement an account is authorized and established. Fees are to be made payable to the "Washington State Patrol", and are to be remitted only by cashier's check, money order or check written on a commercial business account. The Washington state patrol identification section shall adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of ((~~this chapter~~)) these chapters are recovered.

(2) Pursuant to provisions of chapter 486, Laws of 1987, no fees will be charged to a nonprofit organization, including school districts and educational service districts, for the request for conviction records.

AMENDATORY SECTION (Amending Order 82-5, filed 10/22/82)

WAC 446-20-300 PRIVACY—SECURITY. (1) All employers or prospective employers receiving conviction records pursuant to chapter 202, Laws of 1982, shall comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information, or a civil adjudication record pursuant to chapter 486, Laws of 1987, shall comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(a) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this prohibition is subject to civil action for damages.

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under sections 1 through 6, chapter 486, Laws of 1987, or RCW 43.43.760.

AMENDATORY SECTION (Amending Order 82-5, filed 10/22/82)

WAC 446-20-310 AUDITS. (1) All employers or prospective employers receiving conviction records pursuant to chapter 202, Laws of 1982, shall comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the record keeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information or civil adjudication records pursuant to chapter 486, Laws of 1987, shall comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the record keeping system.

WSR 88-03-057
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
(Noxious Weed Control Board)

[Filed January 20, 1988]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Noxious Weed Board intends to adopt, amend, or repeal rules concerning the state noxious weed list and schedule of monetary penalties, chapter 16-750 WAC;

that the agency will at 10:00 a.m., Wednesday, February 24, 1988, in the Kittitas County Commissioners Auditorium, 5th and Main, Ellensburg, Washington 98926, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 4, 1988.

The authority under which these rules are proposed is chapter 17.10 RCW, as amended by sections 8 and 28, chapter 438, Laws of 1987.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before February 24, 1988, to Catherine Hovanic, Executive Secretary, State Noxious Weed Board, 1313 West Meeker, Suite 111, P.O. Box 1064, Kent, WA 98035.

Dated: January 20, 1988
By: Art Losey
Chairperson Pro tem

STATEMENT OF PURPOSE

Title: Chapter 16-750 WAC.

Description of Purpose: The State Noxious Weed Board has established a noxious weed list comprising the names of those plants determined to be highly destructive, competitive or difficult to control by cultural or chemical means.

Statutory Authority: Chapter 17.10 RCW.

Summary of Rules: The amendatory changes classify weeds by class which are determined to be highly destructive, competitive or difficult to control.

Reasons for Supporting Proposed Rules: The State Noxious Weed Board is required by chapter 17.10 RCW to adopt a state noxious weed list.

Personnel Responsible for Drafting and Implementing Rules: State Noxious Weed Board, Arlie Clinkenbeard, Chairman, 149 Third North, Okanogan, WA 98840, phone (509) 422-3521.

Agency Personnel Responsible for Enforcing Rules: Art G. Losey, Washington State Department of Agriculture, Assistant Director, 406 General Administration Building, AX-41, Olympia, WA 98504, phone (206) 753-5062.

Persons Proposing Rules: State Noxious Weed Board.

Comments: None.

Rules Necessary to Comply with Federal Law: No.

Small Business Economic Impact Statement: None.

NEW SECTION

WAC 16-750-001 STATE NOXIOUS WEED LIST—PURPOSE. In accordance with RCW 17.10.080 a state noxious weed list comprising the names of those plants which the state noxious weed control board finds to be highly destructive, competitive, or difficult to

WSR 88-07-066
ADOPTED RULES
STATE PATROL
[Order 88-03-A—Filed March 17, 1988]

I, George B. Tellevik, director of the Washington State Patrol, do promulgate and adopt at the General Administration Building, AX-12, Olympia, Washington 98504, the annexed rules relating to Washington State Patrol criminal records, implementing chapter 486, Laws of 1987.

This action is taken pursuant to Notice No. WSR 88-03-056 filed with the code reviser on January 19, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 43.43.838, section 5, chapter 486, Laws of 1987, which directs that the Washington State Patrol has authority to implement the provisions of RCW 43.43.838, chapter 486, Laws of 1987.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED March 17, 1988.

By George B. Tellevik
Chief

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-020 DEFINITIONS. (1) The definitions in RCW 10.97.030 shall apply to these regulations.

(2) "Nonconviction data" has the meaning set forth in RCW 10.97.030(2), but shall not include dismissals following a period of probation, or suspension, or deferral of sentence.

(3) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030(6), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

(4) The definitions as enumerated in chapter 486, Laws of 1987, "AN ACT Relating to child and adult abuse information", shall apply whenever applicable in these regulations.

NEW SECTION

WAC 446-20-285 EMPLOYMENT—CONVICTION RECORDS; CHILD AND ADULT ABUSE INFORMATION. After January 1, 1988, certain child and adult abuse conviction information will be furnished by the state patrol upon the submission of a written request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes against persons as defined in RCW 43.43.830(6);

(2) Department of licensing disciplinary board final decisions of specific findings of physical or sexual abuse or exploitation of a child; and

(3) Civil adjudications of child abuse.

This information will be furnished, consistent with the provisions of chapter 486, Laws of 1987, on an approved Request for Criminal History Information form available from the Washington State Patrol, P. O. Box 2527, Olympia, Washington, 98507-2527.

The state patrol shall also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request shall not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the Request for Criminal History Information form may be accompanied by fingerprint cards of a type specified by the Washington state patrol identification section, and shall contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in chapter 486, Laws of 1987.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the Request for Criminal History Information form. In the event of a possible match, where the applicant's name and date of birth as submitted varies from that of the record contained by the identification section, the right thumb fingerprint impression will be used for identification verification purposes only. An exact name and date of birth match will be required for dissemination of conviction information in the absence of a fingerprint card or thumbprint impression for positive identification or verification of record.

(d) After processing a properly completed Request for Criminal History Information form, if the conviction record, disciplinary board final decision, adjudication record, or equivalent response from a federal law enforcement agency shows no evidence of crimes against persons, an identification declaring the showing of no evidence shall be issued to the applicant by the state patrol within fourteen calendar days of receipt of the request. Possession of such identification shall satisfy future background check requirements for the applicant.

(e) The business or organization shall notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(f) The business or organization shall be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

AMENDATORY SECTION (Amending Order 82-5, filed 10/22/82)

WAC 446-20-290 FEES. (1) A nonrefundable fee of ten dollars shall accompany each ((~~fingerprint card~~)) request for conviction records submitted pursuant to ((~~chapter 202, Laws of 1982~~)) RCW 43.43.815 and chapter 486, Laws of 1987, unless through prior arrangement an account is authorized and established. Fees are to be made payable to the "Washington State Patrol", and are to be remitted only by cashier's check, money order or check written on a commercial business account. The Washington state patrol identification section shall adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of ((~~this chapter~~)) these chapters are recovered.

(2) Pursuant to provisions of chapter 486, Laws of 1987, no fees will be charged to a nonprofit organization, including school districts and educational service districts, for the request for conviction records.

AMENDATORY SECTION (Amending Order 82-5, filed 10/22/82)

WAC 446-20-300 PRIVACY—SECURITY. (1) All employers or prospective employers receiving conviction records pursuant to ((~~chapter 202, Laws of 1982~~)) RCW 43.43.815, shall comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information, or a civil adjudication record pursuant to chapter 486, Laws of 1987, shall comply with the provisions of WAC 446-20-220 (1) and (3) relating to privacy and security of the records.

(a) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this prohibition is subject to a civil action for damages.

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

AMENDATORY SECTION (Amending Order 82-5, filed 10/22/82)

WAC 446-20-310 AUDITS. (1) All employers or prospective employers receiving conviction records pursuant to ((~~chapter 202, Laws of 1982~~)) RCW 43.43.815, shall comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the record keeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information or civil adjudication records pursuant to chapter 486, Laws of 1987, may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300(2).

WSR 88-07-067
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE CENTER
[Memorandum—March 16, 1988]

A special meeting of the board of directors of the Washington State Convention and Trade Center will be held on Monday, March 21, 1988, at 5:00 p.m., to discuss board action on the kitchen contract. The meeting will be held at the Plymouth Congregational Church, Room 221, 1217 Sixth Avenue, Seattle.

WSR 88-07-068
RULES OF COURT
STATE SUPREME COURT
[March 3, 1988]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENT TO THE CODE OF JUDICIAL CONDUCT — No. 25700-A-411 — ORDER

The Court having considered the proposed amendment to the Code of Judicial Conduct and having determined that the amendment will aid in the prompt and orderly administration of justice and having further determined that an emergency exists which necessitates an early adoption; Now, therefore, it is hereby

ORDERED:

(a) That the amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 3rd day of March, 1988.

	Vernon R. Pearson
Robert F. Utter	Fred H. Dore
Robert F. Brachtenbach	Keith M. Callow
James M. Dolliver	Wm. C. Goodloe
James A. Andersen	B. Durham

CODE OF JUDICIAL CONDUCT

PREAMBLE

1. COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT. Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial

West Virginia Code Annotated
Chapter 15
Criminal Identification Bureau

§ 15-2-24. Criminal identification bureau; establishment: supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

(a) The superintendent of the department shall establish, equip and maintain at the departmental headquarters a criminal identification bureau, for the purpose of receiving and filing fingerprints, photographs, records and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or designate a supervisor to be in charge of the criminal identification bureau and such supervisor shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the criminal identification bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.

(b) The criminal identification bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

(c) The criminal identification bureau may furnish fingerprints, photographs, records or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the fingerprints, photographs, records or other information requested are necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

(d) The criminal identification bureau may furnish, with the approval of the superintendent, fingerprints, photographs, records or other information to any private or public agency, person, firm, association, corporation or other organization, other than a law-enforcement or governmental agency as to which the provisions of subsection (c) of this section shall govern and control, but all requests under the provisions of this subsection (d) for such fingerprints, photographs, records or other information must be accompanied by a written authorization signed and acknowledged by the person whose fingerprints, photographs, records or other information is to be released.

(e) The criminal identification bureau may furnish fingerprints, photographs, records and other information of persons arrested or sought to be arrested in this State to the identification bureau of the United States government and to other states for the purpose of aiding law enforcement.

(f) Persons in charge of any penal or correctional institution, including any city or county jail in this State, shall take, or cause to be taken, the fingerprints and description of all persons lawfully committed thereto or confined therein and furnish the same in duplicate to the criminal identification bureau, department of public safety. Such fingerprints shall be taken on forms approved by the superintendent of the department of public safety. All such officials as herein named may, when possible to do so, furnish photographs to the criminal identification bureau of such persons so fingerprinted.

(g) Members of the department of public safety, and all other state law-enforcement officials, sheriffs, deputy sheriffs, and each and every peace officer in this State, shall take or cause to be taken the fingerprints and

description of all persons arrested or detained by them, charged with any crime or offense in this State, in which the penalty provided therefor is confinement in any penal or correctional institution, or of any person who they have reason to believe is a fugitive from justice or an habitual criminal, and furnish the same in duplicate to the criminal identification bureau of the department of public safety on forms approved by the superintendent of said department. All such officials as herein named may, when possible to do so, furnish to the criminal identification bureau, photographs of such persons so fingerprinted. For the purpose of obtaining data for the preparation and submission to the governor and the legislature by the department of public safety of an annual statistical report on crime conditions in the State, the clerk of any court of record, the magistrate of any magistrate court and the mayor or clerk of any municipal court before which a person appears on any criminal charge shall report to the criminal identification bureau the sentence of the court or other disposition of the charge and the prosecuting attorney of every county shall report to the criminal identification bureau such additional information as the bureau may require for such purpose, and all such reports shall be on forms prepared and distributed by the department of public safety, shall be submitted monthly and shall cover the period of the preceding month.

(h) All persons arrested or detained pursuant to the requirements of this article shall give fingerprints and information required by subsections (f) and (g) of this section. Any person who has been fingerprinted or photographed in accordance with the provisions of this section, who is acquitted of the charges upon which he or she was arrested, and who has no previous criminal record, may, upon the presentation of satisfactory proof to the department, have such fingerprints or photographs, or both, returned to them.

(i) All state, county and municipal law-enforcement agencies shall submit to the bureau uniform crime reports setting forth their activities in connection with law enforcement. It shall be the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of such uniform crime reports. Willful or repeated failure by any state, county or municipal law-enforcement official to submit the uniform crime reports required by this article shall constitute neglect of duty in public office. The bureau shall correlate the reports submitted to it and shall compile and submit to the governor and the legislature semiannual reports based on such reports. A copy of such reports shall be furnished to all prosecuting attorneys and law-enforcement agencies.

(j) Neglect or refusal of any person mentioned in this section to make the report required herein, or to do or perform any act on his or her part to be done or performed in connection with the operation of this section, shall constitute a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for a period of not more than sixty days, or both. Such neglect shall constitute misfeasance in office and subject such persons to removal from office. Any person who willfully removes, destroys or mutilates any of the fingerprints, photographs, records or other information of the department of public safety, shall be guilty of a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or both. (1935, c. 27; 1965, c. 141; 1969, c. 43; 1971, c. 130; 1972, c. 45; 1977, c. 149.)

§ 29A-2-2. Making orders and records available.

Every agency shall publish or, pursuant to rules adopted in accordance with the provisions of this chapter, make available to public inspection all final orders, decisions and opinions in the adjudication of contested cases except those required for good cause to be held confidential and not cited as precedents. Save as otherwise required by statute, matters of official record shall, pursuant to rules adopted in accordance with the provisions of this chapter, be made avilable for public inspection. (1964, c. 1.)

CHAPTER 29B.

FREEDOM OF INFORMATION.

ARTICLE 1.

PUBLIC RECORDS.

Sec.
29B-1-1. Declaration of policy.
29B-1-2. Definitions.
29B-1-3. Inspection and copying.
29B-1-4. Exemptions.
29B-1-5. Enforcement.
29B-1-6. Violation of article; penalties.

§ 29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy. (1977, c. 147.)

§ 29B-1-2. Definitions.

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

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

(3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

(5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics. (1977, c. 147.)

§ 29B-1-3. Inspection and copying.

(1) Every person has a right to inspect or copy any public record of a public body in this State, except as otherwise expressly provided by section four [§ 29B-1-4] of this article.

(2) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

(4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.

(a) Furnish copies of the requested information;

(b) Advise the person making the request of the time and place at which he may inspect and copy the materials; or

(c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records. (1977, c. 147.)

§ 29B-1-4. Exemptions.

The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, that nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers; and

(8) Internal memoranda or letters received or prepared by any public body. (1977, c. 147.)

§ 29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date. (1977, c. 147.)

§ 29B-1-6. Violation of article; penalties.

Any custodian of any public records who shall willfully violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ten days, or, in the discretion of the court, by both such fine and imprisonment. (1977, c. 147.)

WISCONSIN

Wisconsin Statutes Annotated
Division of Law Enforcement Services
Chapter 165

165.82 CRIMINAL HISTORY SEARCH FEE. (1) Notwithstanding s. 19.35(3) the department of justice shall impose the following fees for criminal history searches for purposes unrelated to criminal justice:

(a) For each record check requested by a governmental agency or nonprofit organization, $2.

(b) For each record check by any other requester, $10.

(2) The department of justice shall not impose fees for criminal history searches for purposes related to criminal justice.

165.83 Criminal identification, records and statistics

(1) Definitions. As used in this section and s. 165.84:

(a) "Division" means the division of law enforcement services.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employes of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a violation of a city, county, village or town ordinance.

(2) The division shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. For an offense which is a felony.

2. For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances under ch. 161, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

3. For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.

4. As a fugitive from justice.

5. For any other offense designated by the attorney general.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in par. (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state for the offenses under par. (a) but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the number and nature of offenses known to have been committed in this state, the legal action taken in connection with such offenses from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The administrator of the division may determine any other information to be obtained regarding crime statistics. However, the information shall include such data as may be requested by the F.B.I. under its system of uniform crime reports for the United States.

(5) All persons in charge of law enforcement agencies, all clerks of court, all municipal justices where they have no clerks, all persons in charge of state and county penal and correctional institutions, and all persons in charge of state and county probation and parole offices, shall supply the division with the information described in s. 165.83 (2) (f) on the basis of the forms and instructions to be supplied by the division under s. 165.83(2) (g).

(6) All persons in charge of law enforcement agencies in this state shall furnish the division with any other identifying data required in accordance with guidelines established by the division. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the division copies of such items in these files as will aid in establishing the nucleus of the state criminal identification file.

Public Records

19.31 Declaration of policy. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employes who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employes whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access by denied.

19.32 Definitions. As used in ss. 19.33 to 19.39:

(1) "Authority" means any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001 (3), and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the foregoing.

(2) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to,

handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(3) "Requester" means any person who requests inspection or copies of a record.

19.33 Legal custodians. (1) An elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employe of his or her staff to act as the legal custodian.

(2) The chairperson of a committee of elected officials, or the designee of the chairperson, is the legal custodian of the records of the committee.

(3) The cochairpersons of a joint committee of elected officials, or the designee of the cochairpersons, are the legal custodians of the records of the joint committee.

(4) Every authority not specified in subs. (1) to (3) shall designate in writing one or more positions occupied by an officer or employe of the authority or the unit of government of which it is a part as a legal custodian to fulfill its duties under this subchapter. In the absence of a designation the authority's highest ranking officer and the chief administrative officer, if any, are the legal custodians for the authority. The legal custodian shall be vested by the authority with full legal power to render decisions and carry out the duties of the authority under this subchapter. Each authority shall provide the name of the legal custodian and a description of the nature of his or her duties under this subchapter to all employes of the authority entrusted with records subject to the legal custodian's supervision.

(5) Notwithstanding sub. (4), if an authority specified in sub. (4) or the members of such an authority are appointed by another authority, the appointing authority may designate a legal custodian for records of the authority or members of the authority appointed by the appointing authority, except that if such an authority is attached for administrative purposes to another authority, the authority performing administrative duties shall designate the legal custodian for the authority for whom administrative duties are performed.

(6) The legal custodian of records maintained in a publicly owned or leased building or the authority appointing the legal custodian shall designate one or more deputies to act as legal custodian of such records in his or her absence or as otherwise required to respond to requests as provided in s. 19.35 (4). This subsection does not apply to members of the legislature or to members of any local governmental body.

(7) The designation of a legal custodian does not affect the powers and duties of an authority under this subchapter.

(8) No elected official of a legislative body has a duty to act as or designate a legal custodian under sub. (4) for the records of any committee of the body unless the official is the highest ranking officer or chief administrative officer of the committee or is designated the legal custodian of the committee's records by rule or by law.

19.34 Procedural information (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

19.35 Access to records; fees. (1) RIGHT TO INSPECTION. (a) Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record which appears in written form. If a requester requests a copy of the record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.

(c) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a comprehensible audio tape recording a copy of the tape recording substantially as audible as the original. The authority may instead provide a transcript of the recording to the requester if he or she requests.

(d) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a video tape recording a copy of the tape recording substantially as good as the original.

(e) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is not in a readily comprehensible form a copy of the information contained in the record assembled and reduced to written form on paper.

(f) Except as otherwise provided by law, any requester has a right to inspect any record not specified in pars. (b) to (e) the form of which does not permit copying. If a requester requests permission to photograph the record, the authority having custody of the record may permit the requester to photograph the record. If a requester requests that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.

(g) Paragraphs (a) to (c), (e) and (f) do not apply to a record which has been or will be promptly published with copies offered for sale or distribution.

(h) A request under pars. (a) to (f) is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37.

(i) Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3) (f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(j) Notwithstanding pars. (a) to (f), a requester shall comply with any regulations or restrictions upon access to or use of information which are specifically prescribed by law.

(k) Notwithstanding pars. (a), (b) and (f), a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(L) Except as necessary to comply with pars. (c) to (e) or s. 19.36 (6), this subsection does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format.

(2) FACILITIES. The authority shall provide any person who is authorized to inspect or copy a record under sub. (1) (a), (b) or (f) with facilities comparable to those used by its employes to inspect, copy and abstract the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic or other equipment or to provide a separate room for the inspection, copying or abstracting of records.

(3) FEES. (a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.

(b) An authority may impose a fee upon the requester of a copy of a record for the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is $50 or more.

(d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

(e) An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

(f) An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds $5.

(4) TIME FOR COMPLIANCE AND PROCEDURES. (a) Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.

(b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under s. 19.37 (1) or upon application to the attorney general or a district attorney.

(5) RECORD DESTRUCTION. No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied. If an action is commenced under s. 19.37, the requested record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the requested record may not be destroyed until after the request for inspection or copying is granted.

(6) ELECTED OFFICIAL RESPONSIBILITIES. No elected official is responsible for the record of any other elected official unless he or she has possession of the record of that other official.

19.36 Limitations upon access and withholding. (1) APPLICATION OF OTHER LAWS. Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35 (1), except that any portion of that record which contains public information is open to public inspection as provided in sub. (6).

(2) LAW ENFORCEMENT RECORDS. Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35 (1).

(3) CONTRACTORS' RECORDS. Each authority shall make available for inspection and copying under s. 19.35 (1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority.

(4) COMPUTER PROGRAMS AND DATA. A computer program, as defined in s. 16.97 (4) (c), is not subject to examination or copying under s. 19.35 (1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in s. 19.35 or this section.

(5) TRADE SECRETS. An authority may withhold access to any record or portion of a record containing information qualifying as a common law trade secret.

(6) SEPARATION OF INFORMATION. If a record contains information that may be made public and information that may not be made public, the authority having custody of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release.

19.37 Enforcement and penalties (1) MANDAMUS. If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars. (a) and (b).

(a) The requester may bring an action for a writ of mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.

(b) The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for a writ of mandamus asking a court to order release of the record to the requester. The district attorney or attorney general may bring such an action.

(2) COSTS, FEES AND DAMAGES. The court shall award reasonable attorney fees, damages of not less than $100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1). Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(3) PUNITIVE DAMAGES. If a court finds that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the requester.

(4) PENALTY. Any authority which or legal custodian under s. 19.33 who arbitrarily and capriciously denies or delays response to a request or charges excessive fees may be required to forfeit not more than $1,000. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

19.39 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances. The attorney general may respond to such a request.

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946.72. Tampering with public records and notices

(1) Whoever with intent to injure or defraud destroys, damages, removes or conceals any public record is guilty of a Class D felony.

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973.015 Misdemeanors, special disposition. (1) When a person under the age of 21 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum penalty is imprisonment for one year or less in the county jail, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.

(2) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, such probation has not been revoked. Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record.

History: 1975 c. 39; 1975 c. 189 s. 105; 1975 c. 199.

"Expunge" under this section means to strike or obliterate from the record all references to defendant's name and identity. 67 Atty. Gen. 301.

Circuit courts do not possess inherent powers to expunge or destroy conviction records. 70 Atty. Gen. 115.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under pars. (a) to (f), the time it is to be forwarded, the method of classifying and such other matters as shall facilitate collection and compilation.

(h) Cooperate with and assist all law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in pars. (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing efficient local bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement agencies with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement agencies concerned and supply copies of the criminal record to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(m) Prepare and publish reports and releases, at least once a year and no later than July 1, containing the statistical information gathered under this section and presenting an accurate picture of crime in this state and of the operation of the agencies of criminal justice.

(n) Make available upon request, to all local and state law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the files of the division which will aid these agencies in the performance of their official duties. For this purpose the division shall operate on a 24-hour a day basis, 7 days a week. Such information may also be made available to any other agency of this state or political subdivision of this state, and to any other federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only.

(p) Cooperate with other agencies of this state, the crime information agencies of other states, and the uniform crime reports and national crime information center systems of the F.B.I. in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

165.84 Cooperation in criminal identification, records and statistics

(1) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the F.B.I., full face, profile and full length photographs, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in s. 165.83(2)(a), of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the division. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in s. 165.83(2)(a) may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request.

(2) Fingerprints and other identifying data required to be taken under sub. (1) shall be forwarded to the division within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the law enforcement agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the division so requests.

(3) All persons in charge of law enforcement agencies shall forward to the division copies or detailed descriptions of the arrest warrants and the identifying data described in s. 165.83(2)(e) immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the division of such service or withdrawal. In any case, the law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the division all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the F.B.I., and full face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the division, together with any other identifying data requested, within 10 days after the arrival at the institution of the person committed. Full length photographs in release dress shall be taken immediately prior to the release of such persons from these institutions. Immediately after release, these photographs shall be forwarded to the division.

ARTICLE 3. PROBATION AND SUSPENSION OF SENTENCE

Am. Jur. 2d, ALR and C.J.S. references. — Propriety, in criminal case, of federal district court order restricting defendant's right to re-enter or stay in United States, 94 ALR Fed 619.

§ 7-13-301. Placing person found guilty, but not convicted, on probation.

(a) If a person who has not previously been convicted of any felony is charged with or is found guilty of or pleads guilty to any misdemeanor except any second or subsequent violation of W.S. 31-5-233 or any similar provision of law, or any felony except murder, sexual assault in the first or second degree or arson in the first or second degree, the court may, with the consent of the defendant and the state and without entering a judgment of guilt or conviction, defer further proceedings and place the person on probation for a term not to exceed five (5) years upon terms and conditions set by the court. The terms of probation shall include that he:

(i) Report to the court not less than twice in each year at times and places fixed in the order;

(ii) Conduct himself in a law-abiding manner;

(iii) Not leave the state without the consent of the court;

(iv) Conform his conduct to any other terms of probation the court finds proper; and

(v) Pay restitution to each victim in accordance with W.S. 7-9-101 and 7-9-103 through 7-9-112.

(b) If the court finds the person has fulfilled the terms of probation and that his rehabilitation has been attained to the satisfaction of the court, the court may at the end of five (5) years, or at any time after the expiration of one (1) year from the date of the original probation, discharge the person and dismiss the proceedings against him.

(c) If the defendant violates a term or condition of probation at any time before final discharge, the court may:

(i) Enter an adjudication of guilt and conviction and proceed to impose sentence upon the defendant if he previously pled guilty to or was found guilty of the original charge for which probation was granted under this section; or

(ii) Order that the trial of the original charge proceed if the defendant has not previously pled or been found guilty.

(d) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for any purpose.

(e) There shall be only one (1) discharge and dismissal under this section or under any similar section of the probationary statutes of any other jurisdiction. (Laws 1909, ch. 87, § 1; C.S. 1910, § 537; C.S. 1920, § 610; Laws 1931, ch. 73, § 9; R.S. 1931, § 33-1501; C.S. 1945, § 10-1803; W.S. 1957, § 7-315; Laws 1977, ch. 70, § 2; W.S. 1977, § 7-13-203; Laws 1987, ch. 157, § 3; 1991, ch. 77, § 1.)

CHAPTER 19
Criminal History Records

§ 7-19-101. Short title.

This act shall be known and may be cited as the "Wyoming Criminal History Record Act". (Laws 1987, ch. 163, § 1.)

§ 7-19-102. Scope and applicability of provisions.

(a) This act governs all systems of records for the collection, maintenance, use and dissemination of individually identifiable criminal history record information by any criminal justice agency.

(b) This act applies to criminal history record information compiled for all felonies, high misdemeanors and other misdemeanors determined by the division pursuant to W.S. 9-1-623(a) but does not apply to violations of municipal ordinances.

(c) Notwithstanding any provision of this act, specific provisions relating to confidentiality of records contained in Title 14, Wyoming Statutes, shall govern in those circumstances to which the more specific statute applies. (Laws 1987, ch. 163, § 1.)

§ 7-19-103. Definitions.

(a) As used in this act:

(i) "Conviction data" includes records indicating criminal justice transactions related to an offense that have resulted in a conviction, guilty plea or a plea of nolo contendere of an individual;

(ii) "Criminal history record information" means information, records and data compiled by criminal justice agencies on individuals for the purpose of identifying criminal offenders consisting of identifiable descriptions of the offenders and notations or a summary of arrests, detentions, indictments, information, pre-trial proceedings, nature and disposition of criminal charges, sentencing, rehabilitation, incarceration, correctional supervision and release. Criminal history record information is limited to information recorded as the result of the initiation of criminal proceedings. It does not include intelligence data, analytical prosecutorial files, investigative reports and files or statistical records and reports in which individual identities are not ascertainable;

(iii) "Criminal justice agency" means any agency or institution of state or local government other than the office of the public defender which performs as part of its principal function, activities relating to:

(A) The apprehension, investigation, prosecution, adjudication, incarceration, supervision or rehabilitation of criminal offenders;

(B) The collection, maintenance, storage, dissemination or use of criminal history record information;

(iv) "Division" means the Wyoming division of criminal investigation within the office of the attorney general;

(v) "High misdemeanor" means a misdemeanor for which the penalty authorized by law exceeds the jurisdiction of municipal and justice of the peace courts;

(vi) "Interstate system" means all agreements, arrangements and systems for the interstate transmission and exchange of criminal history record information. The term does not include record keeping systems in the state maintained or controlled by any state or local agency, or group of agencies, even if the agencies receive or have received information through, or otherwise participate or have participated in, systems for the interstate exchange of criminal history record information;

(vii) "Nonconviction data" means arrest information in cases in which:

(A) There has been an acquittal, dismissal or annulment of verdict or plea;

(B) An interval of one (1) year has elapsed from the date of arrest and no active prosecution of the charge is pending;

(C) A law enforcement agency has elected not to refer a matter to a prosecutor;

(D) A prosecutor has elected not to commence criminal proceedings; or

(E) The proceedings have been indefinitely postponed.

(viii) "State" means the state of Wyoming;

(ix) System of record" means any group of records under the control of a criminal justice agency from which information is retrieved using the name of the individual or some identifying number, symbol or other identifier particularly assigned to the individual. The term does not include records that are maintained only in chronological order or by numbers which are not particular to individuals;

(x) "This act" means W.S. 7-19-101 through 7-19-109. (Laws 1987, ch. 163, § 1.)

§ 7-19-104. Procedures to insure currentness of information; disposition and arrest data.

(a) The collection, storage, dissemination and use of criminal history record information under this act shall take place under procedures reasonably designed to ensure that all information is kept current.

(b) Criminal history record information collected, stored, disseminated or used under this act shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included. (Laws 1987, ch. 163, § 1.)

§ 7-19-105. Rules and regulations.

(a) The division shall promulgate reasonable rules and regulations to carry out the provisions of this act. The rules shall include:

(i) Standards and procedures to ensure the security and privacy of all criminal history record information and that the information is used only for criminal justice and other lawful purposes; and

(ii) Standards and procedures in conformance with this act relating to access to and dissemination of criminal history record information, research, system security, record completeness and accuracy, training, intrastate and interstate exchanges, user agreements, audits and procedures for review and challenge of records. (Laws 1987, ch. 163, § 1.)

§ 7-19-106. Access to, and dissemination of, information.

(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

(i) Other criminal justice agencies;

(ii) Any person designated for the purpose provided by W.S. 14-6-227;

(iii) The division of public assistance and social services of the department of health and social services;

(iv) Other governmental agencies as authorized by the laws of the United States or any state or by executive order;

(v) An individual who has met the requirements established by the division to ensure the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable;

(vi) Any record subject as provided by W.S. 7-19-109.

(b) Notwithstanding subsection (a) of this section, the division may disseminate criminal history record information to central repositories of other states and to the Federal Bureau of Investigation in accordance with rules and regulations promulgated by the division governing participation in an interstate system for the exchange of criminal history record information, and upon assurance that the information will be used only for purposes that are lawful under the laws of the other states involved or the laws applicable to the Federal Bureau of Investigation.

(c) All applications or requests to the division for criminal history record information submitted by the record subject or any other person except a criminal justice agency or the division of public assistance and social services, shall be accompanied by the record subject's fingerprints in addition to any other information required by the division.

(d) No criminal justice agency or individual employed by the agency shall confirm the existence or nonexistence of criminal history record information to any person that would not be eligible to receive the information.

(e) Nothing in this act prohibits the dissemination of conviction data for purposes related to the issuance of visas and the granting of citizenship.

(f) Each person requesting criminal history record information from the division or a criminal justice agency shall upon request be advised in writing whether the person is found to be eligible or ineligible for access.

(g) No information shall be disseminated by the division or by any criminal justice agency to any person or agency prior to determination of eligibility.

(h) Each criminal justice agency holding or receiving criminal history record information shall maintain dissemination logs and other records relative to the release of the information in accordance with rules promulgated by the division.

(j) No criminal history record information released to an authorized recipient shall be released, used or disseminated by that recipient to any other

person for any purpose not included in the original request except that the record subject may make further [illegible]

(k) Notwithstanding subsection (a) of this section, the division may disseminate criminal history record information concerning a record subject, or may confirm that no criminal history record information exists relating to a named individual:

(i) In conjunction with state or national criminal history record information check under W.S. 7-19-201; or

(ii) If application is made for a voluntary record information check, provided:

(A) The applicant submits proof satisfactory to the division that the individual whose record is being checked consents to the release of the information to the applicant;

§ 7-19-107. Central repository; information to be submitted; audits; interstate exchanges.

(a) The division of criminal investigation within the office of the attorney general is designated as the central repository for criminal history record information.

(b) For the purpose of maintaining complete and accurate criminal history record information at the central repository, all city, county and state law enforcement agencies, district courts, courts of limited jurisdiction, district attorneys, state adult and juvenile correctional institutions and state or local probation and parole agencies shall submit the criminal history record information required under this section for which they are responsible to the division for filing at the earliest time possible following the occurrence of the reportable event. Reports shall be submitted on uniform forms approved and provided by the division.

(c) All criminal justice agencies making arrests for offenses covered by this act shall furnish the division with information concerning the charges and description of all persons arrested and shall furnish their fingerprints. Each agency shall also notify the division of any decision not to refer an arrest for prosecution. An agency making arrests covered by this subsection may

enter into arrangements with other agencies for the purpose of furnishing required information to the division on its behalf.

(d) All district attorneys shall notify the division of all final disposition information in cases covered by this act including charges not filed in criminal cases for which the division has a record of an arrest.

(e) All district attorneys and clerks of the district courts and courts of limited jurisdiction shall furnish the division with information concerning final dispositions in criminal cases covered by this act. The information shall include, for each charge:

(i) All judgments of not guilty, discharges and dismissals in the trial courts;

(ii) All court orders filed in the case which reverse or remand a reported conviction or vacate, modify or annul a sentence or conviction;

(iii) All judgments terminating or revoking a sentence to probation, supervision or conditional discharge and any order relating to resentencing after the termination or revocation.

(f) After the court pronounces sentence in any case covered by this act, including an order of probation, parole or suspended sentence, the sheriff shall fingerprint any convicted defendant who has not previously been fingerprinted for the same case or whose fingerprints for the same case were rejected as unreadable. The sheriff shall submit the fingerprints to the division.

(g) The wardens of the state penitentiary and the Wyoming women's center, the superintendents of the Wyoming boys' school and Wyoming girls' school, the executive director of the department of probation and parole and the sheriff of each county shall furnish the division with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency or discharge of any individual who has been sentenced to the agency's custody for any offense covered by this act.

(h) The division shall regularly audit its own records and practices to ensure the completeness and accuracy of criminal history record information collected, maintained, used or disseminated by it, and to evaluate its procedures and facilities relating to the privacy and security of information. The division shall periodically audit the records and practices of each criminal justice agency in this state authorized to access criminal history record information maintained by the division.

(j) The division may enter into agreements with criminal records central repositories and criminal justice agencies of other states or the federal government to establish uniform procedures and practices, including codes, formats and fee schedules to facilitate the interstate exchange of criminal record information. (Laws 1987, ch. 163, § 1.)

§ 7-19-108. Fees.

(a) The division may charge the record subject or any other person or noncriminal justice agency qualified to receive criminal history record information, a reasonable application fee of not more than fifteen dollars ($15.00) for processing of fingerprints and other information submitted for a criminal history records check, except:

(i) No fee shall be charged to criminal justice agencies or the department of family services;

(ii) The application fee charged shall be not more than ten dollars ($10.00) if:

(A) The applicant is an organization engaged in providing volunteer services to youth or victims of family violence. Examples of those organizations include big brothers and big sisters and volunteer workers in safe houses for victims of family violence; and

(B) The applicant requests the background investigation be performed solely to determine the suitability of a prospective volunteer to provide volunteer services.

(iii) If national criminal history record information is requested by the submitting party pursuant to W.S. 7-19-201, the application shall include any additional fee required by the federal bureau of investigation in accordance with federal P.L. 92-544.

(b) Criminal justice agencies which fingerprint applicants at the request of noncriminal justice agencies for criminal history record information may charge a reasonable fee of not more than five dollars ($5.00) for fingerprinting. Fees collected under this subsection shall be credited to the state general fund or to the general fund of the appropriate county or municipality. (Laws 1987, ch. 163, § 1; 1991, ch. 113, § 2; ch. 161, § 3.)

§ 7-19-109. Inspection; deletion or modification of information.

(a) An individual has the right to inspect all criminal history record information located within this state which refers to him. The record subject may apply to the district court for an order to purge, modify or supplement inaccurate or incomplete information. Notification of each deletion, amendment or supplementary notation shall be promptly disseminated to any person or agency which received a copy of the record in question during the previous twelve (12) month period as well as the person whose record has been altered.

(b) Criminal justice agencies may prescribe reasonable hours and places for inspection of criminal history record information and may impose additional restrictions, including fingerprinting, reasonably necessary to both assure the records' security and to verify the identities of those who seek to inspect the records.

(c) When an application for inspection of criminal history record information is received by a criminal justice agency the agency shall determine whether a record pertaining to the applicant is maintained. If a record is maintained, the agency shall inform the applicant of the existence of the record and inform him of the procedure for examining the record. Upon verification of his identity, the applicant or his authorized representative shall be allowed to examine the record pertaining to him and to receive a true copy. (Laws 1987, ch. 163, § 1.)

§ 9-1-611. Division of criminal investigation; created; definitions; director; appointment; qualifications.

(a) The Wyoming division of criminal investigation is created within the office of the attorney general.

(b) As used in this act:

(i) "Agent" means an agent of the division;

(ii) "Director" means the director of the division;

(iii) "Division" means the Wyoming division of criminal investigation;

(iv) "This act" means W.S. 9-1-611 through 9-1-627.

(c) With the approval of the governor, the attorney general shall appoint a director who is the chief administrative officer and chief agent of the division.

(d) The director shall be a professional law enforcement officer, experienced in modern methods for the detection of crime and the apprehension of criminals. He shall possess the qualifications of an agent under W.S. 9-1-613 and shall have a thorough working knowledge of criminal law and the law of criminal procedure, including the law of arrest, search and seizure and interrogation of criminal suspects. The director shall possess other qualifications required by the attorney general. (Laws 1973, ch. 246, § 1; W.S. 1957, §§ 9-136.1 to 9-136.3; W.S. 1977, §§ 9-2-530 to 9-2-532; Laws 1982, ch. 62, § 3; 1986, ch. 32, § 1.)

Discharge from division not protected by fifth amendment. — Discharge from the division is not a hazard against which the fifth amendment incrimination clause provides protection. Johnston v. Herschler, 669 F.2d 617 (10th Cir. 1982).

Quoted in Oyler v. State, 618 P.2d 1042 (Wyo. 1980).

§ 9-1-612. Duties of director; deputy directors; appointment; duties; capitol security; security personnel requirements and powers.

(a) The director shall supervise and direct all activities of the division. Subject to the written approval of the attorney general, the director shall prescribe rules and regulations not inconsistent with law to implement this act. The director is responsible to the attorney general for the operation of the division.

(b) With the approval of the attorney general the director may appoint one (1) or more deputy directors who shall perform duties as assigned by the director.

(c) The director shall provide security services for state personnel and property in Laramie county, Wyoming, including security related to the performance of specified duties which may require travel outside Laramie county and in carrying out this subsection, shall employ personnel to be certified pursuant to W.S. 9-1-701 through 9-1-707. Capitol security personnel designated and provided under this subsection have the powers enumerated under W.S. 7-2-103(a) while acting within the scope of their duties as security:

(i) For state personnel or state public functions;

(ii) For other persons on or about state property; and

(iii) For property owned by or in the custody of the state. (Laws 1973, ch. 246, § 1; W.S. 1957, §§ 9-136.4 to 9-136.6; W.S. 1977, §§ 9-2-533 to 9-2-535; Laws 1982, ch. 62, § 3; 1986, ch. 32, § 1; 1989, ch. 178, § 2; 1991, ch. 92, § 1.)

§ 9-1-623. Same; division; identification systems; information recorded; persons included; systematic maintenance and indexing.

(a) The division shall establish and maintain complete systems for the identification of criminals which comply with modern and accepted methods in the field of criminal identification. The division shall obtain, file and preserve for record plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and other information relating to persons who have been:

(i) Convicted of or arrested for any felony;

(ii) Convicted of or arrested for a high misdemeanor or other misdemeanor determined by the division;

(iii) Convicted of violating any of the military, naval or criminal laws of the United States; or

(iv) Convicted of a crime in any other state, country, district or province which, if committed within this state, would be a felony.

(b) All information kept by the division shall be maintained, recorded and indexed in a systematic manner for the purpose of providing a convenient and expeditious method of consultation and comparison. (Laws 1973, ch. 246, § 1; W.S. 1957, § 9-136.23; W.S. 1977, § 9-2-564; Laws 1982, ch. 62, § 3.)

§ 9-1-624. Same; uniform procedures and forms for collecting and disseminating identification data; agencies to cooperate.

(a) The division shall:

(i) Establish uniform procedures and forms for collecting and disseminating criminal identification data;

(ii) Assist law enforcement agencies in establishing and implementing uniform procedures;

(iii) Cooperate with the law enforcement academy to provide to law enforcement agencies and their personnel training, assistance and instruction in the gathering and dissemination of criminal identification data;

(iv) Provide a system for communicating criminal identification data among law enforcement agencies in and outside the state.

(b) All law enforcement agencies within the state shall cooperate with the division in establishing and maintaining an efficient and coordinated system of identification. (Laws 1973, ch. 246, § 1; W.S. 1957, § 9-136.24; W.S. 1977, § 9-2-565; Laws 1982, ch. 62, § 3.)

§ 9-1-625. Same; same; adult arrestees to be processed accordingly; data on persons in state custodial institutions; minors.

(a) When an adult is arrested for a felony, high misdemeanor or other misdemeanor determined by the division, the law enforcement agency responsible for the arrest shall process the person in accordance with the uniform procedures prescribed by the division. The law enforcement agency shall send to the division additional information requested by the director.

(b) The wardens of the state penitentiary and the Wyoming women's center and the superintendents of the Wyoming industrial institute and the Wyoming girls' school shall furnish to the division, in the manner and according to the methods prescribed by the division, photographs, fingerprints, modus operandi statements and other required identification of all persons confined in the respective institutions.

(c) No minor shall be photographed or fingerprinted except in accordance with the Juvenile Court Act. (Laws 1973, ch. 246, § 1; W.S. 1957, § 9-136.25; W.S. 1977, § 9-2-566; Laws 1982, ch. 62, § 3.)

§ 9-1-626. Same; cooperation with similar agencies in other jurisdictions.

The division shall cooperate with similar agencies of other states or the federal government for the purpose of developing and carrying on a complete interstate, national and international system of criminal identification. (Laws 1973, ch. 246, § 1; W.S. 1957, § 9-136.26; W.S. 1977, § 9-2-567; Laws 1982, ch. 62, § 3.)

§ 9-1-627. Authority to compile, disseminate and exchar information; immunity; access to informati limited; security precautions.

(a) Any law enforcement officer, the attorney general and his deputies a assistants, and any prosecuting attorney may:

(i) Take fingerprints, photographs and other information relating to criminal identification;

(ii) Compile reports or other documents in writing containing criminal intelligence information, including statements taken from police informants and reports based on the investigation and surveillance of suspected criminal activity;

(iii) Disseminate and exchange criminal identification data and criminal intelligence information among themselves and among law enforcement agencies of other states or of the federal government.

(b) A person authorized under this section to disseminate or exchange information is not civilly or criminally liable for contributing or for disseminating to authorized persons criminal identification data or criminal intelligence information.

(c) Access to criminal identification and intelligence information is available to law enforcement agencies, the state board of parole and department of probation and parole as provided by W.S. 7-13-401 through 7-13-411, any agency designated for the purpose provided by W.S. 14-6-227 and the division of public assistance and social services of the department of health and social services. Each agency which has that information shall take reasonable security precautions to prevent unauthorized persons from gaining access to it in accordance with rules and procedures established by the division. The rules and procedures may be varied between agencies, depending upon the division's determination of the agency's use of the criminal identification and intelligence information and the adequacy of the agency's security of the information provided by the division under this section.

(d) Access to criminal history record information is available to the Wyoming pari-mutuel commission as provided by W.S. 11-25-104(j). The commission shall take reasonable security precautions to prevent unauthorized persons from gaining access to criminal history record information in accordance with rules and regulations established by the Wyoming division of criminal investigation. For the purpose of this subsection "criminal history record information" means information, records and data compiled by criminal justice agencies on individuals for the purpose of identifying criminal offenders consisting of identifiable descriptions of the offenders and notations or a summary of arrests, detentions, indictments, information, pre-trial proceedings, nature and disposition of criminal charges, sentencing, rehabilitation, incarceration, correctional supervision and release. Criminal history

record information is limited to information recorded as the result of the initiation of criminal proceedings. It does not include intelligence data, analytical prosecutorial files, investigative reports and files of statistical records and reports in which individual identities are not ascertainable. (Laws 1973, ch. 246, § 1; W.S. 1957, § 9-136.27; W.S. 1977, § 9-2-568; Laws 1982, ch. 62, § 3; 1986, Sp. Sess., ch. 1, § 1; 1987, ch. 28, § 1; ch. 157, § 2; ch. 163, § 2.)

§§ 9-1-628 through 9-1-631.

Repealed by Laws 1986, ch. 32, § 2.

§ 9-1-632. Wyoming law enforcement academy; created; location.

(a) The Wyoming law enforcement academy is created under the office of the attorney general.

(b) The academy shall be located in Douglas, Wyoming. (Laws 1981, ch. 88, § 1; W.S. 1977, § 9-2-598; Laws 1982, ch. 62, § 3.)

Title 33

Board of Pharmacy

33-24-122. Revocation or suspension of license and registration; grounds. (a) Any pharmacist may have his license and registration revoked or suspended by the board of pharmacy and the board may refuse to issue or renew any license for any of the following causes:

(i) Conviction of a felony or high misdemeanor involving moral turpitude, in which case the record of conviction or a copy thereof certified by the clerk or judge of the court in which the conviction is had shall be conclusive evidence;

(ii) For renting or loaning to any person his or her license or diploma to be used as a license or diploma for such person;

(iii) For unprofessional conduct, or for gross ignorance or inefficiency in his profession, or habitual intemperance, or habitual personal use of morphine, cocaine or other habit-forming drugs, or gross immorality. Unprofessional conduct shall consist of the substitution of a drug or brand of drug in filling a prescription which is different from that called for by the prescription without authority of the issuer of the prescription; or the obtaining of any fee by fraud or misrepresentation; or willfully betraying patient confidences; or employing directly or indirectly any student or any suspended or unlicensed pharmacist to practice pharmacy other than is specially provided for by law; or making use of any advertising statements of a character tending to deceive or mislead the public; or advertising professional superiority or the performance of professional services in a manner superior to other licensed pharmacists; or filling a prescription which is more than two (2) years old except when the prescriber has specially provided that the prescription shall be valid for a longer period; or filling a prescription without reasonable inquiry and confirmation of its validity if there is occasion to doubt

the current existence of a doctor-patient relationship between the prescriber and the customer seeking to obtain drugs thereby; or filling a prescription with drugs or medicines which may have lost effectiveness by unreasonable lapse of time or expiration of useful life as indicated by the manufacturer or supplier thereof or by other competent authority, at the time the substance is acquired; or filling a prescription with drugs which have not been refrigerated as recommended by the manufacturer or supplier thereof or by other competent authority;

(iv) For knowingly submitting false or misleading information to the board in his application for examination;

(v) For knowingly submitting false or misleading information to the board or its representative regarding the professional practice of the internship or professional practice of pharmacy by any other person;

(vi) Willful violation of any provision of this act [33-24-101 to 33-24-145] or any willful violation of any of the provisions of the Wyoming Controlled Substances Act of 1971 [35-7-1001 to 35-7-1055] or any amendments thereto;

(vii) Willful violation of any rules or regulations promulgated by the board in accordance with this act or the Wyoming Controlled Substances Act of 1971; or

(viii) If the person's registration or license to practice has been refused, or lapsed for cause, or expired for cause, or revoked for cause, in this or any other jurisdiction.

Commission of Real Estate

33-28-111. Suspension or revocation of license. (a) The commission may upon its own motion, and shall, upon verified complaint in writing of any person setting forth a cause of action under this section, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license. The commission shall have power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation or where the licensee in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(i) Making any substantial misrepresentation; or

(ii) Making any false promises of a character likely to influence, persuade, or induce; or

(iii) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen or any medium of advertising, or otherwise; or

(iv) Any misleading or untruthful advertising, including use of the term "realtor", by a person not authorized to do so or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member; or

(v) Failing within a reasonable time to account for or remit any monies coming into his possession which belong to others, commingling funds of others with his own or failing to keep such funds of others in an escrow or trustee account; or

(vi) Being convicted in a court of competent jurisdiction of this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses; or

(vii) Violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act [33-28-101 to 33-28-117]; or

(viii) Failing to furnish a copy of any written instrument to all parties executing the same at the time thereof; or

(ix) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

(x) Failing, if broker, to place as soon after receipt as is practicably possible any deposit money or other money received by him in the course of a real estate transaction in a custodial trust or escrow account maintained by him in a banking institution or title company authorized to do business in this state, wherein the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting thereof shall be made by the broker. Records relative to the deposit, maintenance and withdrawal of such funds

shall contain such information as may be prescribed by the rules and regulations of the commission relative thereto;

(xi) Failing, if a salesman, to place as soon after receipt as is practicably possible in the custody of the broker with whom he is licensed any deposit money or other money entrusted to him by any person dealing with him as the representative of the broker with whom he is licensed;

(xii) Failing to furnish the seller with a completely filled out and executed copy of any contract of employment at the time of the execution thereof and failing to state a definite expiration date in such contract;

(xiii) Failing to disclose to an owner his intention or true position where he directly or indirectly purchases for himself or acquires or intends to acquire any interest in or options to purchase property which he or his associates have been employed to sell;

(xiv) Failing to make known for which party he is acting or receiving compensation from more than one (1) party, except with the full knowledge of all parties;

(xv) Dividing a commission or any other valuable consideration with any person who is not authorized to engage in the real estate business.

STATE OF WYOMING

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER

1977-1

BY VIRTUE OF THE AUTHORITY vested in me under W.S. 9-31.1, I Ed Herschler, Governor of the State of Wyoming, hereby order:

Section 1: Effective this date the Criminal Identification Division of the Attorney General's Office is hereby directed to cooperate with and furnish all information concerning requests from the Wyoming Insurance Commissioner relative to information on the criminal backgrounds of insurance agent license applicants, to run fingerprint checks, and to furnish such other confidential information on such applicants as the

Insurance Commissioner my deem necessary in order to properly act upon such insurance agent license applications.

Section 2: The Commissioner of Insurance shall take whatever proper safeguards are necessary to insure the safekeeping of such confidential information he receives from the Criminal Identification Division and will insure that it will not be used for any purpose other than in conjunction with actions taken by him with respect to insurance agent licenses.

GIVEN under my hand and the Executive Seal of the State of Wyoming this 31st day of January, 1977,

/s/ Ed Herschler

GOVERNOR OF WYOMING

Title 16

ARTICLE 2. PUBLIC RECORDS

§ 16-4-201. Definitions.

(a) As used in this act [§§ 16-4-201 through 16-4-205]:

(i) "Custodian" means the official custodian or any authorized person having personal custody and control of the public records in question;

(ii) "Official custodian" means any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his actual personal custody and control;

(iii) "Person in interest" means the person who is the subject of a record or any representative designated by the person, except if the subject of the record is under legal disability, "person in interest" means the parent or duly appointed legal representative;

(iv) "Political subdivision" means every county, city and county, city, incorporated and unincorporated town, school district and special district within the state;

(v) "Public records" when not otherwise specified includes the original and copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof and by any agencies of the state, counties, municipalities and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law;

(vi) Public records shall be classified as follows:

(A) "Official public records" includes all original vouchers, receipts and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state or any agency or subdivision thereof is a party; all fidelity, surety and performance bonds; all claims filed against the state or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the state of Wyoming; and all other documents or records determined by the records committee to be official public records;

(B) "Office files and memoranda" includes all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not defined and classified in subparagraph (A) of this subsection as official public records; all duplicate copies of official public records filed with any agency of the state or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with the office; and all other documents or records, determined by the records committee to be office files and memoranda.

(vii) "Writings" means all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics;

(viii) "This act" means W.S. 16-4-201 through 16-4-205. (Laws 1969, ch. 145, § 1; W.S. 1957, § 9-692.1; W.S. 1977, § 9-9-101; Laws 1982, ch. 62, § 3.)

§ 16-4-202. Right of inspection; rules and regulations; unavailability.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this act [§§ 16-4-201 through 16-4-205] or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as

is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom application is made, the person shall forthwith notify the applicant of this fact.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall notify the applicant of this situation. (Laws 1969, ch. 145, § 2; W.S. 1957, § 9-692.2; W.S. 1977, § 9-9-102; Laws 1982, ch. 62, § 3.)

§ 16-4-203. Same; grounds for denial; access of news media; order permitting or restricting disclosure.

(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) The inspection would be contrary to any state statute;

(ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination and examination for employment or academic examination. Written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the examination has been conducted and graded;

(iii) The specific details of bona fide research projects being conducted by a state institution;

(iv) Except as otherwise provided by Wyoming statutes or for the owner of the property, the contents of real estate appraisals made for the state or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the state or political subdivision. The contents of the appraisal shall be available to the owner of the property or property interest at any time;

(v) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency.

(c) If the right of inspection of any record falling within any of the classifications listed in this section is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all news media.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological and sociological data on individual persons, exclusive of coroners' autopsy reports;

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of the contributions;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care and other medical information, whether on individual persons or groups, or whether of a general or specific classification; and

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him.

(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial. The statement shall cite the law or regulation under which access is denied and shall be furnished to the applicant.

(f) Any person denied the right to inspect any record covered by this act [§§ 16-4-201 through 16-4-205] may apply to the district court of the district wherein the record is found for any order directing the custodian of the record to show cause why he should not permit the inspection of the record.

(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of the record would do substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available to public inspection, he may apply to the district court of the district in which the record is located for an order permitting him to restrict disclosure. After hearing, the court may issue an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and has the right to appear and be heard. (Laws 1969, ch. 145, § 3; W.S. 1957, § 9-692.3; W.S. 1977, § 9-9-103; Laws 1981, Sp. Sess., ch. 22, § 1; 1982, ch. 62, § 3.)

§ 16-4-204. Same; copies, printouts or photographs; fees.

(a) In all cases in which a person has the right to inspect and copy any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of the record are specifically prescribed by law, the specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and are subject to the supervision of the custodian. When practical the copy work shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the

records. The official custodian may establish a reasonable schedule of time for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing out or photographing as he may charge for furnishing copies under this section. (Laws 1969, ch. 145, § 4; W.S. 1957, § 9-692.4; W.S. 1977, § 9-9-104; Laws 1982, ch. 62, § 3.)

§ 16-4-205. Penalty.

Any person who willfully and knowingly violates the provisions of this act [§§ 16-4-201 through 16-4-205] is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars ($100.00). (Laws 1969, ch. 145, § 5; W.S. 1957, § 9-692.5; W.S. 1977, § 9-9-105; Laws 1982, ch. 62, § 3.)