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privacy and security of criminal justice information.

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 Repealed.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 Repealed.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.

MONTANA

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.
Sections 44-5-106 through 44-5-110 reserved.
- 44-5-111. Court order to enforce compliance.
- 44-5-112. Sanctions.

Part 2 — Collection and Processing

- 44-5-201. Scope of authority to collect, process, and preserve criminal justice information.
- 202. Photographs and fingerprints.
Sections 44-5-203 through 44-5-210 reserved.
- 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.

Part 3 — Dissemination

- 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.
- 305. Dissemination of copied or inspected records.

Part 4 — System Security

- 401. Criminal justice information system security.
- 402. Automated equipment.
- 403. Computer programming.
- 404. Manual equipment.
- 405. Personnel.

Part 1 General Provisions

- 44-5-101. Short title. This chapter may be cited as the "Montana Criminal Justice Information Act of 1979".
History: En. Sec. 1, Ch. 525, L. 1979.

MONTANA

4-5-102. Purpose. The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to insure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in criminal justice information recordkeeping.

History: En. Act. 2, Ch. 525, 1, 1979.

4-5-103. Definitions. As used in this chapter, the following definitions apply:

- 1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.
- 2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities: the collection, storage, and dissemination of criminal justice 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.

MONTANA

(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 ^{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 government 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 are 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.

MONTANA

(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.

History: En. Sec. 4, Ch. 525, L. 1979.

Cross-References

Right to know and right of privacy, Art. II,
sec. 9 and 10, Mont. Const.

Public records, Title 2, ch. 6.

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.

History: En. Sec. 23, Ch. 525, L. 1979; amd. Sec. 2, Ch. 603, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 603 deleted second sentence of (3) that read: "The function authorized in this subsection may not be assigned to any subagency that has supervisory

authority over any criminal justice information system."

Cross-References

Montana Administrative Procedure Act,
Title 2, ch. 4.

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 44-5-205 apply to any knowing or purpose violation of this chapter.

Part 2

Collection and Processing

Part Cross-References

Public records generally, Title 2, ch. 6, part

1.

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 corrections and human services; and
- (c) the department of justice.

(2) The department of corrections and human services 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) upon order of the court that had jurisdiction; 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.

History: En. Sec. 6, Ch. 525, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 804, L. 1991.

Cross-References

Requiring fingerprints for alcoholic beverage license, 16-4-403.	Right not to be fingerprinted, 53-20-143, 53-21-143.
Fingerprints and photographs of youths, 41-5-304.	Rights concerning photographs, 53-20-144, 53-21-144.

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.

History: En. Sec. 7, Ch. 525, L. 1979.

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.

History: En. Sec. 8, Ch. 525, L. 1979.

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 corrections and human services 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 criminal justice agencies other than those that are part of the judicial branch of government 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 the individual's 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 the agent's 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 the individual's 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 the individual's authorized agent. If a machine for making copies is not reasonably available, the individual or the individual's agent may make handwritten copies. A charge may be made by the agency for the cost of supplying the 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 the 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.

MONTANA

(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.

44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies, 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 demands of individual privacy 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.

History: En. Sec. 12, Ch. 525, L. 1979; amd. Sec. 3, Ch. 804, L. 1991.

Cross-References

Inspection or transfer of criminal history records, 44-5-214.

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. Criminal justice information system security. Provisions for the recording, preservation, dissemination, 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;

MONTANA

(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 reflecting 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.

* * * * *

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.

44-5-505. Section supervisor and personnel. (1) The attorney general shall designate a section supervisor.

(2) The department of justice may employ necessary personnel for the efficient and secure operation of the section, subject to approval of the personnel by the attorney general.

44-5-506. Participating agencies. (1) Agencies eligible for participation in the section are:

- (a) municipal police departments;
- (b) sheriff's departments; and
- (c) sections of the department of justice engaged in criminal investigation.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part.

44-5-507 through 44-5-510 reserved.

44-5-511. Functions of advisory council. The advisory council shall:

- (1) recommend general policies for the operation of the section;
- (2) recommend the approval or denial of an application from an eligible agency for participation in the section;
- (3) recommend the suspension of a participant agency for due cause; and
- (4) recommend, if appropriate, the reinstatement of a suspended participant agency.

44-5-512 through 44-5-514 reserved.

44-5-515. Protection of individual privacy. The advisory council shall review and evaluate the implementation of the section's safeguards of individual privacy rights adopted pursuant to 44-5-504 and periodically inspect all records relating to dissemination of information to determine whether they are in compliance with this part and with the standards and procedures adopted by the section. The advisory council shall make an annual report to the attorney general.

46-23-503. Release of sexual or violent offender from place of confinement — duties of official in charge. A sexual or violent offender who is released from the custody of the department of corrections must be informed in writing prior to release of the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address at which the person expects to reside upon the person's release and report the address to the department of corrections. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

46-23-504. Persons required to register — procedure. (1) A sexual or violent offender shall, within 14 days of conviction or release from prison or within 14 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality.

(2) At the time of registering, the person shall sign a statement in writing giving the information required by the department. The chief of police or sheriff shall fingerprint the person, unless the person's fingerprints are on file with the department of justice, and shall photograph the person. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department and the department of justice and to the sheriff of the county where the person resides, if registration is with the chief of police.

(3) The person registered under this section is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration.

(4) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 14 days after entry of the judgment.

46-23-505. Notice of change of address — duty to inform — forwarding of information. If a person required to register under 46-18-254, 46-18-255, and this part changes residence, the person shall within 10 days give written notification of the person's new address to the law enforcement agency with whom the person last registered. The law enforcement agency shall, within 3 days after receipt of the information, forward it to the department, the department of justice, and the local law enforcement agency having jurisdiction over the new place of residence and shall forward a copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency having jurisdiction over the new place of residence.

46-23-506. Duration of registration. (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the person's life, except as provided in subsection (2) of this section or during a period of time during which the person is in prison.

(2) At any time after 10 years since the date of the offender's last conviction of a sexual offense, the offender may petition a district court for an order relieving the offender of the duty to register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

- (a) the offender has remained a law-abiding citizen; and
- (b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) The offender may move that all or part of the proceedings in a hearing under subsection (2) be closed to the public, or the judge may take action on the judge's own motion. Notwithstanding closure of the proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

46-23-507. Penalty. A sexual or violent offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not more than 5 years or may be fined not more than \$10,000, or both.

46-23-508. Dissemination of information in register. Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

- (1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and
- (2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

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, except as provided in 22-1-1103 and 22-3-807.

(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.