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Iowa Code Annotated

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS

Transferred in Code 1985 from ch 68A

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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 1935 from §63A.7

22.8 Injunction to restrain examination.

1. The district court may grant an injunction restraining the examination, including copying, of a spe-

cific 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 1935 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 1955 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 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, col-
lates or permits the comparison of personally identi-

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 direc-

tor 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.	692.12	Data processing.
692.2	Dissemination of criminal history data — fees.	692.13	Review.
692.3	Redissemination.	692.14	Systems for the exchange of criminal history data.
692.4	Statistics.	692.15	Reports to department.
692.5	Right of notice, access and challenge.	692.16	Review and removal.
692.6	Civil remedy.	692.17	Exclusions.
692.7	Criminal penalties.	692.18	Public records.
692.8	Intelligence data.	692.19	Confidential records — oversight by director.
692.9	Surveillance data prohibited.	692.20	Motor vehicle operator's record exempt.
692.10	Rules.	692.21	Data to arresting agency.
692.11	Education program.		

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 shall have the right to examine and obtain a copy of criminal history data filed with the department that refers to the person. The person or person's attorney shall present or mail to the department written authorization and the person's fingerprint identification. The department shall not copy the fingerprint identification and shall return or destroy the identification after the copy of the criminal history data is made. The department 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 commissioner 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.

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 com-

municate 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 non-criminal 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 four years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

93 Acts, ch 115, §7
Section amended

692.17 Exclusions — purposes.

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 and also includes the source documents of the information included in the criminal history data and fingerprint records.

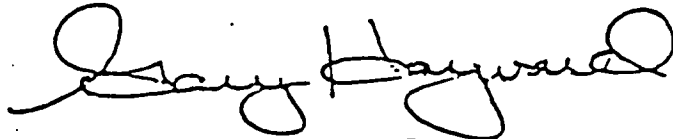
Criminal history data may be collected for management or research purposes.

Mr. William D. Miller
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5. Conclusion

In summary, §692.17, The Code (1981), requires the removal of any arrest or disposition data, as defined in §§692.1(4) and 692.1(6), The Code (1981) respectively, from any computer data storage system whenever the charges are dismissed or the accused is acquitted. To the extent any previous opinion of this office stated to the contrary, it is expressly overruled. Section 692.17 does not regulate any manual data storage systems. Discharge from probation on a deferred judgment or deferred sentence under §§901.5(1), 901.5(5), 907.3(1) and 907.9, The Code (1981), does not constitute a dismissal of the charges under §692.17 requiring the expungement of information for any computer data storage system. The master name index of the Bureau of Criminal Identification does not constitute or contain "criminal history data" subject to Ch. 692 regulation.

Respectfully yours,



GARY L. HAYWARD
Assistant Attorney General
Public Safety Division

GLH:rlr

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 commissioner 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.

Transferred from § 749B.19 by the Code Editor for Code Supp.1977. 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 exemp.

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. | 907.8 | Supervision during probationary period. |
| 907.2 | Probation service — probation officers. | 907.9 | Discharge from probation. |
| 907.3 | Deferred judgment, deferred sentence or suspended sentence. | 907.10 | Release on probation after completing program. |
| 907.4 | Deferred judgment docket. | 907.11 | Maximum period of confinement. |
| 907.5 | Standards for release on probation — written reasons. | 907.12 | Repealed, effective for persons sentenced after July 1, 1982, by 82 Acts, ch 1162, §13. |
| 907.6 | Conditions of probation — regulations. | 907.13 | Community service sentencing — liability — workers' compensation. |
| 907.7 | Length of probation. | | |

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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, 51, 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.

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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. 38, § 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.

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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.

661—11.4(17A,690,692) Right of notice, ~~access and challenge review.~~ Any individual ~~person, or that person's attorney with written authorization and fingerprint identification,~~ who has a criminal history record on file with ~~this the~~ division of criminal investigation has the right to review and obtain a copy of ~~said the~~ record. ~~This right may be exercised only at division headquarters where the individual's identity can be positively established through fingerprint identification. This right may be exercised by an attorney acting on behalf of the person with the criminal history record with written authorization and fingerprint identification of the person with the criminal history record. A copy of a criminal history record provided pursuant to this rule is subject to the fee provided in rule 661—11.15(692).~~

661—11.5(690,692) Review of record. Any individual or that individual's attorney, acting with written authorization from the individual, may review or obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division in the Wallace State Office Building in Des Moines or by submitting a request on a form provided by the department of public safety. A copy of this request form may be obtained by writing to Identification Section, Division of Criminal Investigation, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or by telephoning the identification section at (515)281-8706. The completed request form must be notarized, if submitted by mail, and accompanied by a set of the fingerprints of the individual whose criminal history record is being requested, along with submission of the fee established in rule 661—11.15(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.

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 4.3 prior to 6-27-79]

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.

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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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232.45A. Waiver to and conviction by district court—processing

1. Once jurisdiction over a child has been waived by the juvenile court as provided in section 232.45, for the alleged commission of a felony, and once a conviction is entered by the district court, for all other offenses, the clerk of the juvenile court shall immediately send a certified copy of the findings required by section 232.45, subsection 8, and the judgment of conviction, as applicable, to the department of public safety. The department shall maintain a file on each child who has previously been waived to or waived to and convicted by the district court in a prosecution as an adult. The file shall be accessible by law enforcement officers on a twenty-four hour per day basis.

2. Once a child sixteen years of age or older has been waived to and convicted of an aggravated misdemeanor or a felony in the district court, all criminal proceedings against the child for any aggravated misdemeanor or felony occurring subsequent to the date of the conviction of the child shall begin in district court, notwithstanding sections 232.8 and 232.45. A copy of the findings required by section 232.45, subsection 8, shall be made a part of the record in the district court proceedings.

3. If proceedings against a child for an aggravated misdemeanor or a felony who has previously been waived to and convicted of an aggravated misdemeanor or a felony in the district court are mistakenly begun in the juvenile court, the matter shall be transferred to district court upon the discovery of the prior waiver and conviction, notwithstanding sections 232.8 and 232.45.

Amended by Acts 1994 (75 G.A.) ch. 1172, § 18; Acts 1995 (76 G.A.) ch. 191, § 12.

232.46. Consent decree

1. At any time after the filing of a petition and prior to entry of an order of adjudication pursuant to section 232.47, the court may suspend the proceedings on motion of the county attorney or the child's counsel, enter a consent decree, and continue the case under terms and conditions established by the court. These terms and conditions may include prohibiting a child from driving a motor vehicle for a specified period of time or under specific circumstances, or the supervision of the child by a juvenile court officer or other agency or person designated by the court, and may include the requirement that the child perform a work assignment of value to the state or to the public or make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim. The court shall notify the state department of transportation of an order prohibiting the child from driving.

2. A consent decree entered regarding a child placed in detention under section 232.22, subsection 1, paragraph "g", shall require the child to attend a batterers' treatment program under section 708.2B. The second time the child fails to attend the batterers' treatment as required by the consent decree shall result in the decree being vacated and proceedings commenced under section 232.47.

232.148. Fingerprints—photographs

1. Except as provided in this section, a child shall not be fingerprinted or photographed by a criminal or juvenile justice agency after the child is taken into custody.

2. Fingerprints and photographs of a child who has been taken into custody and who is fourteen years of age or older may be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple or serious misdemeanor. The criminal or juvenile justice agency shall forward the fingerprints to the department of public safety for inclusion in the automated fingerprint identification system and may also retain a copy of the fingerprint card for comparison with latent fingerprints and the identification of repeat offenders.

3. If a peace officer has reasonable grounds to believe that latent fingerprints found during the investigation of the commission of a public offense are those of a particular child, fingerprints of the child may be taken for immediate comparison with the latent fingerprints regardless of the nature of the offense. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive, the fingerprint card and other copies of the fingerprints taken shall be delivered to the division of criminal investigation of the department of public safety in the manner and on the forms prescribed by the commissioner of public safety within two working days after the fingerprints are taken. After notification by the child or the child's representative that the child has not had a delinquency petition filed against the child or has not entered into an informal adjustment agreement, the fingerprint card and copies of the fingerprints shall be immediately destroyed.

4. Fingerprint and photograph files of children may be inspected by peace officers when necessary for the discharge of their official duties. The juvenile court may authorize other inspections of such files in individual cases upon a showing that inspection is necessary in the public interest.

5. Fingerprints and photographs of a child shall be removed from the file and destroyed upon notification by the child's guardian ad litem or legal counsel to the department of public safety that either of the following situations apply:

a. A petition alleging the child to be delinquent is not filed and the child has not entered into an informal adjustment, admitting involvement in a delinquent act alleged in the complaint.

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child has not entered into a consent decree and has not been adjudicated delinquent on the basis of a delinquent act other than one alleged in the petition in question.

Amended by Acts 1994 (75 G.A.) ch. 1172, § 25; Acts 1995 (76 G.A.) ch. 67, § 17; Acts 1995 (76 G.A.) ch. 191, §§ 16, 17; Acts 1996 (76 G.A.) ch. 1034, § 11.