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TITL: Compendium of State Privacy and Security Legislation: 1997
Overview - NEBRASKA ; ART 35 Revised Statutes Annotated

AUTHOR: US Department of Justice, Bureau of Justice Statistics
Washington, DC 20531

SALE: US Department of Justice, Bureau of Justice Statistics
National Institute of Justice/NCJRS Paper Reproduction Sales
Box 6000, Dept. F
Rockville, MD 20849

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ANNOTATION: This is a 1997 overview of State law pertinent to the
privacy and security of criminal justice information.

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Revised Statutes of Nebraska

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section.

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29-3501. Act, how cited. This act shall be known and may be cited as the Security, Privacy, and Dissemination of Criminal History Information Act.

29-3502. Act purposes. The purposes of this act are (1) to control and coordinate criminal offender record-keeping within this state, (2) to establish more efficient and uniform systems of criminal offender

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record-keeping, (3) to assure periodic audits of such record-keeping in order to determine compliance with this act, (4) to establish a more effective administrative structure for the protection of individual privacy in connection with such record-keeping, and (5) to preserve the principle of the public's right to know of the official actions of criminal justice agencies.

29-3503. Definitions: sections found. For the purposes of this act, unless the context otherwise requires, the definitions found in sections 29-3504 to 29-3514 shall be used.

29-3504. Administration of criminal justice, defined. Administration of criminal justice shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, pretrial diversion, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

29-3505. Commission, defined. Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

29-3506. Criminal history record information, defined. Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall not include intelligence or investigative information.

29-3507. Complete, defined. With reference to criminal history record information, complete shall mean that arrest records shall show the subsequent disposition of the case as it moves through the various stages of the criminal justice system; and accurate shall mean containing no erroneous information of a material nature.

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29-3508. Criminal history record information system or system, defined. Criminal history record information system or system shall mean a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

29-3509. Criminal justice agency, defined. Criminal justice agency shall mean:

- (1) Courts; and
- (2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

29-3510. Direct access, defined. Direct access shall mean having the custodial authority to handle and control the actual documents or automated or computerized documentary record which constitutes the criminal history data base.

29-3511. Disposition, defined. Disposition shall mean information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also information disclosing the nature of the termination of the proceedings.

29-3512. Operator, defined. Operator shall mean the agency, person, or group of persons designated by the governing body of the jurisdiction served by a criminal history record information system to coordinate and supervise the system.

29-3513. Person, defined. Person shall mean any natural person, corporation, partnership, firm, or association.

29-3514. Person in interest, defined. Person in interest shall mean the person who is the primary subject of a criminal justice record or any representative designated by such person, except that if the subject of the record is under legal disability, person in interest shall mean the person's parent or duly appointed legal representative.

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29-3515. Criminal justice agency; criminal history record information; maintain. Each criminal justice agency shall maintain complete and accurate criminal history record information with regard to the actions taken by the agency.

29-3516. Criminal justice agency; disposition of cases; report; procedure; commission; forms; rules and regulations; adopt. Each criminal justice agency in this state shall report the disposition of cases which enter its area in the administration of criminal justice. As to cases in which fingerprint records must be reported to the Nebraska State Patrol under section 29-209, such disposition reports shall be made to the patrol. In all other cases when a centralized criminal history record information system is maintained by local units of government, dispositions made within the jurisdiction covered by such system shall be reported to the operator of that system or to the arresting agency in a noncentralized criminal history record information system. All dispositions shall be reported as promptly as feasible but not later than fifteen days after the happening of an event which constitutes a disposition. In order to achieve uniformity in reporting procedures, the commission shall prescribe the form to be used in reporting dispositions and may adopt rules and regulations to achieve efficiency and which will promote the ultimate purpose of insuring that each criminal justice information system maintained in this state shall contain complete and accurate criminal history information. All forms and rules and regulations relating to reports of dispositions by courts shall be approved by the Supreme Court of Nebraska.

29-3517. Criminal justice agency; criminal history record information; process; assure accuracy. Each criminal justice agency shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify each criminal justice agency known to have received such information. Each criminal justice agency shall (1) maintain a listing of the individuals or agencies both in and outside of the state to which criminal history record information was released, a record of what information was released, and the date such information was released, (2) establish a delinquent disposition monitoring system, and (3) verify all record entries.

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29-3518. Criminal history record information; access; restrictions; requirements. Direct access to criminal history record information system facilities, system operating environments, data file contents, and system documentation shall be restricted to authorized organizations and persons. Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system: (1) May determine for legitimate security purposes which personnel may work in a defined area where such information is stored, collected, or disseminated; (2) shall select and supervise all personnel authorized to have direct access to such information; (3) shall assure that an individual or agency authorized direct access is administratively held responsible for (a) the physical security of criminal history record information under its control or in its custody, and (b) the protection of such information from unauthorized access, disclosure, or dissemination; (4) shall institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters; (5) shall provide that each employee working with or having access to criminal history record information is to be made familiar with this act and of any rules and regulations promulgated under such act; and (6) shall require that direct access to criminal history record information shall be made available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system. This section shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of this act, including both review of original records and the right to have copies made of records when not prohibited.

29-3519. Criminal justice information systems; computerized; access; limitations; security; conditions. Whenever computerized data processing is employed, effective and technologically advanced software and hardware designs shall be instituted to prevent unauthorized access to such information. Computer operations which support criminal justice information systems shall operate in accordance with procedures approved by the participating criminal justice agencies and assure that (1) criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by noncriminal justice terminals, (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records from any terminal other than criminal justice system terminals which are so designated, (3) destruction of records is limited to

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designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information, (4) operational programs are used to detect and store, for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program, or file, (5) the programs specified in subdivisions (2) and (4) of this section are known only to criminal justice agency employees responsible for criminal history record information control, or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and that the programs are kept continuously under maximum security conditions, and (6) a criminal justice agency may audit, monitor, and inspect procedures established in this section.

29-3520. Criminal history record information: public record: criminal justice agencies; regulations; adopt. Complete criminal history record information maintained by a criminal justice agency shall be a public record open to inspection and copying by any person during normal business hours and at such other times as may be established by the agency maintaining the record. Criminal justice agencies may adopt such regulations with regard to inspection and copying of records as are reasonably necessary for the physical protection of the records and the prevention of unnecessary interference with the discharge of the duties of the agency.

29-3521. Information: considered public record: classifications. In addition to public records under section 29-3520, information consisting of the following classifications shall be considered public record for purposes of dissemination: (1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person; (2) original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies; (3) court records of any judicial proceeding; and (4) records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's or other operator's licenses.

29-3522. Criminal justice agency records: application to inspect unavailable; procedure to provide records. If the requested criminal justice history record or other public record, as defined in section 29-3521, of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall immediately notify the applicant of this fact. Such notification shall be in writing if requested by the applicant and shall state the agency, if

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known, which has custody or control of the record in question. If the requested criminal history record or other public record of a criminal justice agency is in the custody and control of the person to whom application is made but is not available at the time an applicant asks to examine it, the custodian shall immediately notify the applicant of such fact, in writing, if requested by the applicant. When requested by the applicant, the custodian shall set a date and hour within three working days at which time the record shall be available for inspection.

29-3523. Criminal history record information: notation of an arrest; dissemination; limitations. That part of criminal history record information consisting of a notation of an arrest, when after an interval of one year active prosecution is neither completed nor pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record:

- (1) Is currently the subject of prosecution or correctional control as the result of a separate arrest;
- (2) Is currently an announced candidate for or holder of public office;
- (3) Has made a notarized request for the release of such record to a specific person; or
- (4) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (a) dates of arrests, (b) reasons for arrests, and (c) the nature of the dispositions, including but not limited to reasons for not prosecuting the case or cases.

29-3524. Criminal justice agencies; fees; assessment. Criminal justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply. All fees collected by the Nebraska State Patrol pursuant to this section shall be deposited in the Nebraska State Patrol Cash Fund.

29-3525. Criminal history record information: review by person in interest; identity; verification. Any person in interest, who asserts that he or she has reason to believe that criminal history information relating to him or her or the person in whose interest he or she acts is maintained by any system in this state, shall be entitled to review and receive a copy of such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfac-

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tory verification of the subject's identity, which shall include name, date, and place of birth, and, when identification is doubtful, a set of fingerprint impressions may be taken upon fingerprint cards or forms commonly used for law enforcement purposes by law enforcement agencies. The review authorized by this section shall be limited to a review of criminal history record information.

29-3526. Commission: powers and duties; rules and regulations. The commission may by rule authorize a fee for each application for review under section 29-3525, and may charge for making copies or printouts as provided in section 29-3524. The commission shall implement section 29-3525 by rule and regulation, including but not limited to provisions for (1) administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete, (2) administrative appeal when a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates, (3) supplying to an individual whose record has been corrected, upon his or her request, the names of all noncriminal justice agencies and individuals to which the data has been given, and (4) requiring the correcting agency to notify all criminal justice recipients of corrected information.

29-3527. Violations: penalty. Any person who (1) permits unauthorized direct access to criminal history record information, (2) knowingly fails to disseminate or make public criminal history record information of official acts as required under this act, or (3) knowingly disseminates nondisclosable criminal history record information in violation of this act, shall be guilty of a Class IV misdemeanor.

29-3528. Officer or employee; violation of act; person aggrieved; remedies. Whenever any officer or employee of the state, its agencies, or its political subdivisions, or whenever any state agency or any political subdivision or its agencies fails to comply with the requirements of this act or of regulations lawfully adopted to implement this act, any person aggrieved may bring an action, including but not limited to an action for mandamus, to compel compliance and such action may be brought in the district court of any district in which the records involved are located or in the district court of Lancaster County. The commission may request the Attorney General to bring such action.

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Criminal Identification

29-209. Fingerprints and descriptions: to be furnished State Patrol by sheriffs, peace officers, and state agencies: FBI: copy. It is hereby made the duty of the sheriffs of the several counties of the State of Nebraska, the chiefs of police of incorporated cities therein, marshals of incorporated cities and towns therein, and agencies of state government having powers of arrest to furnish the Nebraska State Patrol two copies of fingerprints on forms provided by the Nebraska State Patrol and the Federal Bureau of Investigation, and descriptions of all persons who are arrested by them (1) for any felony or (2) as felony fugitives from the criminal justice system of another jurisdiction. This section is not intended to include violators of city ordinances or of persons arrested for other trifling offenses. The Nebraska State Patrol shall in all appropriate cases forward one copy of such fingerprints and other necessary identifying data and information to the system maintained by the Federal Bureau of Investigation.

29-210. Nebraska State Patrol: records; system of cards; information: powers. The Nebraska State Patrol is hereby authorized (1) to keep a complete record of all reports filed of all personal property stolen, lost, found, pledged or pawned, in any city or county of this state; (2) to provide for the installation of a proper system and file, and cause to be filed therein cards containing an outline of the methods of operation employed by criminals; (3) to use any system of identification it deems advisable, or that may be adopted in any of the penal institutions of the state; (4) to keep a record consisting of duplicates of measurements, processes, operations, plates, photographs, measurements and descriptions of all persons confined in penal institutions of this state; (5) to procure and maintain, so far as practicable, plates, photographs, descriptions and information concerning all persons who shall hereafter be convicted of felony or imprisoned for violating the military, naval or criminal laws of the United States, and of well-known and habitual criminals from whatever source procurable; (6) to furnish any criminal justice agency with any information, material, records, or means of identification which may properly be disseminated and that it may desire in the proper administration of criminal justice; (7) to upgrade, when feasible, the existing law enforcement communications network; and (8) to establish and maintain an improved system or systems by which relevant information may be collected, coordinated, and made readily available to serve qualified persons or agencies concerned with the administration of criminal justice.

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Article 71

Public Records

84-712. Public records; free examination; memorandum and abstracts. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

84-712.01. Public records; right of citizens; full access. (1) Except where any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt or other record of receipt, cash or expenditure involving public funds is involved in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

84-712.02. Public records; claimants before federal veterans agencies; certified copies free of charge. When it shall be requested by any claimant before the United States Veterans' Bureau or any claimant before the United States Bureau of Pensions, his or her agent or attorney, that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such bureau,

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the officer in charge of such public records shall furnish or cause to be furnished such claimant, his or her agent or attorney, a certified copy thereof free of charge.

84-712.03. Public records; denial of rights; remedies. Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to (1) file for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of said public record can be served or (2) petition the Attorney General to review the record to determine whether it may be withheld from public inspection. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld, the public body shall be ordered to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

84-712.04. Public records; denial of rights; public body; provide information. (1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlated to specific reasons for the denial, correlated to specific portions of the records, including citations to the particular exception under section 84-712.01 relied on as authority for the denial;

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(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.08.

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

NEBRASKA REVISED STATUTES--ANNOTATED

CHAPTER 84. STATE OFFICERS

ARTICLE 7. GENERAL PROVISIONS AS TO STATE OFFICERS

Current through End of 1995 Regular Session

ec. 84-712.05. Records which may be withheld from the public; enumerated.

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any tax-supported educational institution maintaining the records, other than routine directory information;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person, and also records of elections filed under section 44-2821;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or

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E ST Sec. 84-712.05, Sec. 84-712.05. Records which may be withheld from the public; enumerated.

concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the physical security of public property such as guard schedules; lock combinations; or the security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

*47190 (9) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(10) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(11) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(12) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical,

EST Sec. 84-712.05, Sec. 84-712.05. Records which may be withheld from the public; enumerated.

or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act; and

(13) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act.

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84-712.06. Public record; portion provide; when. Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

84-712.07. Public records; public access; equitable relief; attorney fees; costs. The provisions of this act pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

84-712.08. Records; federal government; exception. If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of this act would cause the denial of any funds, services, or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

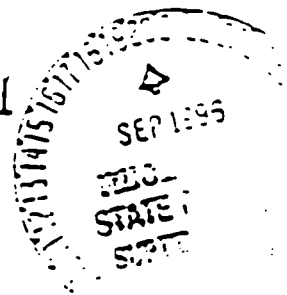
84-712.09. Violation; penalty. Any official who shall violate the provisions of sections 1 to 8 of this act shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.



STATE OF NEBRASKA

Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725



#96068

DON STENBERG
ATTORNEY GENERAL

NO.
STATE OF NEBRASKA
OFFICIAL
SEP 20 1996
DEPT. OF JUSTICE

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

DATE: September 20, 1996
SUBJECT: Retention of Juvenile Fingerprints for AFIS
REQUEST BY: Col. Ron Tussing, Superintendent
Nebraska State Patrol
WRITTEN BY: Don Stenberg, Attorney General
Laurie Smith Camp, Deputy Attorney General

Dear Col. Tussing:

You note that unsolicited juvenile fingerprints are now forwarded to the Nebraska State Patrol's records repository either by mail or by electronic transmission via LiveScan booking station. You ask whether the Patrol can retain such fingerprints for investigation purposes. We conclude that such fingerprints may be retained by the Patrol for the purpose of assisting law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.

Neb. Rev. Stat. § 43-252 (1993) states:

- (1) The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody in the investigation of a suspected unlawful act, shall not be taken unless the consent of any district, county, associate county, associate separate juvenile court, or separate juvenile court judge has first been obtained.
(2) If the judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.

David K. Arterburn
Amy Bartel
Liz Brown
David T. Bydalek
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce H. Harber

Lauren L. Hill
Jay C. Hinsley
Amy Hailerbeck
William L. Howland
Marilyn S. Hutchinson
Elisberly A. Klein
Joseph P. Loudon

Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Nelson
Ronald D. Novacek
Frederick F. Neid
Marie C. Pinal
Carmeth V. Payne

Paul H. Potadie
Jonathan Robitaille
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James M. Soebers
Mark D. Starr
Martin Swanson

Timothy J. Tavel
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Alfonza Whiteaker
Melanie J. Whitcomb-Mantelios
Linda L. Willard

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(3) The fingerprints of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state unless: (a) The juvenile has been convicted of or adjudged to have committed a felony; (b) the juvenile has unlawfully terminated his or her commitment to a youth development center; or (c) the juvenile is a runaway and a fingerprint check is needed for identification purposes to return the juvenile to his or her parent.

Neb. Rev. Stat. § 43-2,105 (Supp. 1995) states:

When the court issues an order setting aside the adjudication under section 43-247, the order shall also require that all records relevant to the adjudication be sealed. Such records shall not be available to the public except upon the order of the court for good cause shown. The court order may include all records of the court, law enforcement officers, county attorneys, or any institution, person, or agency which may have such records. Notice of hearing to set aside the adjudication and seal the records shall be given to the county attorney and any person, agency, or institution that may be affected by such order by delivering by hand or by mailing a copy of the request by registered or certified mail, together with the order of the court which states the time for hearing, to the last-known address of such person, agency, or institution at least ten days before the date for hearing. Any person who fails to comply with the order of the court as provided for in section 43-2,104 or knowingly reveals information covered by such order may be held in contempt of court, except that this section does not prohibit law enforcement agencies from maintaining data to assist law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants. [Emphasis added].

The underlined portion of the above statute was added by LB371 in 1995. Even before the 1995 amendment, the Nebraska Supreme Court recognized that juvenile courts did not have the statutory power to order expungement of records maintained by law enforcement agencies and related to juvenile adjudications. In *Re Interest of P.L.F.*, 218 Neb. 68 (1984). The Court recognized the "utility of the records for law enforcement purposes" and "the interests of society" when reaching its conclusion. *Id.* at 70-71.

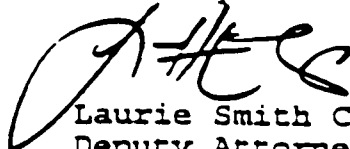
Col. Ron Tussing
September 20, 1996
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When unsolicited juvenile fingerprints are received by the Patrol, the Nebraska statutes place no burden on the Patrol to investigate whether or not the party sending the prints complied in all respects with the provisions of § 43-252. Neither do the statutes require the Patrol to destroy prints which may have been sent to the Patrol contrary to the provisions of § 43-252. If the Patrol is aware that the prints are those of a juvenile under 14 years of age, the Patrol should file or electronically code the prints in a manner separate from prints of persons of the age of majority.

We conclude that juvenile fingerprints sent to the Nebraska State Patrol, either through the mail or electronically, can be maintained by the Nebraska State Patrol and can be entered on the Patrol's Automated Fingerprint Identification System (AFIS) database for the purpose of assisting law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.

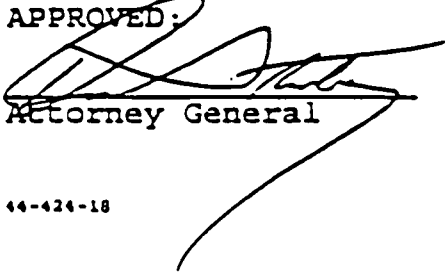
Sincerely,

DON STENBERG
Attorney General



Laurie Smith Camp
Deputy Attorney General

APPROVED:



Attorney General

44-424-18