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Overview - NEW HAMPSHIRE : CH 106-B Revised Statutes Annotated

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privacy and security of criminal justice information.

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### New Hampshire Revised Statutes Annotated

#### CHAPTER 106-B

#### THE STATE POLICE

**106-B:11 Cooperation with Other Police Forces.** The director and employees shall cooperate and exchange information with any other law enforcement agency both within and without this state, including federal authorities, for the purpose of preventing and detecting crime and apprehending criminals and detecting and stopping vehicles transporting hazardous materials contrary to the rules promulgated by the commissioner of safety and pursuant to RSA 106-B:15. With the approval of the commissioner of safety, the director may, on the request of any responsible official of any such agency, assist such official by detailing to him such police employees, for such length of time and under such conditions as the director may deem proper. The director may designate for liaison with the offices of the respective county attorneys or sheriff such number of state police employees as he may deem advisable for each county.

**106-B:13 Power to Take Identification Data.** The employees shall have authority to take fingerprints and, in addition thereto, such identification data as shall be prescribed by the director of all persons taken into custody by them in the discharge of their duties.

#### **106-B:14 Criminal Records, Reports.**

I. With the approval of the commissioner of safety, the director shall make such rules and regulations as may be necessary to secure records and other information relative to persons who have been convicted of a felony or an attempt to commit a felony within the state, or who are known to be habitual criminals, or who have been placed under arrest in criminal proceedings. Such records and information shall not be open to the inspection of any person except those who may be authorized to inspect the same by the director. The clerks of the superior and municipal courts, or if there is no clerk the justice thereof, sheriffs, deputy sheriffs, police officers, jailers, and superintendents of houses of correction shall secure and forward to the director all such information as he may direct relative to persons brought before said courts or arrested or in the custody of such officers. Any person violating the provisions of this section or any rule or regulation made hereunder shall be guilty of a violation, for each offense.

II. The director shall submit an annual report to the general court relative to domestic assaults based on the records and information acquired pursuant to RSA 106-B:14, I. The report shall be a compilation of the number of assaults on family or household members and other such data as the director may deem appropriate.

\* \* \*

**106-B:14-a Intrastate Misdemeanors Recorded.** The division of state police shall record and update on its computer system on a daily basis the names of all persons for whom there are outstanding arrest warrants for misdemeanors in this state, along with a statement of all arrest warrants for misdemeanors each person has pending. The information

recorded shall be made available upon request to all local and state law enforcement agencies and officers. The department of safety and its employees and agents shall not be held liable for errors of omission or commission in the recording and maintenance of this information unless the error is shown to be the result of gross negligence or an intentional act.

**651:5 Disposition of Certain Records.**

I. If a person who has been sentenced to probation, conditional discharge, or a fine has complied with the conditions of his sentence, he may, at any time after one year following completion of the terms of his sentence, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

II. If a person who has been sentenced to unconditional discharge has been convicted of no other crime except a traffic offense during a 2-year period following such sentence, he may, at any time after such 2-year period, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

III. If a person has been sentenced to a suspended sentence and has not been imprisoned under that sentence and has been convicted of no other crime except a traffic offense during a 5-year period following the completion of his suspended sentence, he may at any time after such 5-year period apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

IV. If a person under 21 years of age at the time of his criminal act is sentenced to imprisonment and in any 3-year period following his release has been convicted of no other offense except a traffic offense, he may, at any time after such 3-year period, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

V. When an application has been made under paragraph I, II, III, or IV, the court shall require the department of corrections or district court probation officer to report to it concerning any state or federal convictions, arrests or prosecutions of the applicant during the periods specified in those paragraphs and any other information such as the applicant's employment record or the applicant's addresses during the period after his conviction which may aid the court in making a determination on the application.

VI. Notwithstanding the provisions of paragraph I, II, III, or IV, no person who has had more than one conviction within a 3-year period of time following completion of a sentence may apply for an annulment until 7 years after completion of the terms of his sentence for his last conviction during that 3-year period.

VII. The court shall enter the order applied for under paragraph I, II, III or IV if in the court's opinion the order will assist in the applicant's rehabilitation and will be consistent with the public welfare. Upon entry of the order, the applicant shall be treated in all respects as if he had never been convicted and sentenced, except that, upon conviction of any crime committed after the order of annulment has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed.

VIII. Procedures governing application for an entry of an order annulling a conviction shall be established by rule of court. The application, however, may be made through an attorney or by the department of corrections or district court probation officer if the applicant gives the department written authorization.

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IX. Prior to ordering an annulment, the court shall notify the arresting law enforcement agency and permit them to be heard and present any information regarding the interest of justice or the rehabilitative value in support of or in opposition to the petition for annulment.

X. Upon entry of the order of annulment of conviction, the court shall issue to the applicant a certificate stating that his behavior after the conviction has warranted the issuance of the order, and that its effect is to annul the record of conviction and sentence, and shall forthwith notify the state police criminal records unit and the arresting agency.

XI. In any application for employment, license, or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

XII. Nothing in this section shall affect any right of the applicant to appeal from his conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense, or the right of law enforcement officers to communicate information regarding the prior conviction or arrest to other law enforcement officers for legitimate investigative purposes, in which case such information shall not be disclosed to any other persons.

XIII. Any person whose arrest results in a finding of not guilty, dismissal, or whose case was not prosecuted may at any time apply for an annulment of the arrest record in accordance with the provisions of this section.

XIV. A person is guilty of a misdemeanor if, during the life of another who has had a record of conviction annulled pursuant to this section, he discloses or communicates the existence of such record.

XV. No court shall, until 7 years after the date of conviction, order an annulment pursuant to this section of any record of conviction for an offense under RSA 639:2, 639:3, III, or RSA 649-A, for a felony under RSA 318-B, or for an offense against a person under the age of 13 under RSA 632-A. No court shall order an annulment pursuant to this section of any record of conviction which may be counted toward habitual offender status, as defined in RSA 259:39, until 7 years after the date of such conviction. [Amended 1988, 238:6, eff. Jan. 1, 1989.]

**318-B:28-a Annulments of Criminal Records.** No court shall order an annulment, pursuant to RSA 651:5 or any other provision of law, of any record of conviction for a felony under RSA 318-B until 7 years after the date of conviction.

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## Public Records

**91-A:4 Minutes and Records Available for Public Inspection.** Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda abstracts, photographic or photostatic copies, of the records or minutes so inspected, except as otherwise prohibited by statute or section 5 of this chapter.

**91-A:5 Exemptions.** The records of the following bodies are exempted from the provisions of this chapter:

I. Grand and petit juries.

II. Parole and pardon boards.

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected. [Amended 1990, 134:1, eff. June 18, 1990.]

## CHAPTER 7-A

### INFORMATION PRACTICES ACT

7-A:1 Definitions.

7-A:2 File with Secretary of State.

7-A:3 Changes in Purposes, Uses, etc.

7-A:4 Public Record.

7-A:5 Report to General Court.

**7-A:1 Definitions.** In this chapter:

I. "Agency" means each state board, commission, department, institution, officer or other state official or group other than the legislature or the courts.

II. "File" means the point of collection of personal identifiable information.

III. "Machine-accessible" means recorded on magnetic tape, magnetic disk, magnetic drum, punched card, optically scannable paper or film, punched paper tape or any other medium by means of which information can be communicated to data processing machines.

IV. "Personal information" means any information that by some specific means of identification, including but not limited to any name, number, description, and including any combination of such characters, it is possible to identify with reasonable certainty the person to whom such information pertains.

V. "Personal information system" means any method by which personal information is collected, stored or disseminated by any agency of the state.

VI. "Responsible authority" means the head of any governmental

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agency which is responsible for the collection and use of any data on persons or summary data.

**7-A: 2 File with Secretary or State.** On or before July 1, 1976, all state agencies shall file with the secretary of state the following information with respect to all personal information systems, except those consisting of criminal investigation files, maintained by said agency:

- I. The name of the system.
- II. The purpose of the system.
- III. The number of persons on whom personal information is maintained in the system.
- IV. Categories of personal information maintained in the system.
- V. Categories of the sources of the personal information in the system.
- VI. Descriptions of the uses made of the personal information.
- VII. Categories of users of the personal information.
- VIII. Practices regarding the place and method of personal information storage in the system including but not limited to whether or not the personal information is machine-accessible.
- IX. Length of time of retention of personal information in the system.
- X. Method of disposal of personal information in the system.
- XI. Names and positions of the personnel responsible for maintaining the system.
- XII. Persons or agencies having a right of access to the personal information in the system.

**7-A: 3 Changes in Purposes, Uses, etc.** The agency shall immediately file with the secretary of state any changes in the information required to be filed with the secretary of state by RSA 7-A: 2, except RSA 7-A: 2, III, and the secretary of state shall annex said changes to the original filing and preserve all filings. Any changes in the information required by RSA 7-A: 2, III shall be filed with the secretary of state no less often than annually.

**7-A: 4 Public Record.** All information filed with the secretary of state pursuant to the provisions of this chapter shall be deemed public records.

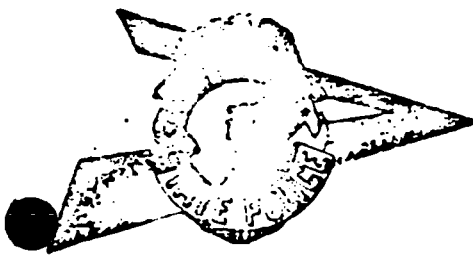
**7-A: 5 Report to General Court.** The secretary of state shall provide to the president of the senate and speaker of the house on October first of each even-numbered year a list of all state agencies that have filed information with him pursuant to RSA 7-A.

\* \* \*



# State of New Hampshire

DEPARTMENT OF SAFETY  
DIVISION OF STATE POLICE  
HEADQUARTERS CONCORD, N.H. 03301



COLONEL PAUL A. DOYON  
DIRECTOR

CLASSIFICATION DATE	NUMBER
SUBJECT	
NEW HAMPSHIRE STATE POLICE BUREAU OF CRIMINAL INVESTIGATION	

# S O P

SOP State Police, Bureau of Criminal Identification

I. PURPOSE: The purpose of this SOP is to establish operating instructions for the Department of Safety, Division of State Police, State Bureau of Criminal Identification (hereinafter referred to as the BCI), which operates under the supervision of the Supervisor, Records and Reports Unit.

II. SCOPE: This SOP establishes the administrative and unique central repository requirements of the BCI.

## 1. Physical Security

A. The criminal history record information manual files are housed in the Bureau of Criminal Identification at the Department of Safety, Division of State Police. As such, they are under constant police supervision and control 24 hours a day. The records section is staffed during the day by the personnel actually working on the records. At night, at other times when the bureau is not staffed, the coded records, in locked filing cabinets, are monitored by Communications personnel in the next room.

B. The physically secure building housing the Department of Safety and the Department of Public Works and Highways is surrounded by perimeter lighting at night and manned at all times by a uniformed officer, utilizing television cameras and identification logs. The building itself is constructed with protective, non-combustible material, and is in compliance with both the Life Safety Code and the National Building Code. The actual location in the interior of the building precludes damage from acts of nature. A new office building being constructed for the Department

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of Safety with occupancy scheduled for January 1977, will provide security in excess of that enumerated above.

C. Access to our manual files are limited to personnel of the records section.

D. There are no back-up files.

### 2. Personnel Selection

A. The BCI is staffed by both uniformed and civilian members of the State Police. The over all responsibility for the administration of this operation falls to the Supervisor of the Records and Reports Unit - a uniformed officer. He is, in turn, responsible to the Commander of the Detective Bureau.

B. Civilian personnel who work with criminal records are employees of the State Police. These classified employees are hired by the Division after passing entrance examinations conducted by the Department of Personnel and after successful completion of an extensive background check designed to assess prior work habits, honesty, and suitability for this sensitive position. In actual practice, most employees in this section are prior employees of the Department of Safety who have transferred to the Division of State Police.

C. After hiring, personnel are further cautioned as to the critical nature of their functions and as to the sanctions applied for malfeasance, in addition to procedures for dismissal promulgated by the Department of Personnel. During the initial days of their employment, probationary clerks are closely monitored by the uniformed supervisor and a senior clerk. Throughout the remainder of their probation period (6 months), they are closely checked by the senior clerk.

D. All employees are required to sign a memorandum from the Director concerning the security and privacy of criminal history record information. This memorandum advises them of their responsibilities and requires compliance of the regulations designed to prevent intentional violations of this data. A copy of this memorandum is attached.

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### J. Limits on Dissemination

#### A. The BCI recognizes three classes of criminal history record information;

1. All data available at the Central repository including, but not limited to, raw arrest data, data containing not guilty and not processed findings, incomplete data, data regarding dispositions (supported or unsupported by arrest date), data regarding juvenile arrests and/or dispositions, and acknowledgement that a criminal record does not exist.
2. All of #1 above with the exception of juvenile data.
3. Data containing documented arrests with guilty dispositions, and data containing guilty dispositions only, as well as the acknowledgement that a record does not exist.

#### B. Dissemination of the above classes of data are limited to the following:

1. Police departments - class 2
2. Other criminal justice agencies - class 3
3. Non-criminal justice agencies with statutory requirements or an executive order allowing access - class 3.
4. Agencies approved by the Director, Division of State Police, under his statutory authority - class 3.
5. Individuals and agencies pursuant of a specific agreement with the State Police to provide services required for the administration of criminal justice pursuant to that agreement. The agreement specifically authorizes access to data, limits the use of data to purposes for which given, insures the security and confidentiality of the data consistent with these regulations and provides sanctions for violation thereof - class 1.
6. Individuals and agencies whether authorized by court order or court rule - class 1.
7. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with the SAC, said agreement simi-

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lar to agreement under B5 above and conforming to section 524(a) of the act - class 1.

8. Any person, agency, or institution approved for dissemination by the Director under his statutory authority who has written authorization from the person whose record they are interested in obtaining - class 2.

9. Any individual may obtain his own record upon satisfactory identification - class 1.

### C. Dissemination

1. Dissemination of criminal history record information to criminal justice agencies will require that the agencies have a certification form of file at the BCI. This certificate form will have to be on file before information can be given out. Once a form is on file, no further certification form will be required for these criminal justice agencies.

2. Non-criminal justice agencies approved for dissemination by the Director under his statutory authority, or those authorized by statute, will be required to complete a certification on a yearly basis.

3. Individuals, after executing a Right to Access form, will be allowed to view their record and receive a copy of that portion they desire to challenge. Completed access forms will be kept on file at the BCI.

a. When a copy is given to an individual, it will include the notation, "For review and challenge only and any other use thereof will be in violation of 42 USC, page 3771," or a similar warning.

4. Dissemination logs will be maintained on all copies of records given to qualified recipients. These logs will be kept in the individual jacket along with the individual master rap sheet.

5. All copies of records given out above, will include the notation to the effect that the information is given for a specified use only and that sanctions will be applied for misuse.

D. In order to insure that under no conditions will an annulled or expun-

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record be disseminated, all such information will be destroyed by the Supervisor of the records and upon receipt of a court order to do same. In addition, all court orders sealed records will be carried out by the Supervisor.

### 4. Audit and Quality Control

A. In order to insure the accuracy of the criminal history record information at the BCI, the following source documents will be the only ones utilized as a vehicle to post information to an individual's rap sheet. ( Specific clerical instructions will be promulgated by the Supervisor)

1. All notations of an arrest must be documented by a fingerprint card submitted by the arresting agency. These fingerprint cards must be classified or verified before entering the data onto the record. Fingerprint cards to support every arrest after the effective date of this SOP will be kept on file at the BCI. Only arrest records of misdemeanors and felonies of a criminal nature will be posted to an individual's criminal record.

2. All notations as to the disposition of an arrest must be supported by a court abstract. These abstracts will be cross matched, to the maximum extent feasible, to a corresponding arrest. All dispositions ( guilty, not guilty, not prosessed, continued for sentence) will be entered. The Supervisor of the Records and Reports Unit will maintain an active list of those offenses not allowed on a rap sheet (e.g. intoxication, vagrancy, motor vehicle violations, Fish & Game violations, etc). All abstracts entered on a rap sheet will be maintained in the individual's jacket.

3. Strict adherence to the above requirements for posting and filing will insure the reliability of the audit trail.

B. The completeness of the criminal history record information will be insured by limiting the dissemination of arrests for which there is no disposition (class 1 and 2) to police agencies only. Arrests which show no disposition after 30 days will require a query to the police department or the corresponding court, if

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it appears that a disposition will be forthcoming, prior to the dissemination of this information.

### 5. Annual Audits

A. The BCI will undergo a yearly audit by the Security and Privacy Committee in order to insure compliance with this SOP and the New Hampshire State Security and Privacy Plan. All resources and files of the BCI will be open to the Security and Privacy Committee at this time.

B. The Supervisor of the Records and Reports Unit or his designated representative will conduct annual audits of a representative sample of local and county law enforcement agencies. Departments to be reviewed will be selected by the Security and Privacy Staff of the SAC. Areas of consideration for this annual audit will be those suggested by the S and P staff.

### 6. Certification with the BCI

A. Every agency or individual who maintains or receives criminal history record information will certify with the BCI that the information is secure and dissemination is limited to a need to know basis.

B. These certifications will be kept on permanent file at the BCI. If another CJA is in doubt as to the certification of an agency or individual, they may query the BCI for certification status.

C. Violations of security and privacy of criminal history record information will result in immediate removal from the certification list of agencies or individuals pending review of the Director.

### 7. Individual Review and Appeal

A. Upon the receipt of a Right to Access form, the Supervisor will verify the identity of the requester and allow him to view the rap sheet. A copy of challenged entries will be provided with the proper notations.

B. When the individual challenges an entry, the determination of whether

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or not to change the entry will be made by the Supervisor with the advice and consent of the Director.

C. Appeals from the BCI decision will be directed to the Security and Privacy Appeal Body.

D. Appeals from the decision of other criminal justice agencies will be given to the BCI who will investigate the complaint and forward a report to the Appeal Body.