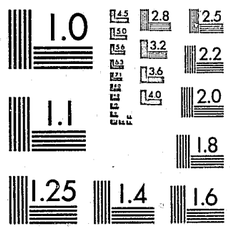

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ILLINOIS CRIMINAL JUSTICE INFORMATION COUNCIL

PROPOSED

THE CRIMINAL HISTORY RECORD INFORMATION *ACT*

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ILLINOIS
CRIMINAL
JUSTICE
INFORMATION
COUNCIL

120 South Riverside Plaza
Chicago, Illinois 60606

THE CRIMINAL HISTORY RECORD INFORMATION ACT

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83rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____, BY

SYNOPSIS:

(New Act; Ch. 38, pars. 206-2, 206-2.1, 206-3, 206-5, 206-7 and 1005-6-3.1, rep. par. 206-4; Ch. 82, par. 2-101; Ch. 127, par. 55a)

The Criminal History Record Information Act. Specifies various levels of access to criminal history record information for the public and for criminal justice agencies. Makes other changes in the law with respect to the collection, maintenance and dissemination of criminal history record information. Amends the Act in relation to criminal identification and investigation, the Unified Code of Corrections, the Local Governmental and Governmental Employees Tort Immunity Act and the Civil Administrative Code of Illinois. Effective one year after becoming a law.

LRB8300841RLml

Fiscal Note Act
may be applicable

THE CRIMINAL HISTORY RECORD INFORMATION ACT

An Act relating to the access to and dissemination of criminal history record information, amending certain Acts in relation thereto.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short Title. This Act shall be known and may be cited as the "Criminal History Record Information Act."

Section 2. Legislative Findings and Purposes. (A) The legislature finds and declares that effective law enforcement requires the collection, maintenance, and dissemination of complete and accurate criminal history record information. This information enables all components of the criminal justice system to coordinate their efforts for investigation and prevention of criminal activity. However, such information should never be collected, maintained, or disseminated in such a manner as to infringe upon the individual citizen's constitutional rights to privacy and to the protection of his own good name and reputation. Uniform policies must be developed regulating the collection, maintenance, and dissemination of criminal history record information throughout the State, to balance the State's need for criminal history record information with the public's right to know the conduct of its officials and with the individual's right to privacy and the protection of his own good name and reputation. The legislature finds that these policies should be premised upon the following principles: criminal history record information must be as complete and accurate as possible; public access to traditionally public information must be guaranteed; and the

improper storage and dissemination of criminal history record information must be prohibited.

(B) The purpose of this Act is to (1) comply with the federal requirements of Sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1976, as amended by the Justice System Improvement Act of 1979, and federal regulations adopted pursuant thereto; (2) establish uniform policy for gaining access to and disseminating criminal history record information throughout the State, consistant with due process mandates for the administration of criminal justice, the needs of criminal justice agencies in the state, the right of individuals to be free from improper and unwarranted intrusions by the government or others into their privacy and reputations, and the public's right to be informed of the official actions of criminal justice agencies; (3) establish guidelines and priorities which fully support effective law enforcement and ongoing criminal investigations, while ensuring both criminal justice agency and public access to criminal history record information within appropriate time frames; and (4) ensure the integrity of criminal history record information, which is fundamental to the administration of justice and the due process rights of individual citizens.

COMMENT

In 1975, the United States Department of Justice issued regulations governing the collection, maintenance, and dissemination of criminal history records. These regulations, among other things, mandated that all federally funded criminal justice information systems comply with national standards for gaining access to and disseminating criminal history record information. Failure to comply meant exposure to having federal funds cut-off and fines up to $10,000. (28 CFR section 20.1 et seq.)

Information practices which had been in place for years and which had rarely been questioned or challenged were suddenly thrown into turmoil. Some law enforcement agencies in Illinois, as with their counterparts throughout the nation, tended to overreact to the federal requirements and drastically changed their dissemination policies. For example, some agencies refused to provide military recruiters with criminal background information about potential recruits. Others stopped providing private security companies and private corporations with the information that they had been supplying for years. Some agencies stopped the flow of information to the media and to private citizens. Some agencies even went so far as to refuse to share information with all other criminal justice agencies in the State.

In 1978, the Illinois Criminal Justice Information Council began studying the issues involved with gaining access to and disseminating criminal history records in Illinois. The Council quickly found that the current laws in Illinois regarding criminal history records are confusing and difficult to administer. For example, the police department of the City of Chicago needed to develop a complex matrix just to determine whether or not a request for criminal history record information may be granted.

The Council documented with painstaking detail numerous problems and determined that there are at least three different legal standards in Illinois. State law applies to the Department of Law Enforcement; federal regulations apply to the recipients of federal funds and to the information maintained by the Department of Law Enforcement; and there are no statutes regarding the dissemination of information maintained by local

criminal justice agencies or the subsequent dissemination of state-maintained information by local agencies.

These and other problems have convinced the Illinois Criminal Justice Information Council that a comprehensive program for collecting, maintaining, and disseminating criminal history record information is sorely needed.

The Act tries to balance three competing concerns. First, there is the need of government agencies to collect and disseminate information about the people with whom they come in contact. Second, there are the constitutional rights of individuals to be free from improper intrusions into their privacy and reputations, and, third, there is the public's right to be informed fully about the official actions of criminal justice agencies and their elected and appointed officials.

Section 3. Definitions. Whenever used in this Act, and for the purposes of this Act, unless the context clearly indicates otherwise:

(A) "Accurate information" means data which is factually correct, containing no mistake or error of a material nature.

COMMENT

In order for information to be "accurate" it must be free of all substantive errors. If a criminal justice agency were to disseminate an incorrect arrest charge or disposition, most likely this would give rise to liability under the Act. However, the dissemination of a misspelled name or the mistaken report that an arrest occurred on August 6 instead of August 5, under most circumstances, would not be a material error and would not be considered inaccurate information. A criminal justice agency would not be liable for disseminating this type of mistake.

(B) The phrase "administer the criminal laws" includes any of the following activities: intelligence gathering, surveillance, criminal investigation, crime detection and prevention (including research), apprehension, detention, pretrial or post-trial release, prosecution, defense, the correctional supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, or the collection, maintenance or dissemination of criminal history record information.

(C) "Automated" means the utilization of computers, telecommunication lines, or other automatic data processing equipment for data collection or storage, analysis, processing, preservation,

maintenance, dissemination, or display and is distinguished from a system in which such activities are performed manually.

(D) "Complete" means containing accurate information which reflects the current criminal history status of an individual in the State of Illinois.

COMMENT

Two criteria must be met for information to be considered "complete." The information must first be accurate, and second, must reflect all the historical information as well as the current status about a person's involvement with the criminal justice system. Under the Act, however, local and state criminal justice agencies are given a 30-day grace period in which to report and record the most recent disposition.

(E) "Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pretrial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges and the nature of any disposition arising therefrom, including sentencing, correctional supervision, rehabilitation and release. The term does not apply to statistical information in which individuals are not identified and from which their identities are not ascertainable, or to information that is exclusively for criminal investigative or intelligence purposes.

COMMENT

Criminal history record information is commonly referred to by most people as a "rap sheet." To be criminal history record information, the information must be identifiable to a particular individual and contain historical data about a person's formal contacts with the criminal justice system: eg., John Doe was arrested by the Chicago Police Department on November 26, 1981 for armed robbery, charged with robbery by the Cook County State's Attorney on November 27, 1981, convicted of theft in the Cook County Circuit Court on September 23, 1982, and sentenced to two years probation on October 23, 1982.

(F) "Criminal justice agency" means (1) a government agency or any subunit thereof which is authorized to administer the criminal laws and which allocates a substantial part of its annual budget for that purpose, or (2) an agency supported by public funds which is authorized as its principal function to administer the criminal laws and which is officially designated by the Illinois Criminal Justice Information Authority as a criminal justice agency for purposes of this Act.

COMMENT

It is the intent of the Act that uniform policy for gaining access to criminal history record information should apply to all state and local criminal justice agencies throughout the State. All questions of fact whether or not an agency is a criminal justice agency would be resolved by the Illinois Criminal Justice Information Authority.

(G) "Disseminate" means to disclose or transmit criminal history record information in any form, oral, written, or otherwise.

(H) "Executive Order" means an order of the President of the United States or the Chief Executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

(I) "Exigency" means pending danger or the threat of pending danger to an individual or property.

(J) "Non-conviction information" is criminal history record information, but is limited to only those criminal charges and any arrest or other information related thereto which have been disposed of in a final manner other than by conviction, and includes one or more of the following:

(1) Acquittal information;

(2) Dismissal information;

(3) Information that the police have elected not to refer a matter for prosecution;

(4) Information that charges will not be filed;

(5) Information that supervision has been terminated by discharge and dismissal.

COMMENT

It is the intent of the Act to single out one type of criminal history record information for special treatment: non-conviction information. One year after a non-conviction event, non-conviction information will only be accessible for law enforcement purposes and to those persons establishing a legitimate need to know the information. Non-conviction information encompasses all

information surrounding a non-conviction event. Thus, for example, the fact of an arrest, the offense charged and the acquittal information combined would constitute non-conviction information under the Act, not just acquittal information.

(K) A "researcher" means (1) a person who is employed by or carrying out research under the sponsorship of an organization that meets the definition of Section 501(c)(3) of the Internal Revenue Code, or (2) a criminal justice agency, or (3) an agency, corporation, organization, or person employed by or carrying out research under the sponsorship of a criminal justice agency.

COMMENT

It is the intent of the Act to permit persons meeting bona fide researcher's criteria to gain access to non-conviction information. In defining the term "researcher" the Act attempts to balance the need to limit access to only legitimate researchers while at the same time trying to avoid censoring the purpose of the research so as not to encourage discretionary behavior by criminal justice officials. The definition settled upon does not require a person to state the purpose of the research or to prove its inherent worth or legitimacy in order to conduct research.

(L) "Statistical information" means information from which the identity of an individual cannot be ascertained, reconstructed, or verified and to which the identity of an individual cannot be linked by the recipient of the information.

(M) "Statute" means an Act of Congress or a State legislature or a provision of the Constitution of the United States or of a State.

(N) "Various participants in the criminal justice system" means any and all courts, clerks of courts, criminal justice agencies, and policing bodies in the State of Illinois.

Section 4. Applicability. (A) The provisions of this Act shall apply to the various participants in the criminal justice system and to all agencies of State and local government collecting, maintaining, recording, gaining access to, or disseminating criminal history record information processed by manual or automated operations.

(B) The provisions of this Act shall apply only to criminal history record information mandated by statute to be collected, maintained, or disseminated by the Department of Law Enforcement. Other types of criminal justice information, such as (1) intelligence and investigative information, (2) all information (other than criminal history record information) contained in original reports prepared and maintained by a criminal justice agency, (3) local municipal ordinance violations, and (4) false or fictitious criminal history record information intentionally fabricated upon the express written authority of the chief executive of a criminal justice agency to support undercover law enforcement efforts, are not subject to the provisions of this Act.

(C) The provisions of this Act shall not apply to statistical information.

(D) In the event of conflict between the application of this Act and the statutes listed in subparagraphs (1), (2), or (3)

below, the statutes listed below shall control, unless specified otherwise:

(1) The Juvenile Court Act; or

(2) Section 5-3-4 of the Unified Code of Corrections; or

(3) Paragraph (4) of Section 12 of "An Act providing for a system of probation, for the appointment and compensation of probation officers, and authorizing the suspension of final judgment and the imposition of sentence upon persons found guilty of certain defined crimes and offenses, and legalizing their ultimate discharge without punishment", approved June 10, 1911, as amended.

COMMENT

The Act applies to all peace officers and government agencies in the State working with criminal history record information. The Act does not attempt to regulate the activities of private individuals, corporations, organizations, or the press.

The Act applies only to criminal history record information required to be collected by the state central repository-- the Department of Law Enforcement's Bureau of Identification. Thus, the amount of information regulated by the Act can be expanded or contracted as seen fit over time, without altering the general policies for its maintenance or dissemination. Currently, the Act would apply to all felony and Class X offenses, murder, and most Class A and B misdemeanors. The Act would not apply to most traffic violations, to Class B conservation offenses, or to any Class C misdemeanors, Petty Offenses, or local municipal ordinances.

Similarly, investigative and intelligence information, original reports of a criminal justice agency (such as an arrest report, as distinguished from the fact of the arrest), and intentionally fabricated

information to support undercover efforts are not regulated by the Act.

The Act is meant to yield to the requirements of some existing laws in the event of any inconsistency or conflict. These include the Juvenile Court Act, Code of Corrections, and statutes dealing with probation information.

Section 5. Completeness and Accuracy. (A) Fxcept as provided herein, it is the duty and responsibiliity of each criminal justice agency to maintain only accurate and, to the fullest extent possible, complete criminal history record information and to correct or update such information after being determined by audit, individual review and challenge procedures, or by other verifiable means, that it is incomplete or inaccurate. A criminal justice agency shall collect, record, or maintain only that criminal history record information required to fulfill its legal responsibilities.

(B) Data which could mislead a reasonable person about the true nature of the criminal history event being recorded or maintained shall not be entered into any criminal history record information system, except for (1) information intentionally fabricated upon the express written authority of the chief executive of a criminal justice agency to support undercover law enforcement efforts or (2) information which is otherwise necessary to administer the criminal laws.

COMMENT

The paramount concern of the Act addresses itself to the accuracy and completeness of criminal history record information maintained by government agencies, and places the responsibility directly on government for guaranteeing the accuracy and completeness of the information to the fullest extent possible.

The Act would implement the finding of the U.S. Privacy Protection Study Commission which would limit a government agency from collecting more information than needed to carry out its lawful

responsiblilites. Under the Act, a criminal justice agency would have an affirmative duty to maintain only accurate and complete information in its files and would also be required to correct all erroneous information once brought to its attention.

The Act acknowledges, however, that there would be circumstances when a criminal justice agency would intentionally need to maintain incorrect information: eg. for undercover purposes or to test the adequacy of audit procedures.

Section 6. Dissemination of Criminal History Record Information. (A) Public Criminal Justice Records. (1) All (a) original records of entry (such as police blotters or logs) compiled chronologically by criminal justice agencies, (b) information identifying persons currently in custody, (c) posters, announcements, or lists for identifying fugitives or wanted persons, (d) announcements of executive clemency, and (e) unless otherwise provided by rule or order of the Supreme Court of Illinois, all records of judicial proceedings, including records containing non-conviction information, which are not by law required to be impounded, are hereby declared to be public records in the State of Illinois and shall be open to inspection without fee or reward. All persons shall have free access to inspect and examine such records and shall have the right to take memoranda and abstracts concerning them.

(2) All criminal history record information, except for non-conviction information which is more than one year old, is hereby declared to be public in the State of Illinois. Except as limited by paragraph (3) herein, such records shall be open to inspection and all persons shall have access to inspect and examine them, consistent with paragraph (8)(b) of this subsection (A), and shall have the right to take memoranda and abstracts concerning them.

(3) Instead of responding to a request to inspect criminal history record information, a criminal justice agency may refer such a request directly to the Department of Law Enforcement.

(4) Except as limited by paragraph (3) herein, a criminal justice agency shall make available for inspection by and dissemination to the public and requesting criminal and non-criminal justice agencies any public records under its control or in its possession.

(5) Any request for inspection or dissemination of public criminal history records shall be subject only to reasonable rules governing the time, manner, and place of examination, and to reasonable limitations ensuring the security and integrity of the record and the orderly and efficient operation of the criminal justice agency making it available.

(6) If the requested information cannot be made available at the time requested, the criminal justice agency shall set a date and hour within a reasonable time period, but not more than 2 weeks from receipt of the request, at which time the record shall be available for inspection.

(7) Specific requests for information identifying the charges against and location of persons recently arrested and currently or recently in the custody of a criminal justice agency shall be honored within a time period reasonably contemporaneous with the request.

(8)(a) Reproduction of information listed in paragraph (1) herein shall be permitted, and fees for such reproduction shall be charged in accordance with the provisions of Section 4 of the State Records Act or Section 13 of the Local Records Act; or, in the absence of the applicability of those Sections, criminal justice agencies or consortia of criminal justice agencies may assess reasonable fees, as established by the Illinois Criminal Justice Information Authority, for providing such information about each person requested. Such fees may be waived or reduced at the discretion of such agencies.

(b) For requests either to inspect or reproduce criminal history record information, criminal justice agencies or consortia of criminal justice agencies may assess reasonable fees, as established by the Illinois Criminal Justice Information Authority, for providing such information about each person requested. Such fees may be waived or reduced at the discretion of such agencies.

COMMENT

While certain criminal justice records, such as police blotters, have been traditionally public in Illinois, that status has not been statutorily recognized. This Act endorses the position that the right to inspect or reproduce public criminal justice information should be guaranteed and rectifies this situation.

In addition, the Act favors a general policy of open access to criminal history record information throughout the State, subject only to reasonable administrative rules protecting the security and integrity of the data and the efficient operation of the criminal justice agency making it available. Criminal history record information would become publicly accessible under the Act, except for non-conviction information more than one year old. Thus, arrest only information, lacking any disposition, would be public information regardless of its age, as would all conviction information.

Since some criminal justice agencies might not be able to allocate sufficient resources necessary to handle public requests for criminal history record

information, the Act would give a criminal justice agency the option of either referring a request directly to the state central repository or responding itself. If a criminal justice agency chose to respond then the dissemination procedures found in the Act would apply. A criminal justice agency, however, could no longer inform a requester that criminal history record information is not public information, but a request for criminal history record information which would impede the efficient operation of a criminal justice agency could be referred directly to the Department or postponed for up to two weeks.

This Section of the Act enforces the principle that there shall be no secret arrests or incarcerations in the State of Illinois. While it could take up to two weeks to obtain criminal history record information, all criminal justice agencies must release current arrest and incarceration information within a reasonably contemporaneous time period.

Under the Act, persons wishing to reproduce public criminal justice information may do so as provided by the State or Local Records Acts. However, if a listing of a computer tape were requested, for example, the Illinois Criminal Justice Information Authority would establish the maximum fees which could be assessed for complying with the request. Similarly, a criminal justice agency could charge the public to inspect a "rap sheet" as well as to copy one. Fees for reproducing information could be waived or reduced by a criminal justice agency if the person requesting the information were indigent.

(B) Non-conviction Information. (1) Non-conviction information shall be accessible to the public for the one year period immediately following the date of its occurrence. Thereafter, non-conviction information shall be accessible only as provided herein. For purposes of this Act, the date upon which non-conviction information shall be deemed to occur shall be the date when the criminal charges are disposed of in a final manner other than by conviction.

(2) A criminal justice agency may disseminate non-conviction information, regardless of its age, to anyone after first reaching a determination that such dissemination is required to administer the criminal laws or to carry out its official duties and responsibilities.

(3) Access to non-conviction information which is more than one year old shall be permitted to those persons or agencies establishing a legitimate need to know the information, and subject only to reasonable rules protecting the security and integrity of the information and the orderly and efficient operation of the criminal justice agency making it available.

(4) For purposes of this Act, a legitimate need to know non-conviction information which is more than one year old shall automatically be established for the following:

(a) All criminal justice agencies, to administer the criminal laws.

(b) The individual to whom the information pertains, upon request. Such an individual may also, upon written request, obtain a copy of the information.

(c) A non-criminal justice agency specifically authorized to gain access to such information by federal or state statute, by federal or state executive order, by court order, or by local ordinance of an Illinois municipality.

(d) A researcher. Authorization to utilize such information shall be prohibited without the execution of a binding non-disclosure agreement between the researcher and the criminal justice agency releasing the information. The non-disclosure agreement must, at a minimum:

(i) State the scope of non-conviction information covered;

(ii) Limit access to only designated personnel engaged in the research program;

(iii) Require compliance with all applicable federal and state laws and regulations;

(iv) Prohibit further dissemination to any other agency or individual, except for statistical information derived from such information;

(v) Prohibit the disclosure of the identity of any person to whom the information pertains to any other agency or individual not engaged in the research program;

(vi) Require the destruction or return of all copies of such information to the disseminating criminal justice agency;

(vii) Require the storage of all such information in secure locked containers when not in use;

(viii) Limit the retention of such information for only so long as may be necessary to complete the research program; and

(ix) Provide sanctions for violation of the terms of the agreement.

(e) Any person, corporation, organization, or agency, obtaining a general or special court order. The court shall issue a general or special order to any person, corporation, organization, or agency establishing a legitimate need to know such information. The person, corporation, organization, or agency seeking access to such information may petition for such access in the circuit court of the State of Illinois in the county where the information sought is maintained. The court shall impose any conditions, including non-disclosure agreements or sanctions it deems appropriate, to protect the security of the data or the privacy and reputation of the individual to whom the information pertains. Except in the case of exigency, a reasonable attempt shall be made to notify any individual to whom the information pertains about the petition and to make him or her a party to the proceedings before granting any general or special court order.

(5) Unless otherwise required by Illinois law, the subsequent dissemination of non-conviction information which is more than one year old by a non-criminal justice agency is prohibited. Any non-criminal justice agency willfully disseminating non-conviction information which is more than one year old to anyone other than its own employees shall be deemed to have violated this Act.

COMMENT

The Act attempts to balance the concerns of those who argue in favor of unrestricted access to all criminal history record information with those who would greatly limit access to only law enforcement agencies under some circumstances. The one year open period for non-conviction information found in the Act reflects the compromise reached by the Criminal Justice Information Council after four years of debate between these two oppositions.

The Council believed that the one year period of accessiblity would be sufficient in most cases to guarantee the ability to investigate official conduct and misconduct and to air the facts. However, a longer time period would begin to expose an individual with a record to potential damage to his reputation and would weigh in favor of limiting access.

The Council admitted that there would be occasional anomalies which would undermine the one year compromise period reached and force those in favor of total access to advocate lengthening it. For example, the recent Gacy murders and cyanide-laced tylenol deaths both involved the public dissemination of non-conviction information well over one year old.

In spite of this, the Act supports a compromise position that uniform criteria for gaining access to non-conviction information more than one year old shall be established and limited to law enforcement purposes and those persons or agencies having a legitimate need to know the information.

Non-conviction information is generated in five common situations, and the one year time clock begins running on the actual date of any of the non-conviction events listed below:

1. When the police decide to drop arrest charges;
2. When the prosecutor drops the charges;
3. When the court dismisses the case;
4. When there is a finding of not guilty;
5. When a sentence of supervision is successfully terminated and discharged.

The Act establishes several automatic "need to know" situations which would warrant the dissemination of non-conviction information more than one year old. These circumstances include when criminal justice agencies request the information for the administration of the criminal laws and when requested by the individual record subject. Non-criminal justice agencies authorized by law, executive or court order, or Illinois municipal ordinance could also establish the need to know. This provision, in particular, clarifies the confusion in current Illinois law regarding whether or not a local criminal justice agency is permitted to provide a non-criminal justice agency with criminal history record information obtained from the state central repository.

A researcher, as defined by the Act, could also gain access to non-conviction information more than one year old. The limitations placed on such access are specifically designed to conform to federal regulations governing the Confidentiality of Identifiable Research and Statistical Information. (28 CFR section 22 et seq.) Currently, the Department of Law Enforcement denies even criminal justice agencies access to criminal history record information for research purposes. This situation will be rectified by this Act.

Since the Criminal Justice Information Council could not identify each and every situation where a legitimate need to know might exist, the Act provides a procedure which would also allow the general public to establish a need to know. The Act empowers the courts to impose any conditions that would protect the security of the data or the privacy and reputation of the record subject. Except in cases of emergency, the record subject would have to be given the opportunity to appear before access could be granted by the court.

Under the Act, any non-criminal justice agency receiving non-conviction information which is more than one year old may only use the information for the purposes for which it was obtained and is prohibited from further disseminating the information to anyone. The rationale behind this provision is based on the concept that criminal history record information becomes outdated the minute that it is disseminated and that information sitting in files for any length of time is inherently suspect. Therefore, non-criminal justice agencies should not be permitted to re-disseminate information that they have obtained from a criminal justice agency. Requesters should be encouraged to go directly to the Department of Law Enforcement instead.

Under the Act, a criminal justice agency may disseminate non-conviction information which is more than one year old to anyone it deems necessary to carry out its responsibilities. For example, a prosecutor should be able to inform a rape victim, who may be reluctant to testify, about the number of other times an offender has been previously arrested for rape but not prosecuted, without fear of violating the Act.

(C) Dissemination Procedures for Criminal History Record Information. (1) A criminal justice agency shall only disseminate accurate and, to the fullest extent possible, complete criminal history record information. A criminal justice agency shall disseminate criminal history record information only after first making certain, through a formal update inquiry, review, or other appropriate means, that the information to be disseminated reflects the most current and accurate information available, except (a) in cases of exigency, or (b) when confirmation of the most current status of the information is beyond the resources of the disseminating criminal justice agency within the time period (less than 2 weeks) reasonably demanded by the requesting agency, corporation, organization, or person, or (c) upon request for criminal history record information by another criminal justice agency. The willful failure of a criminal justice agency to review the accuracy and completeness of a criminal history record prior to its dissemination, except as otherwise permitted by this Section, shall constitute a violation of this Act.

(2) For purposes of this Act, accurate information which is less than 30 days old shall be presumed complete and may, at the discretion of the criminal justice agency, be disseminated in accordance with this Act without first conducting a formal update inquiry or review.

(3) A criminal justice agency shall, within 2 weeks from receipt of the request, disseminate criminal history record infor-

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(3) A criminal justice agency shall, within 2 weeks from receipt of the request, disseminate criminal history record infor-

mation in accordance with the provisions of this Act and in the following manner:

(a) Any dissemination of criminal history record information based on identifying information other than fingerprints shall contain an appropriate statement indicating that the information provided cannot be identified with certainty as pertaining to the individual about whom the information was requested.

(b) In those cases where no record can be found in the files maintained by a criminal justice agency based upon the identifying information submitted by the requesting individual or agency, an appropriate statement shall be issued by the criminal justice agency indicating that it has no information relating to the individual, based upon the information provided.

(c) In those cases where information relating to more than one individual is found in the files maintained by a criminal justice agency based upon the identifying information submitted by a requesting individual or agency, (1) instead of supplying the information an appropriate statement shall be issued by the criminal justice agency indicating that it is unable to determine whether it has any information relating to the individual based upon the information provided, or (2) if it is determined by the disseminating criminal justice agency that dissemination is still warranted due to exigency or a particular set of circumstances to administer the criminal laws, then an appropriate statement shall be issued by the criminal justice agency indicating that the information provided cannot be identified with certainty as

pertaining to the individual about whom the information was requested.

(d) In those cases where dissemination of criminal history record information is based upon fingerprint identification, an appropriate statement shall be issued by the criminal justice agency indicating that the information provided positively pertains to the individual whose fingerprints were taken.

(e) Nothing in this Section shall prohibit the dissemination of criminal history record information to a requesting criminal justice agency upon determination by the disseminating criminal justice agency that dissemination is still warranted due to exigency or a particular set of circumstances to administer the criminal laws. In those instances, an appropriate statement shall be issued by the criminal justice agency indicating that the information provided cannot be identified with certainty as pertaining to the individual about whom the information was requested.

(4)(a) It shall be the responsibility of a criminal justice agency to record every dissemination of criminal history record information. Such records shall be retained for a period of not less than 3 years. Upon request, the individual to whom such disseminated information pertains shall be supplied with the information listed in paragraph (b) below for all non-criminal justice agencies, corporations, organizations, and members of the public who have received criminal history record information during the past three years.

(b) At a minimum, the following information shall be recorded and retained:

(i) The name of the individual to whom the information disseminated pertains;

(ii) The name of the individual requesting the information;

(iii) The name of the individual, corporation, organization, or agency receiving the information;

(iv) The date of the dissemination;

(v) The name of the officer releasing the information.

(c) The record keeping requirements of this subsection (4) shall not apply to either of the following:

(i) The dissemination of criminal history record information to authorized personnel within a criminal justice agency; or

(ii) The reporting or dissemination of criminal history record information from public court records or proceedings.

COMMENT

Currently, there are no procedural guidelines in Illinois law for criminal justice agencies to follow when disseminating criminal history record information to the public. The Act provides criminal justice agencies with uniform procedures for processing a request from the public for criminal history record information, based on identifying information which may or may not include fingerprints.

The first step a criminal justice agency would take is to find out whether or not there are any records in its files which match all of the identifying information supplied by the requester.

Second, assuming that one and only one matching record is found, the criminal justice agency should look at the date of the last entry before it disseminates the record. If the date of the last recorded entry occurred within the last 30 days, and the information on the transcript is accurate, the record is complete (by definition in the Act) and may be disseminated without fear of liability by the agency.

If the date of the last recorded entry is more than 30 days old, however, the information is considered automatically to be incomplete, and the criminal justice agency must conduct an update inquiry to determine if the information is accurate and complete before it can be disseminated.

This mandatory requirement to update or to review a record for completeness intentionally differs from the federal regulations governing criminal history record information. (28 CFR section 20.21(a)(1).) The federal requirement technically mandates a formal update each and every time criminal history record information is disseminated regardless of the date of last update or when it was last disseminated. The Illinois approach presumes information less than 30 days old is current and, therefore, it would significantly reduce the number of meaningless inquiries criminal justice agencies would be required to make. However, nothing in the Act prohibits a criminal justice agency from inquiring more frequently; it just is not required to do so, unless the information is more than 30 days old.

Third, the criminal justice agency should determine whether or not the criminal history record contains any non-conviction information more than one year old. If it does, then only agencies or persons with a legitimate need to know are authorized to receive such information.

The fourth step requires an agency to record every extra-agency dissemination of criminal history record information on a dissemination log, which must be kept for at least three years.

This provision supports the intent of the Act that arrest only and non-conviction information should

not be used as a basis for denying employment. This procedure creates an audit trail and permits the individual to verify every non-criminal justice agency and member of the public who has received the information. Thus, if an applicant for employment (who may have been arrested but never convicted) were denied employment, the applicant could positively establish whether or not the employer knew this information at the time the decision was made not to hire. The establishment of this fact would enable the individual to shift the burden of proof onto the employer to show that the refusal to hire was not a civil rights violation in Illinois. Currently, there is no means of enforcing this provision of the law. (Chapter 68 section 2-103.) The Act would alleviate this situation.

Fifth, under the Act, a criminal justice agency could charge a fee, established by the Illinois Criminal Justice Information Authority, for processing each request from the public.

Finally, an agency would then disseminate the record transcript. A request for criminal history record information must be answered within two weeks.

If fingerprints were supplied by the requester, the agency would be required by the Act to state that the information has been positively identified as pertaining to the record subject.

In cases where more than one individual in the agency's files matches the information supplied by the requester, the Act would prohibit dissemination of any information, except to criminal justice agencies.

Section 7. Prohibited Use of Funds. No appropriated funds of the State of Illinois or funds made available to the State of Illinois or any criminal justice agency therein from any source shall be disbursed or used for any purpose prohibited or made unlawful by this Act.

Section 8. Judicial Remedies. (A) Whenever any officer or employee of the State, its agencies, or political subdivisions, or whenever any State agency or any political subdivision or its agencies fails to comply with the requirements of this Act, any person may institute a civil action for mandamus or to obtain declaratory or, where appropriate, injunctive relief to compel compliance. Such action may be brought in any circuit court of the State of Illinois in the county in which the violation occurs or in the county where the agency is situated. If successful, the individual shall be entitled to recover attorney's fees and other litigation costs reasonably incurred, as provided in Section 12 of this Act.

(B) In any action brought pursuant to this Act, the court may at its discretion issue an order enjoining the collection, maintenance, or dissemination of criminal history record information in violation of this Act, or correct such information, or invoke any other appropriate remedy.

(C) Where funds have been disbursed in violation of Section 7 of this Act, any taxpayer of the State of Illinois shall be entitled to declaratory relief, such other equitable relief as may be proper under the circumstances, and those fees and other

litigation costs reasonably incurred, as provided in Section 12 of this Act.

(D) The Attorney General, with such assistance as he may from time to time require of the State's Attorneys in the several counties, shall bring suit in the circuit courts to prevent and restrain violations of this Act and to enforce the provisions of Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended. The Illinois Criminal Justice Information Authority may request the Attorney General to bring any such action authorized by this subsection to enforce the provisions of this Act.

(E) For the purposes of this Act, the State of Illinois shall be deemed to have consented to suit, and shall be liable for damages, reasonable attorney's fees, and litigation costs as provided in Section 12 of this Act. No defense of sovereign or official immunity may be interposed by any person or the State of Illinois in any court for violations of this Act.

(F) If, in any civil action alleging the unlawful publication or dissemination of criminal history record information, it is found that the provisions of this Act have been violated, no agency or person shall be entitled to claim any privilege, absolute or qualified, as a defense thereto.

(G) An agency, its officials or employees may in good faith rely upon the assurance of another agency that information is maintained or disseminated in compliance with the provisions of

this Act. However, such reliance shall not constitute a defense with respect to equitable or declaratory relief. Similarly, the good faith exercise of a discretionary function by any agency or individual shall not constitute a defense with respect to equitable or declaratory relief, but may be taken into account in determining what damages, if any, are appropriate.

COMMENT

It is the intent of the Act to encourage full enforcement when its provisions have been violated. One method of enforcement that is encouraged is to permit citizens or taxpayers to act as private attorneys general to obtain declaratory or injunctive relief for violations of the Act in the county where the violation occurred or where the criminal justice agency is situated. If successful, these plaintiffs would be entitled to collect reasonable attorneys fees, but not any award for damages.

This Section also actively encourages the Attorney General to enforce the provisions of the Act.

Moreover, the existing laws regarding sovereign and official immunity are greatly modified. Under the Act, the State and its agencies have consented to suit. Actions against the State for equitable or injunctive relief can be brought in the circuit courts. However, actions against the State for monetary relief must be brought in the Court of Claims.

Officials may not interpose a defense of official immunity or qualified privilege. However, traditional defense concepts, such as "discretionary function" or "good faith" or "good faith belief" would be permitted as a means of negating or limiting the amount of monetary damages which could be awarded to an aggrieved party.

Section 9. Civil Damages. (A) Any individual aggrieved by a violation of this Act shall have a civil action for damages or other appropriate remedy against any agency responsible for such violation. Such action may be brought in any circuit court of the State of Illinois in the county in which the violation occurs or in the county where the agency is situated. All damage claims against the State of Illinois for violations of this Act shall be determined by the Court of Claims.

(B) In any action brought pursuant to this Act, an individual aggrieved by any violation of this Act shall be entitled to recover actual and general compensatory damages for each violation, together with costs and attorney's fees reasonably incurred pursuant to Section 12 of this Act. In addition, any individual aggrieved by a willful violation of this Act shall be entitled to recover $1,000 from the offending criminal justice agency for each violation. Any individual aggrieved by a non-willful violation of this Act for which there has been dissemination of criminal history record information shall be entitled to recover $200 from the offending criminal justice agency; provided, however, if criminal history record information is determined to be incomplete or inaccurate, by audit, by individual review and challenge procedures, or by other verifiable means, then the individual aggrieved shall only be entitled to recover such amount if the criminal justice agency fails to correct the information within a reasonable time.

COMMENT

The Constitution of the State of Illinois provides:

> "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." Article I, Section 12.

This section of the Act is designed to complement that portion of the State Constitution. It is the intent of the Act to encourage effective redress of damages and to hold criminal justice agencies and officials accountable for the quality of the criminal history record information they collect, maintain, and disseminate. Thus, the Act takes the position that the individual about whom criminal history record information is disseminated has the greatest stake in the accuracy and completeness of the information and should have effective redress of damages.

The Illinois Criminal Justice Information Council found, however, that current tort and official immunity laws do not permit effective redress. Thus, the Act permits remuneration for two situations. A person who has a criminal history record can recover monetary damages and reasonable attorney's fees against a criminal justice agency which has either collected information beyond its legal mandate or which has disseminated erroneous information about the individual.

For example, assume 1) that a person reviews his record and finds inaccurate information in it, and 2) that the Department of Law Enforcement agrees there is a mistake and promptly corrects the erroneous information in the file. No damages would be awarded in this case, because there was no violation of the Act. Let us say, however, that the Department forgets to correct the record and the information is disseminated to a potential employer three months later. The individual could collect $200 for the unintentional failure to correct the erroneous information plus reasonable attorney's fees up to another $200. Let us assume, further, that 1) the person actually suffers damages based solely on the inaccurate information disseminated by the Department of Law Enforcement and that 2) the person can conclusively establish

the amount to be $700. In that case, the person could collect $200 for the failure to correct the erroneous information, plus the $700 compensatory damages proven in court, plus reasonable attorney's fees of not more than $900.

It is forseeable that an individual could be damaged by the dissemination of criminal history record information in at least two different ways: by the State or by private persons or corporations. First, the State could disseminate inaccurate or incomplete information about the individual, an indefensible action under the Act. This Act holds the State responsible for the damages caused by its negligence in disseminating erroneous data. The logical person to enforce this concept is the individual, himself, who is damaged and not a government bureaucracy. The key concepts to maintaining accurate and complete information, espoused by the Act, are to institute timely reporting of all dispositions and to guarantee the individual the right to review and correct his own record.

Second, the State could disseminate information which is both accurate and complete, but private concerns could use the information against the individual to his detriment, such as by denying the individual employment, credit, insurance or housing. The State's duty however, is only to maintain and disseminate accurate and complete information. Once that duty is fulfilled, the State must not be liable for actions taken by private corporations or individuals based on the accurate information which the State disseminates. For instance, if an employer denies employment based on accurate arrest information disseminated by the State, the individual should sue the employer for a civil rights violation. The State would be protected from suit in that instance.

Section 10. Criminal Penalties. Any person who intentionally and knowingly (A) requests, obtains, or seeks to obtain criminal history record information under false pretenses, or (B) disseminates criminal history record information to any other person or agency except in accordance with this Act, or (C) disseminates inaccurate or incomplete criminal history record information in violation of of this Act, or (D) fails to disseminate or make public criminal history record information as required under this Act, or (E) fails to correct or update a criminal history record after it is determined by audit, by individual review and challenge procedures, or by other verifiable means to be inaccurate or incomplete, or (F) violates any other provision of this Act, shall for each offense be guilty of a Class 4 felony.

COMMENT

It is the intent of the Act also to encourage its enforcement by holding persons criminally liable for deliberate violations of the Act, but not for inadvertent mistakes or failures to act. Thus, a person who illegally sells criminal history record information or gains access under false pretenses, or deliberately disseminates erroneous information to besmirch a person's reputation, or absolutely refuses to release public information, or otherwise deliberately violates the Act would commit a crime punishable by up to $10,000 in fines and/or imprisonment from one to three years.

Section 11. Administrative Sanctions. (A) Each criminal justice agency responsible for the management of criminal history record information shall establish sanctions for accidental or intentional violation of this Act. In addition to any applicable civil or criminal penalties, any employee or officer of a criminal justice agency may be punished by suspension, discharge, reduction in grade, transfer or such other administrative penalties as are deemed to be appropriate by the criminal justice agency, for violating any regulations, procedures, or sanctions established pursuant to this Section.

(B)(1) Any agency violating a provision of this Act may be subject to immediate suspension from gaining access to the criminal history records maintained by the Department of Law Enforcement upon written finding by the Director of the Department that such agency's actions have seriously jeopardized the security of the State system or the integrity of the data contained therein. Within 20 days of such immediate suspension, the Department shall conduct a hearing to determine if further suspension of the agency from the State system is warranted.

(2) Any agency violating any provision of this Act or other federal or State law may be subject to suspension from gaining access to the criminal history records maintained by the Department of Law Enforcement upon 20 days written notice by the Department to the agency. Within such time, the Department shall conduct a hearing to determine the time period, if any, for which suspension from the State system is warranted.

(3) Any final decision of the Department of Law Enforcement may be appealed by the agency to the Illinois Criminal Justice Information Authority.

COMMENT

This Section is intended to comply with the federal regulations governing criminal history record information (28 CFR section 20.21(f)(4)(B)) which require a criminal justice agency to have the right to transfer or remove personnel who violate the provisions of the Act. Since the Act holds criminal justice agencies responsible for the quality of the information they manage, they must have the ability to impose effective administrative sanctions against any and all employees who may be violating the Act.

Similarly, criminal justice agencies found violating the Act may be suspended from using the state CCH system by the Department of Law Enforcement.

Section 12. Attorney's Fees and Costs. (A) Reasonable attorney's fees and other costs shall be awarded to any plaintiff who obtains declaratory, equitable, or injunctive relief. The amount awarded shall represent the reasonable value of the services rendered, taking into account all the surrounding circumstances, including but not limited to: the amount of attorney time and other disbursements determined by the court to be reasonably required by the nature of the case; the benefit rendered to the public; the skill demanded by the novelty or complexity of the issues; and the need to encourage the enforcement of this Act.

(B) Reasonable attorney's fees and other costs shall also be awarded to any plaintiff who obtains monetary relief for damages. The amount awarded shall represent the reasonable value of the costs of the damage action, consistent with paragraph (A) of this Section. However, in no event shall such an award be greater than the actual amount of monetary damages awarded to the plaintiff.

(C) The court shall assess attorney's fees and litigation costs reasonably incurred against any private party or parties bringing an action pursuant to this Act, consistent with paragraph (A) of this Section, upon the court's determination that the action was brought in bad faith or is malicious, vexatious, or frivolous in nature.

COMMENT

It is the intent of the Act to encourage only legitimate enforcement of its provisions while discouraging frivolous litigation or "bounty hunting." Both aggrieved and non-aggrieved persons may obtain reasonable attorney's fees and costs when they successfully enforce the Act. If unsuccessful, however, they receive nothing. On the contrary, if the court finds that suits were brought without merit against an agency out of malice or to harrass the agency, then the plaintiffs must pay the amount of attorney's fees it reasonably cost the agency to defend against the suit.

Section 13. Coordination of Illinois Criminal Justice Agencies. The Illinois Criminal Justice Information Authority shall adopt appropriate policies and guidelines to coordinate the implementation of the provisions of this Act and to establish, operate, and maintain criminal history record information systems consistent with the provisions of this Act. The Authority shall coordinate the development of uniform policies, guidelines, and disposition codes and shall coordinate the transfer of criminal history record information among and between the various participants in the criminal justice system, to guarantee disposition reporting consistent with the Act and to avoid duplication of recordkeeping and reporting efforts.

COMMENT

This section of the Act is intended to complement recent legislation creating the Illinois Criminal Justice Information Authority and to support the recommendation of the Criminal Justice Information Council that an independent entity reporting directly to the Governor and consisting of key representatives of the criminal justice community is vital to the process of transforming sound public policies into cost-effective public programs. The Council further found that to improve effective communication and efficient coordination and to reduce duplication of efforts while implementing the provisions of the Act, it is necessary to establish a state-level forum for the discussion and resolution of criminal justice information issues among the executive and judicial branches of government. State and local criminal justice agencies should have an arena where they can exchange views on issues affecting several levels of government jurisdictions and the sharing of criminal history record information useful to all parts of the criminal justice system.

The intent of this Act is to bring together top-level state and local criminal justice

officials to coordinate its effective implementation and to advise the Governor and General Assembly on criminal justice information issues and the potential effects of proposed legislation.

Section 14. State Liability, Audits, and Indemnification. (A) The State of Illinois shall guarantee the accuracy and completeness of criminal history record information disseminated by the Department of Law Enforcement and shall indemnify a clerk of the circuit court, a criminal justice agency, and their employees and officials from, and against, all damage claims brought by others due to such dissemination by the Department, provided that the clerk of the circuit court or the criminal justice agency requesting such indemnification shall have initially reported the criminal history record information in question to the Department in the accurate, complete, and timely manner mandated by this Act and by Section 2.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended.

(B) The clerks of the circuit courts and criminal justice agencies shall be solely responsible for the timeliness and accuracy of all criminal history record information they are required to report to the Department of Law Enforcement. The Department may, in good faith and for purposes of assessing damages pursuant to subsection (G) of Section 8 and Section 9 of this Act, presume that the criminal history record information reported to it is accurate. However, the Department shall regularly conduct representative audits of the criminal history record keeping and criminal history record reporting policies, practices, and procedures of the local and State criminal justice agencies in Illinois and shall take other appropriate measures to ensure compliance with the provisions of this Act. The findings of such audits shall be reported to the

Illinois Criminal Justice Information Authority, Governor, General Assembly, and public at least once every year.

COMMENT

The Act holds each agency accountable for the accuracy and completeness of the criminal history record information it maintains and disseminates. However, a local agency could conceivably be held liable for an error made by the Department of Law Enforcement. For that reason, the State will indemnify any criminal justice agency for any damage claims awarded due to an erroneous dissemination by the Department of Law Enforcement, provided the information was reported accurately to the Department and within the time period specified by the Act.

In order to guarantee the accuracy of the information being submitted to it, the Department is required to conduct annual audits of local agencies.

Section 15. Supplementary Remedies. The remedies provided in this Act are supplementary to, and in no way modify or supplant, any other applicable causes of action arising under the Constitution, statutes, or common law of the State of Illinois.

Section 16. Construction. (A) The provisions of this Act shall be liberally construed to afford the maximum feasible protection to the individual's right to privacy and enjoyment of his good name and reputation and shall be liberally construed to apply to both manual and automated criminal history record information systems wherever possible.

(B) Except as expressly provided herein, the provisions of this Act shall not be construed to authorize the withholding of criminal history record information heretofore unconditionally open to inspection to all members of the public by law or local custom or tradition.

(C) The provisions of this Act shall be construed to make government accountable to individuals in the collection, use, and dissemination of criminal history record information relating to them.

(D) Nothing in this Act shall be construed to provide the basis for the exclusion of otherwise heretofore admissible evidence in any proceeding before a court, parole authority, or other official body of the State of Illinois.

Section 17. Statute of Limitations. Any cause of action arising under this Act shall be barred unless brought within 3 years from the date of the violation of the Act or within 3 years from the date the plaintiff should reasonably have known of its violation, whichever is later.

Section 18. Reimbursement Under State Mandates Act. This Act is necessary for the administration of justice and the protection of the public from malfeasance, misfeasance or nonfeasance by local government officials, and the State is therefore not liable for reimbursement to local governments under paragraph (a) of Section (6) of the State Mandates Act.

COMMENT

Under Illinois Law (the State Mandates Act, Chapter 85, section 2201 et seq.), a statute which imposes the establishment, expansion or modification of duties upon local government is a state mandate. However, not all mandates are reimburable by the State.

State mandates concerning either the administration of justice or the protection of the public from wrongful acts of local officials are classified as "due process mandates." Such mandates are not reimbursable. (Chapter 85, sections 2203 and 2206(a).)

The Auditor General of the State of Illinois recently examined the applicability of the State Mandates Act to criminal history record information disposition reporting requirements imposed upon circuit clerks and State's Attorneys under Chapter 38 section 206-2.1, in the "Management and Program Audit, Criminal History Components, Criminal Justice Information System, Illinois Department of Law Enforcement," July 1982, adopted by the Legislative Audit Commission, November 30, 1982. On page 41 of that report, the Auditor General found:

"As a result of our review, we have concluded that disposition reporting duties under Illinois statute do constitute a State mandate. However, these duties clearly involve the administration of justice, and because such duties are classified as a 'due process mandate,' their administration is not reimbursable under the SMA."

This Act is consistent with this finding by the Auditor General. While this Act imposes state mandates upon local government in the form of disposition reporting and liability for wrongful dissemination of criminal history record information, each state mandate imposed involves either the administration of justice or the protection of the public from wrongful acts of local officials. Thus, reimbursement is not permitted.

Section 19. Applicability to Home Rule Units. It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the Illinois Criminal Justice Authority is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act.

Section 20. Sections 2, 2.1, 3, 5, and 7 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended, are amended to read as follows:

(Ch. 38, par. 206-2)

Sec. 2. The Department shall procure and file ~~for record, as far as can be procured from any source, photographs, all plates, outline pictures, measurements,~~ descriptions and information of all persons who have been arrested for any offenses which are mandated by statute to be collected, maintained, or disseminated by it ~~on a charge of violation of a penal statute of this State~~ and such other information as is necessary and helpful to plan programs of crime prevention, law enforcement and criminal justice, and aid in the furtherance of those programs.

(Ch. 38, par. 206-2.1)

Sec. 2.1. For the purpose of maintaining complete and accurate criminal records of the Department of Law Enforcement, it is necessary for all policing bodies of this State, the clerk of the circuit court, the Illinois Department of Corrections, the sheriff of each county, and State's Attorney of each county to submit certain criminal arrest, charge, and disposition ~~case~~ information to the Department for filing at the earliest time possible. ~~along with criminal arrest records.~~ Unless otherwise noted herein, it shall be the duty of the various participants in the criminal justice system, as defined in the Criminal History Record Information Act, to report such information as provided in this section, both in the form and manner approved by the Illinois Criminal Justice Information Authority and within 30 days of the criminal history event. Specifically:

(A) Arrest Information. All policing bodies in this state shall furnish daily to the Department fingerprints, charges and descriptions of all persons who are arrested for offenses which are mandated by statute to be collected, maintained or disseminated by the Department of Law Enforcement. All policing bodies of this State shall also notify the Department of all decisions not to refer such arrests for prosecution.

(B) Charge Information. The State's Attorney of each county shall notify the Department of all charges filed, including all those added subsequent to the filing of a criminal court case, and

whether charges were not filed in criminal cases for which the Department has a record of an arrest.

(C) Disposition Information. The clerk of the circuit court of each county shall furnish the Department, in the form and manner required by the Supreme Court, with all final dispositions of criminal cases for which the Department has a record of an arrest or a record of fingerprints reported pursuant to paragraph (D) of this Section. Such information shall include, for each charge, all (1) acquittals, convictions, discharges and dismissals in the trial court; (2) reviewing court orders filed with the clerk of the circuit court which reverse or remand a reported conviction or vacate or modify a sentence; (3) continuances to a date certain in furtherance of an order of supervision granted under section 5-6-1 of the Unified Code of Corrections or an order of probation granted under either section 10 of the Cannabis Control Act or section 410 of the Illinois Controlled Substances Act; and (4) judgments terminating or revoking a sentence to probation, supervision or conditional discharge and any resentencing after such revocation.

(D) Fingerprints after Conviction. The circuit court of each county shall order a law enforcement agency to fingerprint immediately, if not previously fingerprinted for the same case, all persons who appear and for whom the court (1) convicts or issues an order of supervision for any offenses which are mandated by statute to be collected, maintained, or disseminated by the Department of Law Enforcement, or (2) issues an order of probation granted under either section 10 of the Cannabis Control Act or section 410 of the

Illinois Controlled Substances Act. The law enforcement agency shall submit such fingerprints to the Department daily.

(E) Corrections Information. The Illinois Department of Corrections and the sheriff of each county shall furnish the Department with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency, or discharge of an individual convicted for any offenses which are mandated by statute to be collected, maintained or disseminated by the Department of Law Enforcement.

~~The clerk of the circuit court of each county shall furnish the Department with all final dispositions of criminal cases for which the Department has record of an arrest.~~

~~The State's Attorney of each county shall notify the Department of all charges filed and whether charges were not filed in criminal cases for which the Department has record of an arrest.~~

~~All information required by this Section shall be furnished within 30 days of any decision not to file a criminal complaint after arrest; or if a complaint is filed, within 30 days of final disposition of the case.~~

COMMENT

It is the intent of the Act that all required information will be reported to the state central repository in a uniform and timely manner.

The Illinois Criminal Justice Information Council found numerous instances where information which should be available from the Department of Law Enforcement is not in the CCH system. For example, 1) a police agency may not report when a person is released without being referred for prosecution. This could affect as many as 19,000 arrests each year. 2) Some State's Attorneys may not report when they decide not to prosecute an individual. 3) Similarly, there are about 40,000 situations each year where a criminal case has been initiated by indictment, notice to appear, or summons, and the dispositions cannot be recorded by the Department of Law Enforcement because there are no fingerprints or document control numbers by which to link the conviction information to the particular offender. 4) Some clerks may not report when supervision or probation has been successfully terminated or when they have been revoked or modified. 5) There is no statutory requirement for correctional facilities to report to the Department of Law Enforcement when they have received or released a convicted offender. 6) The Department may not learn when convictions have been overturned or vacated or when sentences have been modified by the appellate courts.

The Act corrects all of these deficiencies.

Sec. 3. The Department shall file or cause to be filed all ~~plates, photographs, outline pictures, measurements, descriptions and~~ information which shall be received by it by virtue of its office and shall make a complete and systematic record and index of the same, providing thereby a method of convenient reference and comparison, and shall use a fingerprint identification system or any other system of identification which may be developed and which ensures unique individual identification in the form and manner described by the Illinois Criminal Justice Information Authority. The Department shall furnish~~, upon application,~~ all information pertaining to the identification of any person or persons~~, a plate, photograpy, outline picture, description, measurements,~~ or any data of which there is a record in its office as provided by the Criminal History Record Information Act. ~~Such information shall be furnished to peace officers of the United States, of other states or territories, of the Insular possessions of the United States, of Foreign countries duly authorized to receive the same, to all peace officers of the State of Illinois and, conviction information only, to units of local government and school districts under the provisions of subparagraph (c) of paragraph 6 of Section 55a of "The Civil Administrative Code of Illinois". Applications shall be in writing and accompanied by a certificate, signed by the peace officer or chief administrative officer or his designee making such application, to the effect that the information applied for is necessary in the interest of and will be used solely in the due administration of the criminal laws or for the purpose of~~

~~evaluating the qualifications and character of employees or prospective employees of units of local government and school districts. For the purposes of this Section, "chief administrative officer" is defined as follows:~~

~~a) The city manager of a city or, if a city does not employ a city manager, the mayor of the city.~~

~~b) The manager of a village or, if a village does not employ a manager, the president of the village.~~

~~c) The chairman or president of a county board or, if a county has adopted the county executive form of government, the chief executive officer of the county.~~

~~d) The superintendent of a school district, or if the school district does not have a superintendent, the person having general administrative control of the school district.~~

~~e) The supervisor of a township.~~

~~f) The official granted general administrative control of a special district, an authority, or organization of government establishment by law which may issue obligations and which either may levy a property tax or may expend funds of the district, authority, or organization independently of any parent unit of government.~~

(Ch. 38 par. 206-5)

Sec. 5. All policing bodies of this State shall furnish to the Department, daily, in the form and detail the Illinois Criminal Justice Information Authority ~~Department~~ requires, copies of finger prints and descriptions, of all persons who are arrested on charges of violating any penal statute of this State; and of all persons who have in their possession, inks, dye, paper or other articles necessary in the making of counterfeit notes or in the alteration of bank notes or dies, molds or other articles used in the making of counterfeit money and intended to be used by them for such unlawful purposes. Provided, however, that the information required to be furnished to the Department pursuant to this Section shall be required only for offenses which are classified as felonies and Class A or B misdemeanors. Moving or nonmoving traffic violations under "The Illinois Vehicle Code" shall not be reported except for violations of Chapter 4 and Section 11-204 of that Code. In addition, conservation offenses, as defined in the Supreme Court Rule 501(c), which are classified as Class B misdemeanors shall not be reported. The Illinois Criminal Justice Information Authority ~~Department~~ may by its promulgated rule exempt specific police departments which have acceptable machine record reports from sending any "raw" material to the Department required by law ~~this Section~~ except finger prints and photographs. Whenever a policing body is so exempted by rule it shall furnish to the Department acceptable copies of their machine record reports covering the exempted "raw" material. ~~All photographs, finger prints or other records of identification so~~

~~taken shall, upon the acquittal of a person charged with the crime, or, upon his being released without being convicted, be returned to him. Whenever a person, not having previously been convicted of any criminal offense or municipal ordinance violation, charged with a violation of a municipal ordinance or a felony or misdemeanor, is acquitted or released without being convicted, the Chief Judge of the circuit wherein the charge was brought, or any judge of that circuit designated by the Chief Judge, may upon verified petition of the defendant order the record of arrest and the records of the circuit court relating to such arrest expunged from the official records of the arresting authority and the records of the clerk of the circuit court.~~

Whenever a person has been convicted of a crime or of the violation of a municipal ordinace, in the name of a person whose identity he has stolen or otherwise come into possession of, the aggrieved person from whom such identity was stolen or otherwise obtained without authorization, upon learning of the person having been arrested using his identity, may, upon verified petition to the chief judge of the circuit wherein such arrest was had, have a court order entered by such chief judge correcting ~~expunging~~ the arrest record, conviction, if any, and all official records of the arresting authority and trial court, if any, and may have his name removed from all court records in connection with the arrest and conviction, if any, changed by order of the court to show a correction Nunc pro tunc, including the insertion in such records of the real name of the offender, if known or ascertainable, in lieu of the aggrieved's name. Nothing in this Section shall limit the

Department of Law Enforcement or local law enforcement agencies from listing under an offender's real name the false names he or she has used. ~~For purposes of this Section, convictions for moving and nonmoving traffic violations other than convictions of Chapter 4 and Section 11-204 of "The Illinois Vehicle Code" shall not be a bar to expunging the record of arrest and court records for violation of a misdemeanor or municipal ordinance. Notice of the above petition shall be served upon the State's Attorney or prosecutor charged with the duty of prosecuting the offense. Unless the State's Attorney or prosecutor objects to the petition within 30 days from the date of the notice, the court shall enter an order granting or denying the petition. The clerk of the court shall promptly mail a copy of the order to the accused.~~

COMMENT

During the course of public testimony several problems were brought to the Criminal Justice Information Council's attention regarding the expungement or destruction of criminal history record information and which led the Council to conclude that the current law with respect to destruction of non-conviction information is difficult to administer. For example, while non-conviction information may be destroyed in both the local court and arresting agency files, this procedure is available only upon petition by persons who have no prior convictions. On the other hand, state law requires non-conviction information maintained by the state central repository to be returned, not destroyed, and is available to anyone who has been acquitted or released, whether or not the person has been previously convicted.

The Council identified six additional problems regarding expungement of criminal history record information.

First, the state central repository does not carry out the automatic return provision, found in the current law, regarding non-conviction information. Instead, it requires a court-ordered petition for expungement, before removing the information from its files. One result of this practice is that only 2,000 or so of the tens of thousands of records eligible each year for return are actually removed from the repository's file.

Second, the current expungement laws do not address information maintained in the files of state's attorneys, county jails, probation offices, and other criminal justice agencies. Thus, the purpose of destroying the total existence of a criminal history record is never fully implemented even under present law in Illinois. In addition, newspaper articles reporting the record of arrest remain in the public domain and are not subject to the expungement laws.

Third, the current law requires the court record relevant to the arrest to be destroyed as well as the record of the arresting agency. The Council received testimony that courts are not following this destruction procedure, but rather are impounding records from public view under the theory (upheld in the State of Florida) that the statutorily mandated destruction of court records is unconstitutional.

Fourth, the Act opposes the concept of destroying any official document recording a factual event which has already taken place. The Council recommended against endorsing a policy requiring state and local criminal justice agencies to adopt "mandatory amnesia," in which the state would be forced to report that an arrest which did in fact occur, did not.

Fifth, the Council questioned the wisdom of the current provision requiring arrest information to be returned to the petitioner when it is maintained in an automated information system. For example, the Council inquired whether a computer tape would have to be cut and spliced at the point where the information is stored; if it were on microfilm or microfiche would the film or card have to be physically mutilated, and the clipped segment returned to the individual.

Sixth, the current expungement law encourages the maintenance of more complete criminal history records at the local level rather than at the state

level. This policy contradicts state law establishing a central state repository for such information. Under the present statute, with regard to the local record of arrest, persons with prior convictions are not eligible for expungement. Furthermore, petitions for expungement are not automatic. They are based on judicial discretion. On the other hand, the present statute requires automatic return from the state central repository of the arrest records of persons who have a prior record of conviction. Conceivably, then, a career criminal could have a record of acquittal removed at the state level but not at the local.

In conclusion, this Act proposes a new policy based on the principle that the expungement of original criminal history records should generally be prohibited. Thus, the current law which permits the discretionary destruction of some (but not all) non-conviction information from the files of some (but not all) criminal justice agencies after 30 days, would be replaced by a policy that uniformly limits the dissemination of all non-conviction information after one year to only those with a legitimate need to know the information.

(Ch. 38, par. 206-7)

Sec. 7. No non-conviction information which is more than one year old and which is maintained in a file or record of the Department hereby created shall be made public, except as provided in the Criminal History Record Information Act, or other Illinois law. Any person violating this Section shall for each violation be guilty of a Class A misdemeanor. ~~may be necessary in the identification of persons suspected or accused of crime and in their trial for offenses committed after having been imprisoned for a prior offense, and no information of any character relating to its records shall be given or furnished by said Department to any person, bureau or institution other than as provided in this Act or other State law, or when a governmental unit is required by state or federal law to consider such information in the performance of its duties. Violation of this Section shall constitute a Class A misdemeanor.~~

However, if an individual requests the Department to release information as to the existence or nonexistence of any criminal record he might have, the Department shall do so upon determining that the person for whom the record is to be released is actually the person making the request. The Illinois Criminal Justice Information Authority ~~Department~~ shall establish rules to set forth procedures to allow an individual to review and correct any criminal history record information the Department may hold concerning that individual upon verification of the identity of the

individual. Such rulemaking is subject to the provisions of the Illinois Administrative Procedure Act.

COMMENT

The federal regulations governing criminal history record information require the states to ensure that individuals have the right both to review and correct their own personal criminal history records. (28 CFR section 20.21(g).) The Act encourages this right in several places and guarantees compliance with the federal regulations in this Section.

(Ch. 38, rep. par. 206-4)

Section 21. Section 4 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as amended, is repealed.

Section 22. Section 5-6-3.1 of the "Unified Code of Corrections", approved July 26, 1972, as amended, is amended to read as follows:

(Ch. 38, par. 1005-6-3.1)

Sec. 5-6-3.1. Incidents and Conditions of Supervision. (a) When a defendant is placed on supervision, the court shall enter an order for supervision specifying the period of such supervision, and shall defer further proceedings in the case until the conclusion of the period.

(b) The period of supervision shall be reasonable under all of the circumstances of the case, but may not be longer than 2 years.

(c) The court may in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant as determined for each defendant in the proper discretion of the court require that the person:

(1) Make a report to and appear in person before or participate with the court or such courts, person, or social service agency as directed by the court in the order of supervision;

(2) pay a fine and costs;

(3) work or pursue a course of study or vocational training;

(4) undergo medical or psychiatric treatment; or treatment for drug addition or alcoholism;

(5) attend or reside in a facility established for the instruction or residence of defendants on probation;

(6) support his dependents;

(7) refrain from possessing a firearm or other dangerous weapon;

(8) and in addition, if a minor:

(i) reside with his parents or in a foster home;

(ii) attend school;

(iii) attend a non-residential program for youth;

(iv) contribute to his own support at home or in a foster home; and

(9) make restitution or reparation in an amount not to exceed actual loss or damage to property and pecuniary loss. The court shall determine the amount and conditions of payment;

(10) perform some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities.

(d) The court shall defer entering any judgement on the charges until the conclusion of the supervision.

(e) At the conclusion of the period of supervision, if the court determines that the defendant has successfully complied with all of the conditions of supervision, the court shall discharge the defendant and enter a judgement dismissing the charges.

(f) Dishcarge and dismissal upon a successful conclusion of a disposition of supervision shall be deemed without adjudication of guilt and shall not be termed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime. One year ~~Two years~~ after the discharge and dismissal under this Section a person shall only ~~may~~ have his record of arrest disseminated ~~expunged~~ as may be provided by the Criminal History Record Information Act ~~law~~. However, any defendant placed on supervision before January 1, 1980, may move for expungement of his arrest record, as provided by law before the effective date of the Criminal History Record Information Act, at any time after discharge and dismissal under this Section.

(g) Neither the State, any unit of local government, nor any official or employee thereof acting in the course of his official duties shall be liable for any tortious acts of any person placed on supervision who is given any public service work as a condition of supervision, except for willful misconduct or gross negligence on the part of such governmental unit, official, or employee.

(h) No person assigned to a public service employment program shall be considered an employee for any purpose, nor shall be considered an employee for any purpose, nor shall the county board be obligated to provide any compensation to such person.
(i) A disposition of supervision is a final order for the purposes of appeal.

COMMENT

Current state law permits a person who has successfully completed a period of court-ordered supervision to have that information expunged. A two-year waiting period is mandated for this situation.

The Act favors a policy limiting all dissemination of supervision information one year after successful termination of supervision, instead of the current policy of destroying some of this information two years after the fact. However, this change in policy is not meant to be retroactive and anyone entitled to have the information destroyed prior to the effective date of the Act shall not be denied.

Section 23. Section 2-101 of the "Local Governmental and Governmental Employees Tort Immunity Act", approved August 13, 1965, as amended, is amended to read as follows:

(Ch. 85, par. 2-101)

Sec. 2-101. Nothing in this Act affects the right to obtain relief other than damages against a local public entity or public employee. Nothing in this act affects the liability, if any, of a local public entity or public employee, based on:

(a) ~~a~~ contract;

(b) ~~b~~ operation as a common carrier; and this Act does not apply to any entity organized under or subject to the "Metropolitan Transit Authority Act", approved April 12, 1945, as amended;

(c) ~~c~~ The "Workers' Compensation Act", approved July 9, 1951, as heretofore or hereafter amended;

(d) ~~d~~ The "Workers' Occupational Diseases Act", approved July 9, 1951, as heretofore or hereafter amended;

(e) ~~e~~ Section 1-4-7 of the "Illinois Municipal Code". approved May 29, 1961, as heretofore or hereafter amended.

(f) The "Criminal History Record Information Act", enacted by the 83rd General Assembly, as heretofore or hereafter amended.

Section 24. Section 55a of "The Civil Administrative Code of Illinois", approved March 7, 1917, as amended, is amended to read as follows:

(Ch. 127, par. 55a)

Sec. 55a. The Department of Law Enforcement shall have been vested in the Department of Public Safety by "An Act in relation to the State police:, approved July 20, 1949, as amended;

2. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the establishment and operation of radio broadcasting stations and the acquisition and installation of radio receiving sets for police purposes", approved July 7, 1931, as amended;

3. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to criminal identification and investigation", approved July 2, 1931;

4. To (a) investigate the origins, activities, personnel and incidents of crime and the ways and means to redress the victims of crimes, and study the impact, if any, of legislation relative to the effusion of crime and growing crime rates, and enforce the criminal laws of this State related thereto, (b) enforce all laws regulating the production, sale, prescribing, manufacturing, administering, transporting, having in possession, dispensing, delivering, distributing, or use of controlled substances and cannabis, (c) employ skilled experts, scientists, technicians, investigators or otherwise specially qualified persons to aid in preventing or detecitng crime, apprehending criminals, or preparing and presenting evidence of violations of the criminal laws of the State, (d) cooperate with the police of cities, villages and incorporated towns, and with the police officers of any county, in enforcing the laws of the State and in making arrests and recovering property, (e) apprehend and deliver up any person charged in this State or any other State of the United States with treason, felony, or other crime, who has fled from justice and is found in this State, and (f) conduct such other investigations as may be provided by law. Persons exercising these powers within the Department are conservators of the peace and as such have all the powers possessed by policemen in cities and sheriffs, except that they may exercise such powers anywhere in the State in cooperation with and after contact with the local law enforcement officials.

5. To (a) be a central repository and custodian of criminal statistics for the State, (b) procure and file criminal history record information ~~for record photographs, plates, outline pictures, measurements, descriptions~~ of all persons who have been

arrested for any offenses which are mandated by statute to be collected, maintained, or disseminated by it ~~on a charge of violation of a penal statute of this State~~, (c) procure and file for record such information as is necessary and helpful to plan programs of crime prevention, law enforcement and criminal justice, (d) procure and file for record such copies of fingerprints, as may be required by law, of all persons arrested for any offenses which are mandated by statute to be collected, maintained, or disseminated by it ~~on charges of violating any penal statute of the State~~, (e) establish general and field crime laboratories, (f) register and file for record such information as may be required by law for the issuance of firearm owner's identification cards, (h) employ polygraph operators, laboratory technicians and other specially qualified persons to aid in the identification of criminal activity, and (i) undertake such other identification, information, laboratory, statistical or registration activities as may be required by law.

Photographs, fingerprints or other records of identification so taken shall only be disseminated as provided by the Criminal History Record Information Act. The Department shall only collect, maintain, or disseminate criminal history record information which it is authorized by law to collect, maintain, or disseminate. The Department is hereby empowered to collect, maintain, and disseminate criminal history record information regarding all felonies, Class A and B misdemeanors, murder, and Class X offenses. Moving or non-moving traffic violations under "The Illinois Vehicle Code" shall not be reported except for violations of Chapter 4 and

Section 11-204 of that Code. In addition, conservation offenses, as defined in the Supreme Court Rule 501(c), which are classified as Class B misdemeanors shall not be reported. ~~, upon the acquittal of a person charged with the crime or upon his being released without being convicted, be returned to him, except that nothing herein shall prevent the Department of Law Enforcement from maintaining all records of any person who is admitted to probation upon terms and conditions and who fulfills those terms and conditions pursuant to Section 410 of the "Illinois Controlled Substances Act", enacted by the 77th General Assembly;~~

6. to (a) acquire and operate one or more radio broadcasting stations in the State to be used for police purposes, (b) operate a statewide communications network to gather and disseminate information for law enforcement agencies, (c) operate an electronic data processing and computer center for the storage and retrieval of data pertaining to criminal activity, (d) undertake such other communication activities as may be required by law, (e) based upon personal identifiers only, conduct an employment inquiry, without charge, upon the request of an unit of local government or school district to ascertain whether an employee or prospective employee of the unit or district has been convicted of any offenses which are mandated by statute to be collected, maintained, or disseminated by it ~~on a charge of violation of a penal statute of this State~~. Such information of conviction shall be furnished to an unit of local government or school district and shall be used by the unit or district for the sole purpose of evaluating the

character and qualifications of the employee or prospective employee in relation to his employment.

7. To provide, as may be required by law, assistance to local law enforcement agencies through (a) training, management and consultant services for local law enforcement agencies, and (b) the pursuit of research and the publication of studies pertaining to local law enforcement activities.

8. to exercise the rights, powers and duties which have been vested in the Department of Law Enforcement and Director of the Department of Law enforcement by "An Act in relation to control and regulation of controlled substances, and to make an appropriation therefore", approved July 5, 1957;

9. to exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the regulation of traffic", approved July 9, 1935, as amended;

10. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act relating to the acquisition, possession and transfer of firearms and firearm ammunition, to provide a penalty for the violation thereof, and to make an appropriation in connection therewith", approved August 3, 1967;

11. To enforce and administer such other laws in relation to law enforcement as may be vested in the Department;

12. To transfer jurisdiction of any realty title to which is held by the State of Illinois under the control of the Department to any other Department of the State Government or to the State Employees Housing Commission, or to acquire or accept Federal land, when such transfer, acquisition or acceptance is advantageous to the State and is approved in writing by the Governor;

13. With the written approval of the Governor, to enter into agreements with other departments created by this Act, for the furlough of inmates of the penitentiary to such other departments for their use in research programs being conducted by them.

For the purpose of participating in such research projects, the Department may extend the limits of any inmate's place of confinement, when there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions, to leave the confines of the place unaccompanied by a custodial agent of the Department. The Department shall make rules governing the transfer of the inmate to the requesting other department having the approved research project, and the return of such inmate to the unextended confines of the penitentiary. Such transfer shall be made only with the consent of the inmate.

The willful failure of a prisoner to remain within the extended limits of his or her confinement or to return within the time or manner prescribed to the place of confinement designated by the Department in granting such extension shall be deemed an escape from custody of the Department and punishable as provided in Section 17 of "An Act in relation to the Illinois State Penitentiary", approved June 30, 1933, as now or hereafter amended.

14. To provide investigative services, with all of the powers possessed by policemen in cities and sheriffs, in and around all race tracks subject to the Horse Racing Act of 1975.

15. To expend such sums as the Director deems necessary from Contractual Services appropriations for the Division of Criminal Investigation for the purchase of evidence and for the employment of persons to obtain evidence. Such sums shall be advanced to agents authorized by the Director to expend funds, on vouchers signed by the Director.

16. To conduct arson investigations.

17. To develop a separate statewide statistical police contract record keeping system for the study of juvenile delinquency. The records of this police contact system shall be limited to statistical information. No individually identifiable information shall be maintained in the police contact statistical record system.

To develop a separate statewide central adjudicatory and dispositional records system for persons under 19 years of age who have been adjudicated delinquent minors and to make information available to local registered participating police youth officers so that police youth officers will be able to obtain rapid access to the juvenile's background from other jurisdictions to the end that the police youth officers can make appropriate dispositions which will best serve the interest of the child and the community. Information maintained in the adjudicatory and dispositional record system shall be limited to the incidents or offenses for which the minor was adjudicated delinquent by a court, and a copy of the court's dispositional order. All individually identifiable records in the adjudicatory and dispositional records system shall be destroyed when the person reaches 19 years of age.

To develop rules which guarantee the confidentiality of such individually identifiable adjudicatory and dispositional records except when used for the following:

1. by authorized juvenile court personnel or the state's attorney in connection with proceedings under the Juvenile Court Act; or

2. inquiries from registered police youth officers.

To develop administrative rules and administrative hearing procedures which allow a minor, his attorney, his parents or guardian access to individually identifiable adjudicatory and dispositional records for the purpose of determining or challenging the accuracy of the records. Final administrative decisions shall be subject to the provisions of the Administrative Review Act.

For the purposes of this Act "police youth Officer" means a member of a duly organized State, county or municipal police force who is assigned by his Superintendent, Sheriff or Chief of Police, as the case may be, to specialize in youth problems.

COMMENT

Both this Section and Chapter 38 section 206-5 specifically list the categories of offense information the Department of Law Enforcement is authorized to collect, maintain, and disseminate. As the legislature sees fit, this information could be expanded or contracted from time to time to meet changing needs and priorities.

The traditional approach to protecting privacy has been to limit dissemination to select groups, a policy fostering secrecy and enhancing the power of the holder of the information. The Act generally rejects this approach in favor of a general policy of openness and accountability by government agencies.

The Act takes the position that prohibiting dissemination of criminal history record information is not the most prudent way to accomplish the goal of protecting reputation and privacy rights. The constitutionally protected right to reputation can only be damaged by the dissemination of erroneous information. If the state central repository is incapable of guaranteeing the accuracy or completeness of the information which it maintains, then the collection and storage of inaccurate and incomplete information should be prohibited, as well as its dissemination. It is difficult, however, if not impossible, to damage a person's reputation by making accurate and complete statements about that person. To the extent that the State can guarantee the quality of the information it maintains and disseminates, the potential damage to the individual's reputation will be reduced or eliminated.

On the other hand, the constitutionally protected right to privacy can be damaged by accurate and complete statements. However, this right only exists when there is a "reasonable expectation of privacy." (Katz v. United States, 389 US 347,351 (1967).) The Act pays great deference to the fact that all arrests, prosecutions, trials and sentences are public events giving rise to very little, if any, justification for confidentiality. Thus, this policy generally favoring access to criminal history record information is based on the principle that the Act is regulating public records, maintained at public expense, which relate to public proceedings.

Section 25. Effective Date. This Act takes effect one year after it becomes law.

END