MAINE STATE LEGISLATURE

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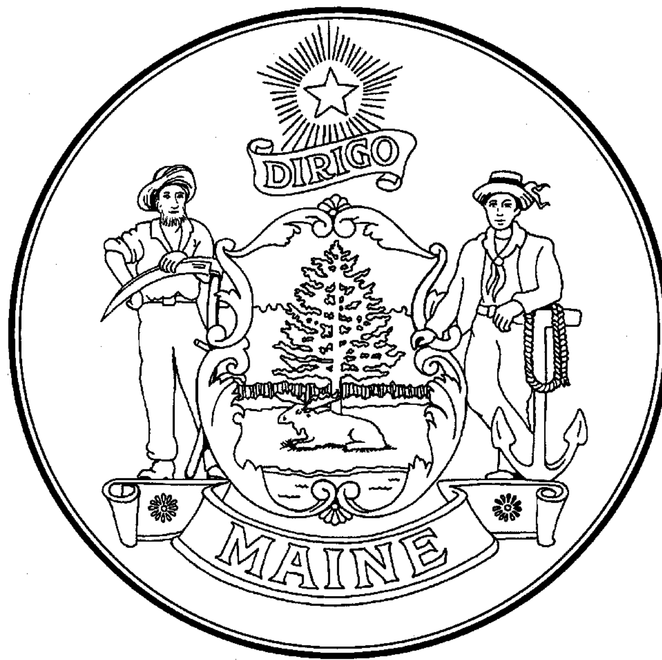

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1-21-74

STATE OF MAINE

Inter-Departmental Memorandum Date September 12, 1973

To Ltc. Donald E. Nichols, Deputy Chief Dept. State Police

From Jon A. Lund, Attorney General Dept. Attorney General

Subject Expungement of Records of Arrest

SYLLABUS:

1. 16 M.R.S.A. § 600 requires that the record of arrest of an individual be destroyed or obliterated from the files of any agency maintaining such a record in the event that; (A) the court dismissed the charge or, (B) the individual is acquitted of the crime charged.

2. 16 M.R.S.A. § 600 does not prevent the use of investigative records, communication records, fingerprints or photographs by law enforcement agencies, despite the fact that such documents may contain notations which reflect the fact of arrest.

FACTS:

In 1969 the Maine Legislature passed a law, 16 M.R.S.A. § 600, relating to the expungement of records of arrest. In substance, the law requires that any agency having records of arrest or detention relating to the arrest of the person, shall expunge from its records any reference to the arrest of the person on that charge in the event that the individual concerned is either: (A) acquitted of that charge, or (B) has the charge against him dismissed by any court. The law specifically excludes from expungement, in such a situation, investigative and communication records, fingerprints and photographs.

The State Bureau of Identification now informs us that the back of fingerprint cards, photographs (mug shots), and perhaps investigative and communication reports often contain reference to the fact that the individual concerned was arrested. Apparently, the present procedure of the State Bureau of Identification is to stamp these records with the words "expunged-do not release." The Bureau is now concerned about the use of these records within the law enforcement agencies as a method of investigation.

In light of its concern, the Bureau has asked this office for an opinion as to the meaning of 16 M.R.S.A. § 600.

QUESTIONS:

1. Does 16 M.R.S.A. § 600 require that records of arrest of individuals, who are acquitted of the charges or have the charges against them dismissed, be destroyed or obliterated?

2. Does 16 M.R.S.A. § 600 require that references to the arrest of such individuals contained on fingerprint cards, photographs, or investigative and communication records be destroyed or eliminated?

ANSWERS:

1. Yes.

2. No.

REASONS:

Situation #1: The term "expunge" means to destroy or obliterate; it implies not a legal act but a physical one of obliteration or cancellation. See Andrews v. Police Court of City of Stockton, 123 P.2d 128 (1942); Application of Brandon, 131 N.Y.S. 2d 204 (1954); Natalizia v. Atlantic Tubing and Rubber Company, 105 A.2d 190 (1954); Thornbrough v. Barnhart, 340 S.W. 2d 569 (1960). The foregoing cases and other general authorities are unanimous in their conclusion that to "expunge" means to permanently destroy or obliterate.

The legislative history of this statute as revealed in the 1969 Legislative Record, reveals that the lawmakers were aware of the meaning of the term expungement and of the concern of law enforcement authorities with this Bill. The legislative debate on this Bill reveals that the exception to the expungement rule, fingerprints, photographs, investigative and communication records, were added out of concern expressed by various law enforcement agencies. (L.R. 1969, at 781)

When the Bill reached the House, further concern was expressed by then Representative Lund, that police agencies would be deprived of important and valuable sources of information which were to be used for investigative purposes. (L.R. 1969, at 922.) Later, Representative Lund sponsored an amendment to the Bill which was tabled to give the Judiciary Committee and the sponsor of the Bill an opportunity for review. (L.R. 1969, at 1124.) The amendment came forth for debate after the sponsor of the Bill expressed no interest in considering any further amendment. It was clearly explained to the House that expungement meant to obliterate or to get rid of, and it was submitted by Representative Lund that expunged records would have to be thrown away or so

altered that they could not be read. (L.R. 1969, at 1426.) Representative Lund's amendment would have removed the expunging provisions of the Bill and have provided in their place, that upon acquittal or dismissal each agency would make the information of these facts a part of its records and would not thereafter release a transcript of its records without the entry of acquittal or dismissal. (L.R. 1969, at 1428.) Subsequent debate lead to a motion to indefinitely postpone action on Representative Lund's amendment, which motion was carried by a vote of 84 to 40.

A later amendment, relating to the penalty provisions of the statute and not here relevant, was passed by the House, The Bill in that form, without Mr. Lund's amendment, was passed in non-concurrence. (L.R. 1969, at 1576.) The Senate then voted to recede from its original position and to concur in the Bill as amended with regards to its penalty provisions. (L.R. 1969, at 1641.)

Upon the return of the Bill to the House for final debate in that chamber, Representative Lund once again spoke out in opposition. During a course of that debate, Representative Lund again made clear that the Bill was not an anti-disclosure Bill, but rather an expungement law. In spite of this, the House enacted passage. (L.R. 1969 at 1784, 1785.)

Upon its return to the Senate, the Bill was further debated. That debate reveals, once again, that the purpose of the Bill was expungement, and not non-disclosure. Further, it is revealed through the sponsor of the Bill, Mr. Beliveau, that the exceptions to the proposed expungement law, fingerprints, photographs, investigative and communication records, were added at the request of concerned law enforcement officials in order that those types of records <u>would not have to be destroyed</u> when the law became effective. (L.R. 1969 at 1850, 1851.) After some further debate on the Bill, not here relevant, the Bill was enacted into law.

Given the obvious meaning of the term "expunge" as announced in the cases cited above, and the fact that the Legislature was made fully aware of this meaning in its debate upon the passage of this Bill, all arrest records of persons acquitted, or of persons against whom a criminal charge has been dismissed by a court must be destroyed or obliterated. This would include the so-called S.B.I. printout sheet and any other records <u>maintained solely for the purpose of reflecting the fact of arrest</u>. Any record not an investigative or communication record, a fingerprint file, or a photograph must also have obliterated* from its surface, in some permanent manner, any reference to the fact of arrest.

* See opinion of 1-31-74

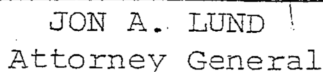
Situation #2: The question here is the meaning of the words "...excluding investigative and communication records, fingerprints and photographs,...". As mentioned above, these exclusions were added to the Bill to accommodate law enforcement officials. The Legislature did not give any thought to the notion that these excepted records, in addition to the S.B.I. printout sheet, may make reference to the fact that an individual had been arrested. Further, the Legislature gave no thought as to what types of records were generally released by the S.B.I. to officials outside of the area of law enforcement. Thus, while the intention is clear that a "pure record of arrest", if there be such a thing, should be expunged; it is unclear from the legislative history as to what should be done with the hybrid.

The pertinent part of the statutory language reads as follows: "Upon the receipt of a certified copy, each agency shall expunge from its records, excluding investigative and communication records, fingerprints and photographs, any reference to the arrest of the person on that charge." This language is clear and unequivocal. What must be expunged is "any reference to the arrest of the person" from any record except the four specific exclusions. In light of this unequivocal language, it is apparent that the Legislature has exempted these records and any notations upon them from expungement.

Having this in mind, the State Bureau of Identification should be able to use and release their fingerprint cards and/or mug shots for use in investigation of subsequent crimes, in spite of the fact that these records may contain notations of the fact that an individual was arrested for a crime of which he was later acquitted. The procedure presently employed of stamping these cards with the words "expunged-do not release" is clearly not within the contemplation of the statute.

It is true that the primary function of statutory interpretation is to ascertain the intent of the Legislature. With reference to so-called "pure records of arrest" that intention is manifest. Such records must be destroyed. The language of the statute makes it equally clear, that references to arrest on the specific types of records listed need not be expunged. In such a situation the legislative intent must be determined from the language of the statute.

The State Bureau of Identification may proceed to use the four excluded records for investigation of subsequent crimes.



JON A. LUND
Attorney General