

# MAINE STATE LEGISLATURE

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16 M.R.S.A. 606  
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DEPARTMENT OF THE ATTORNEY GENERAL



Memo From:

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Date: August 24, 1976  
To: Richard M. Oliver, Warden Dept: Maine State Prison  
Subject: Criminal History Record Information Act

STATEMENT OF FACTS:

The Warden of the Maine State Prison has received a number of requests by inmates to review the records kept on them at the Prison. The inmates claim the Criminal History Record Information Act gives an inmate a right of access and review. The Warden has therefore asked the following question:

QUESTION:

Under the Criminal History Record Information Act, does an inmate at the Maine State Prison have a right to review records kept on him at the Maine State Prison and, if such a right exists, what records is the inmate entitled to review?

ANSWER:

The Maine Criminal History Record Information Act (16 M.R.S.A. Chapter 3, subchapter VII) gives an inmate of the Maine State Prison a right to review "criminal history record information" on file on him at the Prison. "Criminal history record information" means brief descriptions of arrests, detentions, complaints, indictments, informations and any dispositions arising therefrom, sentencing, correctional supervision and release. It does not include intelligence, investigatory or other related files which are related to the occurrence of

the above set forth official criminal justice transactions. The nature of the description referred to with respect to correctional supervision and release would include the fact that correctional supervision in connection with a specific conviction occurred, the location of the supervision, the dates of the supervision, and, if applicable, the status of the release. The inmate's right to inspect does not extend to the Prison's administrative records as they relate to the inmate.

REASONING:

The Criminal History Record Information Act as enacted by P.L. 1975, c. 763, effective July 29, 1976, appears in the Maine Revised Statutes in subchapter VII, Chapter 3 of Title 16. Section 606, subsection 1 of Title 16, provides in relevant part:

"Any person or his attorney shall have the right to inspect the criminal history record information concerning him maintained by a criminal justice agency, provided that a person's right to inspect or review criminal history record information pertaining to himself shall not extend to data contained in intelligence, investigatory or other related files and shall not be construed to include any other information than that included within the definition of "criminal history record information." (Emphasis supplied)

Subsection 2 of § 606 sets forth the procedure a person shall follow to seek correction of inaccurate or incomplete information contained within questioned criminal history records.

A criminal justice agency is defined by the Act in § 601, subsection 3. Pertinently, it provides, "'Criminal justice agency' means those agencies at all levels of Federal or State government which perform as their principal function, activities relating to . . . (the) incarceration or rehabilitation of criminal offenders. . . ." Thus the Maine State Prison is a "criminal justice agency" within

the contemplation of the provisions of the subject act. Section 606 (1), as quoted above, does give an inmate at the Maine State Prison the right to inspect the criminal history record information on file on him at the Maine State Prison.

The question remains, what is "criminal history record information"? The subject phrase is defined in § 601 (2) as follows:

"'Criminal history record information' means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, complaints, indictments, informations and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprints, palm prints or photograph records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations."

Keeping in mind the above-quoted language of § 606 (1) that a person's right to inspect "shall not extend to data contained within intelligence, investigatory or other related files and shall not be construed to include any other information than that included within the definition of 'criminal history record information,'" we are of the opinion that the legislature has given a person the right to inspect only those records which reflect that one or more of the official criminal justice transactions set forth in § 601 (2) occurred with respect to that individual and did not give that person the right to inspect the investigative and related records in connection with the official actions of arrest, detention, complaint, indictment, information and any disposition arising therefrom, sentencing, correctional supervision and release.

We are of the opinion that "descriptions and notations of . . . correctional supervision and release" as contained within § 601 (2), refers to descriptions in

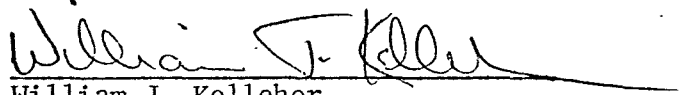
the records that correctional supervision in connection with a specific conviction occurred, the location of the supervision, the dates of the supervision, and, if applicable, the status of the release.

We note that the language and format of the Act under discussion are based, in large measure, upon language contained within regulations concerning criminal justice information promulgated by the United States Attorney General. See 28 C.F.R. § 20 (1975). In view of this reliance by the Legislature on the federal regulations, we have studied the history of the federal regulations and find therein support for our opinion with respect to the meaning of the term "criminal history record information." In his appendix-commentary to the regulations in proposal form, Attorney General Levi stated, "The definition of eriminal history record informa-tion is intended to include the basic offender-based transaction statistics/computer-ized criminal history (OBTS/CCH) data elements . . . The definition, however, does not extend to other information contained in criminal justice agency reports. Intel-ligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history record information." (Emphasis supplied) 40 Fed. Reg. 22117 (1975).

A complete exploration of the rights of inmates to have access to their records at the Prison requires consideration of the provisions of the Freedom of Access Law. 1 M.R.S.A. Chapter I, subchapter I. Section 408 provides, pertinently, "Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of the record." (Emphasis supplied.) "The term 'public records' shall mean any written, printed or graphic matter or any mechanical or electronic data

compilation from which information can be obtained except: A. Records that have been designated confidential by statute. . . ." 1 M.R.S.A. § 402 (3). Section 1-B of Title 34 provides, in relevant part, "All orders of commitment, medical and administrative records, applications and reports and the facts therein pertaining to any persons receiving services from the department (of Mental Health and Corrections) . . . shall be kept confidential and shall not be disclosed by any person . . ." Accordingly, inmates possess no right of access to their records under the Freedom of Access Law:

We trust this opinion will prove helpful to you in responding to requests by inmates to review records in your possession.

  
William J. Kelleher  
Assistant Attorney General

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