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DEPARTMENT OF THE ATTORNEY GENERAL

State Agency
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Memo From.

WILLIAM J. KELLEHER
ASSISTANT ATTORNEY GENERAL
COUNSEL, MENTAL HEALTH & CORRECTIONS

Date: 22 September 1976

To: Frank J. Mack, Personnel Officer Dept: Mental Health and Corrections

Subject: Department of Mental Health and Corrections employment checks

I am in receipt of your memorandum dated July 30, 1976, in which you inform us that the State Bureau of Identification has denied the Personnel Section at the Bangor Mental Health Institute information contained within the Bureau's files as the Institute attempts to ascertain whether applicants for employment have criminal records. You inform us that the Bureau of Identification has notified you that a law exists which prevents them from furnishing the Institute the information and you ask and we answer two questions, as follows:

1. What is this law? The statute on which the State Bureau of Identification is undoubtedly relying is 16 M.R.S.A. Chapter 3, subchapter VII, the Criminal History Record Information Act, as enacted by P.L. 1975, c. 763, effective July 29, 1976. See especially §§603 and 604.

2. Would it be possible for us to avail ourselves of this important information? We advise that 16 M.R.S.A. §604, sub-§1, B, would permit the dissemination of criminal history information to a criminal justice agency for the purposes of criminal justice agency employment. The act defines criminal history record information to include "identifiable descriptions and notations of arrests, detentions, complaints, indictments, informations and any disposition arising therefrom, sentencing, correctional supervision and release . . ." 16 M.R.S.A. §601 (2). A "criminal justice agency" within the contemplation of the act means "those agencies at all levels of Federal or State Government which perform as their principal function, activities relating to . . . incarceration or rehabilitation of criminal offenders . . ." 16 M.R.S.A. §601 (3). We therefore advise that Bangor Mental Health Institute is not a "criminal justice agency" but that those institutions and agencies within the Department of Mental Health and Corrections whose principal functions are the incarceration and rehabilitation of criminal offenders are permitted to have disseminated to them criminal history information for the purposes of determining the suitability of those applying to those institutions and agencies for employment. Both 16 M.R.S.A. §603 (3) (E) and §604 (1) (C) and (F) would allow certain criminal history record information to be made available to state agencies which are expressly permitted such access by statute or executive order but we find no such authority to authorize dissemination to Bangor Mental Health Institute.

William J. Kelleher
Assistant Attorney General

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