

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2273

S. P. 730

In Senate, February 26, 1976

Reported by Senator Collins of Knox, from Committee on Judiciary pursuant to Joint Order S. P. 583 and printed under Joint Rules No. 3.

HARRY N. STARBRANCH, Secretary

(Filed under Joint Rule 3 Pursuant to S. P. 583)

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

**AN ACT Repealing the Expungement Law and Providing for the Control of
Access of and Disclosure of Criminal History Record Information.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 16 MRSA c. 3, sub-c. VI, as enacted by PL 1969, c. 460, and as last amended by PL 1975, c. 623, §§ 18-A and 18-B, is repealed and the following enacted in place thereof:

SUBCHAPTER VI

CRIMINAL HISTORY RECORD INFORMATION

§ 601. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Criminal history record information. "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.

3. Criminal justice agency. "Criminal justice agency" means those agencies at all levels of government in this State which perform as their principal function, activities relating to crime prevention, including research or the sponsorship of research; the apprehension, prosecution, adjudication, incarceration or rehabilitation of criminal offenders or the collection, storage, dissemination or usage of criminal history record information.

4. Executive order. "Executive order" means an order of the President of the United States or the Governor of this State which has the force of law and which is published in a manner permitting regular public access thereto.

§ 602. Applicability

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry such as police blotters, maintained by criminal justice agencies, compiled chronologically;

C. Court records of public judicial proceedings compiled chronologically;

D. Published court opinions;

E. Records of traffic offenses including traffic infractions, maintained by the Secretary of State, except for violations of Title 29, sections 893 and 1312 and except for those violations resulting in revocation of license pursuant to Title 29, section 1313; and

F. Announcements of a full and free pardon.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prevent a criminal justice agency from disclosing to the public factual information concurring the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates; nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, when specific inquiry as to whether a named individual was arrested, had a complaint, information or indictment returned against him, had disposition on a charging document, on a specified date, if the information disclosed is based on data excluded by subsection 2.

§ 603. Nondisclosure of certain records

Dissemination of criminal history record information, whether directly or through any intermediary, which relates directly to information respecting:

1. A crime for which a person has been acquitted in any court;
2. A crime for which a person has been convicted in any court but for which a full and free pardon has been granted; and
3. A crime for which a person has been charged by complaint, indictment or information which subsequently has been dismissed in any court under circumstances foreclosing the State from reinitiating such criminal charge; shall be limited to:

A. Criminal justice agencies, for purposes of the administration of criminal justice;

B. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure security and confidentiality of the data and provide sanctions for violations thereof;

C. Individuals and agencies for the express purpose of research, evaluation or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the security and confidentiality of the data and provide sanctions for violations thereof;

D. Individuals and agencies where authorized by court order or court rule; and

E. Such other state agencies which are by statute or executive order expressly allowed access to such criminal history record information in order to carry out their lawful duties.

§ 604. Limitations on dissemination

1. Dissemination to agencies. Except as provided in section 603, dissemination of criminal history record information, whether directly or through any intermediary, shall be limited to:

A. Criminal justice agencies, for purposes of the administration of criminal justice;

B. Criminal justice agencies, for purposes of criminal justice agency employment;

C. Such other state agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct;

D. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure security and confidentiality of the data and provide sanctions for violations thereof;

E. Individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative or statistical purposes, insure the security and confidentiality of the data and provide sanctions for violations thereof;

F. Agencies of State or Federal Government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and

G. Individuals and agencies where authorized by court order or court rule.

2. Dissemination to noncriminal justice agencies. Use of criminal history record information disseminated to noncriminal justice agencies as authorized by this section shall be limited to the purposes for which it was given and shall not be disseminated further.

§ 605. Right to access and review

1. Inspection. 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." Criminal justice agencies may prescribe reasonable hours during which such right may be exercised, the location at which such right may be exercised and such additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary, both to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect such information. Such agencies shall supply to the person or his attorney a copy of the criminal history record information pertaining to him upon request and payment of a reasonable fee.

2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing either in person or by mail his request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

Upon receipt of such request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and com-

plete. If such investigation reveals that the questioned information is inaccurate or incomplete, the agency shall forthwith correct the error or deficiency and advise the requesting person that such correction or amendment has been made.

If the agency refuses to make the requested amendment or correction, it shall advise the requesting person of the refusal and the reasons therefor. If an agency refuses to make a requested amendment or correction, or if the requesting person believes the agency's decision to be otherwise unsatisfactory, the person may seek relief in the Superior Court.

3. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall within 30 days thereof, advise all prior recipients of the information of the amendment or correction.

§ 606. Accounting for disclosures

All criminal justice agencies shall establish a system of accounting for all disclosures of criminal history record information, made either orally or in writing. Accounting records maintained pursuant to this section shall permit the agency to advise individuals, promptly upon request, of the persons or agencies to which records concerning them have been disclosed, and shall, at a minimum, include the identification of the particular information disseminated, the name and address of recipient person or agency, the record information and the purpose for such dissemination. Each entry for disclosures of criminal history records must be maintained for one year.

At the time he requests to inspect or correct criminal history record information concerning him, or at any other time, a person or his attorney, may request of a criminal justice agency an accounting of the dissemination of criminal history record information concerning him. Upon such request, and after satisfactory verification of identity by fingerprint comparison or other means, the agency shall make available to the requesting person such accounting records, except that an accounting need not be made available in cases of the dissemination of criminal justice record information to criminal justice agencies.

Sec. 2. 25 MRSA § 154I, as amended by PL 1971, c. 592, § 37, is repealed and the following enacted in place thereof:

§ 154I. Commanding officer

1. Appointment. The Chief of the State Police shall appoint a person who has knowledge of the various standard identification systems and Maine court procedure to be commanding officer of the State Bureau of Identification, heretofore established within the Bureau of State Police.

2. Personnel. The Chief of the State Police may delegate members of the State Police to serve in the bureau upon request of the commanding officer. The commanding officer shall have the authority to hire such civilian person-

nel, subject to the Personnel Law and the approval of the Chief of the State Police, as he may deem necessary.

3. Cooperation with other bureaus. The commanding officer shall cooperate with similar bureaus in other states and with the national bureau in the Department of Justice in Washington, D.C. and he shall develop and carry on an interstate, national and international system of identification.

4. Rules and regulations. The commanding officer shall make and forward to all persons charged with any duty or responsibility under this section and sections 1542 to 1544, rules, regulations and forms for the taking, filing, preserving and distributing of fingerprints and other criminal history record information as provided in this chapter. Before becoming effective, such rules, regulations and forms are to be approved by the Attorney General. All state, county and local law enforcement agencies shall take, file, preserve and distribute fingerprints and other criminal history record information.

5. Apparatus and materials. The Chief of the State Police shall supply such bureau with the necessary apparatus and materials for collecting, filing, preserving and distributing criminal history record information.

Sec. 3. 25 MRSA § 1542 is repealed and the following enacted in place thereof:

§ 1542. Recording of fingerprints; photographs, palm prints

1. Fingerprints. Law enforcement officers or persons in charge of state correctional institutions under the general supervision, management and control of the Department of Mental Health and Corrections shall have the authority to take or cause to be taken, and shall take or cause to be taken, the fingerprints of any person:

- A. In custody charged with the commission of a crime;
- B. In custody charged with the commission of a juvenile offense;
- C. In custody and believed to be a fugitive from justice;
- D. Named in a search warrant which directs that such person's fingerprints, palm prints or photograph be taken;
- E. Who dies while confined at a jail, police station or any facility operated by the Bureau of Corrections;
- F. Who may have died by violence or by the action of chemical, thermal or electrical agents, or following abortion, or suddenly when not disabled by recognizable disease, or whose death is unexplained or unattended, if directed to do so by the Attorney General or District Attorney; or
- G. The taking of whose fingerprints, palm prints or photograph has been ordered by a court.

2. Photographs. Whenever a law enforcement officer or other individual is authorized, pursuant to subsection 1, paragraphs A, B, C, E or F, to take or cause to be taken the fingerprints of a person, the officer or other individual

may take or cause to be taken the photograph or palm prints, or photograph and palm prints, of such person.

3. Fingerprint record forms. Fingerprints taken pursuant to subsection 1, paragraphs A, B, C, D and E shall be taken on a form furnished by the State Bureau of Identification, such form to be known as the Criminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph F, shall be taken on a form furnished by the bureau, such form to be known as the Noncriminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph G, shall be taken upon either the Criminal Fingerprint Record or the Noncriminal Fingerprint Record as the court shall order.

4. Law enforcement officer. As used in this section, "law enforcement officer" means any person who by virtue of his public employment is vested by law with a duty to prosecute offenders or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

Sec. 4. 25 MRSA § 1543, 1st ¶, 1st sentence is amended to read:

It is made the duty of every clerk of every criminal court, including the District Court, and of every head of every department, bureau and institution, state, county and local, dealing with criminals and of every officer, probation officer, ~~county~~ district attorney or person whose duties make him the appropriate officer, to transmit, not later than the first and 15th days of each calendar month, to the ~~Supervisor~~ Commanding Officer of the State Bureau of Identification, such information as may be necessary to enable him to comply with ~~sections 1542 and 1544~~ section 1541.

Sec. 5. 25 MRSA § 1543, 2nd ¶, as enacted by PL 1973, c. 707, is repealed.

Sec. 6. 25 MRSA § 1544 is repealed and the following enacted in place thereof:

§ 1544. Uniform crime reporting

It shall be the duty of all state, county and municipal law enforcement agencies, including those employees of the University of Maine appointed to act as policemen, to submit to the State Bureau of Identification uniform crime reports, to include such information as is necessary to establish a Criminal Justice Information System and to enable the commanding officer to comply with section 1541, subsection 3. It shall be the duty of the bureau to prescribe the form, general content, time and manner of submission of such uniform crime reports. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and Legislature annual reports based on such reports. A copy of such annual reports shall be furnished to all law enforcement agencies.

Sec. 7. 25 MRSA §§ 1545 and 1546 are repealed.

Sec. 8. 25 MRSA § 1549, as amended by PL 1973, c. 788, § 109, is repealed and the following enacted in place thereof:

§ 1549. Request for fingerprints; fee

The State Police, the sheriffs and the chiefs of police in each of the cities and towns shall have the authority to take or cause to be taken, and upon

payment of a \$1.00 fee shall take or cause to be taken, the fingerprints or palm prints, or fingerprints and palm prints, of any person who shall request that his fingerprints or palm prints, or fingerprints and palm prints, be taken.

Such fingerprints and palm prints shall be taken on a form provided by the requesting person, or if the person does not provide a form, upon the Non-criminal Fingerprints Record Form. Fingerprints or palm prints taken pursuant to this section or copies thereof, shall not be retained by the taker or forwarded to the State Bureau of Identification.

STATEMENT OF FACT

The purpose of this bill is to repeal the present expungement statutes and to replace them with statutory provisions which, when taken together, provide a mechanism for controlling the access for the disclosure of criminal history record information. The term, "criminal history record information," is defined in Title 16, section 601, subsection 2, which appears in section 1 of the bill.