

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

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No. 2326

S. P. 773

In Senate, March 26, 1976

Reported by Senator Collins of Knox from the Committee on Judiciary and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

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 to and Disclosure of Criminal History Record Information.**

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

Sec. 1. 15 MRSA § 2161-A, as enacted by PL 1973, c. 691, is repealed.

Sec. 2. 16 MRSA c. 3, sub-c. VI, as enacted by PL 1969, c. 460, and as last amended by PL 1975, c. 623, §§ 18-A and 18-B, is repealed.

Sec. 3. 16 MRSA c. 3, sub-c. VII, is enacted to read:

SUBCHAPTER VII

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. The term does not include records of civil violations.

3. **Criminal justice agency.** "Criminal justice agency" means those agencies at all levels of Federal or State Government 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. **Dissemination.** "Dissemination" means use of and access to information and the transmission of information, whether orally, in writing or by electronic means.

5. **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.

6. **Person.** "Person" means a human being or a corporation, partnership or unincorporated association.

§ 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. Police Blotters;

C. Court records of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Written decisions of a court resulting from a public judicial proceeding;

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. Petitions for and warrants of full and free pardons, conditional pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prevent a criminal justice agency from disclosing to the public factual information concerning 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 person was arrested or had a complaint, information or indictment returned against him or 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

Except as provided in section 602, subsections 2 and 3, dissemination of criminal history record information, whether directly or through any intermediary, which relates directly to information respecting:

1. Acquittal. A crime for which a person has been acquitted in any court;
2. Pardon. 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. Dismissal of complaint, indictment or information. A crime for which a person has been charged by complaint, indictment or information which subsequently has been dismissed in any court and which has not been reinitiated by a new or replacement complaint, indictment or information and the dismissal took place under circumstances precluding the State from reinitiating such criminal charge; shall be limited to:

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

B. Persons 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. Persons 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. Persons 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 602, subsections 2 and 3, and 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; provided, that only information relating to the expressly referred to criminal conduct may be disseminated;
- D. Persons 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. Persons 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 and 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. Persons and agencies when 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. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he intentionally or knowingly disseminates criminal history record information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

§ 606. 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 crim-

inal 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 complete. 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. **Right of release.** The provisions of this subchapter shall be in no way construed to limit the right of a person to disseminate, to any person or agency, criminal history record information pertaining to himself.

Sec. 4. 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 personnel, 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, 1544, 1547 and 1549; 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.

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. 5. 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. Duty to submit. It shall be the duty of the head of the arresting agency, or his designee, to transmit, within 5 days of the date of arrest, to the State Bureau of Identification the criminal fingerprint record of any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C. Law enforcement agencies other than the arresting agency shall not submit to the State Bureau of Identification a criminal fingerprint record for any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C, unless expressly requested to do so by the Commanding Officer of the State Bureau of Identification.

It shall be the duty of the Director of the Bureau of Corrections, or his designee, to transmit, within 5 days of the date of death, to the State Bureau of Identification, the criminal fingerprint record of any deceased person whose fingerprints are taken pursuant to subsection 1, paragraph E.

5. 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. 6. 25 MRSA § 1543, as amended by PL 1973, c. 707, is repealed.

Sec. 7. 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. 8. 25 MRSA §§ 1545 and 1546 are repealed.

Sec. 9. 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 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 Fingerprint Record. 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.

Sec. 10. 25 MRSA § 1550 is enacted to read:

§ 1550. Violations

Any person who fails to comply with the provisions of section 1542, subsections 1 or 3, or with the provisions of section 1542, subsection 4, imposing a duty to transmit criminal fingerprint records to the State Bureau of Identification, or with the provisions of sections 1544, 1547 or 1549 commits a civil violation for which a forfeiture of not more than \$100 may be adjudged.

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 3 of the bill.