

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1692

H. P. 1363

House of Representatives, April 13, 1977

On motion of Mr. Hobbins of Saco, referred to Committee on Judiciary.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Hobbins of Saco.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Amend the Laws Relating to Criminal History Record
Information.

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

Sec. 1. 16 MRSA § 601, sub-§ 2, 2nd and 3rd sentences, as enacted by PL 1975, c. 763, § 3, are repealed and the following enacted in their place:

The term does not include identification information such as fingerprint, palmprint or photograph records to the extent that such information does not indicate involvement of the individual in the criminal justice system; records of civil violations, intelligence or investigative information, such as suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles; or records pertaining to juvenile offenses.

Sec. 2. 16 MRSA § 601, sub-§ 3, as enacted by PL 1975, c. 763, § 3, is repealed and the following enacted in its place:

3. Criminal justice agency. "Criminal justice agency" means:

A. Federal and state courts; and

B. A federal, state or local government agency or any subdivision thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

Sec. 3. 16 MRSA § 601, sub-§ 5, as enacted by PL 1975, c. 763, § 3, is amended to read:

5. Executive order. "Executive order" means an order of the President of the United States or the Governor of this State chief executive of a state

which has the force of law and which is published in a manner permitting regular public access thereto.

Sec. 4. 16 MRSA § 601, sub-§ 7 is enacted to read:

7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

Sec. 5. 16 MRSA § 602, sub-§ 2, ¶ D, as enacted by PL 1975, c. 763, § 3, is repealed and the following enacted in its place:

D. Published court or administrative opinions or public judicial, administrative or legislative proceedings.

Sec. 6. 16 MRSA § 602, sub-§ 2, ¶ E, as enacted by PL 1975, c. 763, § 3, is amended to read:

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

Sec. 7. 16 MRSA § 602, sub-§ 3, as enacted by PL 1975, c. 763, § 3, is repealed and the following enacted in its place:

3. Permissible disclosure. Nothing in this subchapter shall be construed to prevent a criminal justice agency from disclosing to the public criminal history record information related to an offense for which an individual is currently within the criminal justice system. A criminal justice agency is not prohibited from confirming prior criminal history record information to members of the news media or any other person, when in response to a specific inquiry as to whether on a specified date a named person was arrested or had a complaint, information or indictment returned against him or had disposition on a charging document, provided that the information disclosed is based on data excluded by subsection 2, and provided further that such disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its custody or control which indicates the disposition of the arrest, detention or charging document. Nothing in this subchapter shall be construed to prohibit the dissemination of criminal history record information for purposes of international travel, such as issuing visas, and granting of citizenships.

Sec. 8. 16 MRSA § 603, sub-§ 2, as enacted by PL 1975, c. 763, § 3, is amended to read:

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~~

Sec. 9. 16 MRSA § 603, sub-§§ 2-A, 2-B and 2-C, are enacted to read:

2-A. Crime not elected to be referred to prosecutor. A crime the police have elected not to refer to a prosecutor;

2-B. Prosecutor not to commence criminal proceedings. A crime for which the prosecutor has elected not to commence criminal proceedings;

2-C. No active prosecution for crime pending. A crime for which a person has been arrested or charged by complaint, indictment or information without disposition within one year and where no active prosecution for the crime is pending; and

Sec. 10. 16 MRSA § 603, sub-§ 3, ¶¶ A - D, as enacted by PL 1975, c. 763, § 3, are repealed and the following enacted in their place:

A. Criminal justice agencies for purposes of the administration of criminal justice, except that such dissemination is not authorized for subsection 1 or, where the Governor when granting a full and free pardon expressly provides that the criminal history record information relating to a crime for which that pardon has been granted shall not be made available to criminal justice agencies for purposes of the administration of criminal justice, for subsection 2;

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 the security and confidentiality of the data consistent with this subchapter and provide sanction for violation thereof;

C. 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 research, evaluative or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for the violations thereof; and

D. Persons and agencies for any purpose when expressly authorized by statute, local ordinance, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, ordinance, executive order or court rule, decision or order which specifically refers to one of the types of information set forth in subsections 1 to 3 and which permits access to such information.

Sec. 11. 16 MRSA § 603, sub-§ 3, ¶ E, as enacted by PL 1975, c. 763, § 3, is repealed.

Sec. 12. 16 MRSA § 604, as enacted by PL 1975, c. 763, § 3, is repealed and the following enacted in its place:

§ 604. Limitations on dissemination generally

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. 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 the security and confidentiality of the data consistent with this subchapter and provide sanctions for violations thereof;

D. 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 confidentiality and security of the data consistent with this subchapter and provide sanctions for the violation thereof;

E. Persons and agencies for any purpose authorized by statute, local ordinance, executive order, court rule, court decision or court order. Express authority, that is specific language in the authorizing statute or order requiring access to such information, is not required. Instead, such dissemination is to be pursuant to and construed from the general requirement in the statute, local ordinance, order, rule or decision; and

F. Persons and agencies for purposes of employment, insurance, credit or bonding except that such dissemination is contingent upon receipt by the criminal justice agency of a written request signed both by the prospective employer, insurer, lender or surety and the person to whom the information relates.

Sec. 13. 16 MRSA § 604-A is enacted to read:

§ 604-A. Dissemination to noncriminal justice agencies

Use of criminal history record information disseminated to noncriminal justice agencies as authorized by sections 603 and 604 shall be limited to the purposes for which it was disseminated and shall not be disseminated further.

Sec. 14. 16 MRSA § 604-B is enacted to read:

§ 604-B. Confirmation of existence or nonexistence of information

No person or agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

Sec. 15. 16 MRSA § 604-C is enacted to read:

§ 604-C. Dissemination not mandated

The provisions of section 602, subsections 2 and 3, sections 603 and 604 authorizing dissemination of criminal history record information shall not be construed as mandating such dissemination by the criminal justice agency to any person or agency.

Sec. 16. 16 MRSA § 606, sub-§ 2, 3rd ¶, as enacted by PL 1975, c. 763, § 3, is repealed and the following enacted in its place:

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of such request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction, the reasons therefor, the procedure established by the agency for requesting persons to request a review of that refusal by the head of the agency and the name and business address of that official.

Sec. 17. 16 MRSA § 606, sub-§ 2-A is enacted to read:

2-A. Administrative appeal. If the requesting person chooses to request a review of the agency's refusal to make the requested amendment or correction, then not later than 30 days, excluding Saturdays, Sundays and legal public holidays, from the date on which the individual requests such review, the head of the agency shall complete such review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection 2-B.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of such dispute and a copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

Sec. 18. 16 MRSA § 606, sub-§ 2-B is enacted to read:

2-B. Judicial review. If an administrative appeal brought pursuant to subsection 2-A is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

Sec. 19. 16 MRSA § 607, as enacted by PL 1975, c. 763, § 3, is amended to read:

§ 607. Application

The provisions of this subchapter shall apply to those criminal records made before ~~the effective date of this Act~~ July 29, 1976, including those which have been previously expunged under any other provision of state law, as well as to criminal records made thereafter.

STATEMENT OF FACT

This bill is necessitated by changes made in 28 Code Federal Regulations, § 20.1 et seq., since the enactment of P.L. 1975, c. 763.