

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 780

H. P. 629

House of Representatives, February 26, 1979

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. MacEachern of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

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Sec. 1. 16 MRSA § 601, as enacted by PL 1975, c. 763, § 3, is repealed.

Sec. 2. 16 MRSA § 601-A is enacted to read:

§ 601-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms 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. **Conviction data.** "Conviction data" means criminal history record information other than nonconviction data.

3. **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, information 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 the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. “Criminal justice agency” means a Federal, State or local government agency or any subunit 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. For purposes of this subchapter, courts are deemed to be criminal justice agencies.

5. Disposition. “Disposition” means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for the postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompetency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, pardon, amnesty or extradition.

6. Dissemination. “Dissemination” means use of and access to information and the transmission of information, whether orally, in writing or by electronic means to anyone outside the agency which maintains the information.

7. Executive order. “Executive order” means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

8. Intelligence and investigative information. “Intelligence and investigative information” means information collected by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, or compiled in the course of investigation of known or suspected crimes.

9. Nonconviction data. “Nonconviction data” means criminal history record information of the following types:

A. Arrest information without disposition if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, that is, arraignment must have been completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. All dismissals;

F. All acquittals, excepting acquittals by reason of mental disease or defect; and

G. Information disclosing that a person has been granted a full and free pardon or amnesty.

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

11. 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.

12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

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

D. Court or administrative opinions not impounded or otherwise declared confidential, or public judicial, administrative or legislative proceedings;

Sec. 4. 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~~ retained at and by the Secretary of State ~~except for those violations resulting in revocation of license pursuant to Title 29, section 1313; and~~

Sec. 5. 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 performing any of the following acts:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. 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, detained, had a

complaint, information or indictment returned against him or whether a complaint or other formal charge was filed on a specified date, provided that the information disclosed is based upon data excluded by subsection 2, and provided further that the disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

Sec. 6. 16 MRSA § 602, sub-§ 4, as enacted by PL 1977, c. 281, is repealed.

Sec. 7. 16 MRSA § 603, as enacted by PL 1975, c. 763, § 3, is repealed.

Sec. 8. 16 MRSA § 603-A is enacted to read:

§ 603-A. Limitations on dissemination of nonconviction data

1. **Limitations on dissemination of nonconviction data.** Except as provided in section 602, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

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

B. Persons and agencies for any purpose when expressly authorized by statute, executive order, ordinance, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, ordinance or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data identified in the definition of that term in this subchapter;

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 or to conduct investigations determining the employment suitability of prospective law enforcement officers pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for violations thereof; and

D. Persons and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with the 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 violations thereof.

Sec. 9. 16 MRSA § 604, as enacted by PL 1975, c. 763, § 3, and amended by PL 1977, c. 311, § 2 and c. 383, is repealed.

Sec. 10. 16 MRSA §§ 604-A-604-D are enacted to read:

§ 604-A. Limitations on dissemination of conviction data

1. Limitations on dissemination of conviction data. Except as provided in section 602, subsections 2 and 3, dissemination of conviction data, whether directly or through any intermediary, shall be limited to:

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

B. Fire departments, for purposes of employment;

C. Persons and agencies for any purpose expressly or implied by authorized by statute, executive order, ordinance, court rule, court decision or court order. Implied authority exists if dissemination would be consistent with the general requirements or purposes of the statute, executive order, ordinance, court rule, court decision or court order;

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 or to conduct investigations determining the employment suitability of prospective law enforcement officers pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter 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 confidentiality and security of the data consistent with this subchapter and provide sanctions for the violations thereof; and

F. Persons and agencies for purposes of employment, insurance, credit or bonding except that the 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.

§ 604-B. Inquiries required

Criminal justice agencies must query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used except in those cases where time is of the essence and the State Bureau of Identification is technically incapable of responding within the necessary time period.

§ 604-C. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to noncriminal justice agencies as authorized by sections 603 and 604-A shall be used by the noncriminal justice agency solely for the purpose for which it was disseminated.

§ 604-D. Confirming existence or nonexistence of criminal history record information

No criminal justice 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. 11. 16 MRSA § 607, as enacted by PL 1975, c. 763, § 3, is amended to read :

The provisions of this subchapter shall apply to ~~those criminal records made before the effective date of this Act~~ criminal history record information in existence before July 29, 1976, including those that which have has been previously expunged under any other provision of state Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

STATEMENT OF FACT

The purpose of this bill is to revise and update the laws of Criminal History Records.