

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1632

H. P. 1425

House of Representatives, May 23, 1979

Reported by Mr. Gray from the Committee on Judiciary. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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Sec. 1. 16 MRSA c. 3, sub-c. VII, as amended, is repealed.

Sec. 2. 16 MRSA c. 3, sub-c. VIII is enacted to read:

SUBCHAPTER VIII

CRIMINAL HISTORY RECORD INFORMATION ACT

§ 611. 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 detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes 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 notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge of an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic 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, district, county or local government agency or any subunit thereof which performs the administration of criminal justice under a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Courts shall be deemed to be criminal justice agencies.

5. **Disposition.** “Disposition” means the conclusion of criminal proceedings, and includes 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, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. **Dissemination.** “Dissemination” means use transmission of information, whether orally, in writing or by electronic means by or 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. It does not include information that is criminal history record information.

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, with arraignment 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, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;
- E. A dismissal;
- F. An acquittal, excepting an acquittal 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 an individual, government agency 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.

§ 612. Application

- 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, that are maintained by criminal justice agencies and that are compiled and organized chronologically;
 - C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;
 - D. Court or administrative opinions not impounded or otherwise declared confidential;
 - E. Records of public administrative or legislative proceedings;
 - F. Records of traffic offenses retained at and by the Secretary of State; and
 - G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

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 the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. 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.

§ 613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

1. Criminal justice agencies. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, 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;

3. Under specific agreements. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. 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 any violations; and

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

§ 614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records in the custody of a local, county or district criminal justice

agency containing intelligence and investigative information shall be confidential and shall not be disseminated, if public release or inspection of the report or record may:

- A. Interfere with law enforcement proceedings;
- B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;
- C. Result in public dissemination of information about the private life of an individual, in which there is no legitimate public interest, and which would be offensive to a reasonable person;
- D. Disclose the identity of a confidential source;
- E. Disclose confidential information furnished only by the confidential source;
- F. Disclose investigative techniques and procedures not generally known by the general public; or
- G. Endanger the life or physical safety of law enforcement personnel.

2. Exception to this limitation. Nothing in this section shall preclude dissemination of intelligence and investigative information to another criminal justice agency. Intelligence and investigative information may also be disseminated to an accused person or his attorney, if authorized by:

- A. The District Attorney for the district in which that accused person is to be tried;
- B. A rule or ruling of a court of this State or of the United States; or
- C. The Attorney General.

§ 615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

§ 616. Inquiries required

A criminal justice agency shall 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.

§ 617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated, and shall not be disseminated further.

§ 618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, 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.

§ 619. Unlawful dissemination

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

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

§ 620. Right to access and review

1. **Inspection.** Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised, and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on 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 shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a 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 notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.

3. **Administrative appeal.** If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the 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. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

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 the dispute. 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.

4. **Judicial review.** If an administrative appeal brought pursuant to subsection 3 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.

5. **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, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

6. **Right of release.** The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

§ 621. Information and records of the Attorney General, State Police and Bureau of Identification

Nothing in this subchapter shall require dissemination of information or records of the Attorney General, State Police or Bureau of Identification that are declared to be confidential under Title 5, section 200-D or Title 25, section 1631.

§ 622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

STATEMENT OF FACT

This new draft clarifies the language of the bill and the present statute. This new draft also provides that all conviction data is open to the public, and that intelligence and investigative information is to remain confidential unless the information will not interfere with law enforcement or judicial actions. Finally, this new draft clarifies the relationship between the provisions governing the Attorney General, the State Police and the Bureau of Identification and this subchapter.

The language of this new draft is based on the federal regulations governing criminal history record, 28 C.F.R., Part 201.