

No. 1978-305

AN ACT

HB 2095

Relating to criminal history record information; providing for the protection of individual right to privacy and for the completeness and accuracy of, the control of dissemination of, the establishment of guidelines for the security of, and provision for quality control of criminal history record information; and providing for the right of individuals to inspect, review and challenge the accuracy of such information; and providing penalties for violations of this act.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER I
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Criminal History Record Information Act."

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

"Administration of criminal justice." The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.

"Audit." The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

"Central repository." The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

"Criminal history record information." Information collected by criminal justice agencies concerning individuals, consisting of identifiable descriptions, dates and notations of arrests, detentions, indictments, informations or other formal charges and any dispositions arising therefrom. The term does not include intelligence information,

investigative information or treatment information, including medical and psychological information, or information and records specified in section 104.

“Criminal justice agency.” Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards and pardon boards.

“Disposition.” Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismissed, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

“Dissemination.” The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

“Expunge.”

(1) to remove information so that there is no trace or indication that such information existed; or

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes.

“Repository.” Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

“Secondary dissemination.” The subsequent transmission or disclosure of criminal history record information received from a repository or confirmation of the existence or nonexistence of criminal history record information received from a repository.

Section 103. Applicability.

This act shall apply to persons within the Commonwealth and to any agency of the Commonwealth or its political subdivisions which collects, maintains, disseminates or receives criminal history record information.

Section 104. Scope.

(a) Except for the provisions of Chapters 2, 4 and 6, nothing in this act shall be construed to apply to:

(1) Original records of entry compiled chronologically, including, but not limited to, police blotters.

(2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.

(3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(4) Announcements of executive clemency.

(b) Court dockets and police blotters and information contained therein shall, for the purpose of this act, be considered public record.

(c) Where court dockets are not maintained any reasonable substitute containing that information traditionally available in court dockets shall, for the purpose of this act, be considered public record.

(d) Nothing in this act must be interpreted to limit the disclosure by the arresting authority, a court, or other criminal justice agency having legal jurisdiction over the individual to any individual or agency of the current status of an individual involved in a criminal case in progress or for which an individual is currently in the criminal justice system so long as such information is disseminated no more than 180 days from the occurrence of any final official action by or final release from the supervision, custody or jurisdiction of that agency.

(e) Nothing in this act shall prohibit a criminal justice agency from disclosing an individual's prior criminal activity to an individual or agency if the information disclosed is based on records set forth in section 104.

(f) Information collected by noncriminal justice agencies and individuals from the sources identified in this section shall not be considered criminal history record information.

Section 105. Other criminal justice information.

Nothing in this act shall be construed to apply to information concerning juveniles, except as provided in section 303, unless they have been adjudicated as adults, nor shall it apply to intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information, nor presentence investigation information. Criminal history record information maintained as a part of these records shall not be disseminated unless in compliance with the provisions of this act.

Section 106. Prohibited information.

The following kinds of information shall not be collected in the central repository nor in any automated or electronic criminal justice information system:

- (1) intelligence information;
- (2) investigative information; and
- (3) treatment information, including but not limited to medical or psychological information.

**CHAPTER 2
COMPLETENESS AND ACCURACY**

Section 201. Duties of criminal justice agencies.

It shall be the duty of every criminal justice agency within the Commonwealth to maintain complete and accurate criminal history record information and to report such information at such times and in such manner as required by the provisions of this or other acts.

Section 202. Mandatory fingerprinting.

(a) Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.

(b) Where private complaints for a felony or misdemeanor result in a conviction or offenses under 18 Pa.C.S. § 3929 (relating to retail theft), the issuing authority shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or in the absence of a police department the State police. Fingerprints so obtained shall be forwarded immediately to the central repository.

(c) The central repository shall transmit the criminal history record information to the criminal justice agency which submitted the fingerprint card.

Section 203. Disposition reporting by criminal justice agencies.

(a) All criminal justice agencies, including but not limited to, courts, county, regional and State correctional institutions and parole and probation agencies, shall collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository as provided for in this section.

(b) Courts shall collect and submit criminal court dispositions as required by the Administrative Office of Pennsylvania Courts.

(c) County, regional and State correctional institutions shall collect and submit information regarding the admission, release and length of sentence of individuals sentenced to local and county institutions as required by the Bureau of Correction.

(d) County probation and parole offices shall collect and submit information relating to the length of time and charges for which an individual is placed under and released from the jurisdiction of such agency as required by the Pennsylvania Board of Probation and Parole.

(e) The Administrative Office of Pennsylvania Courts, the Bureau of Correction, the Pennsylvania Board of Probation and Parole and the Pennsylvania Board of Pardons, shall collect and submit to the central repository such information necessary to maintain complete and accurate criminal history record information. Each state agency listed in this subsection shall submit to the central repository any reports of dispositions occurring within their respective agencies and such information reported from county and local criminal justice agencies.

Section 204. Correction of inaccurate information.

Within 15 days of the detection of inaccurate data in a criminal history record, regardless of the manner of discovery, the criminal justice agency which reported the information shall comply with the following procedures to effect correction:

- (1) Correct its own records.
- (2) Notify all recipients, including the central repository, of the inaccurate data and the required correction.

CHAPTER 3

DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

Section 301. General regulations.

(a) The Attorney General shall establish in accordance with the provisions of the Commonwealth Documents Law, regulations concerning the dissemination of criminal history record information which shall distinguish between conviction and nonconviction data.

(b) Any criminal justice agency which disseminates criminal history record information must indicate to the recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

(c) Except during joint criminal investigations, no secondary dissemination of criminal history record information is permitted except as provided for by this act.

(d) No duplication of criminal history record information by any criminal justice agency except for its own internal use, or by any individual receiving criminal history record information is permitted.

(e) All noncriminal justice agencies or individuals or agencies receiving criminal history record information must return to the disseminating agency or destroy, in accordance with an agreement with the repository, all such information received upon completion of the specific purpose for which criminal history record information was received; nor shall such information be permanently incorporated into the files or records of the agency or individual receiving it.

(f) Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

(g) Any noncriminal justice official, agency or organization requesting criminal history record information prior to receipt of any such criminal history record information, must sign a contract with the repository from which it is seeking criminal history record information, agreeing to abide by the provisions of this act. Any such noncriminal justice official, agency or organization entering into such a contract with a repository is bound by and subject to the provisions of this act.

(h) Except as otherwise provided in this act, no criminal history record information acquired from repositories other than the central repository shall be permanently incorporated into the files or records of the criminal justice agency or individual and must be destroyed upon completion of the specific purpose for which such information was received.

Section 302. Expungement.

(a) Criminal history record information shall be expunged in a specific criminal proceeding when:

(1) no disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the director of the repository that no disposition is available and no action is pending. Expungement shall not occur until the certification from the court is received and the director of the repository authorizes such expungement; or

(2) a court order requires that such nonconviction data be expunged.

(b) Criminal history record information may be expunged when:

(1) an individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision; or

(2) an individual who is the subject of the information has been dead for three years.

(c) Notwithstanding, any other provision of this act, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or Court Rule to be expunged where the individual has successfully completed the conditions of any pre-trial or post-trial diversion or probation program. Such information shall be used solely for the purpose of determining subsequent eligibility for such programs. Criminal history record information may be expunged as provided in section 302(b)(1) and (2). Such information shall be made available to any court upon request.

(d) Notice of expungement shall promptly be submitted to the central repository which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.

(e) Public records listed in section 104 shall not be expunged.

(f) No expungement shall be made without ten days prior notice to the district attorney of the county where the original charges were filed.

Section 303. Juvenile records.

(a) Notwithstanding the provisions of section 105 and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after ten days notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court;

(2) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(3) the individual is 21 years of age or older and a court orders the expungement.

(b) The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

(c) All records of children alleged to be or adjudicated dependent, may be expunged upon court order after the child is 21 years of age or older.

Section 304. Use of records.

(a) Except as provided by this act, a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not preclude the issuance of a license, certificate, registration or permit.

(b) The following information shall not be used in consideration of an application for a license, certificate, registration, or permit:

(1) Records of arrest if there is no conviction of a crime based on the arrest.

(2) Convictions which have been annulled or expunged.

(3) Convictions of a summary offense.

(4) Information that the individual has received a pardon from the Governor.

(c) Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend

or revoke any license, certificate, registration or permit for the following causes:

(1) Where the applicant has been convicted of a felony.

(2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

(d) The board, commission or department shall notify the individual in writing of the reasons for a decision which prohibits the applicant from practicing the trade, occupation or profession if such decision is based in whole or part on conviction of any crime.

Section 305. Use of records for employment.

(a) Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) Convictions for felonies, as well as misdemeanor convictions and arrests for offenses, which relate to the applicant's suitability for employment in the position for which he has applied may be considered by the employer. Misdemeanor convictions and arrests for offenses which do not relate to the applicant's suitability for employment in the position for which he has applied shall not be considered by the employer.

(c) The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

CHAPTER 4 SECURITY

Section 401. Security requirements for repositories.

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

(1) Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters.

(2) Select, supervise and train all personnel authorized to have access to criminal history record information.

(3) Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice, or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

(4) Provide that criminal history record information maintained in a repository is disseminated upon proper validation only to those individuals and agencies authorized to receive the information by the provisions of this act.

CHAPTER 5 AUDIT

Section 501. Annual audit of repositories.

(a) The Attorney General shall conduct annual audits of the central repository and of a representative sample of all repositories to ensure that the provisions of this act are upheld.

(b) Persons conducting the audit shall be provided access to all records, reports and listings required to conduct an audit of criminal history record information, and all persons with access to such information or authorized to receive such information shall cooperate with and provide information requested.

(c) The audit shall contain a report of deficiencies and recommendations for the correction of such deficiencies. Upon the completion of every audit, the audited agency shall carry out the recommendations within a reasonable period of time unless the audit report is appealed to the Attorney General and the appeal is upheld.

(d) The Attorney General shall have the power to modify the corrective measures recommended by the audit.

Section 502. Quality control.

Each repository shall establish effective procedures, in compliance with rules and regulations promulgated by the Attorney General¹ for the completeness and accuracy of criminal history record information.

CHAPTER 6 INDIVIDUAL RIGHT OF ACCESS AND REVIEW

Section 601. Right to access and review.

(a) Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his criminal history record information.

(b) Persons incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge and appeal.

Section 602. Procedure.

(a) The Attorney General in cooperation with appropriate criminal justice agencies shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

(b) Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists the individual may review a copy of such information without undue delay for the purpose of review and challenge.

(c) The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is

¹"Privacy and Security Council," in original.

incorrect and what the correct version should be. Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy of any part subsequently challenged upon the individual. Information subsequently added to such record shall also be subject to review, challenge, correction or appeal.

(d) All criminal justice agencies shall have 60 days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. If the challenge is deemed valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected.

(2) A certified and corrected copy of the criminal history record information is provided to the individual.

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies shall be destroyed or returned and replaced with corrected information.

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

(e) (1) If the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.

(2) The Attorney General shall have the authority to conduct administrative appeal hearings in accordance with the "Administrative Agency Law."

(3) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.

Section 603. Individual rights on access and review.

Any individual exercising his or her right to access and review under the provisions of this chapter, shall be informed when criminal history record information is made available that he or she is under no obligation to divulge such information to any person or agency.

CHAPTER 7 RESPONSIBILITY OF ATTORNEY GENERAL

Section 701. Duties of the Attorney General.

The Attorney General shall have the power and authority to:

(1) Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

(2) Establish a uniform schedule of reasonable fees for the costs of reproducing criminal history record information for individual access and review and for research or statistical purposes and access by noncriminal justice agencies.

(3) Make investigations concerning all matters touching the administration and enforcement of this act and the rules and regulations promulgated thereunder.

(4) Institute civil and criminal proceedings for violations of this act and the rules and regulations adopted thereunder.

(5) Conduct annual audits of the central repository and of a representative sample of all repositories within the Commonwealth, collecting, compiling, maintaining and disseminating criminal history record information.

(6) Appoint such employees and agents as it may deem necessary.

CHAPTER 8 PUBLIC NOTICE

Section 801. Requirements of repositories relating to public notice.

Repositories maintaining criminal history record information shall inform the public and post in a public place, notice of the existence, purpose, use and accessibility of the criminal history record information they maintain and the requirements of the repository for identification on individual access and review.

CHAPTER 9 SANCTIONS

Section 901. General administrative sanctions.

Any person, including any agency or organization, who violates the provisions of this act or any regulations or rules promulgated under it may:

(1) Be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate.

(2) Be subject to civil or criminal penalties or other remedies as provided for in this act.

(3) In the case of an employee of any agency who violates any provision of this act may be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

Section 902. Criminal penalties.

A person employed by a government agency commits a misdemeanor of the third degree, if such person:

(1) knowingly requests, obtains or seeks to obtain criminal history record information in violation of this act; or

(2) disseminates, maintains or uses criminal history record information knowing such dissemination, maintenance or use to be in violation of this act.

Section 903. Civil actions.

(a) The Attorney General, or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this act or to compel such agency, organization or person to comply with the provisions of this act.

(b) (1) Any person aggrieved by a violation of the provisions of this act or of the rules and regulations promulgated hereunder, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found, by the court, to have been aggrieved by a violation of this act or the rules or regulations promulgated hereunder, shall be entitled to actual and real damages of not less than \$100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than \$1,000 nor more than \$10,000 shall be imposed for any violation of this act, or the rules or regulations adopted hereunder, found to be willful.

CHAPTER 10 EFFECTIVE DATE AND REPEALER

Section 1001. Repealer.

All acts and parts of acts are repealed insofar as they are inconsistent herewith.

Section 1002. Effective date.

(a) This act shall take effect on July 1, 1979.

(b) Required expungement provision in section 302(a)(1) is not applicable to criminal proceedings initiated or completed prior to the effective date of this act unless requested by the individual as provided in Chapter 6.

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP