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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 2095** Session of  
1978

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INTRODUCED BY MESSRS. BERSON, RHODES, PRATT AND WHITE, MARCH 13,  
1978

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AS AMENDED ON SECOND CONSIDERATION, IN SENATE, NOVEMBER 14, 1978

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AN ACT

1 Relating to criminal history record information; providing for  
2 the protection of individual right to privacy and for the  
3 completeness and accuracy of, the control of dissemination  
4 of, the establishment of guidelines for the security of, and  
5 provision for quality control of criminal history record  
6 information; and providing for the right of individuals to  
7 inspect, review and challenge the accuracy of such  
8 information; ~~and the establishment of a council to oversee~~ <—  
9 ~~the administration of this act;~~ and providing penalties for  
10 violations of this act.

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

8 CHAPTER 1

9 GENERAL PROVISIONS

10 Section 101. Short title.

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

13 Section 102. Definitions.

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

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

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

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

1 "Criminal history record information." Information collected  
2 by criminal justice agencies concerning individuals, consisting  
3 of identifiable descriptions, dates and notations of arrests,  
4 detentions, indictments, informations or other formal charges  
5 and any dispositions arising therefrom. The term does not  
6 include intelligence information, investigative information or  
7 treatment information, including medical and psychological  
8 information, or information and records specified in section  
9 104.

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

21 "Disposition." Information indicating that criminal  
22 proceedings have been concluded, including information  
23 disclosing that police have elected not to refer a matter for  
24 prosecution, that a prosecuting authority has elected not to  
25 commence criminal proceedings or that a grand jury has failed to  
26 indict and disclosing the nature of the termination of the  
27 proceedings; or information disclosing that proceedings have  
28 been indefinitely postponed and also disclosing the reason for  
29 such postponement. Dispositions of criminal proceedings in the  
30 Commonwealth shall include, but not be limited to, acquittal,

1 acquittal by reason of insanity, pretrial probation or  
2 diversion, charge dismissed, guilty plea, nolle prosequi, no  
3 information filed, nolo contendere plea, convicted, abatement,  
4 discharge under rules of the Pennsylvania Rules of Criminal  
5 Procedure, demurrer sustained, pardoned, sentence commuted,  
6 mistrial-defendant discharged, discharge from probation or  
7 parole or correctional supervision.

8 "Dissemination." The oral or written transmission or  
9 disclosure of criminal history record information, ~~including the~~ ←  
10 ~~confirmation of its existence or nonexistence,~~ to individuals or  
11 agencies other than the criminal justice agency which maintains  
12 the information.

13 "Expunge."

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

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

19 "Repository." Any location in which criminal history record  
20 information is collected, compiled, maintained and disseminated  
21 by a criminal justice agency.

22 "Secondary dissemination." The subsequent transmission or  
23 disclosure of criminal history record information received from  
24 a repository or confirmation of the existence or nonexistence of  
25 criminal history record information received from a repository.

26 Section 103. Applicability.

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

1 Section 104. Scope.

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

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

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

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

11 (4) Announcements of executive clemency.

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

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

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

29 (e) Nothing in this act shall prohibit a criminal justice  
30 agency from disclosing an individual's prior criminal activity

1 to an individual or agency if the information disclosed is based  
2 on records set forth in section 104.

3 (f) Information collected by noncriminal justice agencies  
4 and individuals from the sources identified in this section  
5 shall not be considered criminal history record information.  
6 Section 105. Other criminal justice information.

7 Nothing in this act shall be construed to apply to  
8 information concerning juveniles, except as provided in section  
9 304, unless they have been adjudicated as adults, nor shall it  
10 apply to intelligence information, investigative information,  
11 treatment information, including medical and psychiatric  
12 information, caution indicator information, modus operandi  
13 information, wanted persons information, stolen property  
14 information, missing persons information, employment history  
15 information, personal history information, nor presentence  
16 investigation information. Criminal history record information  
17 maintained as a part of these records shall not be disseminated  
18 unless in compliance with the provisions of this act.

19 SECTION 106. PROHIBITED INFORMATION. ←

20 THE FOLLOWING KINDS OF INFORMATION SHALL NOT BE COLLECTED IN  
21 THE CENTRAL REPOSITORY NOR IN ANY AUTOMATED OR ELECTRONIC  
22 CRIMINAL JUSTICE INFORMATION SYSTEM:

- 23 (1) INTELLIGENCE INFORMATION;
- 24 (2) INVESTIGATIVE INFORMATION; AND
- 25 (3) TREATMENT INFORMATION, INCLUDING BUT NOT LIMITED TO  
26 MEDICAL OR PSYCHOLOGICAL INFORMATION.

## 27 CHAPTER 2

### 28 COMPLETENESS AND ACCURACY

29 Section 201. Duties of criminal justice agencies.

30 It shall be the duty of every criminal justice agency within

1 the Commonwealth to maintain complete and accurate criminal  
2 history record information ~~as required by the Privacy and~~ ←  
3 ~~Security Council as provided in Chapter 7~~ and to report such  
4 information at such times and in such manner as required by the  
5 provisions of this or other acts.

6 Section 202. Mandatory fingerprinting.

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

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

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

24 Section 203. Disposition reporting by criminal justice  
25 agencies.

26 (a) All criminal justice agencies, including but not limited  
27 to, courts, county, regional and State correctional institutions  
28 and parole and probation agencies, shall collect and submit  
29 reports of dispositions occurring within their respective  
30 agencies for criminal history record information, within 90 days

1 of the date of such disposition to the central repository as  
2 provided for in this section.

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

6 (c) County ~~and~~, regional AND STATE correctional institutions ←  
7 shall collect and submit information regarding the admission,  
8 release and length of sentence of individuals sentenced to local  
9 and county institutions as required by the Bureau of Correction.

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

15 (e) The Administrative Office of Pennsylvania Courts, the  
16 Bureau of Correction, the Pennsylvania Board of Probation and  
17 Parole and the Pennsylvania Board of Pardons, shall collect and  
18 submit to the central repository such information necessary to  
19 maintain complete and accurate criminal history record

20 ~~information. Such criminal history record information shall be ←~~  
21 ~~submitted in accordance with the standards for completeness and~~  
22 ~~accuracy promulgated by the Privacy and Security Council. Each~~

23 INFORMATION. EACH state agency listed in this subsection shall ←  
24 submit to the central repository any reports of dispositions  
25 occurring within their respective agencies and such information  
26 reported from county and local criminal justice agencies.

27 Section 204. Correction of inaccurate information.

28 Within 15 days of the detection of inaccurate data in a  
29 criminal history record, regardless of the manner of discovery,  
30 the criminal justice agency which reported the information shall

1 comply with the following procedures to effect correction:

2 (1) Correct its own records.

3 (2) Notify all recipients, including the central  
4 repository, of the inaccurate data and the required  
5 correction.

6 CHAPTER 3

7 DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

8 Section 301. General regulations.

9 ~~(a) No dissemination of criminal history record information~~ <—  
10 ~~is permitted except as provided for by this act or by rule of~~  
11 ~~court promulgated by the Supreme Court of Pennsylvania or by~~  
12 ~~resolution of either House of the General Assembly. No~~  
13 ~~administrative rule or regulation promulgated by any~~  
14 ~~Commonwealth agency, referring to or inferring the need for~~  
15 ~~criminal history record information, shall be sufficient~~  
16 ~~authority for the dissemination of criminal history record~~  
17 ~~information.~~

18 (A) THE ATTORNEY GENERAL SHALL ESTABLISH IN ACCORDANCE WITH <—  
19 THE PROVISIONS OF THE COMMONWEALTH DOCUMENTS LAW, REGULATIONS  
20 CONCERNING THE DISSEMINATION OF CRIMINAL HISTORY RECORD  
21 INFORMATION WHICH SHALL DISTINGUISH BETWEEN CONVICTION AND  
22 NONCONVICTION DATA. ~~ANY CRIMINAL JUSTICE AGENCY MAY ADOPT ITS~~ <—  
23 ~~OWN RULES OF DISSEMINATION, PROVIDED THEY ARE IN ACCORDANCE WITH~~  
24 ~~THIS ACT, DISTINGUISH BETWEEN CONVICTION AND NONCONVICTION DATA~~  
25 ~~AND ARE MADE PUBLIC IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER~~  
26 ~~8.~~

27 (b) Any criminal justice agency which disseminates criminal  
28 history record information must indicate to the recipient that  
29 the information disseminated is only that information contained  
30 in its own file, the date of the last entry, and that a summary

1 of the Statewide criminal history record information may be  
2 obtained from the central repository.

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

6 (d) No duplication of criminal history record information by  
7 any ~~agency or~~ CRIMINAL JUSTICE AGENCY EXCEPT FOR ITS OWN <—  
8 INTERNAL USE, OR BY ANY individual receiving criminal history  
9 record information is permitted.

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

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

24 ~~(g) Repositories shall ensure that criminal history record <—  
25 information is disseminated only to agencies or individuals  
26 authorized by the provisions of this act to receive such  
27 information.~~

28 ~~(h) No agency or individual shall confirm or deny in any  
29 manner the existence or nonexistence of criminal history record  
30 information to any person or agency not eligible to receive the~~

1 ~~information itself unless such information is obtained from~~  
2 ~~records identified in section 104.~~

3 (i) (G) Any noncriminal justice official, agency or ←  
4 organization requesting criminal history record information  
5 prior to receipt of any such criminal history record  
6 information, must sign a contract with the repository from which  
7 it is seeking criminal history record information, agreeing to  
8 abide by the provisions of this act. Any such noncriminal  
9 justice official, agency or organization entering into such a  
10 contract with a repository is bound by and subject to the  
11 provisions of this act.

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

18 ~~Section 302. Access to criminal history record information.~~ ←

19 ~~(a) Except as provided in section 302(c), access to~~  
20 ~~criminal history record information shall be limited to:~~

21 ~~(1) Criminal justice agencies for the purpose of the~~  
22 ~~administration of criminal justice and criminal justice~~  
23 ~~agency employment.~~

24 ~~(2) Auditors working under the direction of the Privacy~~  
25 ~~and Security Council.~~

26 ~~(3) Such other individuals and agencies authorized by~~  
27 ~~statute to receive criminal history record information or~~  
28 ~~which require criminal history record information to~~  
29 ~~implement a statute expressly referring to criminal conduct~~  
30 ~~and containing either requirements or exclusions or both~~

1 ~~expressly based upon such criminal conduct.~~

2 ~~(4) Agencies of Federal, State and foreign governments~~  
3 ~~authorized by statute to conduct investigations determining~~  
4 ~~employment suitability or eligibility for security~~  
5 ~~clearances.~~

6 ~~(5) (i) The chief executive of any Federal, State or~~  
7 ~~local government or any governmental body of the same~~  
8 ~~required to confirm an appointment or nomination for the~~  
9 ~~purpose of determining the suitability of a potential~~  
10 ~~appointment or nomination of an individual to a~~  
11 ~~governmental position.~~

12 ~~(ii) The office of the Governor may make a request~~  
13 ~~to any repository for an oral report concerning the~~  
14 ~~contents of the criminal history record information~~  
15 ~~maintained on a prospective appointee to a Commonwealth~~  
16 ~~board or commission. A copy of the criminal history~~  
17 ~~record information will be provided upon receipt of~~  
18 ~~fingerprint identification of the subject about whom~~  
19 ~~criminal history record information is sought.~~

20 ~~(iii) The office of the Governor, in order to assist~~  
21 ~~the Governor in the exercise of the pardoning power~~  
22 ~~provided by Article IV, section 9 of Constitution of~~  
23 ~~Pennsylvania.~~

24 ~~(6) Defense counsel, through the court, for the purpose~~  
25 ~~of obtaining criminal history record information about a~~  
26 ~~client or witness with regard to a case in progress.~~

27 ~~(7) (i) Individuals and agencies for the express~~  
28 ~~purpose of research, evaluative or statistical~~  
29 ~~activities, or other services required for administration~~  
30 ~~of criminal justice pursuant to an agreement with the~~

1 ~~disseminating agency which authorizes access to criminal~~  
2 ~~history record information, limits the use of criminal~~  
3 ~~history record information to research, evaluative or~~  
4 ~~statistical purposes and ensures the confidentiality and~~  
5 ~~security of the criminal history record information,~~  
6 ~~consistent with this act. Such individuals and agencies~~  
7 ~~are bound by and subject to the provisions of this act.~~

8 ~~(ii) Requests by any noncriminal justice agency,~~  
9 ~~individual or organization for criminal history record~~  
10 ~~information for research or statistical purposes,~~  
11 ~~requiring the identity of persons about whom such records~~  
12 ~~are maintained, must be approved by the Privacy and~~  
13 ~~Security Council. Any individual or agency requesting~~  
14 ~~criminal history record information for research or~~  
15 ~~statistical purposes must submit a research proposal to~~  
16 ~~the Privacy and Security Council.~~

17 ~~(8) Officials of correctional facilities or~~  
18 ~~institutions, with the consent of the individual about whom~~  
19 ~~information is sought, may disseminate criminal history~~  
20 ~~record information to prospective employers or other~~  
21 ~~individuals, when such information is helpful in obtaining~~  
22 ~~employment or rehabilitating the individual about whom the~~  
23 ~~information relates.~~

24 ~~(9) Any individual, upon request and proper verification~~  
25 ~~of identity, for the purpose of reviewing his own criminal~~  
26 ~~history record information, according to the procedure set~~  
27 ~~forth in Chapter 6.~~

28 ~~(10) Agencies authorized to issue visas or grant~~  
29 ~~citizenship.~~

30 ~~(11) Individuals and agencies authorized by a court~~

1 ~~order to receive criminal history record information relating~~  
2 ~~to a case in progress.~~

3 ~~(12) Employers for the purpose of determining the~~  
4 ~~employment suitability of any prospective employee; provided~~  
5 ~~such employer pay a fee established by the Commissioner of~~  
6 ~~the Pennsylvania State Police and provided that access shall~~  
7 ~~not be given to any employer unless the prospective employee~~  
8 ~~shall have given written consent to the inquiry.~~

9 ~~(13) The Pennsylvania Department of Banking, the~~  
10 ~~Pennsylvania Insurance Department and the Pennsylvania~~  
11 ~~Department of Education shall have access to criminal history~~  
12 ~~record information maintained in the central repository for~~  
13 ~~the purpose of determining the employment suitability of any~~  
14 ~~employee; or nomination or appointment of directors, trustees~~  
15 ~~and proposed officers; for the granting of charters; issuance~~  
16 ~~of any license, certificate or permits; or the revocation or~~  
17 ~~suspension of such license, permit or certification of any~~  
18 ~~agency, institution, individual or affiliate thereof over~~  
19 ~~which they have legal authority or jurisdiction, including~~  
20 ~~services performed under contract or other written agreement~~  
21 ~~by any such agency, institution or individual.~~

22 ~~(b) Fingerprint identification of the individual about whom~~  
23 ~~information is requested shall be required under paragraphs (3),~~  
24 ~~(5)(i) and (10) of subsection (a).~~

25 ~~(c) Any member of the working press shall, upon written~~  
26 ~~request, have access to conviction data contained in criminal~~  
27 ~~history record information from the central repository. Each~~  
28 ~~request for the criminal history record information of an~~  
29 ~~individual shall be a separate inquiry. The central repository~~  
30 ~~may impose a fee to cover the cost of complying with the request~~

1 ~~for information from noncriminal agencies upon approval of the~~  
2 ~~fee by the Privacy and Security Council.~~

3 Section ~~303~~ 302. Expungement. ←

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

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

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

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

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

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

25 ~~(c) Requests for criminal history record information which~~ ←  
26 ~~has been expunged must be answered only with a statement that no~~  
27 ~~such information exists.~~

28 (C) NOTWITHSTANDING, ANY OTHER PROVISION OF THIS ACT, THE ←  
29 PROSECUTING ATTORNEY AND THE CENTRAL REPOSITORY SHALL, AND THE  
30 COURT MAY, MAINTAIN A LIST OF THE NAMES AND OTHER CRIMINAL

1 HISTORY RECORD INFORMATION OF PERSONS WHOSE RECORDS ARE REQUIRED  
2 BY LAW OR COURT RULE TO BE EXPUNGED WHERE THE INDIVIDUAL HAS <—  
3 SUCCESSFULLY COMPLETED THE CONDITIONS OF ANY PRE-TRIAL OR POST-  
4 TRIAL DIVERSION OR PROBATION PROGRAM. SUCH INFORMATION SHALL BE  
5 USED SOLELY FOR THE PURPOSE OF DETERMINING SUBSEQUENT  
6 ELIGIBILITY FOR SUCH PROGRAMS. CRIMINAL HISTORY RECORD  
7 INFORMATION MAY BE EXPUNGED AS PROVIDED IN SECTION 302(B)(1) AND  
8 (2). SUCH INFORMATION SHALL BE MADE AVAILABLE TO ANY COURT UPON  
9 REQUEST.

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

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

16 (F) NO EXPUNGEMENT SHALL BE MADE WITHOUT TEN DAYS PRIOR <—  
17 NOTICE TO THE DISTRICT ATTORNEY OF THE COUNTY WHERE THE ORIGINAL  
18 CHARGES WERE FILED.

19 Section ~~304~~ 303. Juvenile records. <—

20 (a) Notwithstanding the provisions of section 105 and except  
21 upon cause shown, expungement of records of juvenile delinquency  
22 cases wherever kept or retained shall occur AFTER TEN DAYS <—  
23 NOTICE TO THE DISTRICT ATTORNEY, ~~when~~ WHENEVER the court upon <—  
24 its motion or upon the motion of a child or the parents or  
25 guardian finds:

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

29 (2) ~~three~~ FIVE years have elapsed since the final <—  
30 discharge of the person from commitment, placement, probation

1 or any other disposition and referral and since such final  
2 discharge, the person has not been convicted of a felony,  
3 misdemeanor or adjudicated delinquent and no proceeding is  
4 pending seeking such conviction or adjudication; or

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

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

9 (c) All records of children alleged to be or adjudicated  
10 dependent, may be expunged upon court order after the child is  
11 21 years of age or older.

12 SECTION 304. USE OF RECORDS. ←

13 (A) EXCEPT AS PROVIDED BY THIS ACT, A BOARD, COMMISSION OR  
14 DEPARTMENT OF THE COMMONWEALTH, WHEN DETERMINING ELIGIBILITY FOR  
15 LICENSING, CERTIFICATION, REGISTRATION OR PERMISSION TO ENGAGE  
16 IN A TRADE, PROFESSION OR OCCUPATION, MAY CONSIDER CONVICTIONS  
17 OF THE APPLICANT OF CRIMES BUT THE CONVICTIONS SHALL NOT  
18 PRECLUDE THE ISSUANCE OF A LICENSE, CERTIFICATE, REGISTRATION OR  
19 PERMIT.

20 (B) THE FOLLOWING INFORMATION SHALL NOT BE USED IN  
21 CONSIDERATION OF AN APPLICATION FOR A LICENSE, CERTIFICATE,  
22 REGISTRATION, OR PERMIT:

23 (1) RECORDS OF ARREST IF THERE IS NO CONVICTION OF A  
24 CRIME BASED ON THE ARREST.

25 (2) CONVICTIONS WHICH HAVE BEEN ANNULLED OR EXPUNGED.

26 (3) CONVICTIONS OF A SUMMARY OFFENSE.

27 (4) INFORMATION THAT THE INDIVIDUAL HAS RECEIVED A  
28 PARDON FROM THE GOVERNOR.

29 (C) BOARDS, COMMISSIONS OR DEPARTMENTS OF THE COMMONWEALTH  
30 AUTHORIZED TO LICENSE, CERTIFY, REGISTER OR PERMIT THE PRACTICE

1 OF TRADES, OCCUPATIONS OR PROFESSIONS MAY REFUSE TO GRANT OR  
2 RENEW, OR MAY SUSPEND OR REVOKE ANY LICENSE, CERTIFICATE,  
3 REGISTRATION OR PERMIT FOR THE FOLLOWING CAUSES:

4 (1) WHERE THE APPLICANT HAS BEEN CONVICTED OF A FELONY.

5 (2) WHERE THE APPLICANT HAS BEEN CONVICTED OF A  
6 MISDEMEANOR WHICH RELATES TO THE TRADE, OCCUPATION OR  
7 PROFESSION FOR WHICH THE LICENSE, CERTIFICATE, REGISTRATION  
8 OR PERMIT IS SOUGHT.

9 (D) THE BOARD, COMMISSION OR DEPARTMENT SHALL NOTIFY THE  
10 INDIVIDUAL IN WRITING OF THE REASONS FOR A DECISION WHICH  
11 PROHIBITS THE APPLICANT FROM PRACTICING THE TRADE, OCCUPATION OR  
12 PROFESSION IF SUCH DECISION IS BASED IN WHOLE OR PART ON  
13 CONVICTION OF ANY CRIME.

14 SECTION 305. USE OF RECORDS FOR EMPLOYMENT.

15 (A) WHENEVER AN EMPLOYER IS IN RECEIPT OF INFORMATION WHICH  
16 IS PART OF AN EMPLOYMENT APPLICANT'S CRIMINAL HISTORY RECORD  
17 INFORMATION FILE, IT MAY USE THAT INFORMATION FOR THE PURPOSE OF  
18 DECIDING WHETHER OR NOT TO HIRE THE APPLICANT, ONLY IN  
19 ACCORDANCE WITH THIS SECTION.

20 (B) CONVICTIONS FOR FELONIES, AS WELL AS MISDEMEANOR  
21 CONVICTIONS AND ARRESTS FOR OFFENSES, WHICH RELATE TO THE  
22 APPLICANT'S SUITABILITY FOR EMPLOYMENT IN THE POSITION FOR WHICH  
23 HE HAS APPLIED MAY BE CONSIDERED BY THE EMPLOYER. MISDEMEANOR  
24 CONVICTIONS AND ARRESTS FOR OFFENSES WHICH DO NOT RELATE TO THE  
25 APPLICANT'S SUITABILITY FOR EMPLOYMENT IN THE POSITION FOR WHICH  
26 HE HAS APPLIED SHALL NOT BE CONSIDERED BY THE EMPLOYER.

27 (C) THE EMPLOYER SHALL NOTIFY IN WRITING THE APPLICANT IF  
28 THE DECISION NOT TO HIRE THE APPLICANT IS BASED IN WHOLE OR IN  
29 PART ON CRIMINAL HISTORY RECORD INFORMATION.

30

CHAPTER 4

1 SECURITY

2 Section 401. Security requirements for repositories.

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

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

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

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

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

26 CHAPTER 5

27 AUDIT

28 Section 501. Annual audit of repositories.

29 ~~(a) The Privacy and Security Council shall establish an~~ <—  
30 ~~auditing team to~~ (A) THE ATTORNEY GENERAL SHALL conduct annual <—

1 audits of the central repository and of a representative sample  
2 of all repositories to ensure that the provisions of this act  
3 are upheld.

4 (b) Persons conducting the audit shall be provided access to  
5 all records, reports and listings required to conduct an audit  
6 of criminal history record information, and all persons with  
7 access to such information or authorized to receive such  
8 information shall cooperate with and provide information  
9 requested. ~~by the auditing team.~~ <—

10 (c) The ~~auditing team shall prepare~~ AUDIT SHALL CONTAIN a <—  
11 report of deficiencies and recommendations for the correction of  
12 such deficiencies. Upon the completion of every audit, the  
13 audited agency shall carry out the recommendations within a  
14 reasonable period of time unless the audit report is appealed to  
15 the ~~Privacy and Security Council~~ ATTORNEY GENERAL and the appeal <—  
16 is upheld.

17 (d) The ~~Privacy and Security Council~~ ATTORNEY GENERAL shall <—  
18 have the power to modify the corrective measures ~~ordered by the~~ <—  
19 ~~auditing team~~ RECOMMENDED BY THE AUDIT. <—

20 Section 502. Quality control.

21 Each repository shall establish effective procedures, in  
22 compliance with rules and regulations promulgated by the Privacy  
23 and Security Council, for the completeness and accuracy of  
24 criminal history record information.

## 25 CHAPTER 6

### 26 INDIVIDUAL RIGHT OF ACCESS AND REVIEW

27 Section 601. Right to access and review.

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

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

5 Section 602. Procedure.

6 (a) The ~~Privacy and Security Council~~ ATTORNEY GENERAL IN ←  
7 COOPERATION WITH APPROPRIATE CRIMINAL JUSTICE AGENCIES shall  
8 promulgate rules and regulations to implement this section and  
9 shall establish reasonable fees.

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

18 (c) The individual may challenge the accuracy of his or her  
19 criminal history record information by specifying which portion  
20 of the record is incorrect and what the correct version should  
21 be. Failure to challenge any portion of the record in existence  
22 at that time will place the burden of proving the inaccuracy of  
23 any part subsequently challenged upon the individual.  
24 Information subsequently added to such record shall also be  
25 subject to review, challenge, correction or appeal.

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

30 (1) The criminal history record information is

1 corrected.

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

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

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

10 (e) (1) If the challenge is ruled invalid, an individual  
11 has the right to appeal the decision to the ~~Privacy and~~ <—  
12 ~~Security Council~~ ATTORNEY GENERAL within 30 days of <—  
13 notification of the decision by the criminal justice agency.

14 (2) The ~~Privacy and Security Council~~ ATTORNEY GENERAL <—  
15 shall have the authority to conduct administrative appeal  
16 hearings in accordance with the "Administrative Agency Law."

17 (3) The decision of the ~~Privacy and Security Council~~ <—  
18 ATTORNEY GENERAL may be appealed to the Commonwealth Court by <—  
19 an aggrieved individual.

20 Section 603. Individual rights on access and review.

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

26 CHAPTER 7

27 ~~PRIVACY AND SECURITY COUNCIL~~ <—

28 ~~Section 701. Privacy and Security Council.~~

29 ~~(a) There is hereby created a Privacy and Security Council,~~  
30 ~~which shall function independently of but for administrative~~

1 ~~purposes shall be in the office of the Governor.~~

2 ~~(b) The Privacy and Security Council shall consist of the~~  
3 ~~Attorney General, the Commissioner of the Pennsylvania State~~  
4 ~~Police, the State Court Administrator, the President pro tempore~~  
5 ~~of the Senate shall appoint one member, and the Speaker of the~~  
6 ~~House shall appoint one member, a local chief of police and one~~  
7 ~~private citizen to be appointed by the Governor.~~

8 ~~(c) Each member shall be eligible for reappointment and the~~  
9 ~~Governor shall fill vacancies by appointing a person to fill the~~  
10 ~~unexpired term.~~

11 ~~(d) The council shall elect one member of the Privacy and~~  
12 ~~Security Council as chairperson thereof, to serve as such at the~~  
13 ~~pleasure of the Governor.~~

14 ~~(e) Members of the Privacy and Security Council shall~~  
15 ~~receive no compensation but shall be entitled to receive~~  
16 ~~reimbursement for travel and other necessary expenses incurred~~  
17 ~~in the performance of their duties as members of the Privacy and~~  
18 ~~Security Council.~~

19 ~~Section 702. Duties of Privacy and Security Council.~~

20 RESPONSIBILITY OF ATTORNEY GENERAL <—

21 SECTION 701. DUTIES OF THE ATTORNEY GENERAL. <—

22 ~~The Privacy and Security Council~~ ATTORNEY GENERAL shall have <—  
23 the power and authority to:

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

28 (2) Establish a uniform schedule of reasonable fees for  
29 the costs of reproducing criminal history record information  
30 for individual access and review and for research or

1 statistical purposes and access by noncriminal justice  
2 agencies.

3 ~~(3) Conduct hearings to further the purposes of this~~ <—  
4 ~~act.~~

5 (4) (3) Make investigations concerning all matters  
6 touching the administration and enforcement of this act and  
7 the rules and regulations promulgated thereunder.

8 ~~(5) Issue subpoenas over the signature of the chairman,~~ <—  
9 ~~after approved by a majority of the members of the council,~~  
10 ~~to require the attendance of witnesses and the production of~~  
11 ~~records and papers pertaining to any investigation or inquiry~~  
12 ~~concerning matters relating to this act. The fees for such~~  
13 ~~witnesses for travel and attendance shall be the same as for~~  
14 ~~witnesses appearing in the courts and shall be paid from~~  
15 ~~appropriations made to the council.~~

16 ~~(6) Institute, through the office of the Attorney~~  
17 ~~General,~~ (4) INSTITUTE civil and criminal proceedings for <—  
18 violations of this act and the rules and regulations adopted  
19 thereunder.

20 ~~(7) (5) Conduct annual audits of the central repository~~ <—  
21 ~~and of a representative sample of all repositories within the~~  
22 ~~Commonwealth, collecting, compiling, maintaining and~~  
23 ~~disseminating criminal history record information.~~

24 ~~(8) (6) Appoint such employees and agents as it may deem~~ <—  
25 ~~necessary.~~

26 ~~(9) Define which noncriminal justice agencies may have~~ <—  
27 ~~access to criminal history record information as provided in~~  
28 ~~section 302.~~

29 ~~(10) Carry out all other powers, duties and~~  
30 ~~responsibilities given to it by this act.~~

1 CHAPTER 8

2 PUBLIC NOTICE

3 Section 801. Requirements of repositories relating to public  
4 notice.

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

11 CHAPTER 9

12 SANCTIONS

13 Section 901. General administrative sanctions.

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

17 (1) Be denied access to specified criminal history  
18 record information for such period of time as the ~~Privacy and~~ <—  
19 ~~Security Council~~ ATTORNEY GENERAL deems appropriate. <—

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

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

27 Section 902. Criminal penalties.

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

30 (1) knowingly requests, obtains or seeks to obtain

1 criminal history record information in violation of this act;  
2 or

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

6 Section 903. Civil actions.

7 (a) The ~~Privacy and Security Council, through the Attorney~~ ←  
8 General, or any other individual or agency may institute an  
9 action in a court of proper jurisdiction against any person,  
10 agency or organization to enjoin any criminal justice agency,  
11 noncriminal justice agency, organization or individual violating  
12 the provisions of this act or to compel such agency,  
13 organization or person to comply with the provisions of this  
14 act.

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

20 (2) A person found, by the court, to have been aggrieved  
21 by a violation of this act or the rules or regulations  
22 promulgated hereunder, shall be entitled to actual and real  
23 damages of not less than \$100 for each violation and to  
24 reasonable costs of litigation and attorney's fees. Exemplary  
25 and punitive damages of not less than \$1,000 nor more than  
26 \$10,000 shall be imposed for any violation of this act, or  
27 the rules or regulations adopted hereunder, found to be  
28 willful.

29 CHAPTER 10

30 EFFECTIVE DATE AND REPEALER

1 Section 1001. Repealer.

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

4 Section 1002. Effective date.

5 (a) This act shall take effect ~~in 90 days except Chapter 7~~ <—  
6 ~~and section 202 which shall take effect~~ on July 1, 1979.

7 (b) Required expungement provision in section ~~303~~ 302 (a)(1) <—  
8 is not applicable to criminal proceedings initiated or completed  
9 prior to the effective date of this act unless requested by the  
10 individual as provided in Chapter 6.