

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2095

Session of
1978

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

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 5, 1978

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 the
9 administration of this act; and providing penalties for
10 violations of this act.

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

6 CHAPTER 1

7 GENERAL PROVISIONS

8 Section 101. Short title.

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

11 Section 102. Definitions.

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

15 "Administration of criminal justice." The activities
16 directly concerned with ~~crime~~ THE prevention, control or <—
17 reduction OF CRIME, the apprehension, detention, pretrial <—
18 release, post-trial release, prosecution, adjudication,
19 correctional supervision or rehabilitation of accused persons or
20 criminal offenders; criminal identification activities; or the
21 collection, storage dissemination or usage of criminal ~~justice~~ <—
22 HISTORY RECORD information. <—

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

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

30 "Criminal history record information." Information collected

1 by criminal justice agencies concerning individuals, consisting
2 of identifiable descriptions, DATES and notations of arrests, <—
3 detentions, indictments, informations or other formal charges
4 and any dispositions arising therefrom. ~~Criminal history record~~ <—
5 ~~information shall include, but shall not be limited to rap~~
6 ~~sheets, abstracts of criminal histories and criminal history~~
7 ~~record information sheets.~~ The term does not include
8 intelligence information, investigative information or treatment
9 information, including medical and psychological information,
10 ~~nor does it include original records of entry maintained by a~~ <—
11 ~~criminal justice agency, such as underlying court records and~~
12 ~~police blotters.~~ OR INFORMATION AND RECORDS SPECIFIED IN SECTION <—
13 104 OF THIS ACT.

14 "Criminal justice agency." Any court, including the minor
15 judiciary, with criminal jurisdiction or any other governmental
16 agency, or subunit thereof, created by statute or by the State
17 or Federal constitutions, specifically authorized to perform as
18 its principal function the administration of criminal justice,
19 and which allocates a substantial portion of its annual budget
20 to such function. Criminal justice agencies include, but are not
21 limited to: organized State and municipal police departments,
22 ~~jails, prisons, detention facilities, correctional agencies,~~ <—
23 LOCAL DETENTION FACILITIES, COUNTY, REGIONAL AND STATE <—
24 CORRECTIONAL FACILITIES, probation agencies, district or
25 prosecuting attorneys, parole boards and pardon boards.

26 ~~"Disposition information."~~ "DISPOSITION." Information <—
27 indicating that criminal proceedings have been concluded,
28 including information disclosing that police have elected not to
29 refer a matter for prosecution, that a prosecuting authority has
30 elected not to commence criminal proceedings or that a grand

1 jury has failed to indict and disclosing the nature of the
2 termination of the proceedings; or information disclosing that
3 proceedings have been indefinitely postponed and also disclosing
4 the reason for such postponement. Dispositions of criminal
5 proceedings in the Commonwealth shall include, but not be
6 limited to, acquittal, acquittal by reason of insanity, pretrial
7 probation or diversion, charge dismissed, guilty plea, nolle
8 prosequi, no information filed, nolo contendere plea, convicted,
9 abatement, discharge under rules ~~1100 or 6013~~ of the <—
10 Pennsylvania Rules of Criminal Procedure ~~concerning prompt~~ <—
11 ~~trials~~, demurrer sustained, pardoned, SENTENCE COMMUTED, <—
12 mistrial-defendant discharged, discharge from probation or
13 parole or correctional supervision. ~~Dispositions of criminal~~ <—
14 ~~proceedings in other jurisdictions shall include, but not be~~
15 ~~limited to, the above dispositions and acquittal by reason of~~
16 ~~mental incompetence, case continued without a finding, charge~~
17 ~~dismissed because of insanity, charge dismissed because of~~
18 ~~mental incompetence, no paper, youthful offender determination,~~
19 ~~deceased, dismissed civil action, found insane, found mentally~~
20 ~~incompetent, sentence commuted, executive clemency.~~

21 "DISSEMINATION." THE ORAL OR WRITTEN TRANSMISSION OR <—
22 DISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION, INCLUDING THE
23 CONFIRMATION OF ITS EXISTENCE OR NONEXISTENCE, TO INDIVIDUALS OR
24 AGENCIES OTHER THAN THE CRIMINAL JUSTICE AGENCY WHICH MAINTAINS
25 THE INFORMATION.

26 "Expunge."

27 (1) to remove information ~~from an information system so~~ <—
28 that there is no trace ~~of information within the system and~~ <—
29 ~~no~~ OR indication that such information existed; or <—

30 (2) to eliminate all identifiers which may be used to

1 trace the identity of an individual, allowing remaining data
2 to be used for statistical purposes.

3 "Repository." Any location in which criminal history record
4 information is collected, compiled, maintained and disseminated
5 BY A CRIMINAL JUSTICE AGENCY. <—

6 ~~"Sealing." The limiting of disclosure of information from a~~ <—
7 ~~summary of an individual's criminal history, consisting of~~
8 ~~identification information, arresting agency, dates of arrest,~~
9 ~~charges and all dispositions arising therefrom so that~~
10 ~~dissemination of such information is limited as provided in this~~
11 ~~act.~~

12 "Secondary dissemination." The ~~transfer~~ SUBSEQUENT <—
13 TRANSMISSION OR DISCLOSURE of criminal history record
14 information received from a repository or confirmation of the
15 existence or nonexistence of criminal history record information
16 received from a repository.

17 Section 103. Applicability.

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

22 Section 104. Scope.

23 ~~(a) This act does not in any way limit the dissemination of:~~ <—

24 ~~(1) Original records of entry compiled chronologically.~~

25 ~~(2) Court records of public criminal proceedings.~~

26 ~~(3) Published court opinions.~~

27 ~~(4) Court dockets and indices used by the court.~~

28 ~~(5) Records of traffic offenses maintained by the~~

29 ~~Pennsylvania Department of Transportation for the purpose of~~
30 ~~regulating the issuance, suspension, revocation or renewal of~~

~~driver's, pilot's or other operator's licenses.~~

~~(6) Announcements of executive clemency.~~

(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.

~~(b)~~ (D) Nothing in this act must be interpreted to limit the
disclosure by the arresting authority ~~or~~, 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)~~ (E) Nothing in this act shall prohibit a criminal

1 ~~justice agency from confirming prior criminal history record~~ <—
2 ~~information~~ AGENCY FROM DISCLOSING AN INDIVIDUAL'S PRIOR <—
3 CRIMINAL ACTIVITY TO AN INDIVIDUAL OR AGENCY if the information
4 disclosed is based on records set forth in section 104 (a). <—

5 (F) INFORMATION COLLECTED BY NONCRIMINAL JUSTICE AGENCIES <—
6 AND INDIVIDUALS FROM THE SOURCES IDENTIFIED IN THIS SECTION
7 SHALL NOT BE CONSIDERED CRIMINAL HISTORY RECORD INFORMATION.
8 SECTION 105. OTHER CRIMINAL JUSTICE INFORMATION.

9 (d) Nothing in this act shall be construed to apply to <—
10 information concerning juveniles unless they have been
11 adjudicated as adults, nor shall it apply to intelligence
12 information, investigative information, treatment information,
13 including medical and psychiatric information, caution indicator
14 information, modus operandi information, wanted persons
15 information, stolen property information, missing persons
16 information, employment history information, ~~nor~~ personal <—
17 history information, NOR PRESENTENCE INVESTIGATION INFORMATION. <—
18 Criminal history record information maintained as a part of
19 these records shall not be disseminated unless in compliance
20 with the provisions of this act.

21 CHAPTER 2
22 COMPLETENESS AND ACCURACY

23 ~~Section 201. Powers of the Attorney General.~~ <—

24 ~~The Attorney General or his designee shall have the power and~~
25 ~~his duty shall be to collect complete and accurate criminal~~
26 ~~history record information from all criminal justice agencies~~
27 ~~within the Commonwealth for statistical purposes and for use by~~
28 ~~the central repository for the maintenance of complete and~~
29 ~~accurate criminal history record information and to prescribe by~~
30 ~~regulation the form and content of records which must be kept by~~

1 ~~such criminal justice agencies in order to ensure the correct~~
2 ~~reporting of data for use for statistics and for the central~~
3 ~~repository for compiling criminal history record information.~~

4 Section ~~202~~ 201. Duties of criminal justice agencies. <—

5 It shall be the duty of every criminal justice agency within
6 the Commonwealth to maintain complete and accurate criminal
7 history record information as required ~~by the Attorney General~~ <—
8 BY THE PRIVACY AND SECURITY COUNCIL AS PROVIDED IN CHAPTER 7 <—
9 information ~~to the Attorney General or his designee~~ at such <—
10 times and in such manner as required by the provisions of this
11 ~~act~~ OR OTHER ACTS. <—

12 Section ~~203~~ 202. Mandatory fingerprinting. <—

13 (a) Fingerprints of all persons arrested for a felony,
14 misdemeanor or summary offense which becomes a misdemeanor on a
15 second arrest after conviction of that summary offense, shall be
16 taken by the arresting authority, and within 48 hours of the
17 arrest, shall be forwarded to, AND IN A MANNER AND SUCH A FORM <—
18 AS PROVIDED BY, the central repository.

19 (b) Where private complaints ~~are initiated,~~ FOR A FELONY OR <—
20 MISDEMEANOR RESULT IN A CONVICTION OR OFFENSES UNDER 18 PA.C.S.
21 § 3929 (RELATING TO RETAIL THEFT), the issuing authority shall
22 order the defendant to submit ~~within five days of such order~~ for <—
23 fingerprinting by the municipal police of the jurisdiction in
24 which the offense allegedly was committed or in the absence of a
25 police department the State police. Fingerprints so obtained
26 shall be forwarded immediately to the central repository.

27 (C) THE CENTRAL REPOSITORY SHALL TRANSMIT THE CRIMINAL <—
28 HISTORY RECORD INFORMATION TO THE CRIMINAL JUSTICE AGENCY WHICH
29 SUBMITTED THE FINGERPRINT CARD.

30 Section ~~204~~ 203. Disposition reporting by criminal justice <—

1 agencies.

2 (A) All criminal justice agencies, including but not limited <—
3 to, courts, county, REGIONAL and State correctional institutions <—
4 and parole and probation agencies, ~~must submit to the Attorney~~ <—
5 ~~General, or his designee,~~ SHALL COLLECT AND SUBMIT reports of <—
6 dispositions occurring within their respective agencies for
7 ~~statistical or criminal history purposes~~ CRIMINAL HISTORY RECORD <—
8 INFORMATION, within 90 days of the date of such disposition. TO <—
9 THE CENTRAL REPOSITORY AS PROVIDED FOR IN THIS SECTION.

10 (B) COURTS SHALL COLLECT AND SUBMIT CRIMINAL COURT
11 DISPOSITIONS AS REQUIRED BY THE ADMINISTRATIVE OFFICE OF
12 PENNSYLVANIA COURTS.

13 (C) COUNTY AND REGIONAL CORRECTIONAL INSTITUTIONS SHALL
14 COLLECT AND SUBMIT INFORMATION REGARDING THE ADMISSION, RELEASE
15 AND LENGTH OF SENTENCE OF INDIVIDUALS SENTENCED TO LOCAL AND
16 COUNTY INSTITUTIONS AS REQUIRED BY THE BUREAU OF CORRECTION.

17 (D) COUNTY PROBATION AND PAROLE OFFICES SHALL COLLECT AND
18 SUBMIT INFORMATION RELATING TO THE LENGTH OF TIME AND CHARGES
19 FOR WHICH AN INDIVIDUAL IS PLACED UNDER AND RELEASED FROM THE
20 JURISDICTION OF SUCH AGENCY AS REQUIRED BY THE PENNSYLVANIA
21 BOARD OF PROBATION AND PAROLE.

22 (E) THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, THE
23 BUREAU OF CORRECTION, THE PENNSYLVANIA BOARD OF PROBATION AND
24 PAROLE AND THE PENNSYLVANIA BOARD OF PARDONS, SHALL COLLECT AND
25 SUBMIT TO THE CENTRAL REPOSITORY SUCH INFORMATION NECESSARY TO
26 MAINTAIN COMPLETE AND ACCURATE CRIMINAL HISTORY RECORD
27 INFORMATION. SUCH CRIMINAL HISTORY RECORD INFORMATION SHALL BE
28 SUBMITTED IN ACCORDANCE WITH THE STANDARDS FOR COMPLETENESS AND
29 ACCURACY PROMULGATED BY THE PRIVACY AND SECURITY COUNCIL. EACH
30 STATE AGENCY LISTED IN THIS SUBSECTION SHALL SUBMIT TO THE

1 CENTRAL REPOSITORY ANY REPORTS OF DISPOSITIONS OCCURRING WITHIN
2 THEIR RESPECTIVE AGENCIES AND SUCH INFORMATION REPORTED FROM
3 COUNTY AND LOCAL CRIMINAL JUSTICE AGENCIES.

4 Section ~~205~~ 204. Correction of inaccurate information. <—

5 (a) Within 15 days of the detection of inaccurate data in a
6 criminal history record, regardless of the manner of discovery,
7 the criminal justice agency which reported the information ~~must,~~ <—
8 ~~at minimum,~~ SHALL comply with the following procedures to effect <—
9 correction:

10 (1) Correct its own records.

11 (2) Notify all recipients, including the central
12 repository, of the inaccurate data and the required
13 correction.

14 ~~Section 206. Checking the central repository before~~ <—
15 ~~—dissemination.~~

16 ~~(a) All criminal justice agencies within the Commonwealth~~
17 ~~are required to check with the central repository before~~
18 ~~disseminating criminal history record information when complete~~
19 ~~Statewide criminal history record information is needed. Those~~
20 ~~situations requiring waiver of the mandated check shall be~~
21 ~~determined by the Privacy and Security Council herein set forth~~
22 ~~in Chapter 7.~~

23 ~~(b) Any criminal justice agency which disseminates criminal~~
24 ~~history record information without making the prescribed check~~
25 ~~with the central repository must indicate to the recipient that~~
26 ~~the information disseminated is only that information contained~~
27 ~~in its own file and that a more complete record can be obtained~~
28 ~~from the central repository.~~

29 CHAPTER 3

30 DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

1 Section 301. General regulations.

2 (a) No dissemination of criminal history record information
3 is permitted except as provided for by this act or by rule of
4 court promulgated by the Supreme Court of Pennsylvania OR BY <—
5 RESOLUTION OF EITHER HOUSE OF THE GENERAL ASSEMBLY. No
6 administrative rule or regulation promulgated by any
7 Commonwealth agency, referring to or inferring the need for
8 criminal history record information, shall be sufficient
9 authority for the dissemination of criminal history record
10 information.

11 (B) ANY CRIMINAL JUSTICE AGENCY WHICH DISSEMINATES CRIMINAL <—
12 HISTORY RECORD INFORMATION MUST INDICATE TO THE RECIPIENT THAT
13 THE INFORMATION DISSEMINATED IS ONLY THAT INFORMATION CONTAINED
14 IN ITS OWN FILE, THE DATE OF THE LAST ENTRY, AND THAT A SUMMARY
15 OF THE STATEWIDE CRIMINAL HISTORY RECORD INFORMATION MAY BE
16 OBTAINED FROM THE CENTRAL REPOSITORY.

17 ~~(b) No~~ (C) EXCEPT DURING JOINT CRIMINAL INVESTIGATIONS, NO <—
18 secondary dissemination of criminal history record information
19 is permitted except as provided for by this act.

20 ~~(e)~~ (D) No duplication of criminal history record <—
21 information by any agency or individual receiving criminal
22 history record information is permitted. ~~except as provided for~~ <—
23 ~~in this act~~

24 ~~(d) All~~ (E) ALL NONCRIMINAL JUSTICE AGENCIES OR individuals <—
25 or agencies receiving criminal history record information must
26 return to the disseminating agency or destroy, in accordance
27 with an agreement with the repository, all such information
28 received upon completion of the specific purpose for which
29 criminal history record information was received; NOR SHALL SUCH <—
30 INFORMATION BE PERMANENTLY INCORPORATED INTO THE FILES OR

1 RECORDS OF THE AGENCY OR INDIVIDUAL RECEIVING IT.

2 ~~(e)~~ (F) Repositories must enter as a permanent part of an <—
3 individual's criminal history record information file, a listing
4 of all persons and agencies to whom they have disseminated that
5 particular criminal history record information and the date and
6 purpose for which the information was disseminated. Such listing
7 shall be maintained separate from the record itself.

8 ~~(f)~~ (G) Repositories shall ensure that criminal history <—
9 record information is disseminated only to agencies or
10 individuals authorized by the provisions of this act to receive
11 such information.

12 ~~(g)~~ (H) No agency or individual shall confirm or deny in any <—
13 manner the existence or nonexistence of criminal history record
14 information to any person or agency not eligible to receive the
15 information itself UNLESS SUCH INFORMATION IS OBTAINED FROM <—
16 RECORDS IDENTIFIED IN SECTION 104 OF THIS ACT.

17 ~~(h)~~ (I) Any noncriminal justice official, agency or <—
18 organization requesting criminal history record information
19 prior to receipt of any such criminal history record
20 information, must sign a contract with the repository from which
21 it is seeking criminal history record information, agreeing to
22 abide by the provisions of this act. Any such noncriminal
23 justice official, agency or organization entering into such a
24 contract with a repository is bound by and subject to the
25 provisions of this act.

26 ~~(i)~~ (J) Except as otherwise provided in this act, no <—
27 criminal history record information acquired from REPOSITORIES <—
28 OTHER THAN the central repository shall be permanently
29 incorporated into the files or records of ~~the agency which~~ <—
30 ~~requested such information.~~ THE CRIMINAL JUSTICE AGENCY OR <—

1 INDIVIDUAL AND MUST BE DESTROYED UPON COMPLETION OF THE SPECIFIC
2 PURPOSE FOR WHICH SUCH INFORMATION WAS RECEIVED.

3 Section 302. Access to criminal history record information.

4 (a) Access to criminal history record information shall be
5 limited to:

6 (1) Criminal justice agencies for the purpose of the
7 administration of criminal justice and criminal justice
8 agency employment.

9 (2) Auditors working under the direction of the Privacy
10 and Security Council.

11 (3) Such other individuals and agencies authorized by
12 statute to receive criminal history record information or
13 which require criminal history record information to
14 implement a statute expressly referring to criminal conduct
15 and containing either requirements or exclusions or both
16 expressly based upon such criminal conduct.

17 (4) Agencies of Federal, State and foreign governments
18 authorized by statute to conduct investigations determining
19 employment suitability or eligibility for security
20 clearances.

21 (5) (i) The chief executive of any Federal, State or
22 local government or any governmental body of the same
23 required to confirm an appointment or nomination for the
24 purpose of determining the suitability of a potential
25 appointment or nomination of an individual to a
26 governmental position.

27 (ii) The office of the Governor may make a request
28 to any repository for an oral report concerning the
29 contents of the criminal history record information
30 maintained on a prospective appointee to a Commonwealth

1 board or commission. A copy of the criminal history
2 record information will be provided upon receipt of
3 fingerprint identification of the subject about whom
4 criminal history record information is sought.

5 (iii) The office of the Governor, in order to assist
6 the Governor in the exercise of the pardoning power
7 provided by Article IV, section 9 of Constitution of
8 Pennsylvania.

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

12 (7) (i) Individuals and agencies for the express
13 purpose of research, evaluative or statistical activities
14 pursuant , OR OTHER SERVICES REQUIRED FOR ADMINISTRATION <—
15 OF CRIMINAL JUSTICE to an agreement with the
16 disseminating agency which authorizes access to criminal
17 history record information, limits the use of criminal
18 history record information to research, evaluative or
19 statistical purposes and ensures the confidentiality and
20 security of the criminal history record information,
21 consistent with this act. Such individuals and agencies
22 are bound by and subject to the provisions of this act.

23 (ii) Requests by any noncriminal justice agency,
24 individual or organization for criminal history record
25 information for research or statistical purposes,
26 requiring the identity of persons about whom ~~they~~ SUCH <—
27 RECORDS are maintained, must be approved by the Privacy
28 and Security Council. Any individual or agency requesting
29 criminal history record information for research or
30 statistical purposes must submit a research proposal to

1 the Privacy and Security Council.

2 (8) Officials of correctional facilities or
3 institutions, with the consent of the individual about whom
4 information is sought, may disseminate criminal history
5 record information to prospective employers or other
6 individuals, when such information is helpful in obtaining
7 employment ~~of rehabilitation or~~ OR REHABILITATING the <—
8 individual about whom the information relates.

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

13 (10) AGENCIES AUTHORIZED TO ISSUE VISAS OR GRANT <—
14 CITIZENSHIP.

15 (11) INDIVIDUALS AND AGENCIES AUTHORIZED BY A COURT
16 ORDER TO RECEIVE CRIMINAL HISTORY RECORD INFORMATION RELATING
17 TO A CASE IN PROGRESS.

18 (B) THE PENNSYLVANIA DEPARTMENT OF BANKING, THE PENNSYLVANIA
19 INSURANCE DEPARTMENT AND THE PENNSYLVANIA DEPARTMENT OF
20 EDUCATION SHALL HAVE ACCESS TO CRIMINAL HISTORY RECORD
21 INFORMATION MAINTAINED IN THE CENTRAL REPOSITORY FOR THE PURPOSE
22 OF DETERMINING THE EMPLOYMENT SUITABILITY OF ANY EMPLOYEE; OR
23 NOMINATION OR APPOINTMENT OF DIRECTORS, TRUSTEES AND PROPOSED
24 OFFICERS; FOR THE GRANTING OF CHARTERS; ISSUANCE OF ANY LICENSE,
25 CERTIFICATE OR PERMITS; OR THE REVOCATION OR SUSPENSION OF SUCH
26 LICENSE, PERMIT OR CERTIFICATION OF ANY AGENCY, INSTITUTION,
27 INDIVIDUAL OR AFFILIATE THEREOF OVER WHICH THEY HAVE LEGAL
28 AUTHORITY OR JURISDICTION, INCLUDING SERVICES PERFORMED UNDER
29 CONTRACT OR OTHER WRITTEN AGREEMENT BY ANY SUCH AGENCY,
30 INSTITUTION OR INDIVIDUAL.

~~(b)~~ (C) Fingerprint identification of the individual about whom information is requested shall be required under paragraphs (3), ~~(4)~~ and ~~(5)(i)~~ (5)(I) AND (10) of subsection (a).

~~Section 303. Sealing.~~

~~(a) The criminal history record information of an individual who has received a pardon must be sealed for the offense for which the pardon was granted. Access shall be allowed only for individual access and review, auditing, research purposes and by the repository for records management.~~

~~(b) Requests for criminal history record information which has been sealed must be answered only by a statement that a pardon was granted and the record sealed.~~

~~Section 304~~ 303. 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 a review verifies THE COURT OF PROPER JURISDICTION CERTIFIES TO THE DIRECTORY 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 ~~100~~ 70 years of age and has been free of arrest or

1 prosecution for ~~15~~ TEN years following final release from <—
2 confinement or supervision; or

3 (2) an individual who is the subject of the information
4 has been dead for ~~seven years and had no contact with the~~ <—
5 ~~criminal justice system for 15 years.~~ THREE YEARS. <—

6 (c) Requests for criminal history record information which
7 has been expunged must be answered only with a statement that no
8 such information exists.

9 ~~(d) Original records of entry maintained chronologically~~ <—

10 (D) NOTICE OF EXPUNGEMENT SHALL PROMPTLY BE SUBMITTED TO THE <—
11 CENTRAL RESPOSITORY 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 CHAPTER 4

17 SECURITY

18 Section 401. Security requirements for repositories.

19 Every criminal justice agency collecting, storing or
20 disseminating criminal history record information shall ensure
21 the confidentiality and security of criminal history record
22 information by providing that wherever such information is
23 ~~stored~~ MAINTAINED, a criminal justice agency must: <—

24 (1) Institute procedures to reasonably protect any
25 repository ~~of criminal history record information~~ from theft, <—
26 fire, sabotage, flood, wind or other natural or man-made
27 disasters.

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

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

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

14 CHAPTER 5

15 AUDIT

16 Section 501. Annual audit of repositories.

17 (a) The Privacy and Security Council ~~must~~ SHALL establish an <—
18 auditing team to conduct annual audits of the central repository
19 and of a representative sample ~~of not less than 3% of all~~ <—
20 ~~repositories within the Commonwealth collecting, storing and~~
21 ~~disseminating criminal history record information to ensure that~~
22 OF ALL REPOSITORIES TO ENSURE THAT the provisions of this act <—
23 are upheld.

24 (b) Persons conducting the audit shall be provided access to
25 all records, reports and listings required to conduct an audit
26 of criminal history record information, and all persons with
27 access to such information or authorized to receive ~~disclosure~~ <—
28 ~~of such information must~~ SHALL cooperate with and provide <—
29 information requested by the auditing team.

30 (c) The auditing team shall prepare a report of deficiencies

1 and recommendations for the correction of such deficiencies.

2 Upon the completion of every audit, the audited agency ~~must~~ <—
3 SHALL carry out the recommendations WITHIN A REASONABLE PERIOD <—
4 OF TIME unless the audit report is appealed to the Privacy and
5 Security Council and the appeal is upheld.

6 (d) The Privacy and Security Council shall have the power to
7 modify the corrective measures ordered by the auditing team.

8 ~~(e) The Privacy and Security Council shall have the power to~~ <—
9 ~~impose administrative sanctions as provided in Chapter 9 upon~~
10 ~~any agency that does not cooperate with the auditing team or~~
11 ~~does not fully implement the corrective measures ordered by the~~
12 ~~auditing team or the council.~~

13 ~~(f) Appeals from the decisions of the privacy and security~~
14 ~~council shall be made to the Commonwealth Court.~~

15 Section 502. Quality control.

16 Each repository ~~must~~ SHALL establish effective procedures, <—
17 ~~approved~~ IN COMPLIANCE WITH RULES AND REGULATIONS PROMULGATED by <—
18 the Privacy and Security Council, for ~~reviewing~~ the completeness <—
19 and accuracy of criminal history record information. ~~maintained~~ <—
20 ~~within such repository.~~

21 CHAPTER 6

22 INDIVIDUAL RIGHT OF ACCESS AND REVIEW

23 Section 601. Right to access and review.

24 (a) Any individual or his legal representative has the right
25 to ~~inspect~~, review, challenge, CORRECT and appeal the accuracy <—
26 and completeness of his criminal history record information.

27 (b) Persons incarcerated in correctional facilities and
28 institutions may authorize a correctional employee to obtain ~~for~~ <—
29 ~~the purpose of review and challenge a copy of their criminal~~
30 ~~history record information.~~ A COPY OF THEIR CRIMINAL HISTORY <—

1 RECORD INFORMATION FOR THE PURPOSE OF REVIEW, CHALLENGE AND
2 APPEAL.

3 Section 602. Procedure.

4 (a) The Privacy and Security Council shall promulgate rules
5 and regulations to ~~set fees and implement this section in~~ <—
6 ~~accordance with the guidelines set forth in the following~~
7 ~~subsections.~~ IMPLEMENT THIS SECTION AND SHALL ESTABLISH <—
8 REASONABLE FEES.

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

17 (c) The individual may challenge the accuracy of his or her
18 criminal history record information by specifying which portion
19 of the record is incorrect and what the correct version should
20 be. Failure to challenge any portion of the record ~~at this~~ IN <—
21 EXISTENCE AT THAT time will place the burden of ~~accuracy~~ PROVING <—
22 THE INACCURACY of any part subsequently challenged upon the
23 individual. INFORMATION SUBSEQUENTLY ADDED TO SUCH RECORD SHALL <—
24 ALSO BE SUBJECT TO REVIEW, CHALLENGE, CORRECTION OR APPEAL.

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

29 (1) The criminal history record information is
30 corrected.

1 (2) A certified and corrected copy of the criminal
2 history record information is ~~sent~~ PROVIDED to the
3 ~~individuals~~ 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, ~~or if the relief~~
11 ~~supplied is deemed inadequate,~~ an individual has the right to
12 appeal the decision to the Privacy and Security Council
13 within 30 days of notification of the decision by the
14 criminal justice agency. ~~for the purpose of obtaining~~
15 ~~administrative relief.~~

<—

<—

16 (2) The Privacy and Security Council shall have the
17 authority to conduct administrative appeal hearings in
18 accordance with the act of June 4, 1945 (P.L.1388, No.442),
19 known as the "Administrative Agency Law."

20 (3) The decision of the Privacy and Security Council may
21 be appealed to the Commonwealth Court by an aggrieved
22 individual.

23 Section 603. Individual rights on access and review.

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

29 CHAPTER 7

30 PRIVACY AND SECURITY COUNCIL

1 Section 701. Privacy and Security Council.

2 (a) There is hereby created a Privacy and Security Council,
3 which shall function independently of but for administrative
4 purposes shall be ~~a departmental administrative board in the~~ <—
5 ~~Department of Justice.~~

6 ~~(b) The Privacy and Security Council shall consist of five~~
7 ~~members appointed by the Governor for three year terms, except~~
8 ~~that the members first appointed shall serve for terms of one~~
9 ~~for one year, two for two years, and two for three years. IN THE~~ <—
10 OFFICE OF THE GOVERNOR.

11 (B) THE PRIVACY AND SECURITY COUNCIL SHALL CONSIST OF THE
12 ATTORNEY GENERAL, THE COMMISSIONER OF THE PENNSYLVANIA STATE
13 POLICE, THE STATE COURT ADMINISTRATOR, THE PRESIDENT PRO TEMPORE
14 OF THE SENATE SHALL APPOINT ONE MEMBER, AND THE SPEAKER OF THE
15 HOUSE SHALL APPOINT ONE MEMBER, A LOCAL CHIEF OF POLICE AND ONE
16 PRIVATE CITIZEN TO BE APPOINTED BY THE GOVERNOR.

17 (c) Each member shall be eligible for reappointment and the
18 Governor shall fill vacancies by appointing a person to fill the
19 unexpired term.

20 (d) ~~The Governor shall designate~~ COUNCIL SHALL ELECT one <—
21 member of the Privacy and Security Council as chairperson
22 thereof, to serve as such at the pleasure of the Governor.

23 (e) Members of the Privacy and Security Council shall
24 receive no compensation but shall be entitled to receive
25 reimbursement for travel and other necessary expenses incurred
26 in the performance of their duties as members of the Privacy and
27 Security Council.

28 Section 702. Duties of Privacy and Security Council.

29 The Privacy and Security Council shall have the power and
30 authority to:

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

5 (2) Establish a uniform schedule of reasonable fees for
6 the costs of reproducing criminal history record information
7 for individual access and review and for research or
8 statistical purposes AND ACCESS BY NONCRIMINAL JUSTICE <—
9 AGENCIES.

10 (3) Conduct hearings to further the purposes of this
11 act.

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

15 (5) Issue subpoenas over the signature of the chairman,
16 AFTER APPROVED BY A MAJORITY OF THE MEMBERS OF THE COUNCIL, <—
17 to require the attendance of witnesses and the production of
18 records and papers pertaining to any investigation or inquiry
19 concerning matters relating to this act. The fees for such
20 witnesses for travel and attendance shall be the same as for
21 witnesses appearing in the courts and shall be paid from
22 appropriations made to the council.

23 (6) Institute, through the office of the Attorney
24 General, civil and criminal proceedings for violations of
25 this act and the rules and regulations adopted thereunder.

26 (7) Conduct annual audits of the central repository and
27 of a representative sample of ~~not less than 3%~~ of all <—
28 repositories within the Commonwealth, collecting, ~~storing~~ <—
29 COMPILING, MAINTAINING and disseminating criminal history <—
30 record information.

1 disciplined by discharge, suspension, reduction in grade,
2 transfer or other formal disciplinary action as the agency
3 deems appropriate.

4 Section 902. Criminal penalties.

5 ~~A person commits a misdemeanor of the third degree, which~~ <—
6 ~~shall be punishable by a fine of not less than \$500 nor~~
7 ~~exceeding \$1,000, if such person:~~ A PERSON EMPLOYED BY A <—
8 GOVERNMENT AGENCY COMMITS A MISDEMEANOR OF THE THIRD DEGREE, IF
9 SUCH PERSON:

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

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

16 Section 903. Civil actions.

17 (a) The Privacy and Security Council, through the Attorney
18 General, or any other individual or agency may institute an
19 action in a court of proper jurisdiction against any person,
20 agency or organization to enjoin any criminal justice agency,
21 noncriminal justice agency, organization or individual violating
22 the provisions of this act or to compel such agency,
23 organization or person to comply with the provisions of this
24 act.

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

30 (2) A person found, by the court, to have been aggrieved

1 by a violation of this act or the rules or regulations
2 promulgated hereunder, shall be entitled to actual and real
3 damages of not less than \$100 for each violation and to
4 reasonable costs of litigation and attorney's fees. Exemplary
5 and punitive damages of not less than \$1,000 nor more than
6 \$10,000 shall be imposed for any violation of this act, or
7 the rules or regulations adopted hereunder, found to be
8 willful.

9 ~~(c) In addition to any other civil or criminal penalty or~~ <—
10 ~~remedy, when a court, in proceedings instituted pursuant to this~~
11 ~~act, finds that any of the provisions of this act have been~~
12 ~~violated, any person shall have the substantive right to bring~~
13 ~~an action against any employee who shall have willfully violated~~
14 ~~the provisions of this act. If the court shall conclude that~~
15 ~~such employee has in fact willfully violated the provisions of~~
16 ~~this act, the court shall order the dismissal of said employee~~
17 ~~and the forfeiture of said employee's pension benefit~~
18 ~~entitlements, if any.~~

19 CHAPTER 10

20 EFFECTIVE DATE AND REPEALER

21 Section 1001. Repealer.

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

24 Section 1002. Effective date.

25 ~~This act shall take effect in 180 days.~~ <—

26 (A) THIS ACT SHALL TAKE EFFECT IN 90 DAYS EXCEPT CHAPTER 7 <—
27 AND SECTION 202 WHICH SHALL TAKE EFFECT ON JULY 1, 1979.

28 (B) REQUIRED EXPUNGEMENT PROVISION IN SECTION 303 (A)(1) IS
29 NOT APPLICABLE TO CRIMINAL PROCEEDINGS INITIATED OR COMPLETED
30 PRIOR TO THE EFFECTIVE DATE OF THIS ACT UNLESS REQUESTED BY THE

1 INDIVIDUAL AS PROVIDED IN CHAPTER 6.