

LEGISLATIVE BILL 713

Approved by the Governor April 24, 1978

Introduced by Murphy, 17

AN ACT to adopt the Security, Privacy, and Dissemination of Criminal History Information Act; to define terms; to amend sections 29-209 and 29-210, Reissue Revised Statutes of Nebraska, 1943, and section 81-1423, Reissue Revised Statutes of Nebraska, 1943; to provide penalties; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Security, Privacy, and Dissemination of Criminal History Information Act.

Sec. 2. The purposes of this act are (1) to control and coordinate criminal offender record-keeping within this state, (2) to establish more efficient and uniform systems of criminal offender record-keeping, (3) to assure periodic audits of such record-keeping in order to determine compliance with this act, (4) to establish a more effective administrative structure for the protection of individual privacy in connection with such record-keeping, and (5) to preserve the principle of the public's right to know of the official actions of criminal justice agencies.

Sec. 3. For the purposes of this act, unless the context otherwise requires, the definitions found in sections 4 to 14 of this act shall be used.

Sec. 4. Administration of criminal justice shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, pretrial diversion, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

Sec. 5. Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

Sec. 6. Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall not include intelligence or investigative information.

Sec. 7. With reference to criminal history record information, complete shall mean that arrest records shall show the subsequent disposition of the case as it moves through the various stages of the criminal justice system; and accurate shall mean containing no erroneous information of a material nature.

Sec. 8. Criminal history record information system or system shall mean a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

Sec. 9. Criminal justice agency shall mean:

(1) Courts; and

(2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

Sec. 10. Direct access shall mean having the custodial authority to handle and control the actual documents or automated or computerized documentary record which constitutes the criminal history data base.

Sec. 11. Disposition shall mean information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also information disclosing the nature of the termination of the proceedings.

Sec. 12. Operator shall mean the agency, person, or group of persons designated by the governing body of the jurisdiction served by a criminal history record information system to coordinate and supervise the system.

Sec. 13. Person shall mean any natural person, corporation, partnership, firm, or association.

Sec. 14. Person in interest shall mean the person who is the primary subject of a criminal justice record or any representative designated by such person, except that if the subject of the record is under legal disability, person in interest shall mean the person's parent or duly appointed legal representative.

Sec. 15. Each criminal justice agency shall maintain complete and accurate criminal history record information with regard to the actions taken by the agency.

Sec. 16. That section 29-209, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-209. It is hereby made the duty of the sheriffs of the several counties of the State of Nebraska, the chiefs of police of incorporated cities therein, and marshals of incorporated cities and towns therein, and agencies of state government having powers of arrest to furnish such--agents the Nebraska State Patrol two copies of fingerprints on standardized--3x8 inch-cards forms provided by the Nebraska State Patrol and the Federal Bureau of Investigation, and descriptions of all such persons, who are arrested by them (1) for any felony or (2) as felony fugitives from the criminal justice system of another jurisdiction. in--the--best judgment--of--such--sheriffs,--chiefs--of--police--and--city marshals,--are--persons--wanted--for--serious--crimes--or--are fugitives--from--justice,--or--of--such--persons--in--whose possession--at--the--time--of--arrest--are--found--goods--or property--reasonably--believed--to--have--been--stolen--by--them, or--of--such--persons--in--whose--possession--are--found--burglar outfits--or--burglar--tools,--or--keys,--or--who--have--in--their possession--highpower--explosives,--reasonably--believed--to be--used--for--unlawful--purposes,--or--who--are--in--possession of--infernal--machines,--bombs,--or--other--contrivances--in whole--or--in--part,--reasonably--believed--by--such--sheriffs, chiefs--of--police--and--city--marshals--to--be--used--for unlawful--purposes,--or--of--all--persons--who--carry--concealed firearms--or--other--deadly--weapons--reasonably--believed--to be--carried--for--unlawful--purposes,--or--who--have--in--their possession--inks,--dye,--paper--or--other--articles--necessary in--the--making--of--counterfeit--bank--notes,--or--in--the alteration--of--bank--notes,--or--dies,--molds,--or--other articles--necessary--in--the--making--of--counterfeit--money, reasonably--believed--to--be--used--by--them--for--such--unlawful purposes. This section is by no means not intended to include violators of city or county ordinances or of

persons arrested for other trifling offenses. ~~It is further made the duty of the aforesaid sheriffs, chiefs of police or city marshals to furnish such agents daily reports of lost, stolen, found, pledged or pawned property received into their respective offices.~~ The Nebraska State Patrol shall in all appropriate cases forward one copy of such fingerprints and other necessary identifying data and information to the system maintained by the Federal Bureau of Investigation.

Sec. 17. That section 29-210, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-210. ~~The agents so designated by the Governor to carry out the provisions of sections 29-208 to 29-210 are Nebraska State Patrol is~~ hereby authorized (1) to keep a complete record of all reports filed of all personal property stolen, lost, found, pledged or pawned, in any city or county of this state; (2) to provide for the installation of a proper system and file, and cause to be filed therein cards containing an outline of the methods of operation employed by criminals; (3) to use any system of identification they ~~deem~~ it deems advisable, or that may be adopted in any of the penal institutions of the state; (4) to keep a record consisting of duplicates of measurements, processes, operations, plates, photographs, measurements and descriptions of all persons confined in penal institutions of this state; (5) to procure and maintain, so far as practicable, plates, photographs, descriptions and information concerning all persons who shall hereafter be convicted of felony or imprisoned for violating the military, naval or criminal laws of the United States, and of well known and habitual criminals from whatever source procurable; and (6) to furnish any ~~law-enforcing-officer-in-Nebraska~~ criminal justice agency with any information, material, records, or means of identification ~~available that he which may properly be disseminated and that it may desire in connection with the apprehension and punishment of criminals the proper administration of criminal justice;~~ (7) to upgrade, when ~~feasible, the existing law enforcement communications network;~~ and (8) to establish and maintain an improved system or systems by which relevant information may be collected, coordinated, and made readily available to serve qualified persons or agencies concerned with the administration of criminal justice.

Sec. 18. Each criminal justice agency in this state shall report the disposition of cases which enter its area in the administration of criminal justice. As to cases in which fingerprint records must be reported to

the Nebraska State Patrol under section 29-209, such disposition reports shall be made to the patrol. In all other cases when a centralized criminal history record information system is maintained by local units of government, dispositions made within the jurisdiction covered by such system shall be reported to the operator of that system or to the arresting agency in a noncentralized criminal history record information system. All dispositions shall be reported as promptly as feasible but not later than fifteen days after the happening of an event which constitutes a disposition. In order to achieve uniformity in reporting procedures, the commission shall prescribe the form to be used in reporting dispositions and may adopt rules and regulations to achieve efficiency and which will promote the ultimate purpose of insuring that each criminal justice information system maintained in this state shall contain complete and accurate criminal history information. All forms and rules and regulations relating to reports of dispositions by courts shall be approved by the Supreme Court of Nebraska.

Sec. 19. Each criminal justice agency shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify each criminal justice agency known to have received such information. Each criminal justice agency shall (1) maintain a listing of the individuals or agencies both in and outside of the state to which criminal history record information was released, a record of what information was released, and the date such information was released, (2) establish a delinquent disposition monitoring system, and (3) verify all record entries.

Sec. 20. Direct access to criminal history record information system facilities, system operating environments, data file contents, and system documentation shall be restricted to authorized organizations and persons. Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system: (1) May determine for legitimate security purposes which personnel may work in a defined area where such information is stored, collected, or disseminated; (2) shall select and supervise all personnel authorized to have direct access to such information; (3) shall assure that an individual or agency authorized direct access is administratively

held responsible for (a) the physical security of criminal history record information under its control or in its custody, and (b) the protection of such information from unauthorized access, disclosure, or dissemination; (4) shall institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters; (5) shall provide that each employee working with or having access to criminal history record information is to be made familiar with this act and of any rules and regulations promulgated under such act; and (6) shall require that direct access to criminal history record information shall be made available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system. This section shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of this act, including both review of original records and the right to have copies made of records when not prohibited.

Sec. 21. Whenever computerized data processing is employed, effective and technologically advanced software and hardware designs shall be instituted to prevent unauthorized access to such information. Computer operations which support criminal justice information systems shall operate in accordance with procedures approved by the participating criminal justice agencies and assure that (1) criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by noncriminal justice terminals, (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records from any terminal other than criminal justice system terminals which are so designated, (3) destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information, (4) operational programs are used to detect and store, for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program, or file, (5) the programs specified in subdivisions (2) and (4) of this section are known only to criminal justice agency employees responsible for criminal history record information control, or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and that the programs are kept continuously under maximum security

conditions, and (6) a criminal justice agency may audit, monitor, and inspect procedures established in this section.

Sec. 22. Complete criminal history record information maintained by a criminal justice agency shall be a public record open to inspection and copying by any person during normal business hours and at such other times as may be established by the agency maintaining the record. Criminal justice agencies may adopt such regulations with regard to inspection and copying of records as are reasonably necessary for the physical protection of the records and the prevention of unnecessary interference with the discharge of the duties of the agency.

Sec. 23. In addition to public records under section 22 of this act, information consisting of the following classifications shall be considered public record for purposes of dissemination: (1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person; (2) original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies; (3) court records of any judicial proceeding; and (4) records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's or other operator's licenses.

Sec. 24. If the requested criminal justice history record or other public record, as defined in section 23 of this act, of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall immediately notify the applicant of this fact. Such notification shall be in writing if requested by the applicant and shall state the agency, if known, which has custody or control of the record in question. If the requested criminal history record or other public record of a criminal justice agency is in the custody and control of the person to whom application is made but is not available at the time an applicant asks to examine it, the custodian shall immediately notify the applicant of such fact, in writing, if requested by the applicant. When requested by the applicant, the custodian shall set a date and hour within three working days at which time the record shall be available for inspection.

Sec. 25. That part of criminal history record information consisting of a notation of an arrest, when

no disposition is shown after an interval of one year and no active prosecution is pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record:

(1) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(2) Is currently an announced candidate for or holder of public office; or

(3) Has made a notarized request for the release of such record to a specific person.

Sec. 26. Criminal justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply.

Sec. 27. That section 81-1423, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1423. The commission shall have authority to:

(1) Adopt rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the central state planning and programming office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;



(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and from other sources, public and private, for carrying out any of its functions; Provided, that no communications equipment be acquired or approval for acquisition of communications equipment be granted without receiving the written approval of the director of the division of communications of the Department of Administrative Services;

(11) Enter into contracts, leases, and agreements necessary, convenient or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426 with agencies of state or local government, corporations, or persons;

(12) Acquire, hold and dispose of personal property in the exercise of its powers;

{13} [13] Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

{14} [14] Report annually to the Governor and to the Legislature on its activities, and make such other reports as it may deem appropriate; and

{15} [15] Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426, except that no activities or transfers or expenditures of funds available to the agency shall be inconsistent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation.

Sec. 28. Any person in interest, who asserts that he or she has reason to believe that criminal history information relating to him or her or the person in whose interest he or she acts is maintained by any system in this state, shall be entitled to review and receive a copy of such information for the purpose of determining its accuracy and completeness by making

application to the agency operating such system. The applicant shall provide satisfactory verification of the subject's identity, which shall include name, date, and place of birth, and, when identification is doubtful, a set of fingerprint impressions may be taken upon fingerprint cards or forms commonly used for law enforcement purposes by law enforcement agencies. The review authorized by this section shall be limited to a review of criminal history record information.

Sec. 29. The commission may by rule authorize a fee for each application for review under section 28 of this act, and may charge for making copies or printouts as provided in section 26 of this act. The commission shall implement section 28 of this act by rule and regulation, including but not limited to provisions for (1) administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete, (2) administrative appeal when a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates, (3) supplying to an individual whose record has been corrected, upon his or her request, the names of all noncriminal justice agencies and individuals to which the data has been given, and (4) requiring the correcting agency to notify all criminal justice recipients of corrected information.

Sec. 30. Any person who (1) permits unauthorized direct access to criminal history record information, (2) knowingly fails to disseminate or make public criminal history record information of official acts as required under this act, or (3) knowingly disseminates nondisclosable criminal history record information in violation of this act, shall be guilty of a Class IV misdemeanor.

Sec. 31. Whenever any officer or employee of the state, its agencies, or its political subdivisions, or whenever any state agency or any political subdivision or its agencies fails to comply with the requirements of this act or of regulations lawfully adopted to implement this act, any person aggrieved may bring an action, including but not limited to an action for mandamus, to compel compliance and such action may be brought in the district court of any district in which the records involved are located or in the district court of Lancaster County. The commission may request the Attorney General to bring such action.

Sec. 32. That original sections 29-209 and 29-210, Reissue Revised Statutes of Nebraska, 1943, and

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section 81-1423, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 33. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.