

Introduced: 3/22/72
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

HOUSE BILL NO. 753

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act protecting the constitutional right of privacy
of those individuals concerning whom records are
maintained by governmental agencies."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 09.25 is amended by adding a new section to read:

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Sec. 09.25.125. INDIVIDUAL RECORDS. (a) A state agency that
maintains records concerning any person which may be retrieved by
reference to, or indexed under, the person's name or a number by which
a person may be identified and which contains any information obtained
from any source other than the person shall, with respect to those
records,

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(1) notify the person by mail at his last known mailing
address that the agency maintains or is about to maintain a record
concerning the person;

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(2) refrain from disclosing the record or any information
contained in the record to another agency or to another person not
employed by the agency maintaining the record, except with the permis-
sion of the person concerned or, in the event the person cannot be
located or communicated with after reasonable effort, with permission
from members of the person's immediate family or guardian, or, only
in the event that the person, members of his immediate family and
guardian cannot be located or communicated with after reasonable effort,
upon good cause for the disclosure; however, if disclosure of a person's
record is required under any other provision of law, the person

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1 concerned shall be notified by mail at his last known address of the
2 required disclosure;

3 (3) maintain an accurate record of the names and positions
4 of all persons inspecting the records and the purposes for which the
5 inspections were made;

6 (4) permit a person to inspect his own record and have
7 copies made at his own expense;

8 (5) permit a person to supplement the information contained
9 in his record by the addition of any document or writing containing
10 information the person considers pertinent to his record; and

11 (6) remove erroneous information of any kind.

12 (b) This section may be enforced by an action in the superior
13 court. If a person, about whom information is maintained by an agency,
14 challenges that information in an action in the superior court as being
15 false, inaccurate or misleading, the burden is on the agency to prove
16 that the information is not false, inaccurate or misleading.

17 (c) Each agency may establish regulations stating the time,
18 place, fees to the extent authorized, and the procedure to be followed
19 with respect to making records promptly available to a person, and
20 otherwise necessary to implement this section.

21 (d) This section does not apply to records that are

22 (1) investigatory files compiled for law enforcement pur-
23 poses, except to the extent that the records have been maintained for
24 a longer period than reasonably necessary to commence prosecution or
25 other action or to the extent available by law to a person other than
26 a law enforcement agency;

27 (2) interagency or intraagency memorandums, letters, files
28 or other information which would not be available by law to a party
29 other than an agency in a litigation with the agency; and

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(3) records relating to adoption proceedings.

(e) The governor shall report to the legislature before January 30 of each year on an agency-by-agency basis the number of records and the number of investigatory files which were exempted from the application of this section under (d)(1) of this section during the immediately preceding calendar year.

(f) Nothing in this section may be considered to permit the disclosure of the identity of any person who has furnished information contained in any record subject to this section.

(g) "State agency" or "agency" in this section means a department, institution, board, commission, bureau, division or other administrative unit of the executive, legislative or judicial branches of the state government.

* Sec. 2. AS 12 is amended by adding a new chapter to read:

CHAPTER 62. CRIMINAL JUSTICE INFORMATION SYSTEMS
SECURITY AND PRIVACY.

Sec. 12.62.010. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds and declares that a more effective administrative structure is required to control the collection, storage, dissemination and usage of criminal offender record information. These improvements in the organization and control of criminal offender record keeping are imperative both to strengthen the administration of criminal justice and to assure appropriate protection of the individual's constitutional right of privacy. The legislature further finds that vigorous protection of the right of individual privacy is an indispensable element of a fair and effective system of criminal offender record keeping.

(b) The purposes of this chapter are

(1) to control and coordinate criminal offender record keeping within the state;

1 (2) to encourage more efficient and uniform systems of
2 criminal offender record keeping;

3 (3) to assure periodic reporting to the governor and legis-
4 lature concerning this record keeping; and

5 (4) to establish a more effective administrative structure
6 for the protection of individual privacy in connection with this record
7 keeping.

8 Sec. 12.62.020. REGULATIONS. The Governor's Commission on the
9 Administration of Justice established under AS 44.19.746 - 44.19.758
10 shall, after appropriate consultation with representatives of state and
11 local law enforcement agencies participating in information systems
12 covered by this chapter, adopt regulations and procedures necessary to
13 carry out the purposes of this chapter. Regulations adopted by the
14 commission shall be submitted to the legislature on the first day of
15 each legislative session and are subject to approval, rejection or
16 amendment by a concurrent resolution of the legislature introduced in
17 either house. Regulations adopted between the effective date of this
18 Act and the first day of the Eighth Alaska Legislature are in effect
19 until acted upon by the legislature, but if no action is taken by
20 March 15, 1973, the regulations are of no effect. Subsequent regula-
21 tions adopted under this chapter do not take effect until acted upon by
22 the legislature within 45 days of the first day of a legislative session
23 The notice and hearing requirements of the Administrative Procedure Act
24 (AS 44.62), relating to the adoption of regulations, apply to regula-
25 tions adopted under this chapter.

26 Sec. 12.62.030. COLLECTION AND STORAGE. Only criminal offender
27 record information may be collected and stored in criminal justice
28 information systems. Criminal offender record information includes
29 data and records compiled by criminal justice agencies for the purpose

1 of identifying criminal offenders, except minor traffic offenders, and
2 of maintaining as to each offender a summary of arrests, pretrial pro-
3 ceedings, the nature and disposition of criminal charges, sentencing,
4 rehabilitation and release. This information is restricted to that
5 recorded as the result of the initiation of criminal proceedings or of
6 consequent proceedings related to the criminal proceedings. It may
7 not include intelligence, analytical and investigative reports and
8 files, nor statistical records and reports in which individuals are
9 not identified and from which their identities are not ascertainable.

10 Sec. 12.62.040. ACCESS. (a) Criminal offender record information
11 shall be disseminated, whether directly or through an intermediary,
12 only to (1) criminal justice agencies, and (2) other persons or agencies
13 as are authorized access to the information by law. The commission
14 shall adopt regulations to assure that this information is disseminated
15 only in situations in which it is demonstrably required by the person
16 or agency for purposes of its statutory responsibilities.

17 (b) It is the responsibility of the commission to determine
18 whether an agency requesting access to criminal offender record infor-
19 mation is authorized to have access under the terms of this chapter.
20 Except as provided in (c) of this section, no information may be dis-
21 seminated to an agency before the commission's determination of its
22 eligibility or, in cases in which the commission's decision is appealed
23 under sec. 100 of this chapter, before the final judgment of the
24 superior court that the agency is eligible.

25 (c) For a period of six months following the effective date of
26 this Act, or until the commission completes its determination of the
27 eligibility or noneligibility for access of a requesting agency, which-
28 ever occurs first, a requesting agency that is receiving criminal
29 offender record information at the time of the effective date of this

1 Act is eligible for access.

2 (d) An agency holding or receiving criminal offender record
3 information shall maintain, for a period determined by the commission
4 to be appropriate, a listing of the agencies to which it has released
5 or communicated the information. These listings shall be reviewed
6 from time to time by the commission or staff members of the commission
7 to determine whether the provisions of this chapter or any applicable
8 regulations have been violated.

9 (e) Dissemination from an agency in this state of criminal
10 offender record information shall, except for purposes of programs of
11 research approved under sec. 50 of this chapter, and with the further
12 exception of instances in which a warrant has been obtained under (f)
13 of this section, be permitted only if the inquiry is based upon name,
14 fingerprints or other personal identifying characteristics. The com-
15 mission shall adopt regulations to prevent dissemination of this infor-
16 mation, except in the above situations, when inquiries are based upon
17 categories of offense or data elements other than name, fingerprints
18 or other personal identifying characteristics.

19 (f) Notwithstanding the provisions of (e) of this section,
20 access to criminal offender record information on the basis of data
21 elements other than personal identifying characteristics is permissible
22 if the criminal justice agency seeking the access has first obtained
23 from a judicial officer a warrant. A warrant may be issued as a matter
24 of discretion by a judicial officer in cases in which probable cause
25 has been shown that (1) access is imperative for purposes of the
26 criminal justice agency's investigational or other responsibilities,
27 and (2) the information sought to be obtained is not reasonably avail-
28 able from any other source or through any other method. A summary of
29 a request for a class access warrant, together with a statement of its

1 disposition, shall within 60 days of disposition be furnished to the
2 commission.

3 Sec. 12.62.050. RESEARCH. (a) The commission shall adopt regu-
4 lations to govern the usage in the state of criminal offender record
5 information for purposes of programs of research. The regulations
6 shall require preservation of the anonymity of the individuals to whom
7 the information relates, shall require the completion of nondisclosure
8 agreements by participants in the programs, and shall impose additional
9 requirements and conditions as the commission finds to be necessary to
10 assure the protection of privacy and security interests.

11 (b) The commission may monitor a research program approved under
12 this section to assure satisfaction both of the requirements of this
13 chapter and of applicable regulations. The commission may, if it
14 determines either that the requirements have not been satisfied or that
15 a program's continuance otherwise threatens privacy or security inter-
16 ests, prohibit access on behalf of a research program to criminal
17 offender record information.

18 (c) A state or local agency may request the commission to evalu-
19 ate a proposed program of research and to offer recommendations concern-
20 ing its consistency with the purposes and requirements of this chapter.

21 Sec. 12.62.060. DATA VERIFICATION AND PURGING. (a) The commis-
22 sion shall adopt regulations creating a continuing program of data
23 auditing and verification to assure the accuracy and completeness of
24 criminal offender record information.

25 (b) The commission shall adopt regulations to assure the prompt
26 and complete purging of criminal record information when purging is
27 required.

28 (1) under a provision of this chapter or by other law or
29 regulation;

1 (2) by the order of a court of competent jurisdiction;

2 (3) by the law of another jurisdiction, when the data or
3 records in question have originated in that jurisdiction;

4 (4) to correct errors shown to exist in the information; and

5 (5) to achieve any of the purposes of this chapter, to
6 improve the efficiency of criminal offender record keeping, or other-
7 wise to promote the fair and efficient administration of criminal
8 justice.

9 Sec. 12.62.070. SYSTEM SECURITY. (a) No computer or other part
10 of the criminal justice information system which is used for criminal
11 offender record information may be linked with any computer or other
12 part of any other information system which is used for another purpose.
13 No terminal used for another purpose may be linked with any computer
14 or other part of the criminal justice information system. A terminal
15 used by the criminal justice information system shall be installed
16 in an appropriate location so as to prohibit accidental or unauthorized
17 use of that terminal by a person other than a criminal justice agency.
18 An appropriate code system shall be used to key information retrieval
19 and this system shall remain confidential to authorized criminal justice
20 agencies.

21 (b) The commission shall adopt regulations to implement this
22 section and to further assure the security of criminal offender record
23 information from unauthorized disclosures at all levels of operation
24 in the state.

25 (c) The commission shall initiate for employees of criminal
26 justice agencies that maintain, receive or are eligible to maintain or
27 receive criminal offender record information a continuing educational
28 program in the proper use and control of the information.

29 (d) Notwithstanding any other provisions of this chapter, criminal

1 offender record information relating to minors which is maintained as
2 part of a criminal justice information system must be afforded at least
3 the same protection and is subject to the same procedural safeguards
4 for the benefit of the individual with respect to whom the information
5 is maintained, in matters relating to access, use and security, as it
6 would be under AS 47.10.090.

7 Sec. 12.62.080. INTERSTATE SYSTEMS FOR THE EXCHANGE OF CRIMINAL
8 OFFENDER RECORD INFORMATION. (a) The commission shall regulate the
9 participation by all state and local criminal justice agencies in an
10 interstate system for the exchange of criminal offender record informa-
11 tion, and shall be responsible to assure the consistency of the partici-
12 pation with the provisions and purposes of this chapter. The commission
13 may not compel any criminal justice agency to participate in an inter-
14 state system.

15 (b) Direct access to an interstate system for the exchange of
16 criminal offender record information shall be limited to those criminal
17 justice agencies that are expressly designated for that purpose by the
18 commission. When the system employs telecommunications access ter-
19 minals, the commission shall limit the number and placement of the
20 terminals to those for which adequate security measures may be taken
21 and as to which the commission may impose appropriate supervisory regu-
22 lations.

23 Sec. 12.62.090. RIGHTS OF INDIVIDUAL ACCESS AND CHALLENGE. (a)
24 When a person, having no prior criminal convictions, who is the subject
25 of identifying data submitted to and filed with the criminal justice
26 information system, is found not guilty of the offense for which
27 identifying data were submitted and filed or is released without a con-
28 viction being obtained, the identifying data and other information
29 recorded pursuant to the arrest and all copies of the data and

1 information shall be destroyed. The criminal justice agency responsible
2 for the person's file shall notify the person of the destruction.

3 (b) A person shall have the right to inspect criminal offender
4 record information located within the state which refers to him. If a
5 person believes the information to be inaccurate or incomplete, he may
6 request the criminal justice agency having custody or control of the
7 records to purge, modify or supplement them. If the agency declines to
8 do so, or if the person believes the agency's decision to be otherwise
9 unsatisfactory, the person may in writing request review by the commis-
10 sion within 60 days of the decision of the agency. The commission, its
11 representative or agent shall, in a case in which it finds a basis for
12 complaint, conduct a hearing at which the person may appear with counsel,
13 present evidence, and examine and cross-examine witnesses. Written
14 findings and conclusions shall be issued. If the record in question is
15 found to be inaccurate, incomplete or misleading, the commission shall
16 order it to be appropriately purged, modified or supplemented by an
17 explanatory notation. An agency or person in the state with custody,
18 possession or control of the record shall promptly have every copy of
19 the record altered in accordance with the commission's order. Notifica-
20 tion of a deletion, amendment and supplementary notation shall be
21 promptly disseminated by the commission to persons or agencies to which
22 records in question have been communicated, as well as to the person
23 whose records have been altered.

24 (c) Criminal justice agencies at which criminal offender records
25 are sought to be inspected may prescribe reasonable hours and places of
26 inspection, and may impose additional restrictions, including finger-
27 printing, that are reasonably necessary both to assure the record's
28 security and to verify the identities of those who seek to inspect them.

29 Sec. 12.62.100. APPEAL. A person or agency aggrieved by an order

1 or decision of the commission may appeal the order or decision to the
2 superior court. The court shall in each case conduct a de novo hearing,
3 and may order the relief it determines to be necessary.

4 Sec. 12.62.110. CIVIL LIABILITY. (a) A person may institute a
5 civil action for damages or to restrain a violation of this chapter, or
6 both. If it is found, in an action under this section, that a wilful
7 violation of this chapter has occurred, the violator shall, in addition
8 to liability for actual damages that may be shown, be liable for exem-
9 plary damages of not less than \$100 nor more than \$1,000 for each viola-
10 tion, together with costs and reasonable attorney fees.

11 (b) If, in a civil action alleging the publication or dissemina-
12 tion of criminal offender record information, it is found that the
13 provisions of this chapter or regulations issued under this chapter
14 with respect to the communication or dissemination of criminal offender
15 record information have been violated, the violator may not be entitled
16 to claim any privilege as a defense to the violation.

17 Sec. 12.62.120. CRIMINAL PENALTIES. A person who wilfully re-
18 quests, obtains or seeks to obtain criminal offender record information
19 under false pretenses, or who wilfully communicates or seeks to com-
20 municate criminal offender record information to an agency or person
21 except in accordance with the provisions of this chapter, or a member,
22 officer, employee or agent of the commission or a participating agency,
23 or a person connected with a research program authorized under sec. 50
24 of this chapter, who wilfully falsifies, or makes a false statement as
25 to the existence or nonexistence of criminal offender record informa-
26 tion, or records relating to that information, shall for each offense
27 be punishable by a fine of not more than \$5,000, or by imprisonment for
28 not more than two years, or by both. A person who knowingly, but with-
29 out criminal purpose, communicates or attempts to communicate criminal

1 offender record information except in accordance with the provisions of
2 this chapter shall, for each offense, be punishable by a fine of not
3 more than \$500, or by imprisonment for not more than 30 days, or by
4 both.

5 Sec. 12.62.130. DEFINITIONS. In this chapter, unless the context
6 otherwise requires,

7 (1) "commission" means the Governor's Commission on the
8 Administration of Justice;

9 (2) "criminal justice agency" or "agency" includes only those
10 public agencies, both state and local, which perform as their principal
11 function activities relating to

12 (A) crime prevention, including research or the sponsor-
13 ship of research;

14 (B) the apprehension, prosecution, adjudication or
15 rehabilitation of criminal offenders; or

16 (C) the collection, storage, dissemination or usage of
17 criminal offender record information;

18 (3) "interstate systems" means all agreements, arrangements
19 and systems for the interstate transmission and exchange of criminal
20 offender record information, but does not include record keeping
21 systems in the state maintained or controlled by a state or local
22 agency, or group of agencies, even if the agency receives information
23 through, or otherwise participates in, systems for the interstate
24 exchange of criminal offender record information.

25 * Sec. 3. AS 18.65.060(a) is amended to read:

26 (a) All peace officers in the state or any municipality or sub-
27 division shall cooperate with the Department of Public Safety in
28 creating and maintaining its files, and all information shall be classi-
29 fied upon standard forms and kept available for the detection of crime

1 and the identification of criminals. Criminal offender record informa-
2 tion collected and maintained under this section is subject to the
3 provisions of AS 12.62.

4 * Sec. 4. AS 44.19 is amended by adding a new section to read:

5 Sec. 44.19.757. DUTIES OF COMMISSION UNDER AS 12.62. The commis-
6 sion shall perform the duties required under AS 12.62 and in carrying
7 out those duties

8 (1) may coordinate its activities with those of interstate
9 systems for the exchange of criminal offender record information, may
10 nominate one or more of its members to serve on the council or committee
11 of an interstate system, and may participate as it considers appropriate
12 in an interstate system's activities and programs;

13 (2) may conduct inquiries and investigations it considers
14 appropriate to carry out its functions under AS 12.62, and for this
15 purpose may request an agency that maintains, or has received, or that
16 is eligible to maintain or receive criminal offender records, to produce
17 for inspection statistical data, reports and other information concern-
18 ing the collection, storage, dissemination and usage of criminal
19 offender record information; each agency is authorized and directed to
20 provide the data, reports and other information;

21 (3) shall report annually to the governor and to the legis-
22 lature concerning the collection, storage, dissemination and usage in
23 the state of criminal offender record information; the governor or
24 legislature may require additional reports as may be considered neces-
25 sary.
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