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1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 387

HCS

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act protecting the constitutional right of privacy
7 of those individuals concerning whom records are main-
8 tained by governmental agencies."

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

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

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

17 (1) the need and provision for the notification of the
18 person that the agency maintains or is about to maintain a record
19 concerning that person;

20 (2) for obtaining the permission of the person about whom
21 the record is maintained, or when he is unavailable, of his immediate
22 family, when the record or information contained in it is not a public
23 record under sec. 120 of this chapter and is disclosed to another agency
24 or to another person not employed by the agency maintaining the record,
25 except that when the person, members of his immediate family or his
26 guardian cannot be located or communicated with after reasonable effort,
27 the agency may make the disclosure upon good cause for the disclosure,
28 and except in those instances provided for by regulation when the dis-
29 closure is of a routine, administrative nature and would not be

1 violative of the person's right to privacy;

2 (3) the need and provision for the notification of the person
3 that his record has been transferred or inspected by another agency or
4 person, except in those instances provided for by regulation when the
5 transfer or inspection is of a routine, administrative nature and would
6 not be violative of the person's right to privacy;

7 (4) for the complete confidentiality of that information
8 required by law or regulation to be confidential, including records
9 maintained for investigatory purposes;

10 (5) for the maintenance of an accurate record of the
11 names and positions of all persons inspecting the records, whether
12 by transfer or otherwise, and the purposes for which the inspections
13 were made;

14 (6) for the inspection by a person on whom a record is
15 maintained of his own record, unless disclosure is prohibited by law,
16 and for the copying of that record by the person at his own expense;

17 (7) procedures under which a person may supplement informa-
18 tion contained in his record by the addition of any document or writing
19 containing information the person considers pertinent to his record;

20 (8) procedures under which a person may have erroneous
21 information removed from his record and which provide for hearing
22 and review if the agency declines to purge, modify or supplement the
23 person's record;

24 (9) for the periodic and systematic correction and purging
25 of the records of the agency;

26 (10) for the periodic and systematic purging of investigatory
27 and intelligence files compiled for law enforcement purposes which
28 have been maintained for a longer period than is reasonably necessary
29 to commence prosecution or other action; each agency shall report to

1 the legislature before January 30 of each year the number of investiga-
2 tory and intelligence files maintained during the immediately preceding
3 calendar year.

4 (b) The notification, obtaining permission for transfer, and
5 inspection provisions of this section do not apply to investigatory
6 files compiled for law enforcement purposes, to interagency or intra-
7 agency memorandums, letters, files or other information which would
8 not be available by law to a party other than an agency in a litigation
9 with the agency, and to records relating to adoption proceedings.

10 (c) Regulations adopted under this section shall be submitted
11 to the legislature on the first day of each legislative session and
12 are subject to approval, rejection or amendment by a concurrent
13 resolution of the legislature introduced in either house. Regulations
14 adopted between the effective date of this Act and the first day of
15 the Eighth Alaska Legislature are in effect until acted upon by the
16 legislature, but if no action is taken by March 15, 1973, the regulations
17 are of no effect. Subsequent regulations adopted under this section
18 do not take effect until acted upon by the legislature within 45 days
19 of the first day of a legislative session. The notice and hearing
20 requirements of the Administrative Procedure Act (AS 44.62), relating
21 to the adoption of regulations, apply to regulations adopted under
22 this chapter.

23 (d) No political subdivision of the state, whether home rule or
24 otherwise, may maintain records on individuals unless the agency
25 provides, with respect to those records, protections at least
26 equivalent to those provided individuals by the regulations required
27 to be adopted under (a) of this section.

28 (e) This section does not apply to criminal offender record
29 information compiled and regulated under AS 12.62.

1 (f) This section may be enforced by an action in the superior
2 court. If a person, about whom information is maintained by an agency,
3 challenges that information in an action in the superior court as
4 being false, inaccurate or misleading, the burden is on the agency to
5 prove that the information is not false, inaccurate or misleading.

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

13 (h) If, in a civil action alleging the publication or dissemina-
14 tion of a record on a person, it is found that the provisions of
15 this section or regulations issued under this section with respect to
16 the communication or dissemination of records have been violated, the
17 violator is not entitled to claim any privilege as a defense to the
18 violation.

19 (i) A person who wilfully requests, obtains or seeks to obtain
20 a personal record under false pretenses, or who wilfully communicates
21 or seeks to communicate a personal record to an agency or person except
22 in accordance with the provisions of this section, or a member, officer
23 employee or agent of an agency who wilfully falsifies, or makes a
24 false statement as to the existence or nonexistence of a personal
25 record, is, for each offense, punishable by a fine of not more than
26 \$5,000, or by imprisonment for not more than two years, or by both.
27 A person who knowingly, but without criminal purpose, communicates or
28 attempts to communicate a personal record except in accordance with
29 the provisions of this section is, for each offense, punishable by a

1 fine of not more than \$500, or by imprisonment for not more than 30
2 days, or by both.

3 (j) "State agency" or "agency" in this section means a department,
4 institution, board, commission, bureau, division or other administra-
5 tive unit of the executive, legislative or judicial branches of the
6 state government.

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

8 CHAPTER 62. CRIMINAL JUSTICE INFORMATION SYSTEMS
9 SECURITY AND PRIVACY.

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

20 (b) The purposes of this chapter are

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

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

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

27 (4) to establish a more effective administrative structure
28 for the protection of individual privacy in connection with this record
29 keeping.

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

19 Sec. 12.62.030. COLLECTION AND STORAGE. Only criminal offender
20 record information may be collected and stored in criminal justice infor-
21 mation systems. Criminal offender record information is limited to data
22 and records compiled by criminal justice agencies for the purpose of
23 identifying criminal offenders and those wanted for criminal offenses
24 and of maintaining as to each offender a summary of arrests, pretrial
25 proceedings, the nature and disposition of criminal charges, sentencing,
26 rehabilitation and release. This information is restricted to that
27 recorded as the result of the initiation of criminal proceedings or of
28 consequent proceedings related to the criminal proceedings. It may not
29 include information relating to juvenile offenders or to misdemeanor

1 drunk or traffic offenders. It may not include intelligence, analytical
2 and investigative reports and files. Statistical records and reports
3 in which individuals are not identified and from which their identities
4 are not ascertainable may not be included unless they are used as part
5 of management systems for the administration of criminal justice
6 agencies.

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

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

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

28 (d) An agency holding or receiving criminal offender record
29 information shall maintain, for a period determined by the commission

1 to be appropriate, a listing of the agencies to which it has released
2 or communicated the information. These listings shall be reviewed
3 from time to time by the commission or staff members of the commission
4 to determine whether the provisions of this chapter or any applicable
5 regulations have been violated.

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

16 (f) Notwithstanding the provisions of (e) of this section,
17 access to criminal offender record information on the basis of data
18 elements other than personal identifying characteristics is permissible
19 if the criminal justice agency seeking the access has first obtained
20 a warrant from a judicial officer. A warrant may be issued as a matter
21 of discretion by a judicial officer in cases in which probable cause
22 has been shown that (1) access is imperative for purposes of the
23 criminal justice agency's investigational or other responsibilities,
24 and (2) the information sought to be obtained is not reasonably avail-
25 able from any other source or through any other method. A summary of
26 a request for a warrant, together with a statement of its disposition,
27 shall within 60 days of disposition be furnished to the commission.

28 Sec. 12.62.050. RESEARCH. (a) The commission shall adopt regu-
29 lations to govern the usage in the state of criminal offender record

1 information for purposes of programs of research. The regulations
2 shall require preservation of the anonymity of the individuals to whom
3 the information relates, shall require the completion of nondisclosure
4 agreements by participants in the programs, shall prohibit the use of
5 raw data obtained for one research purpos for another purpose without
6 the prior approval of the commission, and shall impose additional re-
7 quirements and conditions as the commission finds to be necessary to
8 assure the protection of privacy and security interests.

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

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

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

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

26 (1) under a provision of this chapter or by other law or
27 regulation;

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

29 (3) by the law of another jurisdiction, when the data or

1 records in question have originated in that jurisdiction;

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

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

7 Sec. 12.62.070. SYSTEM SECURITY. (a) A terminal used by the
8 criminal justice information system shall be installed in an appropriate
9 location in order to prohibit accidental or unauthorized use of that
10 terminal by a person other than a criminal justice agency. An appropri-
11 ate code system shall be used to key information retrieval and this
12 system shall remain confidential to authorized criminal justice
13 agencies.

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

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

22 Sec. 12.62.080. INTERSTATE SYSTEMS FOR THE EXCHANGE OF CRIMINAL
23 OFFENDER RECORD INFORMATION. (a) The commission shall regulate the
24 participation by all state and local criminal justice agencies in an
25 interstate system for the exchange of criminal offender record informa-
26 tion, and shall be responsible to assure the consistency of the partici-
27 pation with the provisions and purposes of this chapter. The commission
28 may not compel any criminal justice agency to participate in an inter-
29 state system.

1 (b) Direct access to an interstate system for the exchange of
2 criminal offender record information shall be limited to those criminal
3 justice agencies that are expressly designated for that purpose by the
4 commission. When the system employs telecommunications access ter-
5 minals, the commission shall limit the number and placement of the
6 terminals to those for which adequate security measures may be taken
7 and as to which the commission may impose appropriate supervisory regu-
8 lations.

9 Sec. 12.62.090. RIGHTS OF INDIVIDUAL ACCESS AND CHALLENGE. (a)
10 When a person, having no prior criminal convictions, who is the subject
11 of identifying data submitted to and filed with the criminal justice
12 information system, is found not guilty of the offense for which
13 identifying data were submitted and filed or is released without a con-
14 viction being obtained, the identifying data and other information
15 recorded pursuant to the arrest and all copies of the data and informa-
16 tion shall be destroyed. The criminal justice agency responsible for
17 the person's file shall notify the person of the destruction.

18 (b) A person shall have the right to inspect criminal offender
19 record information located within the state which refers to him. If a
20 person believes the information to be inaccurate or incomplete, he may
21 request the criminal justice agency having custody or control of the
22 records to purge, modify or supplement them. If the agency declines to
23 do so, or if the person believes the agency's decision to be otherwise
24 unsatisfactory, the person may in writing request review by the commis-
25 sion within 60 days of the decision of the agency. The commission, its
26 representative or agent shall, in a case in which it finds a basis for
27 complaint, conduct a hearing at which the person may appear with counsel
28 present evidence, and examine and cross-examine witnesses. Written
29 findings and conclusions shall be issued. If the record in question is

1 found to be inaccurate, incomplete or misleading, the commission shall
2 order it to be appropriately purged, modified or supplemented by an
3 explanatory notation. An agency or person in the state with custody,
4 possession or control of the record shall promptly have every copy of
5 the record altered in accordance with the commission's order. Notifi-
6 cation of a deletion, amendment and supplementary notation shall be
7 promptly disseminated by the commission to persons or agencies to which
8 records in question have been communicated, as well as to the person
9 whose records have been altered.

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

15 Sec. 12.62.100. APPEAL. A person or agency aggrieved by an order
16 or decision of the commission may appeal the order or decision to the
17 superior court. The court shall in each case conduct a de novo hearing
18 and may order the relief it determines to be necessary.

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

26 (b) If, in a civil action alleging the publication or dissemina-
27 tion of criminal offender record information, it is found that the
28 provisions of this chapter or regulations issued under this chapter
29 with respect to the communication or dissemination of criminal offender

1 record information have been violated, the violator may not be entitled
2 to claim any privilege as a defense to the violation.

3 Sec. 12.62.120. CRIMINAL PENALTIES. A person who wilfully
4 requests, obtains or seeks to obtain criminal offender record informa-
5 tion under false pretenses, or who wilfully communicates or seeks to
6 communicate criminal offender record information to an agency or person
7 except in accordance with the provisions of this chapter, or a member,
8 officer, employee or agent of the commission or a participating agency,
9 or a person connected with a research program authorized under sec. 50
10 of this chapter, who wilfully falsifies, or makes a false statement as
11 to the existence or nonexistence of criminal offender record informa-
12 tion, or records relating to that information, shall for each offense
13 be punishable by a fine of not more than \$5,000, or by imprisonment for
14 not more than two years, or by both. A person who knowingly, but with-
15 out criminal purpose, communicates or attempts to communicate criminal
16 offender record information except in accordance with the provisions of
17 this chapter shall, for each offense, be punishable by a fine of not
18 more than \$500, or by imprisonment for not more than 30 days, or by
19 both.

20 Sec. 12.62.130. MAINTENANCE OF SEPARATE FILES. Nothing in this
21 chapter prohibits an agency from maintaining files or records which
22 contain information other than criminal justice information.

23 Sec. 12.62.140. DEFINITIONS. In this chapter, unless the context
24 otherwise requires,

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

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

1 (A) crime prevention, including research or the sponsor-
2 ship of research;

3 (B) the apprehension, prosecution, adjudication or
4 rehabilitation of criminal offenders; or

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

7 (3) "criminal justice information system" means a system or
8 that part of a system, including the equipment, facilities, procedures,
9 agreements, and organizations related to the system funded in whole or
10 in part by the Law Enforcement Assistance Administration, for the
11 collection, processing or dissemination of criminal offender record
12 information;

13 (4) "interstate systems" means all agreements, arrangements
14 and systems for the interstate transmission and exchange of criminal
15 offender record information, but does not include record keeping
16 systems in the state maintained or controlled by a state or local
17 agency, or group of agencies, even if the agency receives information
18 through, or otherwise participates in, systems for the interstate
19 exchange of criminal offender record information.

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

21 (a) All peace officers in the state or any municipality or sub-
22 division shall cooperate with the Department of Public Safety in
23 creating and maintaining its files, and all information shall be classi-
24 fied upon standard forms and kept available for the detection of crime
25 and the identification of criminals. Criminal offender record informa-
26 tion collected and maintained under this section is subject to the
27 provisions of AS 12.62.

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

29 Sec. 44.19.757. DUTIES OF COMMISSION UNDER AS 12.62. The

1 commission shall perform the duties required under AS 12.62 and in
2 carrying out those duties

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

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

16 (3) shall report annually to the governor and to the legis-
17 lature concerning the collection, storage, dissemination and usage in
18 the state of criminal offender record information; the governor or
19 legislature may require additional reports as may be considered neces-
20 sary.