

Introduced: 4/30/79
Referred: Judiciary

1 IN THE HOUSE

BY GARDINER

2 HOUSE BILL NO. 490

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the sealing of arrest records."

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

8 * Section 1. AS 12.25 is amended by adding new sections to read:

9 Sec. 12.25.240. SEALING OF ARREST RECORDS. (a) The court shall
10 order the arrest record of any person sealed if

11 (1) the person is acquitted of the charge for which he was
12 arrested;

13 (2) the charge for which the person was arrested is dis-
14 missed; or

15 (3) no complaint or information was filed or indictment
16 sought within 120 days of the date the person was arrested.

17 (b) Any person may request the court to seal an arrest record
18 under (a) of this section.

19 Sec. 12.25.250. NOTICE OF ORDER. (a) Notice of an order sealing
20 an arrest record made under AS 12.25.240 shall be served upon

21 (1) the arrestee;

22 (2) the person or agency which filed the complaint, filed the
23 information, or sought the indictment, or if no information or complaint
24 was filed or indictment sought, the person who made the arrest;

25 (3) the custodian of the court records.

26 (b) Within 30 days of receipt of notice of an order under (a)(2)
27 or (a)(3) of this section, the person or agency receiving the order
28 shall submit under oath to the court the names and addresses of all
29 persons or agencies, inside and outside the state, known to the person

1 or agency to have custody or knowledge of records which are the subject
2 of the order. If the name and address of a person or agency known to
3 have custody of records is submitted, the court shall serve upon the
4 person or agency notice of the order sealing the arrest record, except
5 that if a person or agency with custody of the records is outside the
6 court's jurisdiction, the court shall only request that the person or
7 agency comply with the terms of the order.

8 (c) The arrestee may at any time submit to the court the names and
9 addresses of any person or agency, inside and outside the state, which
10 he has reason to believe has custody of a record which has been ordered
11 sealed by the court. If the name and address of a person or agency
12 believed to have custody of records is submitted, the court shall serve
13 upon the person or agency notice of the order sealing the arrest record,
14 except that if a person or agency with custody of the records is outside
15 the court's jurisdiction, the court shall only request that the person
16 or agency comply with the terms of the order.

17 Sec. 12.25.260. DUTY OF PERSONS OR AGENCIES RECEIVING ORDERS
18 SEALING ARREST RECORDS. (a) Upon receipt of notice of an order sealing
19 an arrest record, a person or agency within the court's jurisdiction and
20 having custody of the arrest record is prohibited from disseminating the
21 arrest record or notice of the order to any person unless under the
22 terms of an order providing access to the records issued under AS 12.-
23 25.320.

24 (b) Upon receipt of notice of an order sealing an arrest record,
25 the person or agency having custody is prohibited from using any of the
26 information contained in the arrest record for any purpose, except for
27 the purpose of making the showing required to obtain an order providing
28 access to a sealed record under AS 12.25.320.

29 (c) The court may maintain a record of an order sealing arrest

1 records; however, except to the extent acknowledgment of the existence of
2 the order is unavoidable under AS 12.25.300 or 12.25.320, the court may
3 not disclose the existence of the order to any person or agency if dis-
4 closure could reveal the identity of the arrestee.

5 (d) The person or agency having custody of an arrest record ordered
6 sealed shall respond to any request for information ordinarily contained
7 in an arrest record by stating that "no record exists" with respect to
8 the record ordered sealed.

9 (e) Each person or agency receiving notice of an order sealing an
10 arrest record shall take reasonable precautions to ensure full compli-
11 ance with the court order and the provisions of AS 12.25.240 - 12.25.-
12 360.

13 Sec. 12.25.270. RETURN AFFIDAVIT. Each person or agency receiving
14 notice of an order sealing an arrest record shall within 30 days of
15 receipt of the notice file an affidavit with the court issuing the order
16 which affirms that reasonable precautions have been taken to ensure full
17 compliance with the court order and the provisions of AS 12.25.240 -
18 12.25.360.

19 Sec. 12.25.280. PROTECTION AGAINST PERSONAL LIABILITY. Notwith-
20 standing any other provisions of law, regulation, or ordinance, a person
21 may not take adverse action against an arrestee on the basis of his
22 statement, in response to an inquiry about an arrest record pertaining
23 to himself which is sealed, that no record exists. Adverse action which
24 may not be taken includes terminating employment, suspension or cancella-
25 tion of a business or professional license. A finding of liability in a
26 civil action or prosecution for perjury may not be based upon an
27 arrestee's false statement that no record exists if the record has been
28 ordered sealed under AS 12.25.240. This section applies to both state-
29 ments made under oath and to statements not made under oath.

1 Sec. 12.25.290. CONSUMER REPORTING AGENCIES AND CREDITORS. (a) A
2 consumer reporting agency may maintain custody of or disseminate only
3 those arrest records not required to be sealed by the court under
4 AS 12.25.240. Any records in the custody of a consumer reporting agency
5 and not required to be sealed which subsequently are required to be
6 sealed by the court under the terms of AS 12.25.240 shall be destroyed.

7 (b) A credit grantor may not request from a credit applicant,
8 maintain custody of, disseminate, or deny credit on the basis of those
9 arrest records required to be sealed by the court under AS 12.25.240.
10 Any records in the custody of the credit grantor which are not required
11 to be sealed and which subsequently are required to be sealed by the
12 court under the terms of AS 12.25.240 shall be destroyed.

13 Sec. 12.25.300. ARRESTEE'S RIGHT OF ACCESS TO ARREST RECORD INFOR-
14 MATION. Any person or agency shall permit an arrestee to review an
15 arrest record pertaining to the arrestee in the custody of the person or
16 agency.

17 Sec. 12.25.310. CORRECTION OF RECORDS. If a person or agency
18 changes, corrects, or updates an arrest record which that person or
19 agency has disseminated to other persons or agencies, all persons or
20 agencies known by the person or agency to have received the record from
21 the person or agency shall be notified of the change, correction, or
22 update. Upon receipt of such a notification, the person or agency
23 having custody of the records shall change, correct, or update the
24 records accordingly.

25 Sec. 12.25.320. REOPENING SEALED RECORDS. If the state makes a
26 compelling showing that access and use of an arrest record is necessary
27 to meet a law enforcement need which cannot be achieved by any other
28 means, the state may apply to the court for an order providing access to
29 records previously sealed by a court order if access is granted only to

1 designated persons, for a designated use, and for a designated period of
2 time. No order granting access to sealed arrest records may be issued
3 unless the state affords the arrestee reasonable advance notice of its
4 request for an order.

5 Sec. 12.25.330. EMPLOYERS. A public or private employer may not
6 inquire of an applicant for employment or an employee whether the appli-
7 cant or employer has ever been arrested for a crime for which the person
8 has not been convicted. An employer may not discriminate between appli-
9 cants for employment or employees solely on the basis of an arrest
10 record.

11 Sec. 12.25.340. PENALTY. (a) A person with respect to whom an
12 arrest record is being maintained in custody, disseminated, or used in
13 violation of AS 12.25.240 - 12.25.360 is entitled to injunctive relief,
14 reasonable attorney fees and other reasonable costs of litigation.

15 (b) A person who wilfully violates the provisions of AS 12.25.-
16 240 - 12.25.350 is guilty of a class A misdemeanor.

17 Sec. 12.25.350. APPLICABILITY. Insofar as the provisions of
18 AS 12.25.240 - 12.25.360 conflict or are inconsistent with AS 47.10.090,
19 the provisions of AS 12.25.240 - 12.25.360 are inapplicable.

20 Sec. 12.25.360. DEFINITIONS. In AS 12.25.240 - 12.25.360,

21 (1) "arrestee" means a person arrested with or without a
22 warrant;

23 (2) "arrest record" means any and all records arising out of
24 the arrest and prosecution of a person for a crime, from which the
25 identity of the arrestee is ascertainable up to and including the entry
26 of judgment; however, the term does not include identification informa-
27 tion such as fingerprint records if the information has not been obtained
28 through the involvement of the arrestee in the criminal justice system;

29 (3) "consumer report"

1 (A) means any written, oral, or other communication of
2 any information by a consumer reporting agency bearing on a con-
3 sumer's credit worthiness, credit standing, credit capacity,
4 character, general reputation, personal characteristics, or mode of
5 living which is used or expected to be used or collected in whole
6 or in part for the purpose of serving as a factor in establishing
7 the consumer's eligibility for

8 (i) credit or insurance to be used primarily for
9 personal family or household purposes; or

10 (ii) employment purposes;

11 (B) "consumer report" does not include

12 (i) any report containing information solely as to
13 transactions or experiences between the consumer and the
14 person making the report; or

15 (ii) any authorization or approval of a specific
16 extension of credit directly or indirectly by the issuer of a
17 credit card or similar device;

18 (4) "consumer reporting agency" means any person who, for
19 fees, dues, or on a cooperative nonprofit basis, regularly engages in
20 the practice of assembling or evaluating consumer credit information or
21 other information on consumers for the purpose of furnishing consumer
22 reports to third parties;

23 (5) "credit grantor" means a person who, in the ordinary
24 course of business, regularly participates in the decision of whether or
25 not to extend credit.