

CS FOR SENATE BILL NO. 276(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 3/18/94

Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal justice information; providing procedural requirements
2 for obtaining certain criminal justice information; and providing for an effective
3 date."

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

5 * Section 1. AS 12.62 is amended by adding a new section to read:

6 Sec. 12.62.005. INTENT. It is the intent of the legislature that the department
7 administer the provisions of this chapter in a manner that protects victims of crime,
8 allows the proper administration of justice, and avoids vigilantism.

9 * Sec. 2. AS 12.62 is amended by adding new sections to read:

10 Sec. 12.62.100. CRIMINAL JUSTICE INFORMATION ADVISORY BOARD;
11 FUNCTIONS AND DUTIES. (a) The Criminal Justice Information Advisory Board
12 is established in the department. The board consists of the following members:

13 (1) a member of the general public appointed by and serving at the
14 pleasure of the governor;

1 (2) a municipal police chief appointed by and serving at the pleasure
2 of the governor; in making this appointment, the governor shall consult with the
3 Alaska Association of Chiefs of Police;

4 (3) the attorney general or the attorney general's designee;

5 (4) the chief justice of the supreme court or the chief justice's designee;

6 (5) the commissioner of administration or the commissioner's designee;

7 (6) the commissioner of corrections or the commissioner's designee;

8 (7) the commissioner of health and social services or the
9 commissioner's designee;

10 (8) the commissioner of public safety or the commissioner's designee,
11 who will serve as chair of the board; and

12 (9) the executive director of the Alaska Judicial Council or the
13 executive director's designee.

14 (b) Members of the board receive no compensation for services on the board,
15 but are entitled to per diem and travel expenses authorized for boards under
16 AS 39.20.180.

17 (c) The board shall meet at least once every six months.

18 (d) The board shall advise the department and other criminal justice agencies
19 on matters pertaining to the development and operation of the central repository
20 described in AS 12.62.110(1) and other criminal justice information systems, including
21 providing advice about regulations and procedures, and estimating the resources and
22 costs of those resources, needed to carry out the provisions of this chapter.

23 Sec. 12.62.110. DUTIES OF THE COMMISSIONER REGARDING
24 INFORMATION SYSTEMS. The commissioner shall

25 (1) develop and operate a criminal justice information system to serve
26 as the state's central repository of criminal history record information, and to collect,
27 store, and release criminal justice information as provided in this chapter;

28 (2) consult with the board established by AS 12.62.100 regarding
29 matters concerning the operation of the department's criminal justice information
30 systems;

31 (3) provide a uniform crime reporting system for the periodic

1 collection, analysis, and reporting of crimes, and compile and publish statistics and
2 other information on the nature and extent of crime in the state;

3 (4) cooperate with other agencies of the state, the criminal record
4 repositories of other states, the Interstate Identification Index, the National Law
5 Enforcement Telecommunications System, the National Crime Information Center, and
6 other appropriate agencies or systems, in the development and operation of an effective
7 interstate, national, and international system of criminal identification, records, and
8 statistics; and

9 (5) in accordance with AS 44.62 (Administrative Procedure Act), adopt
10 regulations necessary to implement the provisions of this chapter; in adopting the
11 regulations, the commissioner may consult with affected law enforcement agencies
12 regarding the fiscal implications of the regulations; regulations may not be adopted
13 under this section that affect procedures of the court system.

14 Sec. 12.62.120. REPORTING OF CRIMINAL JUSTICE INFORMATION.

15 (a) The commissioner, by regulation and after consultation with the board and affected
16 agencies, may designate which criminal justice agencies are responsible for reporting
17 the events described in (b) of this section. An agency designated under this subsection
18 shall report the events described in (b) of this section to the department, at the time,
19 in the manner, and in the form specified by the department.

20 (b) An agency designated under (a) of this section shall report the following
21 events to the department if they occur in connection with an arrestable offense:

22 (1) the issuance, receipt, withdrawal, quashing, or execution of a
23 judicial arrest warrant, a governor's warrant of arrest for extradition, or a parole arrest
24 warrant;

25 (2) an arrest, with or without a warrant, or an escape after arrest;

26 (3) the release of a person after arrest without charges being filed;

27 (4) the admittance to, release or escape from, or unlawful evasion of,
28 official detention in a correctional facility, either pretrial or post-trial;

29 (5) a decision by a prosecutor or a grand jury not to commence
30 criminal proceedings, to defer or indefinitely postpone prosecution, or to decline to
31 prosecute charges;

- 1 (6) the filing of a charging document, including an indictment, criminal
2 complaint, criminal information, or a petition or other document showing a violation
3 of bail, probation, or parole, or the amendment of a charging document;
- 4 (7) an acquittal, dismissal, conviction, or other disposition of charges
5 set out in a charging document described in (6) of this subsection;
- 6 (8) the imposition of a sentence or the granting of a suspended
7 imposition of sentence under AS 12.55.085;
- 8 (9) the commencement or expiration of parole or probation supervision;
- 9 (10) the commitment to or release from a facility, designated by the
10 Department of Health and Social Services, of a person who was previously accused
11 of a crime but who has been found to be incompetent to stand trial or found not
12 criminally responsible;
- 13 (11) the filing of an action in an appellate court or a federal court
14 relating to a conviction or sentence;
- 15 (12) a judgment of a court that reverses, remands, vacates, or reinstates
16 a criminal charge, conviction, or sentence;
- 17 (13) a pardon, reprieve, executive clemency, commutation of sentence,
18 or other change in the length or terms of a sentence by executive or judicial action;
19 and
- 20 (14) any other event required to be reported under regulations adopted
21 under this chapter.

22 Sec. 12.62.130. REPORTING OF UNIFORM CRIME INFORMATION. A
23 criminal justice agency shall submit to the department, at the time, in the manner, and
24 in the form specified by the department, data regarding crimes committed within that
25 agency's jurisdiction. The department shall compile, and provide to the governor and
26 the attorney general, an annual report concerning the number and nature of criminal
27 offenses committed, the disposition of the offenses, and any other data the
28 commissioner finds appropriate relating to the method, frequency, cause, and
29 prevention of crime.

30 Sec. 12.62.140. REPORTING OF INFORMATION REGARDING WANTED
31 PERSONS AND STOLEN PROPERTY. (a) A criminal justice agency shall report

1 to the department, at the time, in the manner, and in the form specified by the
2 department, data regarding

3 (1) a person the agency is trying to locate, whether that person is
4 wanted in connection with the commission of a crime, and the discovery, if any, of
5 that person;

6 (2) the theft, and recovery if any, of an identifiable motor vehicle; and

7 (3) the theft, and recovery if any, of identifiable property.

8 (b) A criminal justice agency, annually and at other times if requested by the
9 department, shall confirm whether information already reported under (a) of this
10 section continues to be valid, and shall cooperate with the department in periodic
11 audits to validate the information reported.

12 Sec. 12.62.150. COMPLETENESS, ACCURACY, AND SECURITY OF
13 CRIMINAL JUSTICE INFORMATION. (a) A criminal justice agency shall

14 (1) adopt reasonable procedures to ensure that criminal justice
15 information that the agency maintains is accurate and complete;

16 (2) notify a criminal justice agency known to have received information
17 of a material nature that is inaccurate or incomplete;

18 (3) provide adequate procedures and facilities to protect criminal justice
19 information from unauthorized access and from accidental or deliberate damage by
20 theft, sabotage, fire, flood, wind, or power failure;

21 (4) provide procedures for screening, supervising, and disciplining
22 agency personnel in order to minimize the risk of security violations;

23 (5) provide training for employees working with or having access to
24 criminal justice information;

25 (6) if maintaining criminal justice information within an automated
26 information system operated by a noncriminal justice agency, develop or approve
27 system operating procedures to comply with this chapter or regulations adopted under
28 this chapter, and monitor the implementation of those procedures to ensure that they
29 are effective; and

30 (7) maintain, for at least three years, and make available for audit
31 purposes,

1 (A) records showing the accuracy and completeness of
2 information maintained by the agency in a criminal justice information system;
3 and

4 (B) records required to be maintained under AS 12.62.160(c)(4).

5 (b) The department shall adopt reasonable procedures designed to ensure that
6 information about arrests and criminal charges that is stored in a criminal justice
7 information system can be linked with information about the disposition of those
8 arrests and charges.

9 (c) Every two years the department shall undertake an audit, and every four
10 years shall obtain an independent audit, of the department's criminal justice
11 information system that serves as the central repository and of a sample of other state
12 and local criminal justice information systems, to verify adherence to the requirements
13 of this chapter and other applicable laws. The department shall provide to the board
14 the final report of each audit.

15 Sec. 12.62.160. RELEASE AND USE OF CRIMINAL JUSTICE
16 INFORMATION; FEES. (a) Criminal justice information and the identity of
17 recipients of criminal justice information is confidential and exempt from disclosure
18 under AS 09.25. The existence or nonexistence of criminal justice information may
19 not be released to or confirmed to any person except as provided in this section and
20 AS 12.62.180(d).

21 (b) Subject to the requirements of this section, and except as otherwise limited
22 or prohibited by other provision of law or court rule, criminal justice information may
23 be released by a criminal justice agency as follows:

24 (1) an assessment or summary of criminal justice information may be
25 provided to a person when, and only to the extent, necessary to avoid imminent danger
26 to life or extensive damage to property;

27 (2) criminal justice information may be provided to a person to the
28 extent required by applicable court rules or under an order of a court of this state,
29 another state, or the United States;

30 (3) criminal justice information may be provided to a person if the
31 information is commonly or traditionally provided by criminal justice agencies in order

1 to identify, locate, or apprehend fugitives or wanted persons or to recover stolen
2 property, or for public reporting of recent arrests, charges, and other criminal justice
3 activity;

4 (4) criminal justice information may be provided to a criminal justice
5 agency for a criminal justice activity;

6 (5) criminal justice information may be provided to a government
7 agency to the extent necessary for enforcement of or for a purpose specifically
8 authorized by state or federal law;

9 (6) criminal justice information may be provided to a person
10 specifically authorized by a state or federal law to receive such information;

11 (7) criminal justice information may be provided to a member of the
12 Alaska legislature for official legislative business upon the written request of the
13 legislator and the written approval of the presiding officer of the house of which that
14 legislator is a member;

15 (8) criminal justice information in aggregate form may be released to
16 a qualified person, as determined by the agency, for criminal justice research, subject
17 to written conditions that assure the security of the information and the privacy of
18 individuals to whom the information relates;

19 (9) current offender information may be provided to a person for any
20 purpose, except that information may not be released if the release of the information
21 would unreasonably compromise the privacy of a minor or vulnerable adult;

22 (10) past conviction information may be provided to a person for any
23 purpose if less than 10 years has elapsed from the date of unconditional discharge to
24 the date of the request;

25 (11) past conviction information relating to a serious offense may be
26 provided to an interested person if the information is requested for the purpose of
27 determining whether to grant a person supervisory or disciplinary power over a minor
28 or dependent adult; and

29 (12) criminal justice information may be provided to the person who
30 is the subject of the information.

31 (c) Unless otherwise provided for in regulations adopted by the commissioner,

1 if access to criminal justice information is permitted under (b) of this section
2 (1) the information may be released only by the agency maintaining
3 that information;
4 (2) the information may not be released under this section without first
5 determining that the information is the most current information available within that
6 criminal justice information system, unless the system is incapable of providing the
7 most current information available within the necessary time period;
8 (3) the information may not be released under this section until the
9 person requesting the information establishes the identity of the subject of the
10 information by fingerprint comparison or another reliable means of identification
11 approved by the department;
12 (4) the information may not be released under this section unless the
13 criminal justice agency releasing the information records, and maintains for at least
14 three years, the name of the person or agency that is to receive the information, the
15 date the information was released, the nature of the information, and the statutory
16 authority that permits the release; and
17 (5) information released under this section may be used only for the
18 purpose or activity for which the information was released.
19 (d) Notwithstanding AS 09.25, a criminal justice agency may charge fees,
20 established by regulation or municipal ordinance, for processing requests for records
21 under this chapter, unless the request is from a criminal justice agency or is required
22 for purposes of discovery in a criminal case. In addition to fees charged under
23 AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint
24 system, the department may charge fees for other services in connection with the
25 processing of information requests, including fees for contacting other jurisdictions to
26 determine the disposition of an out-of-state arrest or to clarify the nature of an
27 out-of-state conviction. The department may also collect and account for fees charged
28 by the Federal Bureau of Investigation for processing fingerprints forwarded to the
29 bureau by the department. The annual estimated balance in the account maintained by
30 the commissioner of administration under AS 37.05.142 may be used by the legislature
31 to make appropriations to the department to carry out the purposes of this chapter.

1 Sec. 12.62.170. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

2 (a) A criminal justice agency shall correct, modify, or add an explanatory notation to
3 criminal history records that the agency is responsible for maintaining if the revision
4 is necessary to achieve accuracy or completeness.

5 (b) A person may submit a written request to the head of the agency
6 responsible for maintaining criminal justice information asking the agency to correct,
7 modify, or add any information or explanatory notation to criminal justice information
8 about the person that the person believes is inaccurate or incomplete. The decision of
9 the head of the agency is the final administrative decision on the request.

10 (c) The person requesting revision of criminal justice information may appeal
11 an adverse decision of the agency to the court under applicable rules of procedure for
12 appealing the decision of an administrative agency. The appellant bears the burden on
13 appeal of showing that the agency decision was in error. An appeal filed under this
14 subsection may not collaterally attack a court judgment or a decision by prison,
15 probation, or parole authorities, or any other action that is or could have been subject
16 to appeal, post-conviction relief, or other administrative remedy.

17 Sec. 12.62.180. SEALING OF CRIMINAL JUSTICE INFORMATION. (a)
18 Under this section, a criminal justice agency may seal only the information that the
19 agency is responsible for maintaining.

20 (b) A person may submit a written request to the head of the agency
21 responsible for maintaining past conviction or current offender information, asking the
22 agency to seal such information about the person that, beyond a reasonable doubt,
23 resulted from mistaken identity or false accusation. The decision of the head of the
24 agency is the final administrative decision on the request.

25 (c) The person requesting that the information be sealed may appeal an adverse
26 decision of the agency to the court under applicable rules of procedure for appealing
27 the decision of an administrative agency. The appellant bears the burden on appeal
28 of showing that the agency decision was clearly mistaken. An appeal filed under this
29 subsection may not collaterally attack a court judgment or a decision by prison,
30 probation, or parole authorities, or any other action that is or could have been subject
31 to appeal, post-conviction relief, or other administrative remedy.

1 (d) A person about whom information is sealed under this section may deny
2 the existence of the information and of an arrest, charge, conviction, or sentence shown
3 in the information. Information that is sealed under this section may be provided to
4 another person or agency only

- 5 (1) for record management purposes, including auditing;
- 6 (2) for criminal justice employment purposes;
- 7 (3) for review by the subject of the record;
- 8 (4) for research and statistical purposes;
- 9 (5) when necessary to prevent imminent harm to a person; or
- 10 (6) for a use authorized by statute or court order.

11 Sec. 12.62.190. PURGING OF CRIMINAL JUSTICE INFORMATION. (a)
12 A criminal justice agency may purge only the criminal justice information that the
13 agency is responsible for maintaining. An agency may determine when and what
14 information will be purged, under (b) of this section.

15 (b) Criminal justice information may be purged if the agency determines that
16 the information is devoid of usefulness to a criminal justice agency due to the
17 (1) death of the subject of the information;
18 (2) age of the information;
19 (3) nature of the offense or of the information;
20 (4) volume of the agency's records or other record management
21 considerations.

22 Sec. 12.62.200. CIVIL ACTION AND DEFENSE. (a) Failure to comply with
23 a requirement of this chapter or a regulation adopted under this chapter is not a basis
24 for civil liability, but may be the basis for employee discipline or administrative action
25 to restrict a person's or agency's access to information. However, a person whose
26 criminal justice information has been released or used in knowing violation of this
27 chapter or a regulation adopted under this chapter may bring an action for damages in
28 the superior court.

29 (b) It is a defense to a civil or criminal action based on a violation of this
30 chapter, or regulations adopted under this chapter, if a person relied in good faith upon
31 the provisions of this chapter or of other laws or regulations governing maintenance,

1 release, or use of criminal justice information, or upon policies or procedures
2 established by a criminal justice agency.

3 Sec. 12.62.900. DEFINITIONS. In this chapter,

4 (1) "agency" means a criminal justice agency;

5 (2) "automatic data processing" has the meaning given in AS 44.21.170;

6 (3) "board" means the Criminal Justice Information Advisory Board;

7 (4) "commissioner" means the commissioner of public safety;

8 (5) "complete" means that a criminal history record contains
9 information about the disposition of criminal charges occurring in the state and entered
10 within 90 days after the disposition occurred;

11 (6) "correctional treatment information" means information about an
12 identifiable person, excluding past conviction information or current offender
13 information, collected to monitor that person in a correctional facility or while under
14 correctional supervision, including the person's current or past institutional behavior,
15 medical or psychological condition, or rehabilitative progress;

16 (7) "criminal history record information" means information that
17 contains

18 (A) past conviction information;

19 (B) current offender information;

20 (C) criminal identification information;

21 (8) "criminal identification information" means fingerprints,
22 photographs, and other information or descriptions that identify a person as having
23 been the subject of a criminal arrest or prosecution;

24 (9) "criminal justice activity" means

25 (A) investigation, identification, apprehension, detention, pretrial
26 or post-trial release, prosecution, adjudication, or correctional supervision or
27 rehabilitation of a person accused or convicted of a crime;

28 (B) collection, storage, transmission, and release of criminal
29 justice information; or

30 (C) the employment of personnel engaged in activities described
31 in (A) or (B) of this paragraph;

1 (10) "criminal justice agency" means

2 (A) a court with criminal jurisdiction or an employee of that
3 court;

4 (B) a government entity or subdivision of a government entity
5 that allocates a substantial portion of its budget to a criminal justice activity
6 under a law, regulation, or ordinance; or

7 (C) an individual or organization obligated to undertake a
8 criminal justice activity under a written agreement with an agency described in
9 (A) or (B) of this paragraph; as used in this subparagraph, "organization"
10 includes an interagency or interjurisdictional task force formed to further
11 common criminal justice goals;

12 (11) "criminal justice information" means any of the following, other
13 than a court record, a record of traffic offenses maintained for the purpose of
14 regulating drivers' licenses, or a record of a juvenile subject to the jurisdiction of the
15 juvenile court under AS 47.10:

16 (A) criminal history record information;

17 (B) nonconviction information;

18 (C) correctional treatment information;

19 (D) information relating to a person to be located, whether or
20 not that person is wanted in connection with the commission of a crime;

21 (12) "criminal justice information system" means an automatic data
22 processing system used to collect, store, display, or transmit criminal justice
23 information, and that permits information within the system, without action by the
24 agency maintaining the information, to be directly accessed by another principal
25 department of the state, another branch of state government, an agency of another state
26 or the federal government, or by a political subdivision of a state or the federal
27 government;

28 (13) "current offender information" means information showing that an
29 identifiable person

30 (A) is currently under arrest for or is charged with a crime and

31 (i) prosecution is under review or has been deferred by

1 written or oral agreement;
2 (ii) a warrant exists for the person's arrest; or
3 (iii) less than a year has elapsed since the date of the
4 arrest or filing of the charges, whichever is latest;
5 (B) is currently released on bail or on other conditions imposed
6 by a court in a criminal case, either pretrial or post-trial, including the
7 conditions of the release;
8 (C) is currently serving a criminal sentence or is under the
9 custody of the commissioner of corrections for supervision purposes; "current
10 offender information" under this subparagraph includes
11 (i) the terms and conditions of any sentence, probation,
12 suspended imposition of sentence, discretionary or mandatory parole,
13 furlough, executive clemency, or other release; and
14 (ii) the location of any place of incarceration, halfway
15 house, restitution center, or other correctional placement to which the
16 person is assigned; or
17 (D) has had a criminal conviction or sentence reversed, vacated,
18 set aside, or has been the subject of executive clemency;
19 (14) "department" means the Department of Public Safety;
20 (15) "dependent adult" means an adult with a physical or mental
21 disability who requires assistance or supervision with the activities of daily living;
22 (16) "information" means, unless the context clearly indicates
23 otherwise, data compiled within a criminal justice information system;
24 (17) "interested person" means a person as defined in AS 01.10.060 that
25 employs, appoints, or permits a person to serve with or without compensation in a
26 position in which the employed, appointed, or permitted person has or would have
27 supervisory or disciplinary power over a minor or dependent adult;
28 (18) "nonconviction information" means information that an identifiable
29 person was arrested or that criminal charges were filed or considered against the
30 person and
31 (A) a prosecutor or grand jury has elected not to begin criminal

1 proceedings against the person and at least a year has elapsed since that
2 decision;

3 (B) criminal charges against the person have been dismissed or
4 the person has been acquitted and at least a year has elapsed since that action;
5 or

6 (C) there is no indication of the disposition of the criminal
7 charges or the arrest and at least a year has elapsed since the arrest, filing of
8 the charges, or referral of the matter for review by a prosecutor, whichever is
9 latest;

10 (19) "past conviction information" means information showing that an
11 identifiable person who has been unconditionally discharged has previously been
12 convicted of a crime; "past conviction information" includes

13 (A) the terms of any sentence, probation, suspended imposition
14 of sentence, or discretionary or mandatory parole; and

15 (B) information that a criminal conviction or sentence has been
16 reversed, vacated, set aside, or been the subject of executive clemency;

17 (20) "purge" means to delete or destroy information in a criminal
18 justice information system so that there can be no access to the information;

19 (21) "seal" means to retain information in a criminal justice information
20 system subject to special restrictions on access or dissemination;

21 (22) "serious offense" means a conviction for a felony offense or a
22 violation or attempted violation of any of the following laws, or of the laws of another
23 jurisdiction with substantially similar elements:

24 (A) AS 11.41.410 - 11.41.470;

25 (B) AS 11.51.130(a)(1), (3), or (5);

26 (C) AS 11.61.110(a)(7);

27 (D) AS 11.66.100 - 11.66.130; or

28 (E) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -
29 11.40.420, if committed before January 1, 1980;

30 (23) "unconditional discharge" has the meaning given in AS 12.55.185.

31 * Sec. 3. AS 44.99.310(f) is amended to read:

1 (f) This section does not apply to criminal intelligence or criminal investigative
2 records, criminal justice information under AS 12.62, state agency personnel or
3 retirement system records, records of applicants for employment with the state agency,
4 or information in documents recorded under AS 40.17.

5 * Sec. 4. AS 12.62.010, 12.62.015, 12.62.017, 12.62.020, 12.62.030, 12.62.035, 12.62.040,
6 12.62.050, 12.62.060, 12.62.070; AS 18.65.060; and AS 44.41.040 are repealed.

7 * Sec. 5. TRANSITION. (a) Notwithstanding sec. 8 of this Act, an agency of the state
8 that has regulation adoption authority or that is authorized by this Act to adopt regulations,
9 may proceed to adopt regulations necessary to implement provisions in this Act that affect that
10 agency. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
11 before July 1, 1995.

12 (b) Notwithstanding the repeal of AS 44.41.040 by sec. 4 of this Act, regulations
13 adopted under AS 44.41.040 and in effect on the effective date of sec. 4 of this Act remain
14 in effect until the effective date of regulations adopted under AS 12.62.160(d), added by sec.
15 2 of this Act.

16 * Sec. 6. APPLICABILITY. Notwithstanding sec. 8 of this Act, the mandatory reporting
17 requirements of AS 12.62.120 - 12.62.140, added by sec. 2 of this Act, and regulations
18 adopted under those statutes, are not applicable before July 1, 1996, to criminal activity that
19 does not constitute a felony offense.

20 * Sec. 7. Section 5 of this Act takes effect immediately under AS 01.10.070(c).

21 * Sec. 8. Sections 1 - 4 and 6 of this Act take effect July 1, 1995.