

**SB**

**276**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/18/94

FURTHER:

DATE TURNED INTO OFFICE: 3-15-94

The Finance Committee considered **SENATE BILL NO. 276**

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

and recommends:

- replace with CS SB 276 (FINANCE)
- or  adopt previous CS \_\_\_\_\_
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal
Corrections	3/18/94		\$150.0

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
DRS	1-5-94	0	
DOLAW	1-7-94	0	
DHASS	2-2-94	0	

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

*Tom Kelly*  
*Steve Rupp*  
*Mark Huttel*  
*Bill Sharp*  
*Tom Pearce*

2. *Frank Do Pass*

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 276  
(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Criminal Justice Information BRU: Family & Youth Services  
 Sponsor: Rules Committee by request of Governor Component: Central Office, SCRO, NRO, SERO  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0254,0255,0258,0259

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

**ANALYSIS:** (Attach a separate page if necessary)

This bill pertains to criminal justice information sharing and procedural requirements affecting adult criminals and juveniles waived to adult status. This fiscal note is based on the assumption that mandatory fingerprinting pertains only to adults and those juveniles waived to adult status. Additionally, DFYS assumes the standards for fingerprinting contained in the bill will not apply to the juvenile justice system.

Prepared by: Deborah R. Wing, Director Phone: 465-3191  
 Division: Division of Family & Youth Services Date: 02/02/94  
 Approved by Commissioner: Margaret R. Lowe Date: 2-2-94  
 Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

No. 3  
Bill Version: SB 276  
(S) Publish Date: 2-4-94

Revision Date: January 7, 1994  
Title: "...relating to criminal justice information...  
obtaining certain criminal justice information..."  
Sponsor: Rules Committee/Request of the Governor  
Requestor: Governor's Office/OMB

Department Affected: Department of Law  
BRU: Prosecution  
Component: Criminal Justice Litigation  
COMPONENT SERIAL NO. 0089

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimated of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: January 7, 1994

Approved by Commissioner: Bruce M. Botelho, Acting Attorney General  
Agency: Department of Law

Date: January 7, 1994

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**FISCAL NOTE**

**STATE OF ALASKA  
1994 LEGISLATIVE SESSION**

**BILL NO. \_\_\_\_\_**

**ANALYSIS CONTINUATION:**

This bill would completely revise state law regarding the collection, safekeeping and dissemination of criminal justice information in the state's automated criminal justice data systems. The bill would also establish an oversight committee to be known as the Criminal Justice Information Advisory Board. Among other members, the bill would make the attorney general or the attorney general's designee a member of the advisory board. These new duties would entail two meetings per year. Consequently, the department does not anticipate a fiscal impact.

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO: (JUD)am SB 276**

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: AN Act relating to criminal justice BRU: Statewide Support  
 information: providing procedural requirements Component: AK Criminal Records and Identification  
 Sponsor: Rules by Request  
 Requestor: (S) FIN COMPONENT SERIAL NO. 1190

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b> <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

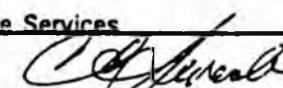
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS: (Attach a separate page if necessary.)**  
 See attached.

Prepared By: Ken Bischoff Phone: 465-4336  
 Division: Administrative Services Date: 02/24/94  
 Approved by Commissioner:  Date: 02/24/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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This bill establishes a statutory framework for 1) a number of continuing programs currently operating within the state's criminal justice community and 2) certain new provisions regarding criminal history information. In both cases, operational requirements are established, through regulation, by the Criminal Justice Advisory Board. The Board consists of representatives of law enforcement, Courts and other criminal justice agencies. The Board will work in concert with existing policy making bodies such as the Criminal Justice Working Group. The adoption and timing of the Board's regulations depends upon the ability of several state agencies, and the Court System to implement the required changes.

It is difficult to predict the requirements that may be imposed through future regulations. In many cases, these regulations will relate to expenditures that agencies would incur regardless of this legislation. Costs associated with increases in system capacities, maintenance and replacement of existing computer systems, and workload increases stemming from general societal trends cannot be directly associated with this bill. This bill formalizes many existing procedures currently in place within the state's criminal justice community. Accordingly, the Department of Public Safety submits a zero fiscal note. Our additional comments are:

The Alaska Legislature has passed a number of criminal, employment and licensing laws that require or permit the use of criminal history information for investigations, sentencing and release decisions, employment and licensing screening.

Alaska law provides for presumptive sentencing which assumes that repeat offenders receive progressively more severe sentencing as a deterrent to repeating criminal behavior.

Alaska law provides for the screening of day care workers, foster parents, school teachers, school bus drivers and various other occupations which require the use of criminal history information to ensure that inappropriate persons are not employed or not licensed who come in contact with children and protected adults, or should otherwise not be allowed to work in certain areas for public safety reasons.

Legislation continues to be proposed and enacted which requires the use of criminal history information to implement these proposals. Examples include federal legislation involving gun control (Brady-National Instant Check System) and protection of children ( National Child Protection Act). Other federal initiatives are pending involving children (Jacob Wetterling Crimes Against Children Registration Act) and a requirement for states to screen, license and train security officers (Private Security Officers Quality Assurance Act). The Alaska Legislature is considering concealed Weapons permit, handgun and other legislation (HB 351, HB 480, HB 3, SB 321).

The legislature has indicated that where criminal history information is required, that it be complete, and to the extent possible, reflect the result of a national search of a person's criminal history. Alaska's state criminal records contain approximately 330,000 convictions on about

135,000 subjects of which 16,000 are felons. Nationally, it is estimated that there are more than 50 million criminal record entries. Whereas two thirds of arrests involve repeat offenders and 20 - 30 percent of offenders have a criminal record in more than one state, it is critical that Alaska maintain criminal records systems that are complete and conform to standards required for the exchange of criminal record information nationally.

Further, it should be understood that the administration of effective and efficient criminal justice information systems is extremely challenging. Coordination is required across branches of government and involves local, state, and national governments. Presently, there is no comprehensive set of laws that Alaska can rely on as a guide to ensure critical criminal history information is maintained. The passage of SB 276 will significantly assist the Department of Public Safety and users who depend upon the availability of criminal history information which is essential to the proper application of certain laws of the State of Alaska.

At the present time, fingerprints support about 39% of Alaska's criminal history records. Additionally, of those fingerprints received, more than 20% are rejected by the Alaska Automated Fingerprint Identification System(AAFIS) due to their poor quality. Missing and rejected fingerprints prevent the automated searching of 180,000 Alaska records and 12 million Western Identification Network records and preclude reliable indexing and searching the FBI's Interstate Identification Index and National Crime Information Center which are used for conducting national criminal records searches. Fingerprints are the internationally accepted standard for authenticating entries to a person's criminal record. Fingerprints are required as the basis for registration of criminal records to state repositories and they are required to register, index and query criminal records with the national systems. Alaska needs to substantially improve.

1. This legislation establishes a statutory framework that should permit a better allocation of existing resources. To a significant degree, this legislation formalizes procedures that exist currently. To this extent, the bill should help improve the efficiency of criminal record processing. Efficiency improvements cannot reliably be quantified but would assist the department and contributing agencies in reducing criminal record backlogs;
2. Mandatory provisions have been minimized, sections generally do not take effect until regulations are adopted.
3. To the extent this legislation may increase public access, provision for the adoption of fees to provide services has been made. The Department currently charges fees for a number of services that will continue to be provided.
4. This bill will provide a framework to guide discussion on how to improve the collection of fingerprints and related criminal history record information. That discussion will include all

Department of Public Safety

Page 4 of 4

Fiscal Note (JUD)am SB 276 Continued:

agencies represented by the Criminal Justice Working Group. Implementing the full scope of this legislation will require a series of discussions in order to reach implementation agreement. This will take time to negotiate.

DPS's primary goal is to provide the framework necessary to maintain an accurate, complete and timely criminal history file. DPS depends on all criminal justice agencies to contribute to the database. This bill provides such a framework.

DPS cannot autonomously implement this legislation across the board. DPS will use the Criminal Justice Advisory Group in concert with existing policy making bodies such as the Criminal Justice Working Group and its subcommittees as a forum to confirm the need for specific data in the criminal history record and proceed only after concurrence is obtained.

### **Summary**

This legislation is required to establish this State's statutory framework for timely, accurate, and complete criminal history record information. Such a statutory framework exists in virtually every other state. Criminal history records consist of timely, accurate, and complete files used to make decisions related to investigations, release, sentencing and employment. Defendants are not going to volunteer their previous criminal history. If accurate and complete criminal records are not available on line, criminal justice agencies have no choice but to make ongoing decisions without reliable criminal history record information. This will result in lighter sentencing, improper employment decisions, and less efficient police investigations.

The Criminal Justice Work Group has endorsed the need for this type of legislation and has submitted a written recommendation to the Governor's Office. The Criminal Justice Work Group consists of the following criminal justice agencies: Department of Public Safety, Department of Law, Department of Health and Social Services, Office of Public Advocacy, Public Defender, Department of Administration, Department of Corrections, Office of Management and Budget, Chief Justice and Administrative Director of the Alaska Court System, Chairs of the House and Senate Judiciary Committees, President of the Alaska Chiefs of Police Association, and the Chief of the Anchorage Police Department.

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: CSSB 276(FIN)

Revision Date:	March 15, 1994	Dept. Affected:	Corrections
Title:	An Act relating to criminal justice information	BRU:	Administration and Support
Sponsor:	Senate Rules	Component:	Office of the Commissioner
Requestor:	Senate Finance	Component Serial #:	694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXP.	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	.	.	.	.	.
TRAVEL	0	.	.	.	.	.
CONTRACTUAL	150.0	.	.	.	.	.
SUPPLIES	0	.	.	.	.	.
EQUIPMENT	0	.	.	.	.	.
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	0	.	.	.	.	.
TOTAL OPERATING	150.0	.	.	.	.	.

CAPITAL EXP	0	.	.	.	.	.
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CHANGES IN REVENUES						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	150.0	.	.	.	.	.
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	150.0	.	.	.	.	.

Estimate of any current year (FY94) cost \$ 0.0

POSITIONS

FULL-TIME	0	.	.	.	.	.
PART-TIME	0	.	.	.	.	.
TEMPORARY	0	.	.	.	.	.

ANALYSIS: Please see the attached explanation.

Prepared by: Diane Schenker, Special Assistant *D. Schenker* Phone: 465-4643/786-2147  
 Division: Office of the Commissioner Date: 3/18/94  
 Approved by: J. Frank Prewitt, Jr., Commissioner *J. Prewitt* Date: 3/18/94  
 Agency: Department of Corrections

Fiscal Note  
CSSB 276 (FIN)  
Revised 3/15/94  
Page 2 of 5

The bill establishes a Criminal Justice Information Advisory Board, one member of which will be the Commissioner of Corrections (or designee.) The Board will advise the Commissioner of Public Safety regarding criminal justice information issues. The Commissioner of Public Safety will adopt regulations concerning the collection, reporting, and analysis of criminal justice information.

The bill requires that criminal justice information be accurate and complete, and sets up auditing requirements. The bill outlines a series of events which must be reported to Public Safety at the time, in the manner, and in the form specified by the department. The department is incapable of providing much of this information due to shortcomings in the inmate tracking system (OBSCIS), lack of training and accountability procedures for data entry, and an already-strained data management unit. Resources in the department's institutional component are strained by responding to immediate crises caused by emergency overcrowding and cannot realistically be diverted to less urgent needs such as information system improvement.

The bill also clarifies which criminal justice information can be released, to whom, and by whom, and authorizes agencies to collect fees, through regulations, for processing records requests. Changes in rules governing what information can be given out will require revision of our policies and training of all staff in all components who routinely respond to questions about offenders.

The provisions of the bill do not go into effect until at least FY96, except that agencies may develop regulations during FY95 which may go into effect in FY96.

During FY95 the department will need to assess its information system needs/resources in order to submit an appropriate budget request in FY96 to accomplish the requirements in the bill. The department does not have any available positions to assign to this work; management, research and data processing resources are extremely strained. The attached letter, from Wolfe and Associates to the Executive Director of the Alaska Judicial Council, explains the department's need for \$150,000 in contractual funds for this task.

**OLFE**  
&  
**SSOCIATES, Inc.**  
Management Consultants

5325 Wyoming Boulevard, N.E.  
Albuquerque, New Mexico 87109  
(505) 821-9336 FAX 821-1741

March 11, 1994

**RECEIVED**

MAR 14 1994

AK Judicial Council

Mr. William Cotton  
Executive Director  
Alaska Judicial Council  
1029 W. Third Street, Suite 201  
Anchorage, Alaska 99501

Dear Mr. Cotton:

As you know, on March 1st, we met with the Criminal Justice Coordination Policy Group to present a status report on our progress in developing a plan for the integration of Alaska's criminal justice computer systems. While we are several weeks away from finishing a draft of our report, we have completed our research and field interviews.

As a result of these completed activities, we have identified several policy issues that need to be addressed, have developed several design alternatives for a centralized repository, and have identified several of the system priorities that need to be addressed. There is no question that the development of a complete, accurate, and timely computerized criminal history will be dependent on the timely submittal of fingerprint cards and the electronic transfer of arrest and disposition information.

The enactment of the APSIN legislation during the current session of the legislature will provide the statutory authority to require the submittal of the fingerprint information in a timely fashion and the ability to promulgate regulations concerning the submittal of "reportable events" information to the criminal history repository.

The submission, however, of "reportable events," which consist of key arrest and change/court disposition data, will be possible only if the existing criminal justice agency systems support the submittal requirements. Currently, two agencies have systems that will not support these requirements: the Department of Law, with

Mr. William Cotton  
March 11, 1994  
Page 2

its PROMIS system, and the Department of Corrections, with its OBSCIS system. Both of these systems need to be replaced as soon as feasible.

During our presentation of March 1st, we outlined a process we described as "business process re-engineering." This process should be employed for all system replacement projects. This process is graphically presented in the attachment to this letter. A design team of department personnel and systems analysts skilled in the re-engineering process will ensure that any new system, whether purchased as a package or developed in house or with contract personnel, will meet the agency's automation information needs.

In addition, this process should include input from the other criminal justice agencies, to ensure that data-sharing needs are properly addressed. A part of this process is to also identify the architectures that should be employed for the new systems. We believe these two systems can and should employ client/server technologies in addressing their information system needs.

We recognize that our written report will not be available until late April, which is near the end of the current legislative session, and that it may be too late, even at this date, to request funding for any priority projects for the 1994-1995 fiscal year. We do believe, however, that a year's delay in beginning the implementation of the plan will be extremely detrimental to improving these systems, as well as making the criminal history repository the complete and accurate data base it needs to be.

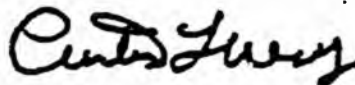
Because of this, we request your assistance in alerting the legislature to the need for some appropriation to the departments of Law and Corrections that will allow them to begin this re-engineering effort during the next fiscal year. We estimate the costs of this effort to be \$150,000 for the Department of Corrections and \$75,000 for the Department of Law. Once these re-engineering efforts are completed, each agency will have the information it needs to detail costs for replacing their systems, which can then be placed in their 1995-1996 fiscal-year budget requests.

Mr. William Cotton  
March 11, 1994  
Page 3

Your assistance in alerting the legislature to this need will be extremely beneficial to implementing the plan we will submit as part of our written report.

Very truly yours,

WOLFE & ASSOCIATES, INC.



Curtis L. Wolfe  
President

CLW:dp  
Attachment

3-12-94  
SR-3  
Adopted  
#1

Additional amendments to SB 276 (APSIN bill)

#1

Transitional section needed: The bill repeals AS 44.41.040 and incorporates those provisions in new AS 12.62.170(d). However, there are regulations adopted under AS 44.41.040, and the transition section should keep those regulations in effect until new regulations can be adopted under AS 12.62.170(d).

SENATE FINANCE  
COMMITTEE

Amendment Number: (E1)

Bill Number: SB 276

Sponsor: \_\_\_\_\_ Date: 3/10/94

Logged In By: (Bm)

Requested by Law

3-12-94  
SR 3

#2

Page 12, line 24 following the word "arrest" add "as an adult offender or as a juvenile charged as an adult" *Adopted*

This was in the original version of the bill and was mistakenly deleted in a subsequent amendment. It will mean that fingerprints of juvenile delinquents will not be required by statute, and will thus avoid a large fiscal note by the Department of Health and Social Services.

SENATE FINANCE  
COMMITTEE

Amendment Number: (#2)  
Bill Number: SR 276  
Sponsor: \_\_\_\_\_ Date: 3/10/94  
Logged In By: (Pon)

*Requested by Low*

3-15-94

passed

SENATE AMENDMENT

BY: Senator Pearce

TO: CSSB 276 ( ) LUCKHAUPT, VERSION K, 3/11/94

Page 3, line 14 through Page 4, line 21.

Delete all material.

Page 12, lines 9-14.

Delete all material.

Page 12, line 21.

Delete all material.

Page 16, line 16.

Delete "AS 12.55.147."

Renumber all sections accordingly.

THE INTENDED EFFECT OF THE AMENDMENT IS TO REPEAL THE PREVIOUSLY ADOPTED LANGUAGE SUGGESTED BY SENATOR HALFORD AND SUPPORTED BY THE DEPARTMENT OF LAW. THAT LANGUAGE IS FOUND IN SB 321.

SENATE FINANCE  
COMMITTEE  
Amendment Number: 3  
Bill Number: SB 276  
Sponsor: PEARCE Date: 3/14/94  
Logged In By: (Signature)

3-15-94  
passed

Proposed amendment to CS SB 276(FIN) [K draft]

Page 8, line 19: Add a new subsection (7), to read:

(7) criminal justice information may be provided to a member of the Alaska legislature for official legislative business, upon the written request of the member and the written concurrence of the presiding officer;

Renumber accordingly.

SENATE FINANCE  
COMMITTEE  
Amendment Number: ④  
Bill Number: SB 276  
Sponsor: \_\_\_\_\_ Date: 3/15/94  
Logged In By: AM

3-12-94  
SR 3  
Adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

8-GS2005AK  
Luckhaupt  
3/11/94

CS FOR SENATE BILL NO. 276( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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. MANDATORY FINGERPRINTING. (a) When a person is  
15 taken into custody for an arrestable offense, with or without a warrant, fingerprints of  
16 the person may be taken by the law enforcement agency with custody of the person.  
17 If the law enforcement agency with custody of the person does not take the  
18 fingerprints, they shall be taken by the correctional facility where the person is lodged  
19 following the arrest.

20 (b) At the initial court appearance or arraignment of a person for an arrestable  
21 offense, the court shall determine if the person's fingerprints have been taken in  
22 connection with the offense. If the court is unable to conclusively determine that the  
23 person's fingerprints have been taken, the court shall order the person to submit to  
24 fingerprinting within 24 hours at the appropriate correctional facility unless, after  
25 consultation with state or local law enforcement agencies, the court determines that  
26 another place for taking fingerprints is more appropriate.

27 (c) When a defendant is sentenced or otherwise adjudicated for an arrestable  
28 offense, the court shall determine if legible fingerprints have been taken in connection  
29 with the proceedings. If the court is unable to conclusively determine that legible  
30 fingerprints have been taken, the court shall order that the defendant, as a condition  
31 of sentence, adjudication, suspended imposition of sentence, probation, or release,

1 submit to fingerprinting within 24 hours at the appropriate correctional facility unless,  
2 after consultation with state or local law enforcement agencies, the court determines  
3 that another place for taking fingerprints is more appropriate.

4 (d) The department shall develop standard forms and procedures for the taking  
5 of fingerprints under this section. Fingerprints shall be

6 (1) taken on a form, and in the manner, prescribed by the department;  
7 and

8 (2) forwarded within five working days to the department.

9 (e) When the department receives fingerprints of a person in connection with  
10 an arrestable offense, the department shall make a reasonable effort to confirm the  
11 identity of the person fingerprinted. If the department finds that the person  
12 fingerprinted has criminal history record information under a name other than the name  
13 submitted with the fingerprints, the department shall promptly notify the officer,  
14 agency, or facility that took the fingerprints.

15 (f) If the arresting officer, the law enforcement agency that employs the  
16 officer, or the correctional facility where fingerprints were taken is notified by the  
17 department that fingerprints taken under this section are not legible, the officer,  
18 agency, or facility shall make a reasonable effort to obtain a legible set of fingerprints.  
19 If legible fingerprints cannot be obtained within a reasonable period of time, and if the  
20 illegible fingerprints were taken under a court order, the officer or agency shall inform  
21 the court, which shall order the defendant to submit to fingerprinting again.

22 Sec. 12.62.130. REPORTING OF CRIMINAL JUSTICE INFORMATION.

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

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

30 (1) the issuance, receipt, withdrawal, quashing, or execution of a  
31 judicial arrest warrant, a governor's warrant of arrest for extradition, or a parole arrest

1 warrant;

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

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

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

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

9 (6) the filing of a charging document, including an indictment, criminal  
10 complaint, criminal information, or a petition or other document showing a violation  
11 of bail, probation, or parole, or the amendment of a charging document;

12 (7) an acquittal, dismissal, conviction, or other disposition of charges  
13 set out in a charging document described in (6) of this subsection;

14 (8) the imposition of a sentence or the granting of a suspended  
15 imposition of sentence under AS 12.55.085;

16 (9) the commencement or expiration of parole or probation supervision;

17 (10) the commitment to or release from a facility, designated by the  
18 Department of Health and Social Services, of a person who was previously accused  
19 of a crime but who has been found to be incompetent to stand trial or found not  
20 criminally responsible;

21 (11) the filing of an action in an appellate court or a federal court  
22 relating to a conviction or sentence;

23 (12) a judgment of a court that reverses, remands, vacates, or reinstates  
24 a criminal charge, conviction, or sentence;

25 (13) a pardon, reprieve, executive clemency, commutation of sentence,  
26 or other change in the length or terms of a sentence by executive or judicial action;  
27 and

28 (14) any other event required to be reported under regulations adopted  
29 under this chapter.

30 Sec. 12.62.140. REPORTING OF UNIFORM CRIME INFORMATION. A  
31 criminal justice agency shall submit to the department, at the time, in the manner, and

1 in the form specified by the department, data regarding crimes committed within that  
2 agency's jurisdiction. The department shall compile, and provide to the governor and  
3 the attorney general, an annual report concerning the number and nature of criminal  
4 offenses committed, the disposition of the offenses, and any other data the  
5 commissioner finds appropriate relating to the method, frequency, cause, and  
6 prevention of crime.

7 Sec. 12.62.150. REPORTING OF INFORMATION REGARDING WANTED  
8 PERSONS AND STOLEN PROPERTY. (a) A criminal justice agency shall report  
9 to the department, at the time, in the manner, and in the form specified by the  
10 department, data regarding

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

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

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

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

20 Sec. 12.62.160. COMPLETENESS, ACCURACY, AND SECURITY OF  
21 CRIMINAL JUSTICE INFORMATION. (a) A criminal justice agency shall

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

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

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

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

31 (5) provide training for employees working with or having access to

1 criminal justice information;

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

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

9 (A) records showing the accuracy and completeness of  
10 information maintained by the agency in a criminal justice information system;  
11 and

12 (B) records required to be maintained under AS 12.62.170(c)(4).

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

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

23 Sec. 12.62.170. RELEASE AND USE OF CRIMINAL JUSTICE  
24 INFORMATION; FEES. (a) Criminal justice information and the identity of  
25 recipients of criminal justice information is confidential and exempt from disclosure  
26 under AS 09.25. The existence or nonexistence of criminal justice information may  
27 not be released to or confirmed to any person except as provided in this section and  
28 AS 12.62.190(d).

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

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

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

7 (3) criminal justice information may be provided to a person if the  
8 information is commonly or traditionally provided by criminal justice agencies in order  
9 to identify, locate, or apprehend fugitives or wanted persons or to recover stolen  
10 property, or for public reporting of recent arrests, charges, and other criminal justice  
11 activity;

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

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

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

19 (7) criminal justice information in aggregate form may be released to  
20 a qualified person, as determined by the agency, for criminal justice research <sup>BS</sup> subject  
21 to written conditions that assure the security of the information and the privacy of  
22 individuals to whom the information relates;

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

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

29 (10) past conviction information relating to a serious offense may be  
30 provided to an interested person if the information is requested for the purpose of  
31 determining whether to grant a person supervisory or disciplinary power over a minor

1 or dependent adult; and

2 (11) criminal justice information may be provided to the person who  
3 is the subject of the information.

4 (c) Unless otherwise provided for in regulations adopted by the commissioner,  
5 if access to criminal justice information is permitted under (b) of this section

6 (1) the information may be released only by the agency maintaining  
7 that information;

8 (2) the information may not be released under this section without first  
9 determining that the information is the most current information available within that  
10 criminal justice information system, unless the system is incapable of providing the  
11 most current information available within the necessary time period;

12 (3) the information may not be released under this section until the  
13 person requesting the information establishes the identity of the subject of the  
14 information by fingerprint comparison or another reliable means of identification  
15 approved by the department;

16 (4) the information may not be released under this section unless the  
17 criminal justice agency releasing the information records, and maintains for at least  
18 three years, the name of the person or agency that is to receive the information, the  
19 date the information was released, the nature of the information, and the statutory  
20 authority that permits the release; and

21 (5) information released under this section may be used only for the  
22 purpose or activity for which the information was released.

23 (d) Notwithstanding AS 09.25, a criminal justice agency may charge fees,  
24 established by regulation or municipal ordinance, for processing requests for records  
25 under this chapter, unless the request is from a criminal justice agency or is required  
26 for purposes of discovery in a criminal case. In addition to fees charged under  
27 AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint  
28 system, the department may charge fees for other services in connection with the  
29 processing of information requests, including fees for contacting other jurisdictions to  
30 determine the disposition of an out-of-state arrest or to clarify the nature of an  
31 out-of-state conviction. The department may also collect and account for fees charged

1 by the Federal Bureau of Investigation for processing fingerprints forwarded to the  
2 bureau by the department. The annual estimated balance in the account maintained by  
3 the commissioner of administration under AS 37.05.142 may be used by the legislature  
4 to make appropriations to the department to carry out the purposes of this chapter.

5 Sec. 12.62.180. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

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

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

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

21 Sec. 12.62.190. SEALING OF CRIMINAL JUSTICE INFORMATION. (a)

22 Under this section, a criminal justice agency may seal only the information that the  
23 agency is responsible for maintaining.

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

29 (c) The person requesting that the information be sealed may appeal an adverse  
30 decision of the agency to the court under applicable rules of procedure for appealing  
31 the decision of an administrative agency. The appellant bears the burden on appeal

1 of showing that the agency decision was clearly mistaken. An appeal filed under this  
2 subsection may not collaterally attack a court judgment or a decision by prison,  
3 probation, or parole authorities, or any other action that is or could have been subject  
4 to appeal, post-conviction relief, or other administrative remedy.

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

9 (1) for record management purposes, including auditing;

10 (2) for criminal justice employment purposes;

11 (3) for review by the subject of the record;

12 (4) for research and statistical purposes;

13 (5) when necessary to prevent imminent harm to a person; or

14 (6) for a use authorized by statute or court order.

15 Sec. 12.62.200. PURGING OF CRIMINAL JUSTICE INFORMATION. (a)

16 A criminal justice agency may purge only the criminal justice information that the  
17 agency is responsible for maintaining. An agency may determine when and what  
18 information will be purged, under (b) of this section.

19 (b) Criminal justice information may be purged if the agency determines that  
20 the information is devoid of usefulness to a criminal justice agency due to the

21 (1) death of the subject of the information;

22 (2) age of the information;

23 (3) nature of the offense or of the information;

24 (4) volume of the agency's records or other record management  
25 considerations.

26 Sec. 12.62.210. CIVIL ACTION AND DEFENSE. (a) Failure to comply with  
27 a requirement of this chapter or a regulation adopted under this chapter is not a basis  
28 for civil liability, but may be the basis for employee discipline or administrative action  
29 to restrict a person's or agency's access to information. However, a person whose  
30 criminal justice information has been released or used in knowing violation of this  
31 chapter or a regulation adopted under this chapter may bring an action for damages in

1 the superior court.

2 (b) It is a defense to a civil or criminal action based on a violation of this  
3 chapter, or regulations adopted under this chapter, if a person relied in good faith upon  
4 the provisions of this chapter or of other laws or regulations governing maintenance,  
5 release, or use of criminal justice information, or upon policies or procedures  
6 established by a criminal justice agency.

7 Sec. 12.62.900. DEFINITIONS. In this chapter,

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

9 (2) "arrestable offense" means conduct subjecting a person to arrest

10 (A) due to a violation of a federal or state criminal law, or  
11 municipal criminal ordinance;

12 (B) under AS 12.25.180;

13 (C) under AS 12.30.060; or

14 (D) under AS 12.70;

15 (3) "automatic data processing" has the meaning given in AS 44.21.170;

16 (4) "board" means the Criminal Justice Information Advisory Board;

17 (5) "commissioner" means the commissioner of public safety;

18 (6) "complete" means that a criminal history record contains  
19 information about the disposition of criminal charges occurring in the state and entered  
20 within 90 days after the disposition occurred;

21 (7) "correctional facility" has the meaning given in AS 33.30.901;

22 (8) "correctional treatment information" means information about an  
23 identifiable person, excluding past conviction information or current offender  
24 information, collected to monitor that person in a correctional facility or while under  
25 correctional supervision, including the person's current or past institutional behavior,  
26 medical or psychological condition, or rehabilitative progress;

27 (9) "criminal history record information" means information that  
28 contains

29 (A) past conviction information;

30 (B) current offender information;

31 (C) criminal identification information;

1 (10) "criminal identification information" means fingerprints,  
2 photographs, and other information or descriptions that identify a person as having  
3 been the subject of a criminal arrest or prosecution;

4 (11) "criminal justice activity" means

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

8 (B) collection, storage, transmission, and release of criminal  
9 justice information; or

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

12 (12) "criminal justice agency" means

13 (A) a court with criminal jurisdiction or an employee of that  
14 court;

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

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

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

27 (A) criminal history record information;

28 (B) nonconviction information;

29 (C) correctional treatment information;

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

1 (14) "criminal justice information system" means an automatic data  
2 processing system used to collect, store, display, or transmit criminal justice  
3 information, and that permits information within the system, without action by the  
4 agency maintaining the information, to be directly accessed by another principal  
5 department of the state, another branch of state government, an agency of another state  
6 or the federal government, or by a political subdivision of a state or the federal  
7 government;

8 (15) "current offender information" means information showing that an  
9 identifiable person

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

11 (i) prosecution is under review or has been deferred by  
12 written or oral agreement;

13 (ii) a warrant exists for the person's arrest; or

14 (iii) less than a year has elapsed since the date of the  
15 arrest or filing of the charges, whichever is latest;

16 (B) is currently released on bail or on other conditions imposed  
17 by a court in a criminal case, either pretrial or post-trial, including the  
18 conditions of the release;

19 (C) is currently serving a criminal sentence or is under the  
20 custody of the commissioner of corrections for supervision purposes; "current  
21 offender information" under this subparagraph includes

22 (i) the terms and conditions of any sentence, probation,  
23 suspended imposition of sentence, discretionary or mandatory parole,  
24 furlough, executive clemency, or other release; and

25 (ii) the location of any place of incarceration, halfway  
26 house, restitution center, or other correctional placement to which the  
27 person is assigned; or

28 (D) has had a criminal conviction or sentence reversed, vacated,  
29 set aside, or has been the subject of executive clemency;

30 (16) "department" means the Department of Public Safety;

31 (17) "dependent adult" means an adult with a physical or mental

1 disability which requires assistance or supervision with the activities of daily living;

2 (18) "information" means, unless the context clearly indicates  
3 otherwise, data compiled within a criminal justice information system;

4 (19) "interested person" means a person as defined in AS 01.10.060 that  
5 employs, appoints, or permits a person to serve with or without compensation in a  
6 position in which the employed, appointed, or permitted person has or would have  
7 supervisory or disciplinary power over a minor or dependent adult;

8 (20) "nonconviction information" means information that an identifiable  
9 person was arrested or that criminal charges were filed or considered against the  
10 person and

11 (A) a prosecutor or grand jury has elected not to begin criminal  
12 proceedings against the person and at least a year has elapsed since that  
13 decision;

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

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

21 (21) "past conviction information" means information showing that an  
22 identifiable person who has been unconditionally discharged has previously been  
23 convicted of a crime; "past conviction information" includes

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

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

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

30 (23) "seal" means to retain information in a criminal justice information  
31 system subject to special restrictions on access or dissemination;

1 (24) "serious offense" means a conviction for a felony offense or a  
2 violation or attempted violation of any of the following laws, or of the laws of another  
3 jurisdiction with substantially similar elements:

4 (A) AS 11.41.410 - 11.41.470;

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

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

7 (D) AS 11.66.100 - 11.66.130; or

8 (E) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -  
9 11.40.420, if committed before January 1, 1980;

10 (25) "unconditional discharge" has the meaning given in AS 12.55.185.

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

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

16 \* Sec. 4. AS 12.55.147; AS 12.62.010, 12.62.015, 12.62.017, 12.62.020, 12.62.030,  
17 12.62.035, 12.62.040, 12.62.050, 12.62.060, 12.62.070; AS 18.65.060; and AS 44.41.040 are  
18 repealed.

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

24 \* Sec. 6. APPLICABILITY. Notwithstanding sec. 8 of this Act, the fingerprinting and  
25 mandatory reporting requirements of AS 12.62.120 - 12.62.150, added by sec. 2 of this Act,  
26 and regulations adopted under those statutes, are not applicable before July 1, 1996, to  
27 criminal activity that does not constitute a felony offense.

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

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

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2150  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 15, 1994

**SUBJECT:** CSSB 276(FIN)

**TO:** Senator Steve Frank  
Senator Drue Pearce  
Co-Chairs, Senate Finance Committee  
Attn: Kathy

**FROM:** Pam Finley *PF*  
Assistant Revisor

Enclosed is the Finance CS you requested; I drafted it because Mr. Luckhaupt was at a committee meeting. The transition section is in sec. 5(b). I ignored the Department of Law's amendment that was to be inserted after "arrest" on page 12, line 24 (actually page 12, line 9) because the fingerprinting section and corresponding definition were deleted by Senator Pearce's amendment. I also deleted a reference to fingerprinting in sec. 6. Please let me know if this was not what you wanted.

I also want to alert you to a possible problem. Although Senator Pearce's amendment deleted the definition of "arrestable offense," that term still appears in the bill at page 3, line 21 (AS 12.62.120(b)).

PLF:pl  
94-207.plm

Enclosure

March 15, 1994

Billy -

Spoke with Diana Schenker of Dept. of Corrections this afternoon and requested an updated fiscal note for CSSB 276 (Finance). Have delivered a copy of the CS, adopted and reported out this a.m., to her for analysis. She said that based on her understanding of committee discussion of the bill this morning, the updated note will delete references to fingerprinting but will probably not change much financially since funding relates to advisory board costs, expenses associated with compiling criminal justice information, and training of personnel--which will involve substantial travel. I asked that the updated note be delivered to Senator Pearce's office to your attention.

Kathy  
2618

*Billy acknowledged  
4:00pm.*

# A F A X

## Alaska State Legislature

Date: 3-15-94

To: Peggy - Legal Services

Fax #: 2029 Phone #: 465-6662

From: Kathy - Senate Finance

Phone #: 465-2618

Re: CS5B 276 (Fin) - Please incorporate  
the attached 4 amendments into work  
draft 8-GS2005\K (3-11-94) to produce final  
CS5B 276 (Fin).

Following this page, please find 4 pages(s). If this does not reach you in full, please inform us ASAP.



# THANK YOU

MAR 14 1994

SB 276



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1917 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR  
William T. Cotton

March 10, 1994

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Chief Justice  
Supreme Court

Senator Drue Pearce  
Co-Chair, Senate Finance Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

RE: SB 276

Dear Senator Pearce:

I am writing to urge the Senate Finance Committee to promptly endorse Senate Bill 276. The bill is currently assigned to a finance subcommittee chaired by Senator Rieger. This bill, part of the Governor's crime package, would set the groundwork to ensure that accurate criminal history information is available in Alaska to all criminal justice agencies.

The Departments of Public Safety and Law will emphasize the importance of accurate and complete criminal history information for law enforcement. We agree with their arguments, but emphasize that this bill would benefit the other components of the criminal justice system as well. In fact, the Criminal Justice Working Group (including the court system, Corrections, local police, and the public defender agency among others), unanimously endorsed the general principles of this legislation (see attached).

The Judicial Council has an independent interest in this legislation stemming from the legislative directive to the Council last year to work with the criminal justice agencies to develop a plan to coordinate the various criminal justice computer information systems. Accurate and fingerprint-backed criminal history is an absolute prerequisite to coordinated systems. Information cannot be shared, whatever the level of technical sophistication, unless the systems can accurately identify offenders and tie them to their criminal history records.

More specifically, I believe the mechanism in the legislation to govern criminal history information—authorities make regulations in DPS with an advisory committee made up of representatives from other agencies—is appropriate and workable. There simply has to be one final authority and we see the Department of Public Safety as the only agency with the expertise, self-interest and willingness to take on the task.

The Judicial Council does recommend that its executive director or designee be added to the Advisory Board. (See the language added by the Senate Judiciary Committee to the identical Senate Bill.) This change is important because unlike other agencies whose focus on is on their own needs, the Council brings a systemwide perspective from its work with the Sentencing Commission and its current legislative assignment to work towards coordinating the criminal justice computer systems. Also, the Council's research analyst has more experience than anyone in the state in transferring data out of each department's computer system.

Further, the Council's consultants in the computer coordination project recommend that the five-day reporting period in Sec. 12.62.120(b) be shortened to one working day unless the weather or other circumstances make this impossible. This shorter time period is realistic and would minimize the chance that a dangerous felon would be released before accurate identification is completed.

In conclusion, the Judicial Council has endorsed the objectives of SB 276 because of its importance to Alaska's criminal justice system as a whole, and in particular because the legislation is a necessary step to coordinating the state's criminal justice computer information systems. Please feel free to contact me if you have any questions.

Very truly yours,



William T. Cotton  
Executive Director

WTC:pjs

Attachment

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE JUDICIARY COMMITTEE

TO: SB 276

⊕ Page 2, line 5:

Delete "and"

⊕ Page 2, line 7, following "board":

Insert "; and

(9) the executive director of the Alaska Judicial Council or the executive director's designee"

~~Page 3, line 8:~~

~~Delete "shall"~~

~~Insert "may"~~

⊕ Page 3, line 30:

Delete "five"

Insert "one"

Delete "days"

Insert "day"

~~Page 9, line 23, following "records":~~

~~Insert ", and maintains for at least three years,"~~

~~Page 9, line 24:~~

~~Delete "and"~~

~~Page 9, line 25, following "information":~~

9-GS2005K  
Luckhaupt  
3/11/94

CS FOR SENATE BILL NO. 276( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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. MANDATORY FINGERPRINTING. (a) When a person is  
15 taken into custody for an arrestable offense, with or without a warrant, fingerprints of  
16 the person may be taken by the law enforcement agency with custody of the person.  
17 If the law enforcement agency with custody of the person does not take the  
18 fingerprints, they shall be taken by the correctional facility where the person is lodged  
19 following the arrest.

20 (b) At the initial court appearance or arraignment of a person for an arrestable  
21 offense, the court shall determine if the person's fingerprints have been taken in  
22 connection with the offense. If the court is unable to conclusively determine that the  
23 person's fingerprints have been taken, the court shall order the person to submit to  
24 fingerprinting within 24 hours at the appropriate correctional facility unless, after  
25 consultation with state or local law enforcement agencies, the court determines that  
26 another place for taking fingerprints is more appropriate.

27 (c) When a defendant is sentenced or otherwise adjudicated for an arrestable  
28 offense, the court shall determine if legible fingerprints have been taken in connection  
29 with the proceedings. If the court is unable to conclusively determine that legible  
30 fingerprints have been taken, the court shall order that the defendant, as a condition  
31 of sentence, adjudication, suspended imposition of sentence, probation, or release,

1 submit to fingerprinting within 24 hours at the appropriate correctional facility unless,  
2 after consultation with state or local law enforcement agencies, the court determines  
3 that another place for taking fingerprints is more appropriate.

4 (d) The department shall develop standard forms and procedures for the taking  
5 of fingerprints under this section. Fingerprints shall be

6 (1) taken on a form, and in the manner, prescribed by the department;  
7 and

8 (2) forwarded within five working days to the department.

9 (e) When the department receives fingerprints of a person in connection with  
10 an arrestable offense, the department shall make a reasonable effort to confirm the  
11 identity of the person fingerprinted. If the department finds that the person  
12 fingerprinted has criminal history record information under a name other than the name  
13 submitted with the fingerprints, the department shall promptly notify the officer,  
14 agency, or facility that took the fingerprints.

15 (f) If the arresting officer, the law enforcement agency that employs the  
16 officer, or the correctional facility where fingerprints were taken is notified by the  
17 department that fingerprints taken under this section are not legible, the officer,  
18 agency, or facility shall make a reasonable effort to obtain a legible set of fingerprints.  
19 If legible fingerprints cannot be obtained within a reasonable period of time, and if the  
20 illegible fingerprints were taken under a court order, the officer or agency shall inform  
21 the court, which shall order the defendant to submit to fingerprinting again.

22 Sec. 12.62.130. REPORTING OF CRIMINAL JUSTICE INFORMATION.

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

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

30 (1) the issuance, receipt, withdrawal, quashing, or execution of a  
31 judicial arrest warrant, a governor's warrant of arrest for extradition, or a parole arrest

1 warrant;

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

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

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

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

9 (6) the filing of a charging document, including an indictment, criminal  
10 complaint, criminal information, or a petition or other document showing a violation  
11 of bail, probation, or parole, or the amendment of a charging document;

12 (7) an acquittal, dismissal, conviction, or other disposition of charges  
13 set out in a charging document described in (6) of this subsection;

14 (8) the imposition of a sentence or the granting of a suspended  
15 imposition of sentence under AS 12.55.085;

16 (9) the commencement or expiration of parole or probation supervision;

17 (10) the commitment to or release from a facility, designated by the  
18 Department of Health and Social Services, of a person who was previously accused  
19 of a crime but who has been found to be incompetent to stand trial or found not  
20 criminally responsible;

21 (11) the filing of an action in an appellate court or a federal court  
22 relating to a conviction or sentence;

23 (12) a judgment of a court that reverses, remands, vacates, or reinstates  
24 a criminal charge, conviction, or sentence;

25 (13) a pardon, reprieve, executive clemency, commutation of sentence,  
26 or other change in the length or terms of a sentence by executive or judicial action;  
27 and

28 (14) any other event required to be reported under regulations adopted  
29 under this chapter.

30 Sec. 12.62.140. REPORTING OF UNIFORM CRIME INFORMATION. A  
31 criminal justice agency shall submit to the department, at the time, in the manner, and

1 in the form specified by the department, data regarding crimes committed within that  
2 agency's jurisdiction. The department shall compile, and provide to the governor and  
3 the attorney general, an annual report concerning the number and nature of criminal  
4 offenses committed, the disposition of the offenses, and any other data the  
5 commissioner finds appropriate relating to the method, frequency, cause, and  
6 prevention of crime.

7 Sec. 12.62.150. REPORTING OF INFORMATION REGARDING WANTED  
8 PERSONS AND STOLEN PROPERTY. (a) A criminal justice agency shall report  
9 to the department, at the time, in the manner, and in the form specified by the  
10 department, data regarding

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

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

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

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

20 Sec. 12.62.160. COMPLETENESS, ACCURACY, AND SECURITY OF  
21 CRIMINAL JUSTICE INFORMATION. (a) A criminal justice agency shall

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

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

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

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

31 (5) provide training for employees working with or having access to

1 criminal justice information;

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

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

9 (A) records showing the accuracy and completeness of  
10 information maintained by the agency in a criminal justice information system;  
11 and

12 (B) records required to be maintained under AS 12.62.170(c)(4).

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

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

23 Sec. 12.62.170. RELEASE AND USE OF CRIMINAL JUSTICE  
24 INFORMATION; FEES. (a) Criminal justice information and the identity of  
25 recipients of criminal justice information is confidential and exempt from disclosure  
26 under AS 09.25. The existence or nonexistence of criminal justice information may  
27 not be released to or confirmed to any person except as provided in this section and  
28 AS 12.62.190(d).

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

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

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

7 (3) criminal justice information may be provided to a person if the  
8 information is commonly or traditionally provided by criminal justice agencies in order  
9 to identify, locate, or apprehend fugitives or wanted persons or to recover stolen  
10 property, or for public reporting of recent arrests, charges, and other criminal justice  
11 activity;

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

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

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

19 (7) criminal justice information in aggregate form may be released to  
20 a qualified person, as determined by the agency, for criminal justice research, subject  
21 to written conditions that assure the security of the information and the privacy of  
22 individuals to whom the information relates;

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

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

29 (10) past conviction information relating to a serious offense may be  
30 provided to an interested person if the information is requested for the purpose of  
31 determining whether to grant a person supervisory or disciplinary power over a minor

1 or dependent adult; and

2 (11) criminal justice information may be provided to the person who  
3 is the subject of the information.

4 (c) Unless otherwise provided for in regulations adopted by the commissioner,  
5 if access to criminal justice information is permitted under (b) of this section

6 (1) the information may be released only by the agency maintaining  
7 that information;

8 (2) the information may not be released under this section without first  
9 determining that the information is the most current information available within that  
10 criminal justice information system, unless the system is incapable of providing the  
11 most current information available within the necessary time period;

12 (3) the information may not be released under this section until the  
13 person requesting the information establishes the identity of the subject of the  
14 information by fingerprint comparison or another reliable means of identification  
15 approved by the department;

16 (4) the information may not be released under this section unless the  
17 criminal justice agency releasing the information records, and maintains for at least  
18 three years, the name of the person or agency that is to receive the information, the  
19 date the information was released, the nature of the information, and the statutory  
20 authority that permits the release; and

21 (5) information released under this section may be used only for the  
22 purpose or activity for which the information was released.

23 (d) Notwithstanding AS 09.25, a criminal justice agency may charge fees,  
24 established by regulation or municipal ordinance, for processing requests for records  
25 under this chapter, unless the request is from a criminal justice agency or is required  
26 for purposes of discovery in a criminal case. In addition to fees charged under  
27 AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint  
28 system, the department may charge fees for other services in connection with the  
29 processing of information requests, including fees for contacting other jurisdictions to  
30 determine the disposition of an out-of-state arrest or to clarify the nature of an  
31 out-of-state conviction. The department may also collect and account for fees charged

1 by the Federal Bureau of Investigation for processing fingerprints forwarded to the  
2 bureau by the department. The annual estimated balance in the account maintained by  
3 the commissioner of administration under AS 37.05.142 may be used by the legislature  
4 to make appropriations to the department to carry out the purposes of this chapter.

5 Sec. 12.62.180. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

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

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

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

21 Sec. 12.62.190. SEALING OF CRIMINAL JUSTICE INFORMATION. (a)

22 Under this section, a criminal justice agency may seal only the information that the  
23 agency is responsible for maintaining.

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

29 (c) The person requesting that the information be sealed may appeal an adverse  
30 decision of the agency to the court under applicable rules of procedure for appealing  
31 the decision of an administrative agency. The appellant bears the burden on appeal

1 of showing that the agency decision was clearly mistaken. An appeal filed under this  
2 subsection may not collaterally attack a court judgment or a decision by prison,  
3 probation, or parole authorities, or any other action that is or could have been subject  
4 to appeal, post-conviction relief, or other administrative remedy.

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

9 (1) for record management purposes, including auditing;

10 (2) for criminal justice employment purposes;

11 (3) for review by the subject of the record;

12 (4) for research and statistical purposes;

13 (5) when necessary to prevent imminent harm to a person; or

14 (6) for a use authorized by statute or court order.

15 Sec. 12.62.200. PURGING OF CRIMINAL JUSTICE INFORMATION. (a)  
16 A criminal justice agency may purge only the criminal justice information that the  
17 agency is responsible for maintaining. An agency may determine when and what  
18 information will be purged, under (b) of this section.

19 (b) Criminal justice information may be purged if the agency determines that  
20 the information is devoid of usefulness to a criminal justice agency due to the

21 (1) death of the subject of the information;

22 (2) age of the information;

23 (3) nature of the offense or of the information;

24 (4) volume of the agency's records or other record management  
25 considerations.

26 Sec. 12.62.210. CIVIL ACTION AND DEFENSE. (a) Failure to comply with  
27 a requirement of this chapter or a regulation adopted under this chapter is not a basis  
28 for civil liability, but may be the basis for employee discipline or administrative action  
29 to restrict a person's or agency's access to information. However, a person whose  
30 criminal justice information has been released or used in knowing violation of this  
31 chapter or a regulation adopted under this chapter may bring an action for damages in

1 the superior court.

2 (b) It is a defense to a civil or criminal action based on a violation of this  
3 chapter, or regulations adopted under this chapter, if a person relied in good faith upon  
4 the provisions of this chapter or of other laws or regulations governing maintenance,  
5 release, or use of criminal justice information, or upon policies or procedures  
6 established by a criminal justice agency.

7 Sec. 12.62.900. DEFINITIONS. In this chapter,

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

9 (2) "arrestable offense" means conduct subjecting a person to arrest

10 (A) due to a violation of a federal or state criminal law, or  
11 municipal criminal ordinance;

12 (B) under AS 12.25.180;

13 (C) under AS 12.30.060; or

14 (D) under AS 12.70;

15 (3) "automatic data processing" has the meaning given in AS 44.21.170;

16 (4) "board" means the Criminal Justice Information Advisory Board;

17 (5) "commissioner" means the commissioner of public safety;

18 (6) "complete" means that a criminal history record contains  
19 information about the disposition of criminal charges occurring in the state and entered  
20 within 90 days after the disposition occurred;

21 (7) "correctional facility" has the meaning given in AS 33.30.901;

22 (8) "correctional treatment information" means information about an  
23 identifiable person, excluding past conviction information or current offender  
24 information, collected to monitor that person in a correctional facility or while under  
25 correctional supervision, including the person's current or past institutional behavior,  
26 medical or psychological condition, or rehabilitative progress;

27 (9) "criminal history record information" means information that  
28 contains

29 (A) past conviction information;

30 (B) current offender information;

31 (C) criminal identification information;

1 (10) "criminal identification information" means fingerprints,  
2 photographs, and other information or descriptions that identify a person as having  
3 been the subject of a criminal arrest or prosecution;

4 (11) "criminal justice activity" means

5 (A) investigation, identification, apprehension, detention, pre-trial  
6 or post-trial release, prosecution, adjudication, or correctional supervision or  
7 rehabilitation of a person accused or convicted of a crime;

8 (B) collection, storage, transmission, and release of criminal  
9 justice information; or

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

12 (12) "criminal justice agency" means

13 (A) a court with criminal jurisdiction or an employee of that  
14 court;

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

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

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

27 (A) criminal history record information;

28 (B) nonconviction information;

29 (C) correctional treatment information;

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

1 (14) "criminal justice information system" means an automatic data  
2 processing system used to collect, store, display, or transmit criminal justice  
3 information, and that permits information within the system, without action by the  
4 agency maintaining the information, to be directly accessed by another principal  
5 department of the state, another branch of state government, an agency of another state  
6 or the federal government, or by a political subdivision of a state or the federal  
7 government;

8 (15) "current offender information" means information showing that an  
9 identifiable person

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

11 (i) prosecution is under review or has been deferred by  
12 written or oral agreement;

13 (ii) a warrant exists for the person's arrest; or

14 (iii) less than a year has elapsed since the date of the  
15 arrest or filing of the charges, whichever is latest;

16 (B) is currently released on bail or on other conditions imposed  
17 by a court in a criminal case, either pretrial or post-trial, including the  
18 conditions of the release;

19 (C) is currently serving a criminal sentence or is under the  
20 custody of the commissioner of corrections for supervision purposes; "current  
21 offender information" under this subparagraph includes

22 (i) the terms and conditions of any sentence, probation,  
23 suspended imposition of sentence, discretionary or mandatory parole,  
24 furlough, executive clemency, or other release; and

25 (ii) the location of any place of incarceration, halfway  
26 house, restitution center, or other correctional placement to which the  
27 person is assigned; or

28 (D) has had a criminal conviction or sentence reversed, vacated,  
29 set aside, or has been the subject of executive clemency;

30 (16) "department" means the Department of Public Safety;

31 (17) "dependent adult" means an adult with a physical or mental

1 disability who requires assistance or supervision with the activities of daily living;

2 (18) "information" means, unless the context clearly indicates  
3 otherwise, data compiled within a criminal justice information system;

4 (19) "interested person" means a person as defined in AS 01.10.060 that  
5 employs, appoints, or permits a person to serve with or without compensation in a  
6 position in which the employed, appointed, or permitted person has or would have  
7 supervisory or disciplinary power over a minor or dependent adult;

8 (20) "nonconviction information" means information that an identifiable  
9 person was arrested or that criminal charges were filed or considered against the  
10 person and

11 (A) a prosecutor or grand jury has elected not to begin criminal  
12 proceedings against the person and at least a year has elapsed since that  
13 decision;

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

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

21 (21) "past conviction information" means information showing that an  
22 identifiable person who has been unconditionally discharged has previously been  
23 convicted of a crime; "past conviction information" includes

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

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

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

30 (23) "seal" means to retain information in a criminal justice information  
31 system subject to special restrictions on access or dissemination;

1 (24) "serious offense" means a conviction for a felony offense or a  
2 violation or attempted violation of any of the following laws, or of the laws of another  
3 jurisdiction with substantially similar elements:

4 (A) AS 11.41.410 - 11.41.470;

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

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

7 (D) AS 11.66.100 - 11.66.130; or

8 (E) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -  
9 11.40.420, if committed before January 1, 1980;

10 (25) "unconditional discharge" has the meaning given in AS 12.55.185.

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

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

16 \* Sec. 4. AS 12.55.147; AS 12.62.010, 12.62.015, 12.62.017, 12.62.020, 12.62.030,  
17 12.62.035, 12.62.040, 12.62.050, 12.62.060, 12.62.070; AS 18.65.060; and AS 44.41.040 are  
18 repealed.

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

24 \* Sec. 6. APPLICABILITY. Notwithstanding sec. 8 of this Act, the fingerprinting and  
25 mandatory reporting requirements of AS 12.62.120 - 12.62.150, added by sec. 2 of this Act,  
26 and regulations adopted under those statutes, are not applicable before July 1, 1996, to  
27 criminal activity that does not constitute a felony offense.

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

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

new work draft  
incorporates Dept of  
law's demand

copies given to:

- Billy & Sen Pearce (2)
- Ann / Sen Reiger  
(3) for subcommittee.
- Dean Guareli (1)

new work draft  
incorporates Dept of  
revenue award

copies given to:

- Billy & Sam Donice (2)
- Ann / Sam Reiger
- (3) [unclear]
- Stan Gas. li (1)

8-GS2005V  
Luckhaupt  
3/4/94

**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:**  
**Referred:**

**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 new sections to read:**

6 **Sec. 12.62.100. CRIMINAL JUSTICE INFORMATION ADVISORY BOARD;**  
7 **FUNCTIONS AND DUTIES. (a) There is established in the department the Criminal**  
8 **Justice Information Advisory Board consisting of the following members:**

9 **(1) a member of the general public appointed by and serving at the**  
10 **pleasure of the governor;**

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

14 **(3) the attorney general or the attorney general's designee;**

1 (4) the chief justice of the supreme court or the chief justice's designee;  
2 (5) the commissioner of administration or the commissioner's designee;  
3 (6) the commissioner of corrections or the commissioner's designee;  
4 (7) the commissioner of health and social services or the  
5 commissioner's designee;

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

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

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

13 (c) The board shall meet once every six months and at such other times as the  
14 chair finds necessary.

15 (d) The board shall

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

21 (2) provide an annual report of its activities and recommendations to  
22 the governor and the legislature.

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 that will  
26 serve as the state's central repository of criminal history record information, and that  
27 will collect, 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. MANDATORY FINGERPRINTING. (a) When a person is  
15 taken into custody for an arrestable offense, with or without a warrant, fingerprints of  
16 the person may be taken by the law enforcement agency with custody of the person.  
17 If the law enforcement agency with custody of the person does not take the  
18 fingerprints, they shall be taken by the correctional facility where the person is lodged  
19 following the arrest.

20 (b) At the initial court appearance or arraignment of a person for an arrestable  
21 offense, the court shall determine if the person's fingerprints have been taken in  
22 connection with the offense. If the court is unable to conclusively determine that the  
23 person's fingerprints have been taken, the court shall order the person to submit to  
24 fingerprinting within 24 hours at the appropriate correctional facility unless, after  
25 consultation with state or local law enforcement agencies, the court determines that  
26 another place for taking fingerprints is more appropriate.

27 (c) When a defendant is sentenced or otherwise adjudicated for an arrestable  
28 offense, the court shall determine if legible fingerprints have been taken in connection  
29 with the proceedings. If the court is unable to conclusively determine that legible  
30 fingerprints have been taken, the court shall order that the defendant, as a condition  
31 of sentence, adjudication, suspended imposition of sentence, probation, or release,

1 submit to fingerprinting within 24 hours at the appropriate correctional facility unless,  
2 after consultation with state or local law enforcement agencies, the court determines  
3 that another place for taking fingerprints is more appropriate.

4 (d) The department shall develop standard forms and procedures for the taking  
5 of fingerprints under this section. Fingerprints shall be

6 (1) taken on a form, and in the manner, prescribed by the department;  
7 and

8 (2) forwarded within five working days to the department.

9 (e) When the department receives fingerprints of a person in connection with  
10 an arrestable offense, the department shall make a reasonable effort to confirm the  
11 identity of the person fingerprinted. If the department finds that the person  
12 fingerprinted has criminal history record information under a name other than the name  
13 submitted with the fingerprints, the department shall promptly notify the officer,  
14 agency, or facility that took the fingerprints.

15 (f) If the arresting officer, the law enforcement agency that employs the  
16 officer, or the correctional facility where fingerprints were taken is notified by the  
17 department that fingerprints taken under this section are not legible, the officer,  
18 agency, or facility shall make a reasonable effort to obtain a legible set of fingerprints.  
19 If legible fingerprints cannot be obtained within a reasonable period of time, and if the  
20 illegible fingerprints were taken under a court order, the officer or agency shall inform  
21 the court, which shall order the defendant to submit to fingerprinting again.

22 Sec. 12.62.130. REPORTING OF CRIMINAL JUSTICE INFORMATION.

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

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

30 (1) the issuance, receipt, withdrawal, quashing, or execution of a  
31 judicial arrest warrant, a governor's warrant of arrest for extradition, or a parole arrest

1 warrant;

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

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

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

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

9 (6) the filing of a charging document, including an indictment, criminal  
10 complaint, criminal information, or a petition or other document showing a violation  
11 of bail, probation, or parole, or the amendment of a charging document;

12 (7) an acquittal, dismissal, conviction or other disposition of charges  
13 set out in a charging document described in (6) of this subsection;

14 (8) the imposition of a sentence or the granting of a suspended  
15 imposition of sentence under AS 12.55.085;

16 (9) the commencement or expiration of parole or probation supervision;

17 (10) the commitment to or release from a facility, designated by the  
18 Department of Health and Social Services, of a person who was previously accused  
19 of a crime but who has been found to be incompetent to stand trial or found not  
20 criminally responsible;

21 (11) the filing of an action in an appellate court or a federal court  
22 relating to a conviction or sentence;

23 (12) a judgment of a court that reverses, remands, vacates, or reinstates  
24 a criminal charge, conviction, or sentence;

25 (13) a pardon, reprieve, executive clemency, commutation of sentence,  
26 or other change in the length or terms of a sentence by executive or judicial action;  
27 and

28 (14) any other event required to be reported under regulations adopted  
29 under this chapter.

30 Sec. 12.62.140. REPORTING OF UNIFORM CRIME INFORMATION. A  
31 criminal justice agency shall submit to the department, at the time, in the manner, and

1 in the form specified by the department, data regarding crimes committed within that  
2 agency's jurisdiction. The department shall compile, and provide to the governor and  
3 the attorney general, an annual report concerning the number and nature of criminal  
4 offenses committed, the disposition of the offenses, and any other data the  
5 commissioner finds appropriate relating to the method, frequency, cause, and  
6 prevention of crime.

7 Sec. 12.62.150. REPORTING OF INFORMATION REGARDING WANTED  
8 PERSONS AND STOLEN PROPERTY. (a) A criminal justice agency shall report  
9 to the department, at the time, in the manner, and in the form specified by the  
10 department, data regarding

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

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

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

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

20 Sec. 12.62.160. COMPLETENESS, ACCURACY, AND SECURITY OF  
21 CRIMINAL JUSTICE INFORMATION. (a) A criminal justice agency shall

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

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

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

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

31 (5) provide training for employees working with or having access to

1 criminal justice information;

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

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

9 (A) records showing the accuracy and completeness of  
10 information maintained by the agency in a criminal justice information system;  
11 and

12 (B) records required to be maintained under AS 12.62.170(c)(4).

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

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

23 Sec. 12.62.170. RELEASE AND USE OF CRIMINAL JUSTICE  
24 INFORMATION; FEES. (a) Criminal justice information and the identity of  
25 recipient of criminal justice information is confidential and exempt from disclosure  
26 under AS 09.25. The existence or nonexistence of criminal justice information may  
27 not be released to or confirmed to any person except as provided in this section and  
28 AS 12.62.190(d).

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

1 (1) an assessment or summary of criminal justice information may be  
2 provided to a person when necessary to avoid imminent danger to life or extensive  
3 damage to property;

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

7 (3) criminal justice information may be provided to a person if the  
8 information is commonly or traditionally provided by criminal justice agencies in order  
9 to identify, locate, or apprehend fugitives or wanted persons or to recover stolen  
10 property, or for public reporting of recent arrests, charges, and other criminal justice  
11 activity;

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

14 (5) criminal justice information may be provided to a government  
15 agency to the extent necessary for enforcement of or for a purpose authorized by local,  
16 state, or federal law;

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

19 (7) criminal justice information may be provided to the governor or the  
20 lieutenant governor for purposes of

21 (A) personal or family security; or

22 (B) reviewing a candidate for appointment as a  
23 state official or employee in the exempt or partially exempt  
24 service under AS 39.25.110 or 39.25.120;

25 (8) criminal justice information may be provided to a legislator  
26 of this state for purposes of

27 (A) personal or family security;

28 (B) reviewing a governor's appointee whose  
29 appointment has been submitted to the legislature for  
30 confirmation; or

31 (C) reviewing a candidate for legislative

1 appointment or for employment in the legislative branch of  
2 government;

3 (9) criminal justice information may be released to a qualified person,  
4 as determined by the agency, for criminal justice research, subject to written conditions  
5 that assure the security of the information and the privacy of individuals to whom the  
6 information relates;

7 (10) current offender information may be provided to a person for any  
8 purpose;

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

12 (12) past conviction information relating to a serious offense may be  
13 provided to an interested person if 10 or more years have elapsed from the date of  
14 unconditional discharge to the date of the request and if the information is requested  
15 for the purpose of determining whether to grant a person supervisory or disciplinary  
16 power over a minor or dependent adult; and

17 (13) criminal justice information may be provided to the person who  
18 is the subject of the information.

19 (c) Unless otherwise provided for in regulations adopted by the commissioner,  
20 if access to criminal justice information is permitted under (b) of this section

21 (1) the information may be released only by the agency maintaining  
22 that information;

23 (2) the information may not be released under this section without first  
24 determining that the information is the most current information available within that  
25 criminal justice information system, unless the system is incapable of providing the  
26 most current information available within the necessary time period;

27 (3) the information may not be released under this section until the  
28 person requesting the information establishes the identity of the subject of the  
29 information by fingerprint comparison or another reliable means of identification  
30 approved by the department;

31 (4) the information may not be released under this section unless the

1 criminal justice agency releasing the information records, and maintains for at least  
2 three years, the name of the person or agency that is to receive the information, the  
3 date the information was released, the nature of the information, and the statutory  
4 authority that permits the release; and

5 (5) information released under this section may be used only for the  
6 purpose or activity for which the information was released.

7 (d) Notwithstanding AS 09.25, a criminal justice agency may charge fees,  
8 established by regulation or municipal ordinance, for processing requests for records  
9 under this chapter, unless the request is from a criminal justice agency or is required  
10 for purposes of discovery in a criminal case. In addition to fees charged under  
11 AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint  
12 system, the department may charge fees for other services in connection with the  
13 processing of information requests, including fees for contacting other jurisdictions to  
14 determine the disposition of an out-of-state arrest or to clarify the nature of an  
15 out-of-state conviction. The department may also collect and account for fees charged  
16 by the Federal Bureau of Investigation for processing fingerprints forwarded to the  
17 bureau by the department. The annual estimated balance in the account maintained by  
18 the commissioner of administration under AS 37.05.142 may be used by the legislature  
19 to make appropriations to the department to carry out the purposes of this chapter.

20 Sec. 12.62.180. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

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

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

29 (c) The person requesting revision of criminal justice information may appeal  
30 an adverse decision of the agency to the court under applicable rules of procedure for  
31 appealing the decision of an administrative agency. The appellant bears the burden on

1 appeal of showing that the agency decision was in error. An appeal filed under this  
2 subsection may not collaterally attack a court judgment or a decision by prison,  
3 probation, or parole authorities, or any other action that is or could have been subject  
4 to appeal, post-conviction relief, or other administrative remedy.

5 Sec. 12.62.190. SEALING OF CRIMINAL JUSTICE INFORMATION. (a)  
6 Under this section, a criminal justice agency may seal only the information that the  
7 agency is responsible for maintaining.

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

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

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

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

30 Sec. 12.62.200. PURGING OF CRIMINAL JUSTICE INFORMATION. (a)  
31 A criminal justice agency may purge only the criminal justice information that the

1 agency is responsible for maintaining. An agency may determine when and what  
2 information will be purged, under (b) of this section.

3 (b) Criminal justice information may be purged if the agency determines that  
4 the information is devoid of usefulness to a criminal justice agency due to the

5 (1) death of the subject of the information;

6 (2) age of the information;

7 (3) nature of the offense or of the information;

8 (4) volume of the agency's records or other record management  
9 considerations.

10 Sec. 12.62.210. CIVIL ACTION AND DEFENSE. (a) Failure to comply with  
11 a requirement of this chapter or a regulation adopted under this chapter is not a basis  
12 for civil liability, but may be the basis for employee discipline or administrative action  
13 to restrict a person's or agency's access to information. However, a person whose  
14 criminal justice information has been released or used in knowing violation of this  
15 chapter or a regulation adopted under this chapter may bring an action for damages in  
16 the superior court.

17 (b) It is a defense to a civil or criminal action based on a violation of this  
18 chapter, or regulations adopted under this chapter, if a person relied in good faith upon  
19 the provisions of this chapter or of other laws or regulations governing maintenance,  
20 release, or use of criminal justice information, or upon policies or procedures  
21 established by a criminal justice agency.

22 Sec. 12.62.900. DEFINITIONS. In this chapter,

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

24 (2) "arrestable offense" means conduct subjecting a person to arrest

25 (A) due to a violation of a federal or state criminal law, or  
26 municipal criminal ordinance;

27 (B) under AS 12.25.180;

28 (C) under AS 12.30.060; or

29 (D) under AS 12.70;

30 (3) "automatic data processing" has the meaning given in AS 44.21.170;

31 (4) "board" means the Criminal Justice Information Advisory Board;

1 (5) "commissioner" means the commissioner of public safety;

2 (6) "complete" means that a criminal history record contains  
3 information about the disposition of criminal charges occurring in the state within 90  
4 days after the disposition occurred;

5 (7) "correctional facility" has the meaning given in AS 33.30.901;

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

11 (9) "criminal history record information" means information that  
12 contains

13 (A) past conviction information;

14 (B) current offender information;

15 (C) criminal identification information;

16 (10) "criminal identification information" means fingerprints,  
17 photographs, and other information or descriptions that identify a person as having  
18 been the subject of a criminal arrest or prosecution;

19 (11) "criminal justice activity" means

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

23 (B) collection, storage, transmission, and release of criminal  
24 justice information; or

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

27 (12) "criminal justice agency" means

28 (A) a court with criminal jurisdiction or an employee of that  
29 court;

30 (B) a government entity or subdivision of a government entity  
31 that allocates a substantial portion of its budget to a criminal justice activity

1 under a law, regulation, or ordinance; or

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

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

11 (A) criminal history record information;

12 (B) nonconviction information;

13 (C) correctional treatment information;

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

16 (14) "criminal justice information system" means an automatic data  
17 processing system used to collect, store, display, or transmit criminal justice  
18 information, and that permits information within the system, without action by the  
19 agency maintaining the information, to be directly accessed by another principal  
20 department of the state, another branch of state government, an agency of another state  
21 or the federal government, or by a political subdivision of a state or the federal  
22 government;

23 (15) "current offender information" means information showing that an  
24 identifiable person

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

26 (i) prosecution is under review or has been deferred by  
27 written or oral agreement;

28 (ii) a warrant exists for the person's arrest; or

29 (iii) less than a year has elapsed since the date of the  
30 arrest or filing of the charges, whichever is latest;

31 (B) is currently released on bail or on other conditions imposed

1 by a court in a criminal case, either pretrial or post-trial, including the  
2 conditions of the release;

3 (C) is currently serving a criminal sentence or is under the  
4 custody of the commissioner of corrections for supervision purposes; "current  
5 offender information" under this subparagraph includes

6 (i) the terms and conditions of any sentence, probation,  
7 suspended imposition of sentence, discretionary or mandatory parole,  
8 furlough, executive clemency, or other release; and

9 (ii) the location of any place of incarceration, halfway  
10 house, restitution center, or other correctional placement to which the  
11 person is assigned; and

12 (D) has had a criminal conviction or sentence reversed, vacated,  
13 set aside, or has been the subject of executive clemency;

14 (16) "department" means the Department of Public Safety;

15 (17) "dependent adult" means an adult with a physical or mental  
16 disability who requires assistance or supervision with the activities of daily living;

17 (18) "information" means, unless the context clearly indicates  
18 otherwise, data compiled within a criminal justice information system;

19 (19) "interested person" means a person as defined in AS 01.10.060 that  
20 employs, appoints, or permits a person to serve with or without compensation in a  
21 position in which the person has or would have supervisory or disciplinary power over  
22 a minor or dependent adult;

23 (20) "nonconviction information" means information that an identifiable  
24 person was arrested or that criminal charges were filed or considered against the  
25 person and

26 (A) a prosecutor or grand jury has elected not to begin criminal  
27 proceedings against the person and at least a year has elapsed since that  
28 decision;

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

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

5 (21) "past conviction information" means information showing that an  
6 identifiable person who has been unconditionally discharged has previously been  
7 convicted of a crime; "past conviction information" includes

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

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

12 (22) "purge" means to electronically delete or destroy information in  
13 a criminal justice information system so that there can be no access to the information;

14 (23) "seal" means to retain information in a criminal justice information  
15 system subject to special restrictions on access or dissemination;

16 (24) "serious offense" means a conviction for a felony offense or a  
17 violation or attempted violation of any of the following laws, or of the laws of another  
18 jurisdiction with substantially similar elements:

19 (A) AS 11.41.410 - 11.41.470;

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

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

22 (D) AS 11.66.100 - 11.66.130; or

23 (E) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -  
24 11.40.420, if committed before January 1, 1980; and

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

26 \* Sec. 2. AS 44.99.310(f) is amended to read:

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

31 \* Sec. 3. AS 12.55.147; AS 12.62.010, 12.62.015, 12.62.017, 12.62.020, 12.62.030,

1 12.62.035, 12.62.040, 12.62.050, 12.62.060, 12.62.070; AS 18.65.060; and AS 44.41.040 are  
2 repealed.

3 \* **Sec. 4. TRANSITION.** Notwithstanding sec. 7 of this Act, an agency of the state that  
4 has regulation adoption authority or that is authorized by this Act to adopt regulations, may  
5 proceed to adopt regulations necessary to implement provisions in this Act that affect that  
6 agency. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not  
7 before July 1, 1995.

8 \* **Sec. 5. APPLICABILITY.** Notwithstanding sec. 7 of this Act, the fingerprinting and  
9 mandatory reporting requirements of AS 12.62.120 - 12.62.150, added by sec. 1 of this Act,  
10 and regulations adopted under those statutes, are not applicable before July 1, 1996 to criminal  
11 activity that does not constitute a felony offense.

12 \* **Sec. 6.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

13 \* **Sec. 7.** Sections 1 - 3 and 5 of this Act take effect July 1, 1995.

*Amend. #1*  
Proposed Amendment to SB 276  
ADOPTED  
3-3-93

Post-It™ brand fax transmittal memo 7671 # of pages ▶ 3	
To <i>Legal Services</i>	From <i>Marie</i>
Co.	Co. <i>Senate Finance</i>
Dept.	Phone # <i>4935</i>
Fax #	Fax # <i>x 2187</i>

*req'd w/draft 3-3-93 11:15 am*

Replace proposed AS 12.62.120 (pages 3-4) with the following:

Sec. 12.62.120. MANDATORY FINGERPRINTING IN CRIMINAL CASES. (a) When a person is taken into custody for an arrestable offense, with or without a warrant, fingerprints of the person may be taken by the law enforcement agency with custody of the person. If the law enforcement agency with custody of the person does not take the fingerprints, they shall be taken by the correctional facility where the person is lodged following the arrest.

(b) At the initial court appearance or arraignment of a person for an arrestable offense, the court shall determine if the person's fingerprints have been taken in connection with the offense. If the court is unable to conclusively determine that the person's fingerprints have been taken, the court shall order the person to submit to fingerprinting within 24 hours at the appropriate correctional facility unless, after consultation with state or local law enforcement agencies, the court determines that another place for taking fingerprints is more appropriate.

(c) When a defendant is sentenced or otherwise adjudicated for an arrestable offense, the court shall determine if legible fingerprints have been taken in connection with the proceedings. If the court is unable to conclusively determine that legible fingerprints have been taken, the court shall order that the defendant, as a

condition of sentence, adjudication, suspended imposition of sentence, probation, or release, submit to fingerprinting within 24 hours at the appropriate correctional facility unless, after consultation with state or local law enforcement agencies, the court determines that another place for taking fingerprints is more appropriate.

(d) The department shall develop standard forms and procedures for the taking of fingerprints under this section. Fingerprints shall be

(1) taken on a form, and in the manner, prescribed by the department; and

(2) forwarded within five working days to the department.

(e) When the department receives fingerprints of a person in connection with an arrestable offense, the department shall make a reasonable effort to confirm the identity of the person fingerprinted. If the department finds that the person fingerprinted has criminal history record information under a name other than the name submitted with the fingerprints, the department shall promptly notify the officer, agency, or facility that took the fingerprints.

(f) If the arresting officer, the law enforcement agency that employs the officer, or the correctional facility where fingerprints were taken, is notified by the department that fingerprints taken under this section are not legible, the officer, agency, or facility shall make a reasonable effort to

obtain a legible set of fingerprints. If legible fingerprints cannot be obtained within a reasonable period of time, and if the illegible fingerprints were taken pursuant to a court order, the officer or agency shall inform the court, which shall order the defendant to submit to fingerprinting again.

Replace the definition of "correctional facility" (page 12) with:

(7) "correctional facility" has the meaning given in AS 33.30.901;

Replace the definition of "arrestable offense" (page 12) with:

(2) "arrestable offense" means conduct subjecting a person to arrest

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under AS 12.30.060; or

(D) under AS 12.70.

Add AS 12.55.147 to the list of repealed statutes in Sec. 3.

8-GS2005E  
Luckhaupt  
2/16/94

ADOPTED  
3-3-94

**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:  
Referred:**

**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 new sections to read:**

6 **Sec. 12.62.100. CRIMINAL JUSTICE INFORMATION ADVISORY BOARD;**  
7 **FUNCTIONS AND DUTIES. (a) There is established in the department the Criminal**  
8 **Justice Information Advisory Board consisting of the following members:**

9 **(1) a member of the general public appointed by and serving at the**  
10 **pleasure of the governor;**

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

14 **(3) the attorney general or the attorney general's designee;**

- 1 (4) the chief justice of the supreme court or the chief justice's designee;  
2 (5) the commissioner of administration or the commissioner's designee;  
3 (6) the commissioner of corrections or the commissioner's designee;  
4 (7) the commissioner of health and social services or the  
5 commissioner's designee;  
6 (8) the commissioner of public safety or the commissioner's designee,  
7 who will serve as chair of the board; and  
8 (9) the executive director of the Alaska Judicial Council or the  
9 executive director's designee.

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

13 (c) The board shall meet once every six months and at such other times as the  
14 chair finds necessary.

15 (d) The board shall

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

21 (2) provide an annual report of its activities and recommendations to  
22 the governor and the legislature.

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 that will  
26 serve as the state's central repository of criminal history record information, and that  
27 will collect, 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. MANDATORY FINGERPRINTING IN CRIMINAL CASES.

15 (a) A peace officer making an arrest, or another appropriate officer, shall take or  
16 cause to be taken a person's fingerprints if the person is arrested in connection with  
17 an arrestable offense. If a person's arraignment or first court appearance in connection  
18 with an arrestable offense has been secured other than by arrest, or if for any other  
19 reason the person was not fingerprinted in connection with the arrestable offense, the  
20 court shall order, as a condition of the person's release, that the person submit to  
21 fingerprinting at the appropriate police agency or correctional facility within 24 hours.

22 (b) If a person is found guilty of a criminal offense after plea or trial, the court  
23 shall inquire whether the person has previously been fingerprinted in connection with  
24 the proceedings leading to the conviction. If the court finds that the person has not  
25 been fingerprinted, the fingerprints are not legible, or the evidence is inconclusive that  
26 the person has been fingerprinted, the court shall order that the person submit to  
27 fingerprinting at the appropriate police agency or correctional facility within 24 hours.

28 (c) A criminal justice agency operating a correctional facility shall obtain  
29 fingerprints of each person received at the facility in connection with an arrestable  
30 offense.

31 (d) A criminal justice agency taking fingerprints required by this section shall

1 send the fingerprints and other identifying information, in the manner and on forms  
2 approved by the department, to the department no later than one working day after the  
3 fingerprints are taken. If the fingerprints received from a criminal justice agency are  
4 not legible enough to permit accurate identification, the department shall notify the  
5 agency that took the fingerprints, and that agency shall make reasonable effort to  
6 obtain a more legible set of the fingerprints.

7 (e) Upon receiving legible fingerprints from a criminal justice agency, the  
8 department shall use reasonable efforts to confirm the identity of the person  
9 fingerprinted. If the department finds that the person fingerprinted has criminal history  
10 record information under a name other than the name on the fingerprint submission,  
11 the department shall promptly notify the agency that sent the fingerprints.

12 (f) Unless otherwise provided by law or court rule, the commissioner, by  
13 regulation, may exempt certain classes of persons from the fingerprinting requirements  
14 of this section.

15 Sec. 12.62.130. REPORTING OF CRIMINAL JUSTICE INFORMATION.

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

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

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

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

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

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

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

1 prosecute charges;

2 (6) the filing of a charging document, including an indictment, criminal  
3 complaint, criminal information, or a petition or other document showing a violation  
4 of bail, probation, or parole, or the amendment of a charging document;

5 (7) an acquittal, dismissal, conviction or other disposition of charges  
6 set out in a charging document described in (6) of this subsection;

7 (8) the imposition of a sentence or the granting of a suspended  
8 imposition of sentence under AS 12.55.085;

9 (9) the commencement or expiration of parole or probation supervision;

10 (10) the commitment to or release from a facility, designated by the  
11 Department of Health and Social Services, of a person who was previously accused  
12 of a crime but who has been found to be incompetent to stand trial or found not  
13 criminally responsible;

14 (11) the filing of an action in an appellate court or a federal court  
15 relating to a conviction or sentence;

16 (12) a judgment of a court that reverses, remands, vacates, or reinstates  
17 a criminal charge, conviction, or sentence;

18 (13) a pardon, reprieve, executive clemency, commutation of sentence,  
19 or other change in the length or terms of a sentence by executive or judicial action;  
20 and

21 (14) any other event required to be reported under regulations adopted  
22 under this chapter.

23 **Sec. 12.62.140. REPORTING OF UNIFORM CRIME INFORMATION.** A  
24 criminal justice agency shall submit to the department, at the time, in the manner, and  
25 in the form specified by the department, data regarding crimes committed within that  
26 agency's jurisdiction. The department shall compile, and provide to the governor and  
27 the attorney general, an annual report concerning the number and nature of criminal  
28 offenses committed, the disposition of the offenses, and any other data the  
29 commissioner finds appropriate relating to the method, frequency, cause, and  
30 prevention of crime.

31 **Sec. 12.62.150. REPORTING OF INFORMATION REGARDING WANTED**

1 PERSONS AND STOLEN PROPERTY. (a) A criminal justice agency shall report  
2 to the department, at the time, in the manner, and in the form specified by the  
3 department, data regarding

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

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

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

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

13 Sec. 12.62.160. COMPLETENESS, ACCURACY, AND SECURITY OF  
14 CRIMINAL JUSTICE INFORMATION. (a) A criminal justice agency shall

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

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

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

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

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

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

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

1 purposes,

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

5 (B) records required to be maintained under AS 12.62.170(c)(4).

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

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

16 Sec. 12.62.170. RELEASE AND USE OF CRIMINAL JUSTICE  
17 INFORMATION; FEES. (a) Criminal justice information and the identity of  
18 recipients of criminal justice information is confidential and exempt from disclosure  
19 under AS 09.25. The existence or nonexistence of criminal justice information may  
20 not be released to or confirmed to any person except as provided in this section and  
21 AS 12.62.190(d).

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

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

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

31 (3) criminal justice information may be provided to a person if the

1 information is commonly or traditionally provided by criminal justice agencies in order  
2 to identify, locate, or apprehend fugitives or wanted persons or to recover stolen  
3 property, or for public reporting of recent arrests, charges, and other criminal justice  
4 activity;

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

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

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

12 (7) criminal justice information may be provided to the governor or the  
13 lieutenant governor for purposes of

14 (A) personal or family security; or

15 (B) reviewing a candidate for appointment as a  
16 state official or employee in the exempt or partially exempt  
17 service under AS 39.25.110 or 39.25.120;

18 (8) criminal justice information may be provided to a legislator  
19 of this state for purposes of

20 (A) personal or family security;

21 (B) reviewing a governor's appointee whose  
22 appointment has been submitted to the legislature for  
23 confirmation; or

24 (C) reviewing a candidate for legislative  
25 appointment or for employment in the legislative branch of  
26 government;

27 (9) criminal justice information may be released to a qualified person,  
28 as determined by the agency, for criminal justice research, subject to written conditions  
29 that assure the security of the information and the privacy of individuals to whom the  
30 information relates;

31 (10) current offender information may be provided to a person for any

1 purpose;

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

5 (12) past conviction information relating to a serious offense may be  
6 provided to an interested person if 10 or more years have elapsed from the date of  
7 unconditional discharge to the date of the request and if the information is requested  
8 for the purpose of determining whether to grant a person supervisory or disciplinary  
9 power over a minor or dependent adult; and

10 (13) criminal justice information may be provided to the person who  
11 is the subject of the information.

12 (c) Unless otherwise provided for in regulations adopted by the commissioner,  
13 if access to criminal justice information is permitted under (b) of this section

14 (1) the information may be released only by the agency maintaining  
15 that information;

16 (2) the information may not be released under this section without first  
17 determining that the information is the most current information available within that  
18 criminal justice information system, unless the system is incapable of providing the  
19 most current information available within the necessary time period;

20 (3) the information may not be released under this section until the  
21 person requesting the information establishes the identity of the subject of the  
22 information by fingerprint comparison or another reliable means of identification  
23 approved by the department;

24 (4) the information may not be released under this section unless the  
25 criminal justice agency releasing the information records, and maintains for at least  
26 three years, the name of the person or agency that is to receive the information, the  
27 date the information was released, the nature of the information, and the statutory  
28 authority that permits the release; and

29 (5) information released under this section may be used only for the  
30 purpose or activity for which the information was released.

31 (d) Notwithstanding AS 09.25, a criminal justice agency may charge fees,

1 established by regulation or municipal ordinance, for processing requests for records  
2 under this chapter, unless the request is from a criminal justice agency or is required  
3 for purposes of discovery in a criminal case. In addition to fees charged under  
4 AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint  
5 system, the department may charge fees for other services in connection with the  
6 processing of information requests, including fees for contacting other jurisdictions to  
7 determine the disposition of an out-of-state arrest or to clarify the nature of an  
8 out-of-state conviction. The department may also collect and account for fees charged  
9 by the Federal Bureau of Investigation for processing fingerprints forwarded to the  
10 bureau by the department. The annual estimated balance in the account maintained by  
11 the commissioner of administration under AS 37.05.142 may be used by the legislature  
12 to make appropriations to the department to carry out the purposes of this chapter.

13 Sec. 12.62.180. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

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

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

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

29 Sec. 12.62.190. SEALING OF CRIMINAL JUSTICE INFORMATION. (a)  
30 Under this section, a criminal justice agency may seal only the information that the  
31 agency is responsible for maintaining.

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

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

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

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

23 **Sec. 12.62.200. PURGING OF CRIMINAL JUSTICE INFORMATION.** (a)  
24 A criminal justice agency may purge only the criminal justice information that the  
25 agency is responsible for maintaining. An agency may determine when and what  
26 information will be purged, under (b) of this section.

27 (b) Criminal justice information may be purged if the agency determines that  
28 the information is devoid of usefulness to a criminal justice agency due to the

- 29 (1) death of the subject of the information;
- 30 (2) age of the information;
- 31 (3) nature of the offense or of the information;

1 (4) volume of the agency's records or other record management  
2 considerations.

3 Sec. 12.62.210. CIVIL ACTION AND DEFENSE. (a) Failure to comply with  
4 a requirement of this chapter or a regulation adopted under this chapter is not a basis  
5 for civil liability, but may be the basis for employee discipline or administrative action  
6 to restrict a person's or agency's access to information. However, a person whose  
7 criminal justice information has been released or used in knowing violation of this  
8 chapter or a regulation adopted under this chapter may bring an action for damages in  
9 the superior court.

10 (b) It is a defense to a civil or criminal action based on a violation of this  
11 chapter, or regulations adopted under this chapter, if a person relied in good faith upon  
12 the provisions of this chapter or of other laws or regulations governing maintenance,  
13 release, or use of criminal justice information, or upon policies or procedures  
14 established by a criminal justice agency.

15 Sec. 12.62.900. DEFINITIONS. In this chapter,

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

17 (2) "arrestable offense" means an offense that is committed by an adult  
18 or by a juvenile who has been charged as an adult, and that is

19 (A) a violation of a federal or state criminal law, or municipal  
20 criminal ordinance;

21 (B) an offense resulting in arrest under AS 12.25.170; or

22 (C) an offense resulting in arrest under AS 12.70;

23 (3) "automatic data processing" has the meaning given in AS 44.21.170;

24 (4) "board" means the Criminal Justice Information Advisory Board;

25 (5) "commissioner" means the commissioner of public safety;

26 (6) "complete" means that a criminal history record contains  
27 information about the disposition of criminal charges occurring in the state within 90  
28 days after the disposition occurred;

29 (7) "correctional facility" means a prison, jail, or other facility for the  
30 temporary or indefinite confinement of persons charged with criminal offenses;

31 (8) "correctional treatment information" means information about an

1 identifiable person, excluding past conviction information or current offender  
2 information, collected to monitor that person in a correctional facility or while under  
3 correctional supervision, including the person's current or past institutional behavior,  
4 medical or psychological condition, or rehabilitative progress;

5 (9) "criminal history record information" means information that  
6 contains

7 (A) past conviction information;

8 (B) current offender information;

9 (C) criminal identification information;

10 (10) "criminal identification information" means fingerprints,  
11 photographs, and other information or descriptions that identify a person as having  
12 been the subject of a criminal arrest or prosecution;

13 (11) "criminal justice activity" means

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

17 (B) collection, storage, transmission, and release of criminal  
18 justice information; or

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

21 (12) "criminal justice agency" means

22 (A) a court with criminal jurisdiction or an employee of that  
23 court;

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

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

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

5 (A) criminal history record information;

6 (B) nonconviction information;

7 (C) correctional treatment information;

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

10 (14) "criminal justice information system" means an automatic data  
11 processing system used to collect, store, display, or transmit criminal justice  
12 information, and that permits information within the system, without action by the  
13 agency maintaining the information, to be directly accessed by another principal  
14 department of the state, another branch of state government, an agency of another state  
15 or the federal government, or by a political subdivision of a state or the federal  
16 government;

17 (15) "current offender information" means information showing that an  
18 identifiable person

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

20 (i) prosecution is under review or has been deferred by  
21 written or oral agreement;

22 (ii) a warrant exists for the person's arrest; or

23 (iii) less than a year has elapsed since the date of the  
24 arrest or filing of the charges, whichever is latest;

25 (B) is currently released on bail or on other conditions imposed  
26 by a court in a criminal case, either pretrial or post-trial, including the  
27 conditions of the release;

28 (C) is currently serving a criminal sentence or is under the  
29 custody of the commissioner of corrections for supervision purposes; "current  
30 offender information" under this subparagraph includes

31 (i) the terms and conditions of any sentence, probation,

1 suspended imposition of sentence, discretionary or mandatory parole,  
2 furlough, executive clemency, or other release; and

3 (ii) the location of any place of incarceration, halfway  
4 house, restitution center, or other correctional placement to which the  
5 person is assigned; and

6 (D) has had a criminal conviction or sentence reversed, vacated,  
7 set aside, or has been the subject of executive clemency;

8 (16) "department" means the Department of Public Safety;

9 (17) "dependent adult" means an adult with a physical or mental  
10 disability who requires assistance or supervision with the activities of daily living;

11 (18) "information" means, unless the context clearly indicates  
12 otherwise, data compiled within a criminal justice information system;

13 (19) "interested person" means a person as defined in AS 01.10.060 that  
14 employs, appoints, or permits a person to serve with or without compensation in a  
15 position in which the person has or would have supervisory or disciplinary power over  
16 a minor or dependent adult;

17 (20) "nonconviction information" means information that an identifiable  
18 person was arrested or that criminal charges were filed or considered against the  
19 person and

20 (A) a prosecutor or grand jury has elected not to begin criminal  
21 proceedings against the person and at least a year has elapsed since that  
22 decision;

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

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

30 (21) "past conviction information" means information showing that an  
31 identifiable person who has been unconditionally discharged has previously been

1 convicted of a crime; "past conviction information" includes

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

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

6 (22) "purge" means to electronically delete or destroy information in  
7 a criminal justice information system so that there can be no access to the information;

8 (23) "seal" means to retain information in a criminal justice information  
9 system subject to special restrictions on access or dissemination;

10 (24) "serious offense" means a conviction for a felony offense or a  
11 violation or attempted violation of any of the following laws, or of the laws of another  
12 jurisdiction with substantially similar elements:

13 (A) AS 11.41.410 - 11.41.470;

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

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

16 (D) AS 11.66.100 - 11.66.130; or

17 (E) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -  
18 11.40.420, if committed before January 1, 1980; and

19 (25) "unconditional discharge" has the meaning given in AS 12.55.185.

20 \* Sec. 2. AS 44.99.310(f) is amended to read:

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

25 \* Sec. 3. AS 12.62.010, 12.62.015, 12.62.017, 12.62.020, 12.62.030, 12.62.035, 12.62.040,  
26 12.62.050, 12.62.060, 12.62.070; AS 18.65.060; and AS 44.41.040 are repealed.

27 \* Sec. 4. TRANSITION. Notwithstanding sec. 7 of this Act, an agency of the state that  
28 has regulation adoption authority or that is authorized by this Act to adopt regulations, may  
29 proceed to adopt regulations necessary to implement provisions in this Act that affect that  
30 agency. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not  
31 before July 1, 1995.

1 \* **Sec. 5. APPLICABILITY.** Notwithstanding sec. 7 of this Act, the fingerprinting and  
2 mandatory reporting requirements of AS 12.62.120 - 12.62.150, added by sec. 1 of this Act,  
3 and regulations adopted under those statutes, are not applicable before July 1, 1996 to criminal  
4 activity that does not constitute a felony offense.

5 \* **Sec. 6.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

6 \* **Sec. 7.** Sections 1 - 3 and 5 of this Act take effect July 1, 1995.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 15, 1994

**SUBJECT:** SB 276 - Criminal Justice Information (Work Order No. 18-GS2005\A)

**TO:** Senator Drue Pearce

**FROM:** Jerry Luckhaupt   
Legislative Counsel

The Senate Judiciary Committee passed out the above-referenced bill with amendments. The Judiciary Committee, though, did not incorporate the amendments into, or adopt, a committee substitute, but the amendments are merely riding along with the bill. I am pointing this out because SB 276 is a governor's bill that has not as of yet been edited or revised by the legal editor or the revisor of statutes. If the Judiciary Committee had adopted a CS we would have been able to make our editorial changes at that time; since they did not we would like to inform you of editorial changes that we have identified that need to be made to the bill. The changes are:

1. Page 1:

line 7, following "department":  
Delete "a"  
Insert "the"

2. Page 2:

line 9:  
Delete "as"  
Delete "state employees"  
Insert "boards under AS 39.20.180"

line 21:  
Delete "of public safety"

line 25:  
Delete "Criminal Justice Information Advisory Board"  
Insert "board"

3. Page 3:

line 6, following "AS 44.62":  
Insert "(Administrative Procedure Act)"

4. Page 4:

lines 13 - 14:  
Delete "Criminal Justice Information Advisory Board"  
Insert "board"

5. Page 7:

line 13:  
Delete "Criminal Justice Information Advisory Board"  
Insert "board"

6. Page 11:

line 11:  
Delete "any"  
Insert "an"

line 23:  
Delete ", in accordance with"  
Insert "under"

7. Page 15:

lines 10 - 11:  
Delete "corporation, company, partnership, firm, association,  
organization, business trust, or society, as well as natural  
person,"

Insert "person"  
(In the alternative, insert "person, as defined in AS 01.10.060,")

8. Page 16:

line 31:  
Delete "enacted"  
Insert "added"

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF PUBLIC SAFETY**

OFFICE OF THE COMMISSIONER

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4322  
FAX: (907) 465-4362

February 22, 1994

The Honorable Drue Pearce  
Co-Chair, Senate Finance  
Alaska State Legislature  
State Capitol - Room 508  
Juneau, AK 99801-1182

Dear Senator Pearce:

This is to request your assistance in scheduling a Senate Finance hearing on SB 276, "An Act relating to criminal justice information; providing procedural requirements for obtaining certain criminal justice information; and providing for an effective date."

This bill to update Alaska's laws regarding the administration of certain criminal justice information is the culmination of a four-year effort sponsored by the Department of Public Safety, assisted by SEARCH, the National Consortium for Criminal Justice Information and Statistics, and the Department of Law.

The broad based goal of this bill is to establish the statutory framework necessary to provide police, prosecutors, courts, corrections and employers, essential criminal history information via the Alaska Public Safety Information Network (APSIN)

Legislation is required to ensure the taking of fingerprints and the capturing of arrest and related information to ensure that Alaska's criminal justice decision-makers are supplied with complete, accurate, and timely criminal history information. Alaska's APSIN criminal history database is dependent upon cooperation with police agencies to provide arrest information, Corrections for fingerprints and prisoner information, Department of Law for decline to prosecute information, and the Courts for judgement information. This legislation will provide the statutory framework necessary to facilitate the reporting of criminal history information to the Department of Public Safety. The Criminal Justice Working Group has endorsed the need for this type of legislation.

The Honorable Drue Pearce  
February 22, 1994  
Page 2

Without accurate, complete, and timely criminal history records, police investigations will be impaired; persons who should be arrested or otherwise held during routine police contact will not be; repeat offenders will receive lighter sentencing or be inappropriately released from custody; unsuitable persons will be permitted employment in criminal justice or sensitive civilian capacities; and ineligible persons will be allowed to purchase and carry firearms.

APSIN houses Alaska's criminal history database and provides access to national criminal history and fingerprint networks. APSIN is accessed statewide by all police and criminal justice agencies comprising 2,000 users and 900 computer terminals. Information contained in this database and its companion fingerprint system is used by police to investigate crimes and identify persons and property. Prosecutors depend upon APSIN to determine previous criminal history. Courts, through Corrections' presentence reports, use APSIN information in making sentencing, release, probation, and parole decisions.

APSIN criminal history information is provided to employers and regulatory authorities to make informed employment and licensing decisions. Certain background checks, such as those for criminal justice employment and school teachers, are provided for by law. Others, such as background checks on foster parents, are voluntary but critical to the public welfare. Further, APSIN is a partner with our sister states and the federal government in developing national systems initiatives to form national criminal justice information networks.

The importance of complete, accurate, and timely access to criminal history information continues to increase due to recently enacted federal legislation involving gun control (Brady-National Instant Check System) and protection of children (National Child Protection Act). Other federal initiatives are pending involving the registration of offenders who are convicted of crimes against children (Jacob Wetterling Crimes Against Children Registration Act) and requiring states to establish programs to screen, license, and train security officers (Private Security Officers Quality Assurance Act). In addition, the Alaska Legislature is considering concealed weapons permit legislation (HB 351), registration of sexual offenders (HB 69), and the Governor's Anti-Crime Package (Three Strikes You're Out). All of these initia-

The Honorable Drue Pearce  
February 22, 1994  
Page 3

tives are dependent upon the availability of criminal history information in order to implement the provisions of these enacted and pending laws.

Sincerely,



Richard L. Burton  
Commissioner

Enclosures: Criminal Justice Working  
Group Letter of Support  
Police Impact Summary  
Spreadsheet Bill Summary  
Dept. of Law Commentary  
Fingerprints at Arrest  
Fingerprint Survey

cc: Senate Finance Members

# **GOVERNOR HICKEL'S CRIMINAL HISTORY RECORDS INFORMATION LEGISLATION (SB 276 & HB 442)**

Governor Hickel has introduced legislation which will provide police, prosecutors, courts, corrections, and employers with essential criminal history information via the Alaska Public Safety Information Network (APSIN).

APSIN houses Alaska's criminal history database and provides access to national criminal history and fingerprint networks. APSIN is accessed statewide by all police and criminal justice agencies comprising 2,000 users and 900 computer terminals. Information contained in this database and its companion fingerprint system is used by police to investigate crimes and identify persons and property. Prosecutors depend upon APSIN to determine previous criminal history. Courts, through Corrections presentence reports, use APSIN information in making sentencing, release, probation and parole decisions.

Without accurate, complete and timely criminal history records, police investigations will be impaired. Persons who should be arrested or otherwise held during routine police contact will not be. Repeat offenders will receive lighter sentencing or be inappropriately released from custody. Unsuitable persons will be permitted employment in criminal justice or sensitive civilian capacities. Ineligible persons will be allowed to purchase and carry firearms.

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The importance of complete, accurate and timely access to criminal history information continues to increase due to recently enacted federal legislation involving gun control (Brady-National Instant Check System) and protection of children (National Child Protection Act). Other federal initiatives are pending involving the registration of offenders who are convicted of crimes against children (Jacob Wetterling Crimes Against Children Registration Act) and requiring states to establish programs to screen, license and train security officers (Private Security Officers Quality Assurance Act). In addition, the Alaska legislature is considering concealed weapons permit legislation (HB 351), registration of sexual offenders (HB 69), and the Governor's Anti-Crime Package. All of these initiatives are dependent upon the availability of criminal history information in order to implement the provisions of these enacted and pending laws.

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
Juneau, Alaska 99811-0001  
907) 465-3500

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 4, 1994

*The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Mr. President:*

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to criminal justice information.*

*The need for new Alaska legislation on the subject of criminal justice information and computer information systems has been recognized for a number of years. If accurate and complete, these information systems provide a measure of protection for law enforcement officers on the front line of the battle against crime and provide needed information for all parts of the criminal justice system and the public. At the same time, provisions are needed for the security and privacy of the information contained in these systems. Under the bill, "criminal justice information" does not include records relating to juvenile offenders.*

*The federal Anti-Drug Abuse Act of 1988 required the United States Department of Justice to develop a system for more immediate and accurate identification of offenders, which resulted in voluntary national standards being developed. The Department of Justice recommended that all states (1) implement mandatory reporting of all criminal justice information, (2) monitor case dispositions and adopt unique case-tracking numbers to improve data accuracy, (3) ensure timely submission of fingerprint records, (4) provide standardized data entry, and (5) provide audits, training, and data security. This bill is a necessary step toward that goal, and it will provide a framework under which the state can comply with appropriate national standards for the collection and use of criminal justice information, to the extent they are practical as applied to Alaska.*

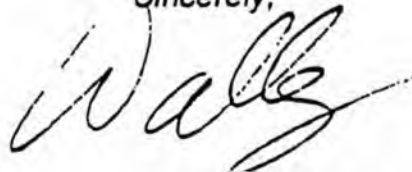
*This bill also adopts a trend seen in some other states, to give the press and public greater access to criminal history records and to make those records more "open."*

*The Honorable Rick Halford  
February 3, 1994  
Page 2*

*For example, under this bill, anyone would be permitted to receive information about a person in the custody or under the supervision of the state, including the location of incarceration of inmates, and the conditions under which such inmates are released into the community on bail, probation, or parole. Currently, much of this information is available only to victims of crimes. AS 33.16.120(f). The public would also be permitted to receive information about past convictions if less than 10 years has elapsed from the date the offender was released from all state supervision. Current law gives past conviction records only to employers of persons who work with children, and only for specified crimes. AS 12.62.035. These provisions in this legislation would give the public a great deal of information about current or past criminal offenders that is either not available under current law, or is only available by expending great effort to search paper or microfilm records in the possession of the court system.*

*A detailed section-by-section description that describes the need for and the intent behind each provision in the bill is available from the Department of Public Safety.*

*-Sincerely,*

A handwritten signature in cursive script, appearing to read "Walter J. Hickel".

*Walter J. Hickel  
Governor*



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1917 (907) 279-2526 FAX (907) 276-3046

EXECUTIVE DIRECTOR  
William T. Cottan

November 2, 1993

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Chief Justice  
Supreme Court

Honorable Walter Hickel  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, AK 99811-0001

RE: Criminal Justice Working Group Recommendation concerning Criminal History  
Legislation

Dear Governor Hickel:

I am writing on behalf of the Criminal Justice Working Group which you recently established to, among other reasons, recommend to you policies which would benefit the criminal justice system in Alaska as a whole. The CJWG recently reviewed legislation prepared by the Departments of Public Safety and Law which comprehensively addresses the collection, oversight and dissemination of criminal history information. While the CJWG did not consider all of the specifics in the legislation, and undoubtedly members will have differences of opinion on individual items, the CJWG was unanimous in endorsing the general direction of the legislation. The Group strongly urges you to introduce it and work for its passage next session.

Accurate and complete criminal history information is a necessity for all parts of the criminal justice system. The ability of the police and troopers to apprehend criminals and protect the public depends in many cases on accurate fingerprint identification. Innocent citizens often can be absolved by accurate records while inaccurate information can put them at risk. Sentencing decisions under our laws are dependent on accurately determining prior convictions. Further, accurate and complete information is vital to a wide range of decisions in our society, for example, hiring a day care worker who has not been convicted of sexual abuse of a minor. Current statutes governing criminal records collection, use and dissemination are inadequate. Because of these inadequacies, protection of the public and individuals can be at risk.

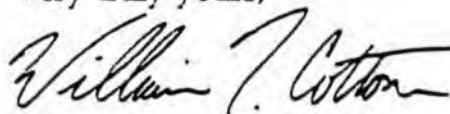
The CJWG endorses the following general objectives of the proposed legislation:

1. Establish an advisory group to oversee the collection and use of criminal history information;
2. Establish regulatory authority with Department of Public Safety;
3. Provide for mandatory fingerprinting;
4. Establish mandatory reporting of events in the criminal justice system;
5. Provide for correcting or sealing information;
6. Make recommendations for dissemination of information.

The CJWG did not review individual sections of the legislation. In particular, some members had reservations about the dissemination provisions, although all felt that dissemination of criminal history information is an important topic which must be addressed.

The CJWG believes a need for new, comprehensive legislation governing the collection and use of criminal history information is an important issue. As a whole, the group feels that complete and accurate criminal history records are an integral part of a good criminal justice system and request the Governor endorse and introduce this legislation during the next session.

Very truly yours,



William T. Cotton  
Executive Director

WTC:pjs

cc: Criminal Justice Working Group Members

Commissioner Richard L. Burton, Department of Public Safety  
Attorney General Charles E. Cole  
Commissioner Theodore A. Mala, Department of Health & Social Services  
Brant McGee, Director, Office of Public Advocacy  
Chief Justice Daniel A. Moore, Jr.  
Ron Otte, President, Police Chiefs  
Representative Brian Porter, Alaska State Legislature  
Commissioner J. Frank Prewitt, Department of Corrections  
John Salemi, Public Defender  
Arthur H. Snowden, Administrative Director, Alaska Court System  
Shelby Stastny, Director, Office of Management & Budget  
Senator Robin Taylor, Alaska State Legislature  
Duane Udland, Chief Deputy, Anchorage Police Department  
Commissioner Nancy Bear Usera, Department of Administration

# IMPACT UPON LOCAL POLICE

**IN GENERAL:** This legislation establishes a statutory framework which formalizes existing criminal justice information processing procedures. Mandatory provisions have been minimized and sections generally do not take effect until regulations are adopted. To implement the full scope of this legislation, a series of implementation discussions with local law enforcement are required. Full implementation will be achieved through negotiation and concurrence. The bill provides for an effective date of July 1, 1994 but the substantive sections of the bill do not apply to misdemeanants until July 1, 1995. This delay is intended to hold down the initial costs of this legislation and to enable justice agencies to streamline procedures.

The information depicted below addresses those provisions that may increase the work load of local police. Other provisions of the bill, not mentioned here, are either already performed by local police or the performance requirement is placed on other organizations in the criminal justice community. The accompanying materials fully explain the provisions of the legislation.

PROVISION	EXPECTED IMPACT	EXPECTED BENEFIT
<p><b>Criminal Justice Information Board</b> (12.62.100)</p>	<p>A municipal police chief serves as a Board member</p>	<p>Direct local police representation on policy and implementation issues. Travel and per diem expenses are paid by the State.</p>
<p><b>Mandatory fingerprinting</b> (12.62.120) Current practice is to obtain fingerprints for all felonies and serious misdemeanors.</p>	<p>All accused misdemeanants and felons must be fingerprinted. If the arresting agency normally books prisoners at a Correctional facility, there is no impact. If the local police department operates a jail, there will likely be an increase in the number of people it fingerprints.</p>	<p>Fingerprints are the only acceptable, cost effective way to guarantee the identity of the individual and the accuracy of the criminal history record. Additionally, these fingerprints are included in AAFIS and the FBI system for latent matching and national retrieval of criminal records.</p>
<p><b>Time limit for forwarding fingerprints to the central repository</b> (12.62.120)</p>	<p>Fingerprint cards must be forwarded to AAFIS within five working days. Local police may have to mail cards to the central repository more frequently.</p>	<p>A more timely delivery to AAFIS will result in quicker positive identification of criminals and a more timely updating of APSIN in "merge person" situations.</p>
<p><b>Reporting of criminal justice information</b> (12.62.130) - An Arrest, issuance or withdrawal of an arrest warrant - all currently done.</p>	<p>Reporting requirements have been extended to every significant event in the criminal justice process. If the local police department operates a jail, there will likely be some increase in data entry. Law's commentary clearly states that the form, content and timing of reports may be specified without regulation. The intent is to work with local criminal justice agencies in adopting policies that are efficient, workable and cost effective.</p>	<p>A significant increase in the content, integrity, timeliness, completeness, and usability of APSIN information.</p>
<p><b>Release of a person after arrest without filing of a charge - not currently done</b></p>		
<p><b>Reporting of Uniform Crime Information</b> (12.62.140)</p> <p>Approximately 25 police agencies currently submit UCR based information to Public Safety comprising approximately 85% of statewide crime statistics.</p>	<p>A requirement placed on criminal justice agencies to submit uniform crime reporting information to DPS continues. The intent is to work with local police agencies prior to adopting changes from current practice. This legislation does not mandate NIBRS nor UCR reporting formats - law enforcement will be consulted prior to change in current practices.</p>	<p>Availability of true statewide crime statistics and crime trending. Accurate information is useful to law enforcement in operations planning, budget submissions, grant applications</p>

## CRIMINAL HISTORY DATABASE

## PROPOSED CRIMINAL HISTORY RECORD CONTENTS

Source: December 1989 Search Report, September 26, 1991 University of Alaska White Paper

*The importance of complete and accurate criminal history records cannot be over-emphasized at this time. Within the criminal justice system, criminal history records are needed for decisions relating to pretrial release, offense charging, prosecution priorities, sentencing and correctional assignments. Similarly, such data are increasingly necessary for noncriminal justice purposes to meet requirements relating to licensing, security clearances and employment of individuals in sensitive positions. A Bureau of Justice Statistics (BJS) survey found that, as of October 1990, almost all states had enacted some legislation which required that criminal history record information be considered in connection with criminal justice decisions. (Source: Report of the National Task force on Criminal History Record disposition Reporting)*

## ALASKA'S CRIMINAL HISTORY REPOSITORY

Alaska's criminal history database contains approximately 500,000 criminal record entries representing approximately 300,000 persons;

Alaska's fingerprint database contains approximately 170,000 sets of ten print records;

Alaska's fingerprint database contains approximately 2,500 latent fingerprints from crime scenes;

Alaska's criminal history database is updated or queried approximately 50,000 times per month by courts, police, corrections, prosecutors and on behalf of employers;

Alaska's criminal history database is accessed through 900 terminals and 2,000 users in state and nationally via the Law Enforcement Telecommunications System ( NLETS );

Preliminary results of a sample of 300 FY 91 arrests disclosed that approximately one third were supported by fingerprints and one third had dispositions reported. Currently, State Correctional facilities are fingerprinting approximately 40% of people accused of committing crimes; Contract Jails fingerprint approximately 50% and smaller facilities approximately 30%.

- (1) ISSUANCE OR WITHDRAWAL OF AN ARREST WARRANT
- (2) AN ARREST
- (3) RELEASE OF A PERSON AFTER ARREST WITHOUT FILING OF A CHARGE
- (4) DECISION BY A PROSECUTOR NOT TO COMMENCE CRIMINAL PROCEEDINGS OR TO DEFER OR INDEFINITELY POSTPONE PROSECUTION
- (5) PRESENTMENT OF AN INDICTMENT OR THE FILING OF A CRIMINAL INFORMATION OR OTHER STATEMENT OF CHARGES AFTER ARREST
- (6) A RELEASE PENDING TRIAL OR APPEAL
- (7) COMMITMENT TO OR RELEASE FROM A PLACE OF PRETRIAL CONFINEMENT
- (8) THE DISMISSAL OF AN INDICTMENT OR CRIMINAL INFORMATION OR ANY OF THE CHARGES SET OUT IN SUCH INDICTMENT OR CRIMINAL INFORMATION
- (9) AN ACQUITTAL, CONVICTION OR OTHER DISPOSITION AT OR FOLLOWING TRIAL
- (10) IMPOSITION OF A SENTENCE
- (11) COMMITMENT TO OR RELEASE FROM A CORRECTIONAL FACILITY, WHETHER STATE OR LOCALLY OPERATED, INCLUDING COMMITMENT TO OR RELEASE FROM A PAROLE OR PROBATION AGENCY
- (12) COMMITMENT TO OR RELEASE FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES AS INCOMPETENT TO STAND TRIAL OR AS NOT CRIMINALLY RESPONSIBLE
- (13) AN ESCAPE FROM DETENTION OR CONFINEMENT
- (14) ENTRY OF AN APPEAL TO AN APPELLATE COURT
- (15) JUDGMENT OF AN APPELLATE COURT
- (16) A PARDON, REPRIEVE, COMMUTATION OF SENTENCE OR OTHER CHANGE IN SENTENCE LENGTH, INCLUDING A CHANGE ORDERED BY A COURT
- (17) REVOCATION OF PROBATION OR CHANGE IN PAROLE STATUS
- (18) ANY OTHER EVENT ARISING OUT OF OR OCCURRING DURING THE COURSE OF CRIMINAL JUSTICE PROCEEDINGS DECLARED TO BE REPORTABLE BY REGULATIONS ISSUED BY THE DPS COMMISSIONER

ENTS	CONTRIBUTOR	CURRENTLY	CONDITIONS/RECOMMENDED ACTION
These Paper	SYSTEM/AGENCY	PROVIDED	
	APSIN - POLICE PROMIS - AG DOL	YES	<p>Passage of legislation addressing the management of criminal justice information is needed. The current proposal includes the following sections and are briefly discussed:</p> <ol style="list-style-type: none"> <li>12.62.100 - Discontinues the Governor's Commission on Criminal Justice and establishes a criminal justice advisory group to the Commissioner Department of Public Safety;</li> <li>12.62.110 - Defines the responsibilities of the Commissioner, Department of Public Safety with respect to criminal justice information systems;</li> <li>12.62.120 - Prescribes mandatory fingerprinting for all serious offenses in order to authenticate entries to a person's criminal history record and to facilitate future person identification;</li> <li>12.62.130 - Authorizes the reporting of criminal justice information;</li> <li>12.62.140 - Authorizes the reporting of Uniform Crime Information;</li> <li>12.62.150 - Authorizes the reporting of wanted persons and stolen property;</li> <li>12.62.160 - Addresses issues of completeness, accuracy and security of criminal justice information;</li> <li>12.62.170 - Defines criteria for dissemination of criminal justice information;</li> <li>12.62.180 - Prescribes the process for correction of criminal history record information;</li> <li>12.62.190 - Makes provision for sealing of criminal history record information;</li> <li>12.62.200 - Makes provision for purging of criminal history record information;</li> <li>12.62.210 - Provides for recourse through civil action and defense;</li> <li>12.62.900 - Provides definitions of terms used in this legislation.</li> </ol>
	APSIN - POLICE	YES, BUT NOT TIMELY	
AL	APSIN-POLICE PROMIS-AG DOL	NO YES	
AGES	PROMIS-AG DOL	YES, BUT NOT ENTERED	
AL	COURTS OBSCIS-CORRECTIONS	NO NO	
LA- SENT	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
OR	COURTS	YES	
	COURTS	YES	
	COURTS	YES	
LE	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
OF AND	H&SS	NO	
	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
	COURTS PROMIS-AG DOL COURTS	NO NO NO	
	COURTS GOVERNOR	NO NO	
TUS	OBSCIS-CORRECTIONS	NO	
ING RED	APSIN, OBSCIS PROMIS, H&SS	N/A CURRENTLY	

February 3, 1994

"An Act Relating to criminal justice information;  
providing procedural requirements for obtaining certain criminal justice information; and  
providing for an effective date."

*Commentary and section-by-section description*

The need for new Alaska laws for criminal justice information systems has been recognized for a number of years. It has been recommended, for example, that state statutes "should be revised to reflect a decision as to oversight and monitoring responsibility and to clearly set policy . . .". *A Special Report on the Oversight of Criminal Justice Information Systems in Alaska and the Alaska Public Safety Information Network*, Division of Legislative Audit, 1986. See also, Trostle, *Alaska Criminal History Record Information Program, A White Paper*, Justice Center, University of Alaska (1991) ("Legislative intervention in this area is warranted and required."). The Ombudsman has also recommended new legislation. *Investigative Report, Complaint J91-0810* (December 10, 1992).

In 1972, the statutes in AS 12.62, the regulations in 6 AAC 60, and the constitutional right of privacy in Art. I, sec. 22, of the state constitution, were adopted as a direct result of fears generated by the 1971 implementation of the Alaska Justice Information System computer (known as "AJIS").<sup>1</sup> With the exception of AS 12.62.035 (access to conviction records for sex offenders), the statutes have not changed in over 20 years. The last decade has seen enormous changes in the use of, and attitude towards, computer systems, and statutory changes are needed to reflect these changes.<sup>2</sup>

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<sup>1</sup> Newspaper reports at the time contained statements by the sponsors and supporters of the constitutional amendment that the AJIS system was the primary motivation for the right-to-privacy provision. See, articles appearing in Alaska newspapers in 1972: Anchorage Daily News, March 21 at 8; March 22 at 5; March 31 at 1-2; April 1 at 4; April 6 at 2; Anchorage Times, March 20 at 8; March 27 at 2; March 27 at 2; March 31 at 1-2; Fairbanks Daily News-Miner, March 20 at 2; Southeast Alaska Empire, March 17 at 2; March 20 at 1; March 21 at 1 and 8; May 18 at 4.

<sup>2</sup> The regulations in 6 AAC 60 were amended in 1982 during the last meeting of the Governor's Commission on the Administration of Justice, but in reality there has been no systematic oversight of criminal justice information systems since the 1970's. The federal regulations in 28 CFR, Part 20, apply only to information systems funded in whole or in part by the Law Enforcement Assistance Administration, which provided federal grant funds since the 1970s. In 1986 the Department of Law issued an opinion concluding that changes in the funding of the Department of Public Safety criminal records system meant that the statutes and regulations no longer applied to that system. See, *Applicability of AS 12.62 to Alaska Public Safety Information Network*, Inf. Op. Atty. Gen. 663-86-0479, December 10, 1986. Both the division of legislative audit and the division of legislative legal services concur in that conclusion. See, *A Special Report On The Oversight Of Criminal Justice Systems In Alaska And The Alaska Public Safety Information Network*, at 8 (March 19, 1986; Audit Control Number 12-4247-86-5) and *A Report to the Fifteenth State Legislature, Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes*, at 29 (November, 1987).

There has also been a growing recognition that national standards for criminal justice data collection should be established, and the Anti-Drug Abuse Act of 1988 required the Department of Justice to develop a system for more immediate and accurate identification of offenders. The Justice Department recommended that states (1) implement mandatory reporting of all criminal justice information, (2) monitor case dispositions and adopt unique case-tracking numbers to improve data accuracy, (3) ensure timely submission of fingerprint records, (4) provide standardized data entry, and (5) provide audits, training, and data security. ✓

In addition, federal handgun control efforts, such as the "Brady bill" in 1993, depend to a large extent on the accuracy, completeness and availability of criminal history records. Alaska has recently received a federal grant to improve its data collection, and this bill is a necessary step toward that goal. This legislation provides a framework under which the state can comply with appropriate national standards, to the extent they are practical in Alaska.

Major portions of this legislation are patterned after the laws in other states, the federal regulations in 28 CFR, Part 20, and the recommendations made by SEARCH, Inc., in *Standards for the Security and Privacy of Criminal History Record Information, Third Edition*, published in July, 1988.<sup>3</sup> This publication resulted from a three-year effort by the SEARCH Law and Policy Project Advisory Committee, with assistance provided by experts within and outside of the criminal justice community. While the SEARCH publication was not intended as a model statute that would fit the particular needs of every state, it does set out a comprehensive approach to criminal justice information policy based upon articulated standards that reflect the knowledge and experience of a large, nationwide group of criminal justice information experts.

This bill is organized as follows:

AS 12.62.100	Criminal justice information advisory board.
AS 12.62.110	Duties of the commissioner regarding information systems.
AS 12.62.120	Mandatory fingerprinting in criminal cases.
AS 12.62.130	Reporting of criminal justice information.
AS 12.62.140	Reporting of uniform crime information.
AS 12.62.150	Reporting of information regarding wanted persons and stolen property.
AS 12.62.160	Completeness, accuracy and security of criminal justice information.
AS 12.62.170	Release and use of criminal justice information; fees.
AS 12.62.180	Correction of criminal justice information.
AS 12.62.190	Sealing of criminal justice information.
AS 12.62.200	Purging of criminal justice information.
AS 12.62.210	Civil action and defense.
AS 12.62.900	Definitions.

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<sup>3</sup> That SEARCH publication is known across the country as *Technical Report No. 13 (Revised)*.

AS 12.62.100

Subsection (a) establishes the Criminal Justice Information Board, located for administrative and budgetary purposes within the Department of Public Safety. Although the board's role is advisory, provisions requiring twice yearly meetings and annual reports to the Governor and Legislature should encourage it to be active in its advisory role.

There are boards of this type in about half of the states. *Compendium of State Privacy and Security Legislation*, United States Department of Justice, 1989 Overview (hereafter "Dept. of Justice Overview") at page 21. Experience in other states has shown that an advisory board of this type can be effective and can exert a strong influence on the development of policies.

In order to keep the board to a manageable size, the board's membership is limited to commissioners from the five state departments most directly involved in criminal justice matters, the chief justice, a municipal police chief, as well as a member of the public appointed by the Governor to represent broader public interests.

AS 12.62.110

This section sets out the powers and duties of the Commissioner of Public Safety, based on similar provisions in numerous state laws, and requires the commissioner to develop a central state repository for criminal history records and other criminal justice information. At the present time, the Alaska Public Safety Information Network (APSIN) serves as the central repository, and it is anticipated that it will continue in that role. The commissioner must consult with the Criminal Justice Information Board, and cooperate with other state and federal law enforcement agencies.

This section also specifically requires the commissioner to promulgate regulations governing the central repository. Based upon Alaska's past experience with the long-inactive Governor's Commission on the Administration of Justice, it is more efficient and workable to vest rule-making authority in the official, i.e., the commissioner, who is responsible for the day-to-day operation of the system.

There is regulatory authority in this area in nearly every state in the country. Dept. of Justice Overview at page 20. This bill limits the commissioner's rule-making authority to the development and operation of the central repository and enforcement of the statutory requirements concerning the reporting of information to the central repository. The commissioner also is authorized to issue regulations necessary to insure that criminal justice agencies maintain records sufficient to facilitate the audit responsibilities imposed by the statute,

although regulations would not be strictly necessary to prescribe the forms on which information is to be reported. In other respects, criminal justice agencies in the state are free to establish their own agency rules and procedures to comply with the substantive requirements of the chapter. The section specifically authorizes the commissioner to cooperate with NLETS, NCIC, the Interstate Identification Index (III) system and other interstate, national or international identification and record systems.

This section also provides that any regulations adopted by the commissioner will not affect agencies or officials of the judicial branch. This avoids legal questions concerning the separation of powers. It is anticipated that rules affecting operation of the court will be adopted by the supreme court, and it is the intent of this legislation that the court cooperate with executive branch agencies in providing workable criminal justice information systems. As a member of the Criminal Justice Information Board, the chief justice will be familiar with the issues involved in criminal justice data collection, and participation on the board will provide a basis for cooperation with other agencies concerning such issues as court disposition reporting, taking of fingerprints and use of tracking numbers. According to SEARCH, such an approach has worked well in other states.

#### AS 12.62.120 -- 150: Applicability

Based on preliminary comments from a number of criminal justice agencies, an applicability section at the end of the bill will apply the fingerprinting and reporting requirements of AS 12.62.120 -- 150 only to persons arrested for felony offenses. It was felt that meeting the fingerprinting and reporting requirements for the many thousands of misdemeanor cases proceedings through the courts every year in Alaska would be burdensome to state and municipal agencies. In order to hold down the initial costs of this legislation, and to enable justice agencies to streamline procedures, these sections will not apply to misdemeanor offenses until July 1, 1996.

#### AS 12.62.120

This section imposes a mandatory fingerprinting requirement for all offenses that will be included in the central criminal history record system. Since fingerprints provide positive identification, thereby ensuring the integrity of the records, it is important that fingerprints be uniformly obtained and forwarded to the central repository. National standards adopted by the Justice Department call for increased collection of fingerprint data.

It has been suggested that routine taking of fingerprints in all criminal cases may violate an offender's right of privacy. Given the minimal intrusiveness of fingerprinting, however, and its common acceptance as a standard police practice, it is doubtful a person under

arrest or charged with a crime would have a subjective expectation of privacy with respect to fingerprints, nor is it likely society would be willing to recognize any such expectation as reasonable. It is therefore unlikely a court would conclude that the right of privacy is implicated.

Subsection (a), requiring arresting officers to take fingerprints, and requiring a court to order a person charged with a crime to submit to fingerprinting if not arrested, is modeled after a provision in New York's law (N.Y. Crim. Proc. Law § 160.10). See, also 18 Pa. Cons. Stat. Ann. § 2112 (Purdon). Subsection (b) ensures that fingerprints are obtained at the time of conviction in cases in which, for whatever reason, fingerprints were not obtained earlier.

Subsection (c) is modeled after provisions in many state laws requiring correctional institutions to obtain fingerprints of persons committed to such institutions. E.g., Ga. Code Ann. § 35-3-36(f) (1981); Del. Code Ann. tit. 11, § 8509-8510. In addition, most other states follow this practice, though it is not expressly required by law.

Subsection (d) sets a time limit for the forwarding of fingerprints to the central repository. Fingerprints are required to be forwarded within five days. The most common time frame in use (by law or practice) in other states is seventy-two hours, although fingerprint reporting requirements vary from twenty-four hours to a week or more. Five days is a reasonable standard that criminal justice agencies in Alaska can meet in practice. This subsection also deals with poor quality fingerprints by requiring the originating agency to attempt to obtain better prints.

Subsection (e) is modeled after a provision in New York's law specifically requiring the central repository to use reasonable efforts to confirm the identity of the person being fingerprinted. N.Y. Crim. Proc. Law, § 160.30. If the central repository discovers that the person has an alias, the original agency must be notified. It is anticipated that in the vast majority of cases the sole effort to confirm identity would be through the department's automated fingerprint system. This will be sufficient to meet the requirement of "reasonable" efforts.

Subsection (f) permits the commissioner to adopt regulations to exempt certain classes of offenders from the fingerprinting requirement. For example, the commissioner may determine that it is not necessary for purposes of prison security or data accuracy to take repeated sets of fingerprints of prisoners transferred between institutions or of persons rearrested for violations of bail conditions, as would be required by subsection (c).

AS 12.62.130

This section establishes a framework for requiring that every significant event in the criminal justice process be reported to the Department of Public Safety. The current record system is ordinarily based only on the first event (usually an arrest) and the last event (usually a court judgment). Because of delays in the court process, records may show no disposition on the charges for long periods of time unless the department is notified of intervening events, such as dismissals of or amendments to criminal charges.

Reporting requirements set out in this section are modeled after the approach followed in Maryland. Md. Ann. Code art. 27, § 747 (1957). This section identifies all decisions or actions that occur in the course of the processing of criminal offenders and anticipates that the agency responsible for each "reportable event" will forward relevant information to the central repository. This section, however, leaves it to the commissioner to specify by regulation which agency is responsible for reporting each event.

At the present time this level of information is not uniformly reported to the department, and the APSIN system currently in operation is not capable of collecting all of this information. It is anticipated that the ability to collect and report this information will be developed over a period of time, and this section requires the commissioner to consult with the Criminal Justice Information Board and with affected agencies such as municipal police departments, prosecutors, courts, probation and parole officers, and others. Although this section will not be implemented immediately, the basic framework should be set forth in statute.

The form, content, and timing of the reports may be specified by the department without regulation. It is anticipated that different events will be required to be reported under different deadlines, depending on the importance of the information. For example, it may be reasonable to require that information about arrests and arrest warrants be reported within 48 hours, whereas information about other events could be reported within 30-60 days. A 30-day requirement is consistent with California's statutes for court disposition reporting (Cal. Penal Code § 13151) and with laws and policies of several other states. The national average, however, is about 60 days. See, e.g., Maryland Ann. Code art. 27, § 747 (1957) (60 days), 18 Pennsylvania Cons. Stat. Ann. § 9113(a) (Purdon) (90 days); Delaware Code Ann. tit. 11, § 8509 (90 days). Given the wide variation in personnel, equipment and telecommunication capabilities in Alaska, the specific requirements are best left to the commissioner, after consultation with local criminal justice agencies.

Subsection (b) is a relatively complete list of reportable events, but a catch-all category is included authorizing the commissioner to specify other events or actions to be reported.

AS 12.62.140 and AS 12.62.150

These two provisions are not strictly necessary to deal with the most immediate issues concerning criminal justice information systems, but they are useful and appropriate recommendations made by the SEARCH group in order to establish a statutory framework for a workable central criminal justice reporting system.

Proposed AS 12.62.140 imposes a legal requirement on criminal justice agencies to submit information to the Department of Public Safety for uniform crime reports and to cooperate with the central repository in efforts to ensure compliance with national and state uniform crime reporting requirements. It is modeled after provisions in Georgia, Ga. Code Ann. of 1981, § 35-3-36 (i), (k) (1981).

Proposed AS 12.62.150 is modeled after provisions in the laws of other states, requiring the reporting of information relating to wanted persons, stolen vehicles and identifiable stolen property.

AS 12.62.160

This section sets out data quality requirements applicable to the central records repository and to other criminal justice information systems in the state.

All criminal justice systems are subject to the general requirement in subsection (a) that procedures be adopted to ensure that criminal history record information is complete, accurate and secure. Such steps may include the use of manual procedures such as standard data collection forms and reporting procedures to detect inaccurate or missing information, or automated procedures to edit and verify required data fields and to perform a wide variety of checks on the accuracy and consistency of information entered into the systems.

The security provisions set out in (a) are taken from the federal regulations but in somewhat abbreviated form. They set out basic requirements for physical, personnel and computer security. Subsection (a) also requires that when a criminal justice agency utilizes a shared automated information system operated by a non-criminal justice agency, such as a municipal or regional data processing center, the criminal justice agency must insure that the system utilizes security procedures that are adequate to comply with the statutory security requirements.

Subsection (b) requires that procedures be developed for linking of charges and dispositions. Such a procedure might include use of a unique tracking number. The few extensive audits of state repositories that have been undertaken (including recent audits in Texas and Maryland) have demonstrated that tracking systems utilizing unique case numbers can solve

most problems encountered in linking reported disposition data to the right rap sheet and to the correct charges. In this way all charges can be accounted for and the criminal history record can accurately and clearly reflect the outcome of the case.

The requirement that the department adopt "reasonable" procedures recognizes that there is a large amount of information already maintained in APSIN, which was not collected using a uniform arrest tracking number or which was received from another jurisdiction, and missing information within this data cannot reasonably be linked to dispositions of the charges. This limitation on existing data is well known within the criminal justice system and this bill does not require modification of that data.

Subsection (c) requires the department to perform audits every two years, and to obtain an independent audit every four years, of the central repository and of a sample of other agencies to verify compliance with legal requirements. It should be noted that the sample need not be a random sample or a representative sample. This will permit the central repository to audit problem agencies or large agencies in a particular year, if appropriate or necessary. The independent audit could be performed by a private contractor or by an agency such as the Division of Legislative Audit. Subsection (a) also requires criminal justice agencies to maintain source documents and other records necessary to facilitate the performance of the audits.

#### AS 12.62.170

Even in criminal justice information systems that are federally-funded, a detailed state law will govern dissemination -- rather than federal regulations. "When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State." Commentary to 28 CFR 20.21(b) (7-1-91 Edition).

Unfortunately, current Alaska law does not directly address the confidentiality of criminal history records on state computers.<sup>4</sup> This section makes criminal justice information confidential and prohibits its release, except as provided in this chapter. The rules for dissemination in this section are taken in general form from recommendations by the SEARCH group.

Criminal justice information is made confidential in subsection (a), and may not be disseminated except pursuant to subsection (b) or AS 12.62.190(d). Information may be

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<sup>4</sup> The United States Supreme Court, however, has held that public disclosure of such information would constitute an "unwarranted invasion of personal privacy" as that term is used in the federal Freedom of Information Act, and dissemination of such information at the federal level is limited. *United States v. Reporters Committee For Freedom of the Press*, 489 U.S. 749, 103 L.Ed.2d 774, 109 S.Ct. 1468 (1989).

released only by the agency that maintains it. The information cannot be provided unless it is up-to-date and accompanied by proper identification, and once provided, the information must be used only for the purpose for which it was released. Subsection (c). The department of public safety is permitted to establish fees for certain services in providing information under this section. Subsection (d).

Subsection (b) specifies several categories of criminal justice information that may be disseminated by criminal justice agencies. Even if the information may be disseminated under subsection (b), it is recognized that some other provision of law or court rule may prohibit its release. The types of information that may be provided by criminal justice agencies under subsection (b) are:

- An assessment or summary of criminal justice information can be provided to anyone if necessary to avoid imminent danger to life or extensive damage to property. Subsection (b)(1).

- Criminal justice information may be provided pursuant to court rule or court order. Subsection (b)(2).

- Agencies would be permitted to publicly release information about recent police activity, such as posters, announcements, notices, press releases, bulletins, police blotters, including data derived from a criminal justice information system. Subsection (b)(3). This is a common and traditional practice, recognized in current 6 AAC 60.070(g) and in most other states and the federal regulations.

- Criminal justice information would be provided to criminal justice agencies for criminal justice purposes. Subsection (b)(4). This includes making full criminal histories available to federal and out-of-state criminal justice agencies, such as the FBI and to central repositories in other states by means of the Interstate Identification Index (III) system. By exchanging information in this way, the state is permitted to participate in the III system.

- Criminal justice information would also be provided to non-criminal justice governmental agencies for official purposes (that is, those related to an agency's statutory duties), to other persons authorized by law to receive the information. Subsections (b)(5) and (b)(6).

Under (b)(5) the Public Defender Agency or the Office of Public Advocacy would be able to directly obtain information necessary for representation of indigent defendants, to the same extent as is available currently. Private defense attorneys would be able to obtain the same

information through the court or court rules under subsection (b)(2), or as a member of the public under (b)(10) or (b)(11).<sup>5</sup>

Government agencies would also be able to obtain information for purposes of licensing, security clearances, and other official purposes, as is available currently through written agreements with the Department of Public Safety. It is not anticipated, however, that employment of non-criminal justice personnel will be "necessary" for the enforcement of a law, and therefore full criminal justice information will not be made available for general government employment purposes unless there is specific statutory authorization in another law. Government employers would, however, be able to obtain more limited records to the same extent as other employers under subsections (b)(10), (b)(11) and (b)(12).

- The governor, lieutenant governor and state legislators would also be entitled to receive criminal justice information under (b)(7) and (b)(8) for security purposes and for purposes of appointment of exempt or partially-exempt state officials.

- Information for research purposes may be disseminated under (b)(9), subject to written conditions to safeguard security and privacy.

- Any person would be permitted to receive "current offender information". Subsection (b)(10). The definition of "current offender information" includes many pieces of information about a person currently charged with a crime or in the custody or under the supervision of the state, including the location of incarceration of inmates, and the conditions under which such inmates are released. Much of this information is presently provided only to victims of crimes under AS 33.16.120(f).

- Anyone would also be permitted to receive "past conviction information", if less than 10 years has elapsed from the date the offender was released from all state supervision. Subsection (b)(11). The 10-year limitation on past records is designed to assure that very old conviction records are not freely disseminated.

Although current law does not explicitly make criminal justice information confidential, the United States Supreme Court has held that such information is exempt from the federal "freedom of information" statutes that formed the basis for current state public records laws in AS 09.25.120(6). *United States Dept. of Justice v. Reporters Committee for Freedom of the Press, et al.*, 489 U.S. 749, 103 L.Ed.2d 774, 109 S.Ct. 1468 (1989) (criminal conviction

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<sup>5</sup> Current regulations in 6 AAC 60 (which no longer apply to APSIN; see footnote 2) adopt a procedure that would permit private defense attorneys to get criminal justice information directly from the Public Defender Agency. It was felt that this procedure is not workable because if it became a routine practice it would greatly add to the workload of the Public Defender Agency and because the normal safeguards applied to agency access would be missing.

records on computers are not subject to disclosure under federal law). In addition, current AS 12.62.035 could be construed as a legislative expression that conviction records be provided to the public only if the person requesting the information is an employer of persons who work with children, and only for specified crimes. For these, and other reasons, the Department of Public Safety does not currently disseminate criminal justice information to the public.

Taken together, however, subsections (b)(10) and (b)(11) provide the public with a great deal of information that is either not available under current law, or is only available by expending great effort to search manual or microfilm files in the possession of the court system. These provisions reflect a strong public policy interest in permitting criminal justice agencies to respond to press or public inquiries about ongoing criminal cases and about offenders currently or recently under state supervision.

Florida, Oklahoma and Wisconsin currently have "open" record policies and several other states permit criminal history records to be made available for a wide range of non-criminal justice purposes. Based on a study in Florida by SEARCH, the main recipients of this information are businesses and agencies that use the information for employment screening purposes. Only a small percentage of the requests for such information are for "curiosity". "Availability of Criminal History Records: The Effect of an Open Records Policy", SEARCH Group, Inc. 1990.

The current provisions in AS 12.62.035 are retained in subsection (b)(12). This current statute permits dissemination of certain conviction records, regardless of the passage of time, in order to evaluate someone for a position involving supervision of children or dependent adults.

Finally, a person can have access to his or her own criminal justice information. Subsection (b)(13).

Subsection (c)(3) provides that criminal justice information may not be released unless the subject's identity is confirmed by fingerprint comparison or some other approved means of identification. There are other instances, however, when the requirement of fingerprint identification or other positive identification is not feasible or necessary, and this subsection permits the commissioner to exempt certain requesters (such as criminal justice agencies, for example) from the strict identification requirements.<sup>6</sup>

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<sup>6</sup> For the public and the press it is not feasible to obtain fingerprint identification for current offenders. Because most such inquiries will likely be made of local criminal justice agencies by persons within the community where the crime was committed, fingerprints are probably not required to obtain information about the correct person. Moreover, newly developed name search techniques used in Florida are regarded as extremely accurate. "Availability of Criminal History Records: The Effect of

Subsection (c)(4) requires that criminal justice agencies maintain logs of persons to whom criminal history record information is provided. This facilitates audits of the system, and permits notification in case of errors or corrections. Here, too, there are instances when the requirement of maintaining logs is not warranted, and this subsection permits the commissioner to exempt agencies from maintaining logs for certain classes of recipients, such as criminal justice agencies.

#### AS 12.62.180

The provisions in the bill authorizing persons to request corrections to their own records are similar to existing law in AS 12.62.030 (c), (e) and (f). Under this bill, however, if a court undertakes a review of an agency's refusal to modify records, the burden is placed on the person to prove that the information is inaccurate or incomplete, rather than on the criminal justice agency. It is appropriate to place the burden on the person challenging the information, because that person is usually in the best position to have access to relevant evidence to support the challenge. Although less than half of the states provide for judicial review (Dept. of Justice Overview at 25), it was felt that this provision in Alaska law should be continued.

#### AS 12.62.190

This section permits criminal justice agencies to "seal" past or current conviction records if the records resulted, beyond a reasonable doubt, from mistaken identity or false accusation. It is anticipated that, upon request, the central repository or other agency will voluntarily seal records in appropriate circumstances.

Like the provisions for revising information in proposed AS 12.62.180, an administrative appeal of the agency's decision may be made to the court, but the appellant bears the burden on appeal of showing that the agency's decision was clearly mistaken. This heavy burden reflects the intent that proceedings to seal records should be rare. As noted by the court of appeals, "no court has seriously questioned the legitimacy or importance of the government's interest in obtaining and retaining records dealing with individuals who pass through our criminal justice system . . ." *Journey v. State*, 850 P.2d 663, 666 (Alaska App. 1993).

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<sup>6</sup>(...continued)

an Open Records Policy", SEARCH Group, Inc. 1990, at page 7. It is also not required that the person requesting current offender information present positive identification.

If the state or a municipal prosecutor pursues a criminal case in good faith, it is unlikely a defendant could muster the necessary level of proof beyond a reasonable doubt, much less that the department's decision to retain the records was clearly mistaken. Thus sealing will not become a common practice following dismissal or acquittal of criminal charges. Moreover, a proceeding to seal information should not be used as another avenue of collateral attack on court judgments, or on other actions taken by prison, probation or parole authorities. Unless the person is successful in an appeal or post-conviction relief action, a court judgment or prison administrative decision will be conclusive evidence that the record should not be sealed.

Under current Alaska law, it is not clear that persons have a right to have their records sealed. *Journey v. State*. This section thus establishes a procedure for persons to use to seal their records and, to the extent that subsection (d) permits a person to deny the existence of a sealed record, this statute provides a broader remedy than would be available under a the "inherent" power of the courts.

Subsection (d) authorizes a person whose record has been sealed to deny the existence of the record and any related arrest or other action. This provision reflects the view in half the states (Dept. of Justice Overview at 31) that if a person can be required to reveal the existence of a sealed record in answer to a question on an employment application, for example, the sealing remedy is ineffective. Records that have been sealed may only be disseminated for specific limited purposes under this section.

#### AS 12.62.200

This section permits criminal justice agencies to "purge" (i.e., destroy) criminal justice information for a variety of administrative reasons, if the information is devoid of any usefulness to a criminal justice agency.

#### AS 12.62.210

Given the many thousands of arrests made each year, and the remoteness of many locations in Alaska, it is likely that in many instances fingerprints will not be taken or will not be submitted to the department, that backlogs in reporting of events or in data entry may cause delays in processing and compiling data in an information system, or that other errors may occur. Therefore, subsection (a) provides immunity from civil liability if the requirements of the chapter or regulations (including requirements for accurate and complete data), are not strictly followed, but such conduct can be used as a basis for employee discipline or administrative action to restrict agency access to the system. Public officials could, however, be subject to criminal sanctions in extreme cases in which confidential information is misused.

This civil immunity provision is generally based on AS 13.50.014(a) and 016(a), providing immunity from liability for failure of hospital or law enforcement personnel to search for information relating to anatomical gifts. It is also based on similar immunity provisions relating to reporting or not reporting cases of abuse of the elderly (AS 47.24.010(f) and (g)) and reporting abuse of children. AS 47.17.050. This provision is, however, also specifically intended to reverse the decision in *Zerbe v. State*, 578 P.2d 597 (Alaska 1978), and to make clear that there is no cause of action for errors made in recordkeeping.

A legal remedy for damages is provided, however, if criminal justice information is released or used in knowing violation of this chapter. The civil remedy and defense set out in this section is based on current AS 12.62.060. This section does not create a separate criminal offense because current AS 11.56.860 already makes misuse of confidential information by a "public servant" a class A misdemeanor. The definition of "public servant" is broad, and includes contractors and consultants to government agencies. Although current law does not provide a criminal penalty for misuse by other persons, such as members of the public and the press, the civil damage remedies are likely to be an adequate deterrent.

#### AS 12.62.900

The definitions are generally consistent with, although more detailed than, those found in the federal regulations (28 CFR Part 20, § 20.3). They are also consistent with recommendations made by the SEARCH Group.

The definition section contains many important provisions that specify the applicability of this legislation. For example, the word "information" is defined to mean, unless the context clearly indicates otherwise, data compiled within a "criminal justice information system". That latter term, in turn, is defined to mean an "automatic data processing" system (i.e., a computer) linked to another computer in another department, branch of government, or in another jurisdiction, in such a way that access to the information in the system can occur directly, without action by the agency maintaining the information. This concept of a direct connection between agency computers is contained in current 6 AAC 60.900(1), and reflects the desire to limit interference with internal agency files that cannot be electronically accessed by another agency.

Because of these definitions, this chapter does not apply to the paper records in the possession of criminal justice agencies (which continue to be covered by the general public records statutes) nor to records contained in computers commonly referred to as "stand-alone" computers that are used solely within one department or agency (in this bill a multi-jurisdictional task force is considered a single "agency"). It was not the intent of this bill to regulate the paper files, notebooks, binders, microfilm or other internal records maintained by dozens of state, municipal or judicial branch agencies, if that information is not susceptible to being directly

accessed from outside of that agency by way of a computer system. This definition is also not intended to regulate the exchange of photographs or original documents, whether by facsimile transmission or otherwise.

The criminal justice process produces many different types of information, and therefore a large number of definitions are required.

The broad definition of "criminal justice information" includes all types of data generally collected by criminal justice and public safety agencies, with the exception of court records, drivers license records and records relating to juveniles within the juvenile justice system. It includes criminal history record information, nonconviction information, correctional treatment information, as well as data about wanted or missing persons and stolen property. These various types of information are defined in terms of "identifiable persons". This limitation means that statistical information that does not identify a person is not "criminal justice information".

This legislation leaves to the supreme court the task of regulating court record systems. This legislation also recognizes that the confidentiality and dissemination of drivers license records are already covered by AS 28.15.181.

Each type of information has different uses, and each may be subject to differing rules, depending on the sensitivity of the information and the need for its easy accessibility by the public, the press, and other agencies.

The most sensitive is correctional treatment information. This includes data from confidential sources such as prison medical and psychological files, and presentence reports. Another type of information subject to limited dissemination is "nonconviction" information, which includes data about old arrests or other old charges without dispositions. Oftentimes criminal history records show arrests or charges, but no dispositions of those charges. If the arrest is recent (less than a year old) or prosecution is ongoing, this data is treated, consistently with federal regulations, as "current offender information", which has greater accessibility to the public. However, once a year has passed with no indication that prosecution is ongoing, an arrest record without a disposition is treated as "nonconviction information". Under this bill, information in these categories is not available to the general public or the press, and is only provided for official agency activities.

The definition of "criminal history record information" is functionally equivalent to the one found in the federal regulations and in general use in the laws in other states. Within that broad term there are three categories: (A) past conviction information; (B) current offender information; and (C) criminal identification information.

"Past conviction information" relates only to old convictions where the sentence has already been served and the person has been unconditionally discharged. Such information can include not only the fact of conviction but any specific data related to that conviction, such as dates of proceedings. Convictions that have been set aside under AS 12.55.085 following a suspended imposition of sentence, or that have been vacated or reversed, are included. Under this bill, "past conviction data" less than 10 years old is available to the public when accompanied by adequate identification of both the subject of the records and the person who is requesting the information.

"Current offender information" includes all data of public interest about current or recent cases, or those in which the offender is still under the custody or supervision of the state. Included are conditions of bail or probation and the location of incarceration or community supervision.

"Criminal justice activity" is defined as broadly inclusive of all official activities of criminal justice agencies, including the traditional law enforcement activities of police agencies and activities involved in the processing of criminal cases from arrest through correctional supervision. Also included is criminal justice employment activities. Criminal defense is not an included activity; however, the Public Defender Agency and the Office of Public Advocate will continue to have access to discoverable information under Alaska Rules of Criminal Procedure 16, as well as proposed AS 12.62.170(b)(5).

#### Section 2 of the bill.

Section 2 of the bill amends AS 44.99.310(f) to exempt criminal justice information from the provisions in that statute governing challenges to accuracy and completeness of "personal information". The provisions of this bill address such issues more comprehensively and directly.

#### Section 3: Repealer.

All of current AS 12.62, much of it over 20 years old, is repealed, as are AS 18.65.060 and AS 44.41.040, which relate to subjects covered comprehensively in the bill.

#### Section 4: Transition.

This transition section permits agencies to adopt regulations under this Act at any time, but the regulations do not become effective until the Act takes effect. This allows agencies to avoid delays in adopting regulations. This section has an immediate effective date.

Section 5: Applicability.

Based on preliminary comments from a number of criminal justice agencies, an applicability section at the end of the bill will apply the fingerprinting and reporting requirements of AS 12.62.120 -- 150 only to persons arrested for felony offenses. It was felt that it would be burdensome to state and municipal agencies to immediately begin meeting the fingerprinting and reporting requirements for the many thousands of misdemeanor cases proceeding through the courts every year in Alaska. In order to hold down the initial costs of this legislation, and to enable justice agencies to streamline procedures, these sections will not apply to misdemeanor offenses until July 1, 1996.

Sections 6 and 7: Effective dates.

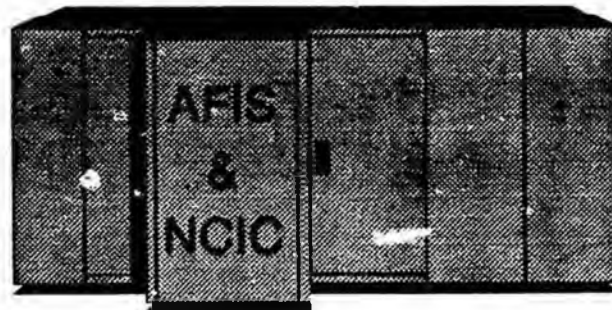
# FINGERPRINTS at ARREST



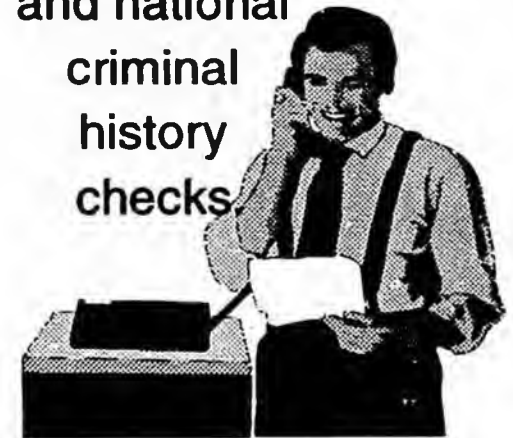
It is the only way  
to guarantee  
positive identification.



It insures that the person  
serving the sentence is the  
same as the one arrested.



It is the  
only way to conduct  
reliable state  
and national  
criminal  
history  
checks.



Fingerprint based  
background checks  
are required for many  
existing licensing, certification  
and employment regulations and  
will be the basis for new,  
major national programs.

The more complete the data base, the more trust in the results of the search.  
A national criminal history record cannot be created without fingerprints.

**ALASKA'S**

**CRIMINAL HISTORY  
RECORDS  
SUPPORTED BY  
FINGERPRINTS**

**Annual Survey of Completeness**

**December 1993**

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RECORDS AND IDENTIFICATION SECTION  
DIVISION OF ADMINISTRATIVE SERVICES  
DEPARTMENT OF PUBLIC SAFETY

# EXECUTIVE SUMMARY

The State of Alaska spends more than \$300 million annually on criminal justice operations. The business of criminal justice provides nearly 4,500 jobs throughout the state. These employees make more than 40,000 arrest decisions, 40,000 release from custody decisions, 13,500 sentencing decisions, and 14,500 employment decisions dealing with sensitive child supervisory positions such as foster care parents, teachers, and school bus drivers, as well as security sensitive positions involving criminal justice employment.

The accuracy, efficiency, and defensibility of these decisions hinge significantly on the authenticity and accurateness of the criminal history information used in making the decisions. The only feasible way to authenticate criminal history entries is to substantiate them with fingerprints taken at the time of arrest or first court appearance. Criminal history records supported by fingerprints are accurate, factual and unambiguous. Such records allow decision makers to act with confidence and protect the state from substantiated challenges of the criminal records used to make such decisions.

Fingerprints are the only cost effective methodology of authenticating criminal records. The costs of corroboration by other means are not feasible and would require court testimony from multiple individuals and numerous, geographically dispersed record searches to accomplish the same purpose served by fingerprinting.

**Alaska is doing a poor job of fingerprinting accused criminals.** State Correctional facilities fingerprint less than 40% of people accused of committing crimes. Contract jails fingerprint 50% of the accused criminals brought to them for arrest processing. The smaller, miscellaneous booking locations in the state fingerprint accused criminals only 30% of the time. Juveniles, despite clear provisions in the law allowing such fingerprinting, are very rarely fingerprinted in Alaska.

Several audits, reviews and site visits from respected state level criminal justice agencies and nationally recognized criminal justice consulting organizations have repeatedly identified Alaska's low percentage of fingerprint supported criminal history entries as an impediment to accurate record keeping and a significant contributor toward possible civil liability. In short, the State of Alaska is ineffective in securing the necessary fingerprints to insure the integrity of its criminal records and may well suffer punitive damages from decisions based upon such records.

The State can meet the need for fingerprint supported criminal history records by advancing the following initiatives:

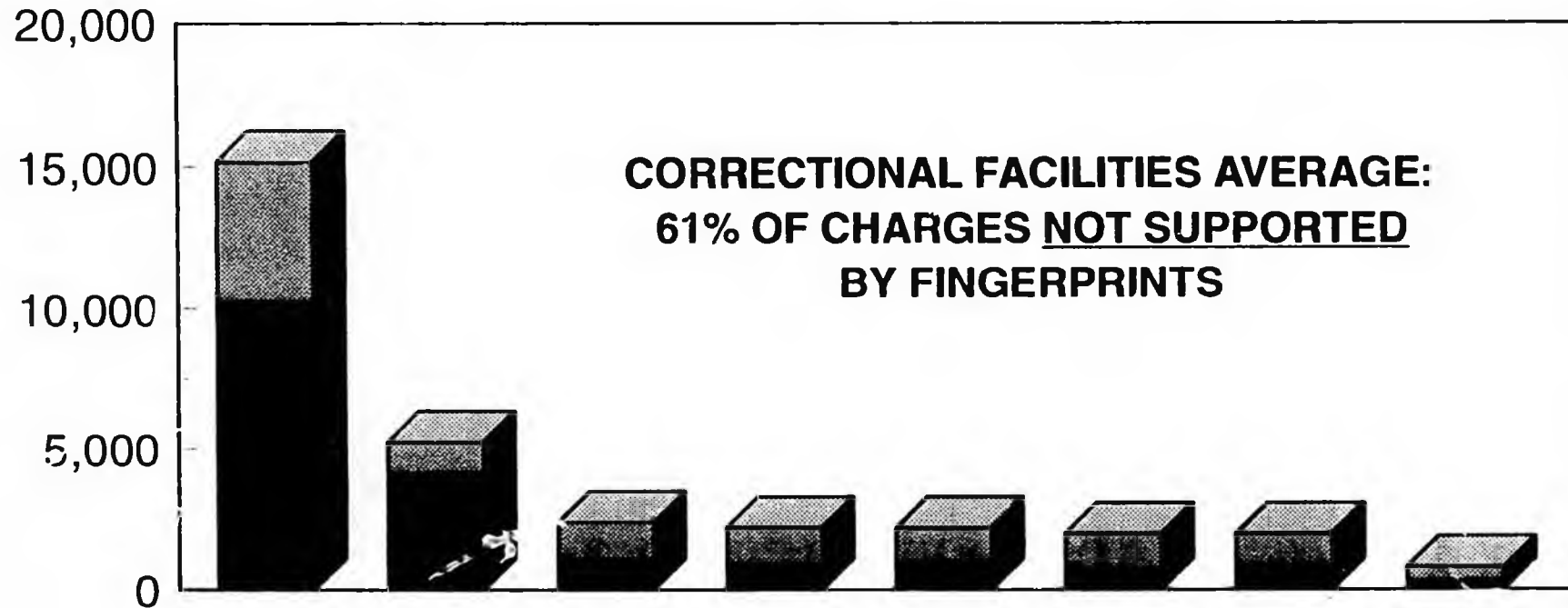
- ▶ Passing proposed legislation (AS 12.62) mandating the fingerprinting of all accused criminals
- ▶ Funding capital requests providing for Live-Scan Automated Booking Workstations and a replacement Automated Fingerprint Identification System - both labor saving and quality improving projects
- ▶ Renewing the commitment of all parties involved in the fingerprinting of accused criminals to insure that each defendant is properly fingerprinted

The following graphs and narrative explain the current situation in Alaska. The information is based upon charges recorded in the Alaska Public Safety Information Network (APSIN) during calendar 1992.



# FINGERPRINTING IN STATE CORRECTIONAL FACILITIES

Figure 1



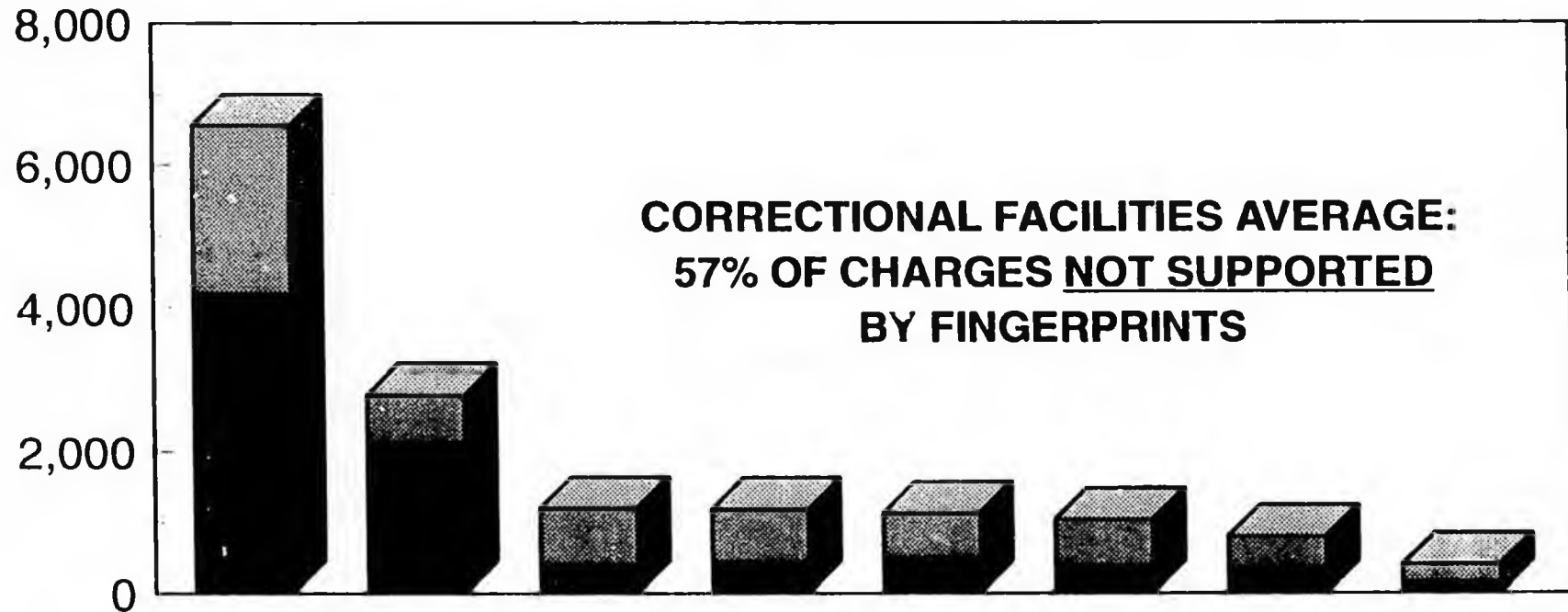
	6th Ave & CIPT	Fairbanks	Mat-Su Pre-Trial	Lemon Creek	Wildwood	Ketchikan	Yukon-Kuskokwim	Anvil Mountain
Without Prints ■	10,254	4,150	1,105	904	1,031	756	858	329
With Positive ID ▨	4,916	1,093	1,271	1,324	1,183	1,240	1,134	480
Total	15,170	5,243	2,401	2,228	2,214	1,996	1,992	809

Based upon calendar 1992 misdemeanor and felony charges, with and without dispositions, recorded in APSIN



# FINGERPRINTING IN STATE CORRECTIONAL FACILITIES

Figure 2



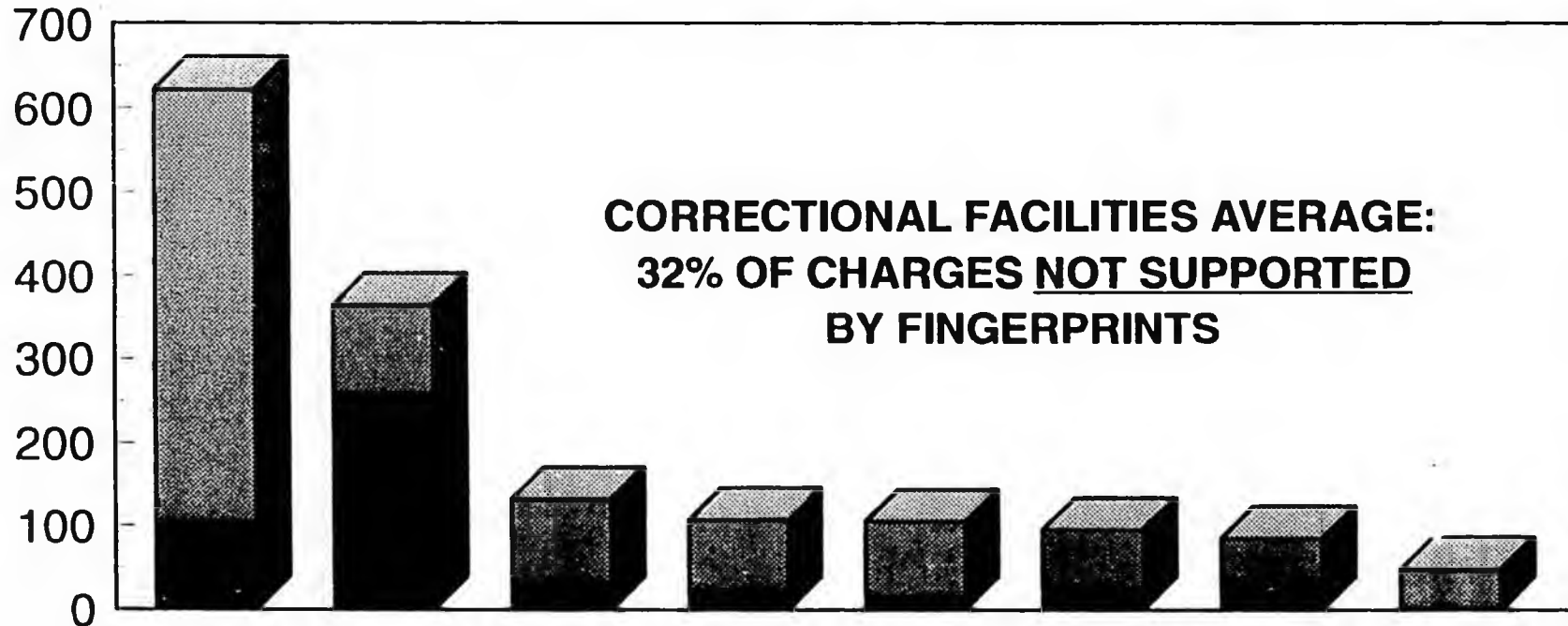
	Sixth Avenue	Fairbanks	Mat-Su Pre-Trial	Ketchikan	Lemon Creek	Wildwood	Yukon-Kuskokwim	Anvil Mountain
Without Prints	4,199	2,116	417	449	512	394	356	160
With Positive ID	2,359	670	780	737	612	645	444	245
Total	6,558	2,786	1,197	1,186	1,124	1,039	800	405

Based upon calendar 1992 misdemeanor charges, with guilty dispositions, recorded in APSIN



# FINGERPRINTING IN STATE CORRECTIONAL FACILITIES

Figure 3



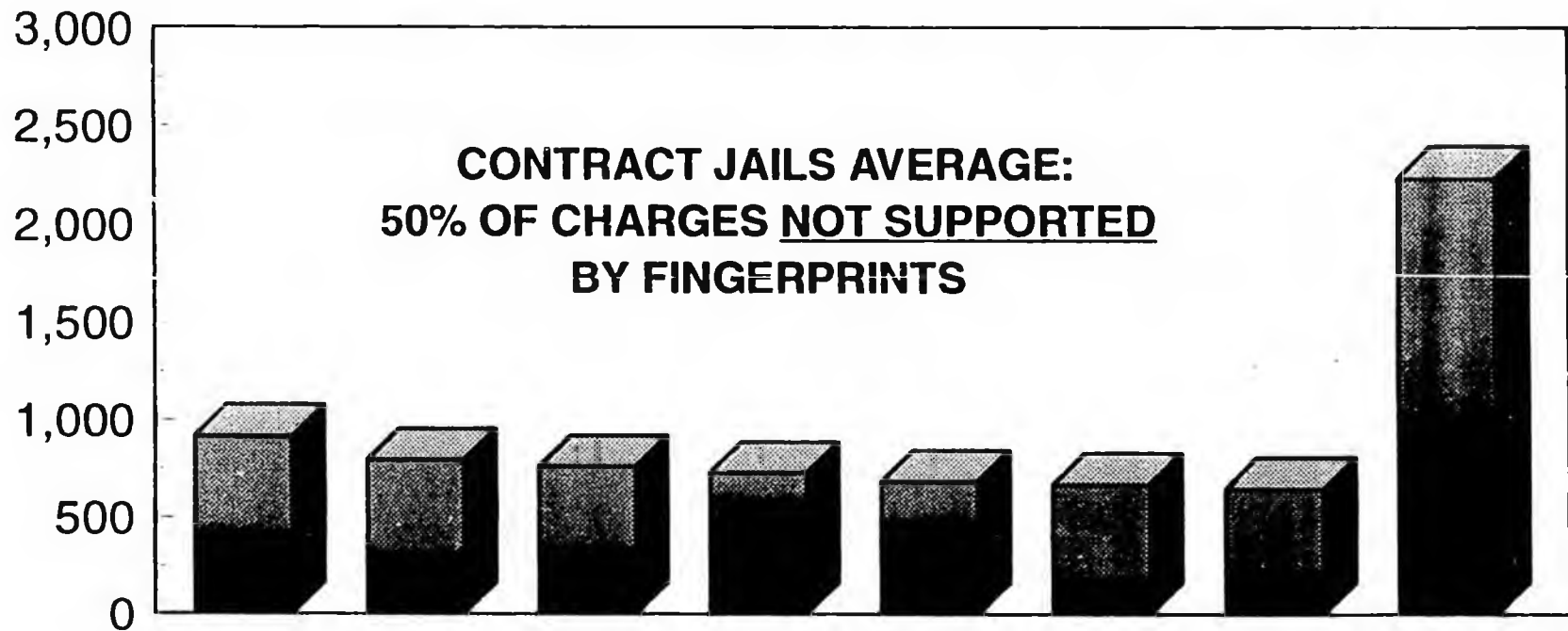
	Cook Inlet Pre-Trial	Fairbanks	Mat-Su Pre-Trial	Ketchikan	Lemon Creek	Wildwood	Yukon-Kuskokwim	Anvil Mountain
Without Prints	105	258	33	23	16	27	29	2
With Positive ID	517	105	99	84	89	68	56	46
Total	622	364	132	107	105	95	85	48

Based upon calendar 1992 felony charges, with guilty dispositions, recorded in APSIN



# FINGERPRINTING IN CONTRACT JAILS

Figure 4



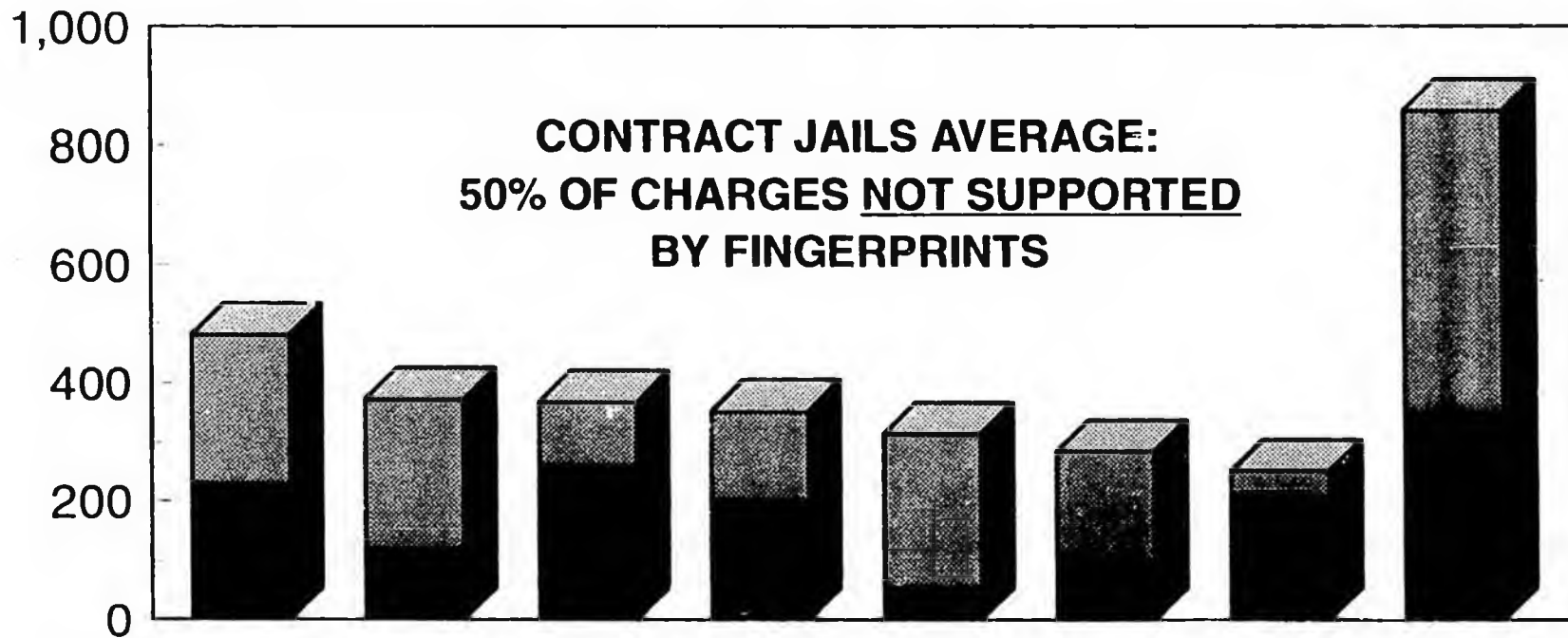
	Kodlak PD	North Slope B.	Craig PD	Kotzebue PD	Homer PD	Seward PD	Sitka PD	All Others
Without Prints	432	322	345	596	483	192	223	1,017
With Positive ID	485	475	416	133	201	475	424	1,218
Total	917	797	761	729	684	667	647	2,235

Based upon calendar 1992 misdemeanor and felony charges, with and without dispositions, recorded in APSIN



# FINGERPRINTING IN CONTRACT JAILS

Figure 5



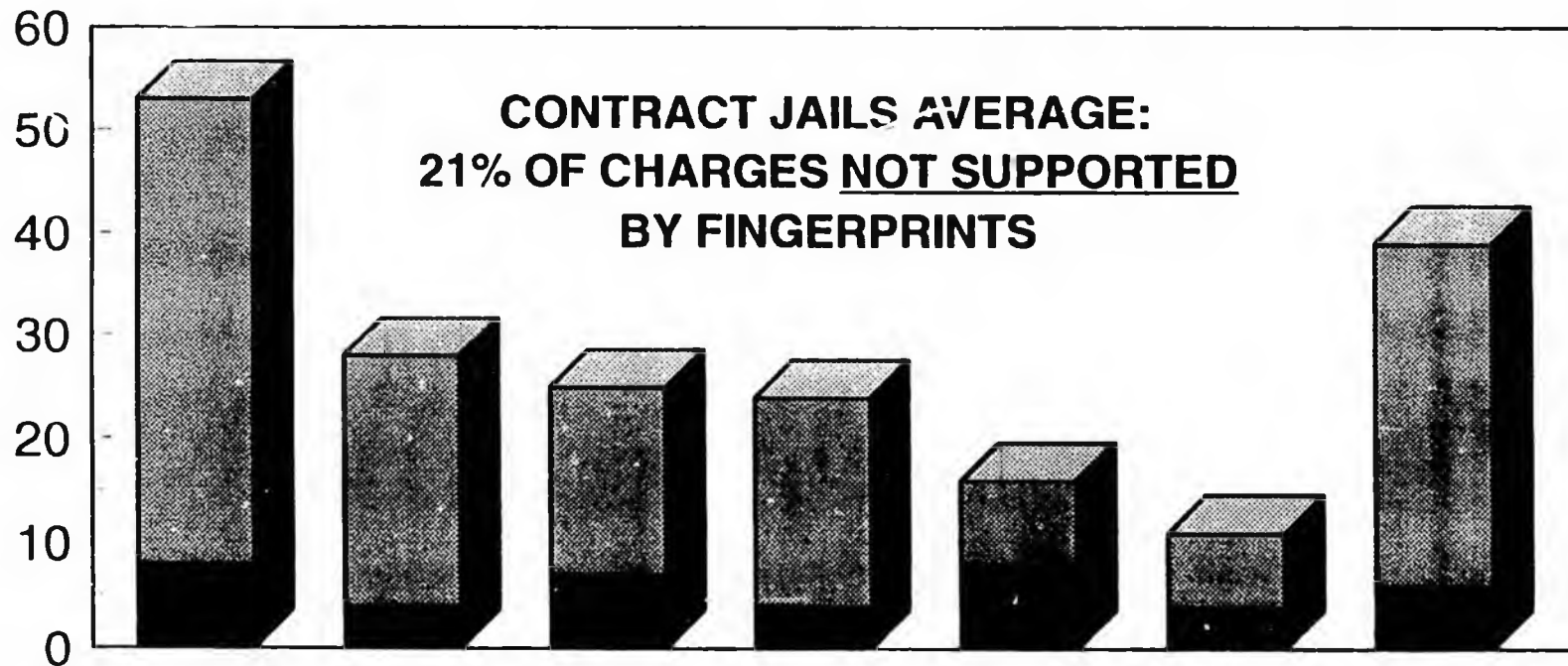
	Kodiak	Sitka PD	Homer PD	Dillingham PD	Seward PD	North Slope B.	Kotzebue PD	All Others
Without Prints	228	121	260	203	56	104	208	353
With Positive ID	253	252	109	150	259	181	44	505
Total	481	373	369	353	315	285	252	858

Based upon calendar 1992 misdemeanor charges, with guilty dispositions, recorded in APSIN



# FINGERPRINTING IN CONTRACT JAILS

Figure 6



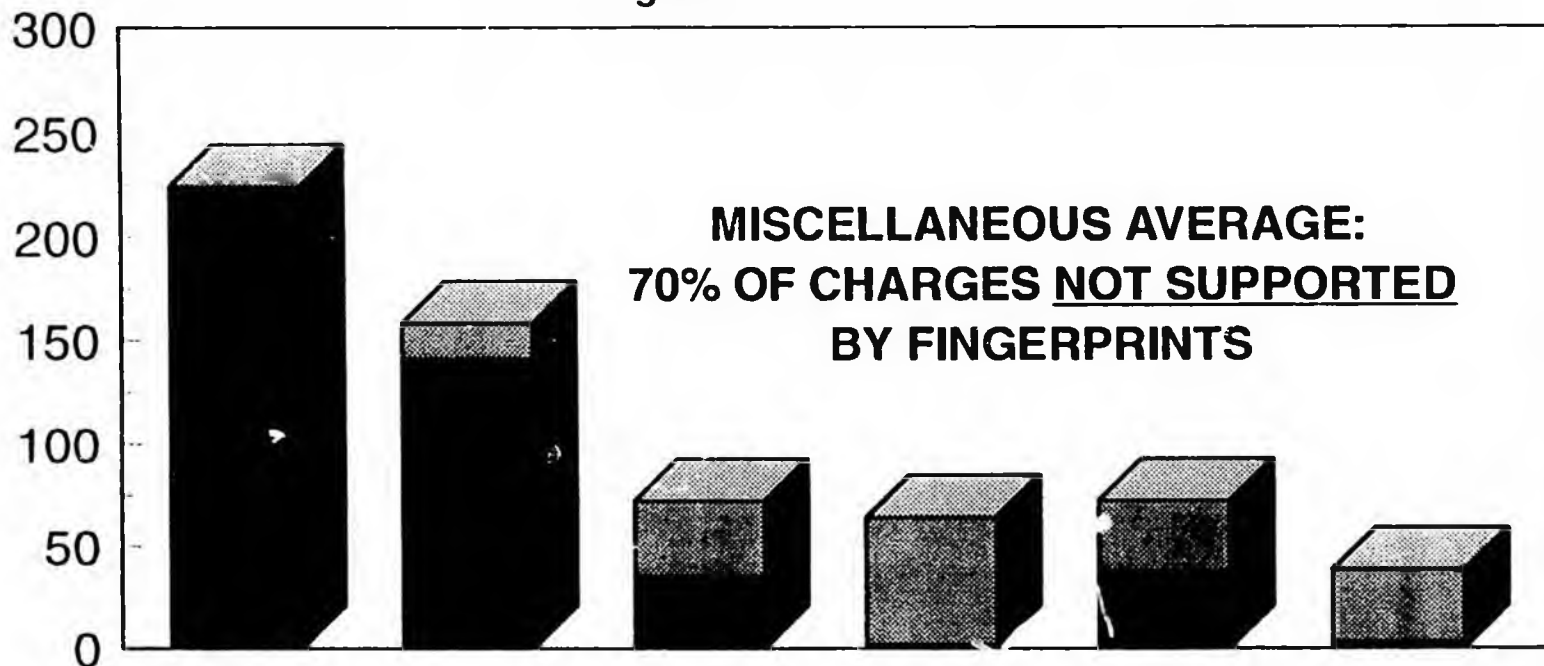
	North Slope B.	Sitka PL	Kotzebue PD	Kodiak PD	Valdez PD	Petersburg PD	All Others
Without Prints	8	4	7	4	8	4	6
With Positive ID	45	24	18	20	8	7	33
Total	53	28	25	24	16	11	39

Based upon calendar 1992 felony charges, with guilty dispositions, recorded in APSIN



# FINGERPRINTING IN MISCELLANEOUS LOCATIONS

Figure 7

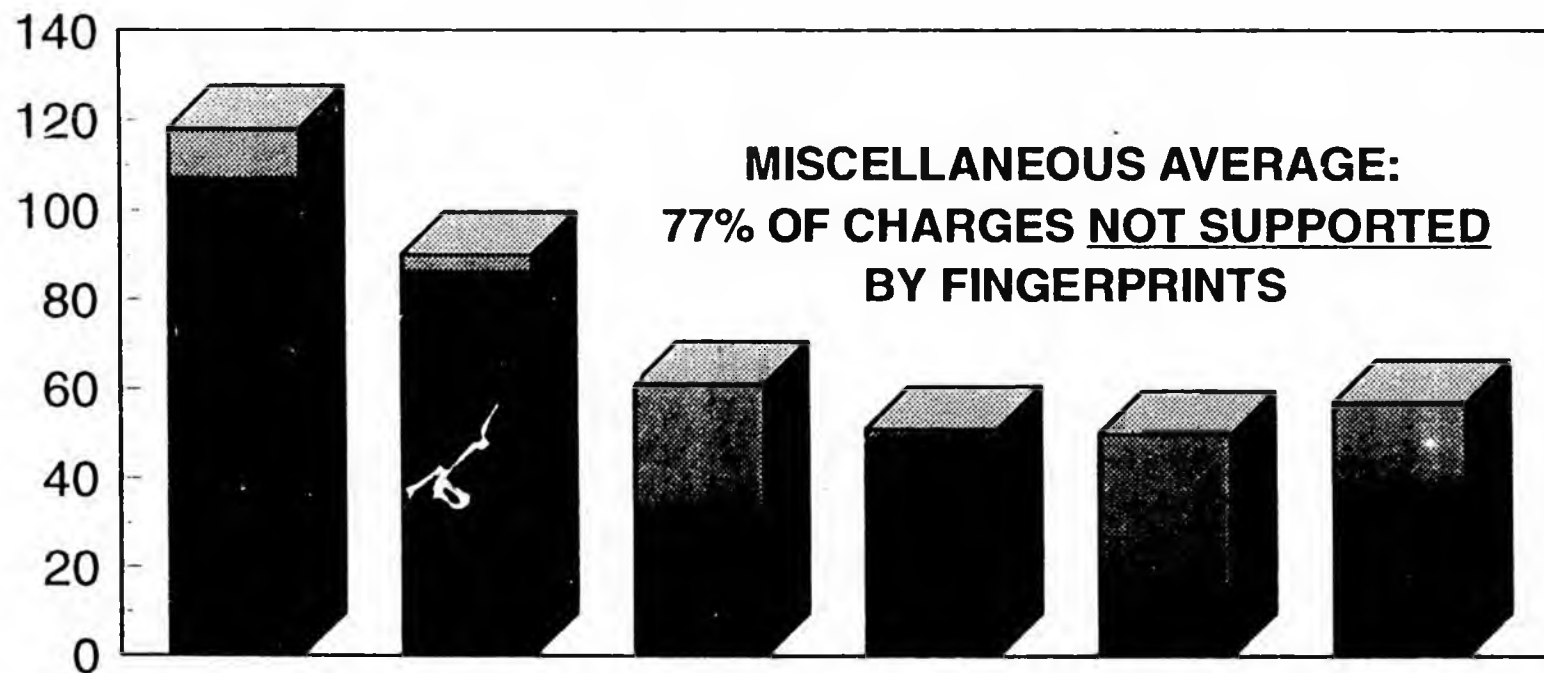


	Tok AST	Glenallen AST	Hoonah PD	Sand Pt. PD	Kake PD	All Others
Without Prints	222	141	35	2	37	3
With Positive ID	2	17	37	62	35	35
Total	224	158	72	64	72	38



# FINGERPRINTING IN MISCELLANEOUS LOCATIONS

Figure 8



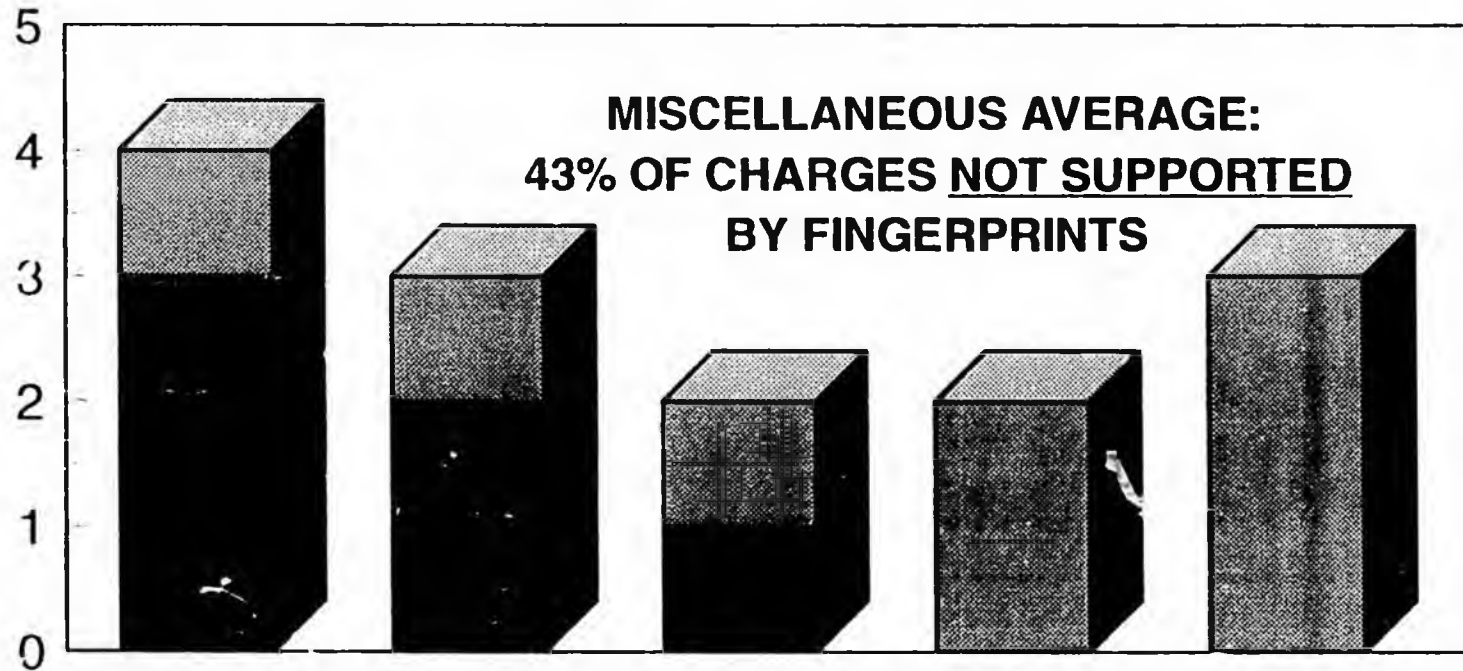
	Glenallen AST	St. Paul PD	Hconah PD	Tok AST	Sand Point PD	All Others
Without Prints	107	86	33	49	16	39
With Positive ID	11	4	28	2	34	18
Total	118	90	61	51	50	57

Based upon calendar 1992 misdemeanor charges, with guilty dispositions, recorded in APSIN



# FINGERPRINTING IN MISCELLANEOUS LOCATIONS

Figure 9



	Tok AST	Glenallen AST	St. Paul PD	Metlakatla	All Others
Without Prints	3	2	1	0	0
With Positive ID	1	1	1	2	3
Total	4	3	2	2	3

Based upon calendar 1992 felony charges, with guilty dispositions, recorded in APSIN

# ALASKA'S CRIMINAL HISTORY RECORDS SUPPORTED BY FINGERPRINTS

## A Survey of Completeness

To date, there has been no fingerprint related statistical data regularly published by the Records and Identification (R&I) Section of the Division of Administrative Services, Department of Public Safety (DPS). This is the first of what is to be an annual survey documenting the percentage of Alaska's criminal history records that are supported by fingerprints. Ideally, each arrest event should be accompanied by the taking of the subjects fingerprints. The percentage of arrests supported by fingerprints is a prime indicator of the quality of the criminal history database. The more complete the data, in terms of a one-to-one match between arrest events and fingerprints, the greater the quality.

### BACKGROUND

Improving the quality of criminal history record information is a core responsibility of the Records and Identification (R&I) Section. In general, improvements in the quality of state and national level criminal history records has been a long standing goal of the criminal justice community. In 1991, the Federal Bureau of Investigation (FBI) published a set of standards<sup>1</sup> outlining criteria that must be met in order to maintain an accurate and complete database. Of these data integrity standards, two bear directly on our survey:

- ▶ *Every state shall maintain fingerprint impressions or copies thereof as the basic source document for each arrest (including incidents based upon a summons issued in lieu of an arrest warrant) recorded in the criminal history record system.*<sup>2</sup>
- ▶ *Every state shall ensure that fingerprint impressions of persons arrested for serious and/or significant offenses are included in the national criminal history records system.*<sup>3</sup>

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<sup>1</sup>Federal Bureau of Investigation / Bureau of Justice Statistics, "Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information" 50 Fed. Reg. 5849 (February 13, 1991).

<sup>2</sup>Ibid

<sup>3</sup>Ibid

A study<sup>4</sup> conducted by SEARCH, a nationally recognized criminal justice consulting organization, reviewed Alaska's present level of compliance with these two standards. The study conducted by SEARCH involved two data samples. One sample used 283 arrests from 1992 and the other used 298 arrests from 1991. Their findings were:

*The record reviews undertaken to assess the accuracy and completeness of Alaska CCH (computerized criminal history) records showed that fingerprints are not on file for 60 percent of the sample cases. Obviously, Alaska is a long way from complying with this standard, which is perhaps the most important of the ten standards. Fingerprints are critical for establishing positive identification of record subjects, for searching criminal history record files and for authenticating criminal history records for use in judicial proceedings.*

*Every case event in the criminal history database should be supported by fingerprints. Top priority should be assigned to furthering compliance with this standard, including enactment of the proposed mandatory fingerprinting law applicable to all case events to be maintained by the Alaska criminal record repository and provision of live-scan... equipment to high volume booking sites.*

### **WHY THIS SURVEY WAS DONE**

There have been several recent events which have caused the Records and Identification Section to examine the quality of the state's criminal records database. Among the most prominent of these events are:

- ▶ Publication of the aforementioned criminal history records Baseline Assessment
- ▶ Alaska's participation in the FBI's national Interstate Identification Index (III) program
- ▶ Work done in connection with the ordering of accused felons, appearing in court as the result of a summons, to be fingerprinted
- ▶ Preparatory work done in connection with a project to synchronize data discrepancies in AAFIS and APSIN databases
- ▶ Broader cooperation among criminal justice policy makers through the Criminal Justice Work Group and its Policy and Technical Sub-committees
- ▶ Obvious discrepancies in "facts" and "figures" regarding fingerprinting frequency cited in presentations and discussions within the criminal justice community.

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<sup>4</sup>SEARCH, The National Consortium for Justice Information and Statistics, "Alaska Criminal History Record Processing - Baseline Assessment" March 31, 1993

The results of this survey are intended to be a basis for communication among organizations that contribute to the accuracy and completeness of criminal history records. While, we suppose, it's almost impossible to avoid inferences about a given location's performance in the area of fingerprinting, our intent is to present the data as it appears to Public Safety in order to encourage discussions about how we can improve the quality of our records. While many organizations contribute to the accuracy of criminal history records, the Records and Identification Section retains oversight responsibility for the accuracy and integrity of the state's criminal records databases.

Note that there can be several explanations for why fingerprints are not on file:

- ▶ Fingerprints were not taken
- ▶ Fingerprints were taken but not forwarded to R&I
- ▶ Fingerprints were taken, forwarded to R&I, but never recorded in the criminal history database

The preponderance of evidence suggests that the most likely of explanations is that fingerprints were not taken.

### **HOW THE SURVEY WAS DONE**

Each criminal history record in APSIN carries an indication of whether or not fingerprints are on file for the charge being displayed. This indicator is of a yes/no nature; "Y" indicates we do have positive identification, i.e., fingerprints were taken in connection with this charge and are part of the central repository's files, and "N" indicates we do not have positive identification, i.e., fingerprints were not taken in connection with this charge.

For this survey, we examined all APSIN criminal history records entered in the calendar year 1992. For 1992, approximately 40,000 charge segments were entered into APSIN. Charges are entered individually in APSIN and a single arrest can generate multiple charge entries. That is why the number of charges is significantly higher than the number of arrests reported in the state's Uniform Crime Reporting totals, the number of case openings reported by the Department of Law, and the number of cases handed by the Alaska Court System.

This difference, explained by the fact that multiple charges are frequently filed for each physical arrest made, may be thought subtle by the lay reader but will be seen as significant by the criminal justice practitioner. Alaska's criminal history records system treats each of these charges as separate entities providing, of course, that the data entry is correctly performed. The data charts in our survey refer to "charges recorded in APSIN" and, as explained above, should not be confused with individual arrests.

Two sets of base numbers were used in this survey. The first is composed of all charges recorded in APSIN regardless of the seriousness of the crime or the disposition of the charge. The other set is composed of only felony crimes for which the defendant was found guilty. These two sets of base numbers were used because while interested in the total charge universe we recognize that, in times of limited resources, criminal justice organizations frequently concentrate their efforts primarily on the more serious, i.e., felony crimes. You'll see a marked improvement in fingerprinting when looking at the felony charge data although, at best, even here Alaska's performance is significantly lacking in completeness.

The survey addresses three categories of data:

- ▶ State Correctional Facilities - adult correctional facilities operated by the Department of Corrections
- ▶ Contract Jails - primarily adult correctional facilities operated by local authorities under contract with the State of Alaska
- ▶ Miscellaneous Locations - primarily adult correctional facilities operated by local authorities with no affiliation with the State of Alaska (also included in this category are two locations operated by the Department of Public Safety which are responsible for the processing of arrested persons in certain situations)

We did not examine Youth Correctional Facilities because, as stated in the Executive Summary, juveniles, despite clear provisions in the law, are very rarely fingerprinted in Alaska and, because of specific provisions in the law, juvenile criminal records are not intermixed with adult criminal histories.

### **STATE CORRECTIONAL FACILITIES**

There are nine primary facilities operated by the Department of Corrections in the State of Alaska. These facilities, as part of the booking process, fingerprint and photograph all arrested persons brought to the facility by federal, state and local law enforcement officials. The nine institutions are:

- ▶ Sixth Avenue Correctional Center<sup>5</sup>
- ▶ Cook Inlet Pre-Trial
- ▶ Mat-Su Pre-Trial
- ▶ Fairbanks Correctional Center

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<sup>5</sup>The Sixth Avenue facility nominally handles all Anchorage misdemeanor bookings and female felon bookings. For purposes of this survey, we've classified all Sixth Avenue bookings as misdemeanors (and all Cook Inlet Pre-Trial bookings as felonies). The current survey did not use sex of the offender as one of the reporting criteria and, therefore, could not separate the female felons from the male felons for reporting purposes. Future surveys will capture specifics regarding the offender's sex.

- ▶ Lemon Creek Correctional Center
- ▶ Wildwood Correctional Center
- ▶ Ketchikan Correctional Center
- ▶ Yukon-Kuskokwim Correctional Center
- ▶ Anvil Mountain Correctional Center

The general fingerprinting policy of these institutions, as stated in the Department of Corrections Policies and Procedures manual (811.09) is:

*All prisoners 18 years of age or older, except non-criminal remands under Title 47, who are admitted to a Department Institution on criminal charges will have fingerprints taken on standard Federal Bureau of Investigation (FBI) Fingerprint Cards.*

Each of these correctional facilities can serve a variety of federal, state and municipal law enforcement agencies. Appendix 1 lists law enforcement agencies and the corresponding state correctional facility that serves as the agency's primary booking location.

Figure 1 displays statistics for all criminal charges, regardless of disposition, booked in state correctional facilities, for calendar year 1992. Overall, fingerprints are not taken in connection with 61% of the criminal charges filed.

Figure 2 displays statistics for misdemeanor charges, carrying guilty dispositions, booked in state correctional facilities, for calendar year 1992. Overall, fingerprints are not taken in connection with 57% of the misdemeanor charges filed wherein the defendant was subsequently found guilty.

Figure 3 displays statistics for felony charges, carrying guilty dispositions, booked in state correctional facilities, for calendar year 1992. Overall, fingerprints are not taken in connection with 32% of the felony charges filed wherein the defendant was subsequently found guilty.

### **CONTRACT JAILS**

There are 17 municipal correctional facilities that house state prisoners, under contract with DPS, in Alaska (16 of which had arrest data in APSIN in 1992). Each of these contract jails serve a variety of state and municipal law enforcement agencies. Appendix 2 lists each contract jail and the law enforcement agencies which use these jails as their primary booking location.

The general fingerprinting policy of these institutions, as stated in the DPS Contract Jail Program Administrative Manual (Edition 92-1, Section F. Minimum Admissions Procedures) is:

*All prisoners being admitted on criminal charges must be fingerprinted.*

*All facilities will contribute fingerprint data to the AAFIS system and will ensure that the data is submitted to assure an APSIN record of the arrest and any subsequent conviction / acquittal.*

*Must comply with AS 47.10.097<sup>6</sup>*

Figure 4 displays statistics for all criminal charges, regardless of disposition, booked in contract jails, for calendar year 1992. Overall, fingerprints are not taken in connection with 50% of the criminal charges filed.

Figure 5 displays statistics for misdemeanor charges, carrying guilty dispositions, booked in contract jails, for calendar year 1992. Overall, fingerprints are not taken in connection with 50% of the misdemeanor charges filed wherein the defendant was subsequently found guilty.

Figure 6 displays statistics for felony charges, carrying guilty dispositions, booked in contract jails, for calendar year 1992. Overall, fingerprints are not taken in connection with 21% of the felony charges filed wherein the defendant was subsequently found guilty.

### **MISCELLANEOUS LOCATIONS**

These locations are small, municipal jails without a contract for housing state prisoners. Statistically, they represent a very small number of the total bookings for the year.

The Tok and Glenallen AST locations are included as part of these statistics. These two posts are somewhat unique in their operations regarding fingerprinting. When defendants are transported to a state correctional facility because of the seriousness of their offense or because of danger to the community or risk of flight, the Troopers rely on the correctional facility to do the fingerprinting. In cases where the defendant is released by the local magistrate, the Troopers are responsible for fingerprinting the defendant prior to release.

Appendix 3 lists all organizations addressed in the Miscellaneous category.

Figure 7 displays statistics for all criminal charges, regardless of disposition, booked in miscellaneous locations, for calendar year 1992. Overall, fingerprints are not taken in connection with 70% of the criminal charges filed.

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<sup>6</sup>Sec. 47.10.097 Fingerprinting of minors. (a) A peace officer may fingerprint a minor under the same circumstances as an adult may be fingerprinted.

Figure 8 displays statistics for misdemeanor charges, carrying guilty dispositions, booked in miscellaneous locations, for calendar year 1992. Overall, fingerprints are not taken in connection with 77% of the misdemeanor charges filed wherein the defendant was subsequently found guilty.

Figure 9 displays statistics for felony charges, carrying guilty dispositions, booked in miscellaneous locations, for calendar year 1992. Overall, fingerprints are not taken in connection with 43% of the felony charges filed wherein the defendant was subsequently found guilty.

### **FOR ADDITIONAL INFORMATION**

Questions and comments concerning the information contained in this survey can be directed to the Manager - Special Projects, on (907) 269-5092. Questions and comments concerning the processing of fingerprint cards and the Alaska Automated Fingerprint Identification System (AAFIS) can be directed to the Identification Bureau Chief, on 907 269-5581. Questions and comments concerning the Alaska Public Safety Information Network (APSIN) can be directed to the APSIN Programming Supervisor, on 907 269-5703. The mailing address for all of these positions is 5700 E. Tudor Road, Anchorage, Alaska 99507. All state-level criminal history record databases in Alaska operate under the supervision of the Department of Public Safety, Director of the Division of Administrative Services located at PO Box 111200, Juneau, Alaska 99811-1200. The Director can be reached on 907 465-4336.

# APPENDIX 1

## Law Enforcement (Arrest Reporting) Agency

Anchorage Airport Safety  
Alaska Commercial Vehicle Enforcement  
Anchorage Police Department  
Anchorage AST Enforcement  
Anchorage AST Investigations  
Anchorage FWP Enforcement  
AST CIB Anchorage HQs  
AST Major Crimes Unit  
AST White Collar Crimes Unit  
Anchorage Corrections  
District Court - Anchorage  
Girdwood AST Enforcement  
VPSO - False Pass  
VPSO - King cove  
Superior Court - Anchorage  
Anchorage Major Offenders Office  
University of Alaska - Anchorage  
FAA Security Division  
Southcentral Regional Office

Cantwell AST Enforcement  
Delta AST Enforcement  
District Court - Fairbanks  
Fairbanks FWP Enforcement  
Fairbanks Police Department  
Fairbanks Fire Department  
Fairbanks AST Enforcement  
Fairbanks AST Investigations  
Fairbanks AST - Judicial Services  
Fairbanks Airport Police  
Fort Yukon Police  
Probation / Parole - Fairbanks  
Ft. Yukon AST Enforcement  
Galena AST Enforcement  
Magistrate's Court - Fort Yukon  
Magistrate's Court - Galena  
Magistrate's Court - Healy  
Magistrate's Court Nenana

## State Correctional Facility

Cook Inlet Pre-Trial  
&  
Sixth Avenue Corrections

Fairbanks  
Correctional Center

# APPENDIX 1 (cont.)

Nenana Police Department  
Nenana AST Enforcement  
North Pole Police Department  
Superior Court - Fairbanks  
University of Alaska - Fairbanks

Fairbanks  
Correctional Center (cont.)

Aniak AST Enforcement  
Bethel Police Department  
Bethel AST Enforcement  
Bethel AST Headquarters  
Bethel AST - Judicial Services  
Bethel VPSO  
Bethel Corrections / Probations  
District Court - Bethel  
Magistrate's Court - Aniak  
Goodnews Bay - VPSO  
Toksook Bay - VPSO  
Tuntululiak - VPSO  
Akiachak - VPSO  
Kwethluk - VPSO  
Napaskiak - VPSO  
Sleetmute - VPSO  
Aniak - VPSO  
Chevak - VPSO  
Pilot Station - VPSO  
Hooper Bay - VPSO  
Scammon Bay - VPSO  
Emmcnak - VPSO  
Mt. Village - VPSO  
Sheldon's Point - VPSO  
Kotlik - VPSO  
Superior Court - Bethel  
Yukon-Kuskokwim Corrections

Yukon Kuskokwim  
Correctional Center

District Court - Nome  
Department of Corrections - Nome  
Magistrate's Court - Selawik  
Nome FWP Enforcement  
Nome Police Department  
Nome AST Enforcement

Anvil Mt.  
Correctional Center

# APPENDIX 1 (cont.)

Unalakleet - VPSO  
Gambell - VPSO  
Savoonga - VPSO  
Selawik - VPSO  
Superior Court - Nome  
Unalakleet Police Department

Anvil Mt.  
Correctional Center  
(cont.)

District Court - Ketchikan  
Department of Corrections - Ketchikan  
Ketchikan Police Department  
Ketchikan AST Enforcement  
Superior Court - Ketchikan  
Southeast Regional Office

Ketchikan  
Correctional Center

Cooper Landing AST  
Probations / Parole - Kenai  
District Court - Kenai  
Department of Corrections - Kenai  
Kenai Police Department  
Superior Court - Kenai  
Soldotna FWP Enforcement  
Soldotna Police Department  
Soldotna AST Enforcement  
Soldotna AST Investigations  
Soldotna AST - Judicial Services

Wildwood  
Correctional Center

District Court - Juneau  
Juneau FWP Enforcement  
Juneau Police Department  
Juneau AST Enforcement  
Juneau VPSO  
Magistrate's Court - Emmonak  
Superior Court - Juneau  
Department of Corrections - Juneau

Lemon Creek  
Correctional Center

Department of Corrections - Palmer  
District Court - Palmer  
Magistrate's Court - Palmer  
Palmer FWP Enforcement  
Palmer Police Department  
Mat-Su Regional Office  
Palmer AST Enforcement

Mat-Su Pre-Trial

# APPENDIX 1 (cont.)

Palmer AST Investigations  
Palmer AST Traffic  
Superior Court - Palmer  
Talkeetna AST Enforcement

Mat-Su Pre-Trial (cont.)

# APPENDIX 2

## Law Enforcement (Arrest Reporting) Agency

## Contract Jail

Point Barrow Police Department  
Borough  
District Court - Barrow  
Northslope Borough Dept. of Public Safety  
Superior Court - Barrow

North Slope

Bristol Bay Police Department  
Bristol Bay VPSO  
King Salmon AST Enforcement  
Magistrate's Court - Naknek

Bristol Bay

Anchor Point AST Enforcement  
District Court - Homer  
Homer Police Department  
Homer AST Enforcement

Homer

Cordova Police Department  
Cordova AST Enforcement  
District Court - Cordova  
Superior Court - Cordova

Cordova

Craig Police Department  
Craig AST Enforcement  
Klawock Police Department  
Klawok AST Enforcement  
Magistrate's Court - Craig

Craig

Dillingham Police Department  
Dillingham AST Enforcement  
Magistrate's Court - Dillingham

Dillingham

District Court - Kotzebue  
Kotzebue Police Department  
Kotzebue AST Enforcement  
Magistrate's Court - Noorvik  
Noorvik - VPSO  
Superior Court - Kotzebue

Kotzebue

## APPENDIX 2 (cont.)

District Court - Petersburg Petersburg Police Department Petersburg AST Enforcement Superior Court - Petersburg	Petersburg
District Court - Sitka Sitka Police Department AST Sitka Superior Court - Sitka	Sitka
District Court - Seward Seward FWP Enforcement Seward AST Enforcement Seward Police Department	Seward
District Court - Valdez Superior Court - Valdez Valdez Police Department	Valdez
District Court - Wrangell Superior Court - Wrangell Wrangell Police Department	Wrangell
Haines Police Department Haines AST Enforcement Magistrate's Court - Haines	Haines
District Court - Kodiak Kodiak Police Department Kodiak AST Enforcement Kodiak - VPSO Larsen Bay - VPSO Superior Court - Kodiak	Kodiak
Magistrate's Court - Unalaska Unalaska Police Department Unalaska AST Enforcement	Unalaska
Seldovia Police Department	Seldovia

# APPENDIX 3

## Miscellaneous Fingerprinting Locations

Nondalton - VPSO

Magistrate's Court - Whittier

Whittier Police Department

Magistrate's Court - Tanana

Tanana Police Department

Magistrate's Court - Sand Point

Sand Point Police Department

Sand Point AST Enforcement

Magistrate's Court - St. Mary's

Magistrate's Court - St. Paul

St. Mary's AST Enforcement

St. Paul Police Department

Metlakatla Police Department

King Cove Police Department

Kake Police Department

Magistrate's Court - Kake

Hoonah Police Department

Hoonah AST Enforcement

Magistrate's Court - Hoonah

cannot be over-emphasized at this time. Within the criminal justice system, criminal history records are needed for decisions relating to pretrial release, offense charging, prosecution priorities, sentencing and correctional assignments. Similarly, such data are increasingly necessary for noncriminal justice purposes to meet requirements relating to licensing, security clearances and employment of individuals in sensitive positions. A Bureau of Justice Statistics (BJS) survey found that, as of October 1990, almost all states had enacted some legislation which required that criminal history record information be considered in connection with criminal justice decisions. (Source: Report of the National Task force on Criminal History Record Information Reporting)

### ALASKA'S CRIMINAL HISTORY REPOSITORY

Alaska's criminal history database contains approximately 500,000 criminal record entries representing approximately 300,000 persons;

Alaska's fingerprint database contains approximately 170,000 sets of ten print records;

Alaska's fingerprint database contains approximately 2,500 latent fingerprints from crime scenes;

Alaska's criminal history database is updated or queried approximately 50,000 times per month by courts, police, corrections, prosecutors and on behalf of employers;

Alaska's criminal history database is accessed through 900 terminals and 2,000 users in state and nationally via the Law Enforcement Telecommunications System (NLETS);

Preliminary results of a sample of 300 FY 91 arrests disclosed that approximately one third were supported by fingerprints and one third had dispositions reported. Currently, State Correctional facilities are fingerprinting approximately 40% of people accused of committing crimes; Contract Jails fingerprint approximately 50% and smaller facilities approximately 30%.

(7) AN ARREST	PROMIS - AG DOL	YES, BUT NOT TIMELY	<p>The current proposal includes the following sections and are discussed:</p> <ol style="list-style-type: none"> <li>12.62.100 - Discontinues the Governor's Commission on Criminal Justice and establishes a criminal justice advisory group to the Commissioner Department of Public Safety;</li> <li>12.62.110 - Defines the responsibilities of the Commissioner, Department of Public Safety with respect to criminal justice information systems;</li> <li>12.62.120 - Prescribes mandatory fingerprinting for all serious offenses in authentic entries to a person's criminal history record and to facilitate future identification;</li> <li>12.62.130 - Authorizes the reporting of criminal justice information;</li> <li>12.62.140 - Authorizes the reporting of Uniform Crime Information;</li> <li>12.62.150 - Authorizes the reporting of wanted persons and stolen property;</li> <li>12.62.160 - Addresses issues of completeness, accuracy and security of criminal justice information;</li> <li>12.62.170 - Defines criteria for dissemination of criminal justice information;</li> <li>12.62.180 - Prescribes the process for correction of criminal history information;</li> <li>12.62.190 - Makes provision for sealing of criminal history record information;</li> <li>12.62.200 - Makes provision for purging of criminal history record information;</li> <li>12.62.210 - Provides for recourse through civil action and defense;</li> <li>12.62.900 - Provides definitions of terms used in this legislation.</li> </ol>
(3) RELEASE OF A PERSON AFTER ARREST WITHOUT FILING OF A CHARGE	AFPSIN-POLICE	NO	
(4) DECISION BY A PROSECUTOR NOT TO COMMENCE CRIMINAL PROCEEDINGS OR TO DEFER OR INDEFINITELY POSTPONE PROSECUTION	PROMIS-AG DOL	YES	
(5) PRESENTMENT OF AN INDICTMENT OR THE FILING OF A CRIMINAL INFORMATION OR OTHER STATEMENT OF CHARGES AFTER ARREST	PROMIS-AG DOL	YES, BUT NOT ENTERED	
(6) A RELEASE PENDING TRIAL OR APPEAL	COURTS OBSCIS-CORRECTIONS	NO NO	
(7) COMMITMENT TO OR RELEASE FROM A PLACE OF PRETRIAL CONFINEMENT	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
(8) THE DISMISSAL OF AN INDICTMENT OR CRIMINAL INFORMATION OR ANY OF THE CHARGES SET OUT IN SUCH INDICTMENT OR CRIMINAL INFORMATION	COURTS	YES	
(9) AN ACQUITTAL, CONVICTION OR OTHER DISPOSITION AT OR FOLLOWING TRIAL	COURTS	YES	
(10) IMPOSITION OF A SENTENCE	COURTS	YES	
(11) COMMITMENT TO OR RELEASE FROM A CORRECTIONAL FACILITY, WHETHER STATE OR LOCALLY OPERATED, INCLUDING COMMITMENT TO OR RELEASE FROM A PAROLE OR PROBATION AGENCY	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
(12) COMMITMENT TO OR RELEASE FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES AS INCOMPETENT TO STAND TRIAL OR AS NOT CRIMINALLY RESPONSIBLE	HASS	NO	
(13) AN ESCAPE FROM DETENTION OR CONFINEMENT	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
(14) ENTRY OF AN APPEAL TO AN APPELLATE COURT	COURTS PROMIS-AG DOL COURTS	NO NO NO	
(15) JUDGMENT OF AN APPELLATE COURT	COURTS GOVERNOR	NO NO	
(16) A PARDON, REPRIEVE, COMMUTATION OF SENTENCE OR OTHER CHANGE IN SENTENCE LENGTH, INCLUDING A CHANGE ORDERED BY A COURT	COURTS GOVERNOR	NO NO	
(17) REVOCATION OF PROBATION OR CHANGE IN PAROLE STATUS	OBSCIS-CORRECTIONS	NO	
(18) ANY OTHER EVENT ARISING OUT OF OR OCCURRING DURING THE COURSE OF CRIMINAL JUSTICE PROCEEDINGS DECLARED TO BE REPORTABLE BY REGULATIONS ISSUED BY THE DPS COMMISSIONER	AFPSIN, OBSCIS PROMIS, HASS	N/A, CURRENTLY	

February 3, 1994

"An Act Relating to criminal justice information;  
providing procedural requirements for obtaining certain criminal justice information; and  
providing for an effective date."

*Commentary and section-by-section description*

The need for new Alaska laws for criminal justice information systems has been recognized for a number of years. It has been recommended, for example, that state statutes "should be revised to reflect a decision as to oversight and monitoring responsibility and to clearly set policy . . . ." *A Special Report on the Oversight of Criminal Justice Information Systems in Alaska and the Alaska Public Safety Information Network*, Division of Legislative Audit, 1986. See also, Trostle, *Alaska Criminal History Record Information Program, A White Paper*, Justice Center, University of Alaska (1991) ("Legislative intervention in this area is warranted and required."). The Ombudsman has also recommended new legislation. *Investigative Report, Complaints 191-0810* (December 10, 1992).

In 1972, the statutes in AS 12.62, the regulations in 6 AAC 60, and the constitutional right of privacy in art. I, sec. 22, of the state constitution, were adopted as a direct result of fears generated by the 1971 implementation of the Alaska Justice Information System computer (known as "AJIS").<sup>1</sup> With the exception of AS 12.62.035 (access to conviction records for sex offenders), the statutes have not changed in over 20 years. The last decade has seen enormous changes in the use of, and attitude towards, computer systems, and statutory changes are needed to reflect these changes.<sup>2</sup>

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<sup>1</sup> Newspaper reports at the time contained statements by the sponsors and supporters of the constitutional amendment that the AJIS system was the primary motivation for the right-to-privacy provision. See, articles appearing in Alaska newspapers in 1972: Anchorage Daily News, March 21 at 8; March 22 at 5; March 31 at 1-2; April 1 at 4; April 6 at 2; Anchorage Times, March 20 at 8; March 27 at 2; March 27 at 2; March 31 at 1-2; Fairbanks Daily News-Miner, March 20 at 2; Southeast Alaska Empire, March 17 at 2; March 20 at 1; March 21 at 1 and 8; May 18 at 4.

<sup>2</sup> The regulations in 6 AAC 60 were amended in 1982 during the last meeting of the Governor's Commission on the Administration of Justice, but in reality there has been no systematic oversight of criminal justice information systems since the 1970's. The federal regulations in 28 CFR, Part 20, apply only to information systems funded in whole or in part by the Law Enforcement Assistance Administration, which provided federal grant funds since the 1970s. In 1986 the Department of Law issued an opinion concluding that changes in the funding of the Department of Public Safety criminal records system meant that the statutes and regulations no longer applied to that system. See, *Applicability of AS 12.62 to Alaska Public Safety Information Network*, Inf. Op. Atty. Gen. 663-86-0479, December 10, 1986. Both the division of legislative audit and the division of legislative legal services concur in that conclusion. See, *A Special Report On The Oversight Of Criminal Justice Systems In Alaska And The Alaska Public Safety Information Network*, at 8 (March 19, 1986; Audit Control Number 12-4247-86-5) and *A Report to the Fifteenth State Legislature, Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes*, at 29 (November, 1987).

There has also been a growing recognition that national standards for criminal justice data collection should be established, and the Anti-Drug Abuse Act of 1988 required the Department of Justice to develop a system for more immediate and accurate identification of offenders. The Justice Department recommended that states (1) implement mandatory reporting of all criminal justice information, (2) monitor case dispositions and adopt unique case-tracking numbers to improve data accuracy, (3) ensure timely submission of fingerprint records, (4) provide standardized data entry, and (5) provide audits, training, and data security.

In addition, federal handgun control efforts, such as the "Brady bill" in 1993, depend to a large extent on the accuracy, completeness and availability of criminal history records. Alaska has recently received a federal grant to improve its data collection, and this bill is a necessary step toward that goal. This legislation provides a framework under which the state can comply with appropriate national standards, to the extent they are practical in Alaska.

Major portions of this legislation are patterned after the laws in other states, the federal regulations in 28 CFR, Part 20, and the recommendations made by SEARCH, Inc., in *Standards for the Security and Privacy of Criminal History Record Information, Third Edition*, published in July, 1988.<sup>3</sup> This publication resulted from a three-year effort by the SEARCH Law and Policy Project Advisory Committee, with assistance provided by experts within and outside of the criminal justice community. While the SEARCH publication was not intended as a model statute that would fit the particular needs of every state, it does set out a comprehensive approach to criminal justice information policy based upon articulated standards that reflect the knowledge and experience of a large, nationwide group of criminal justice information experts.

This bill is organized as follows:

AS 12.62.100	Criminal justice information advisory board.
AS 12.62.110	Duties of the commissioner regarding information systems.
AS 12.62.120	Mandatory fingerprinting in criminal cases.
AS 12.62.130	Reporting of criminal justice information.
AS 12.62.140	Reporting of uniform crime information.
AS 12.62.150	Reporting of information regarding wanted persons and stolen property.
AS 12.62.160	Completeness, accuracy and security of criminal justice information.
AS 12.62.170	Release and use of criminal justice information; fees.
AS 12.62.180	Correction of criminal justice information.
AS 12.62.190	Sealing of criminal justice information.
AS 12.62.200	Purging of criminal justice information.
AS 12.62.210	Civil action and defense.
AS 12.62.900	Definitions.

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<sup>3</sup> That SEARCH publication is known across the country as *Technical Report No. 13 (Revised)*.

AS 12.62.100

Subsection (a) establishes the Criminal Justice Information Board, located for administrative and budgetary purposes within the Department of Public Safety. Although the board's role is advisory, provisions requiring twice yearly meetings and annual reports to the Governor and Legislature should encourage it to be active in its advisory role.

There are boards of this type in about half of the states. *Compendium of State Privacy and Security Legislation*, United States Department of Justice, 1989 Overview (hereafter "Dept. of Justice Overview") at page 21. Experience in other states has shown that an advisory board of this type can be effective and can exert a strong influence on the development of policies.

In order to keep the board to a manageable size, the board's membership is limited to commissioners from the five state departments most directly involved in criminal justice matters, the chief justice, a municipal police chief, as well as a member of the public appointed by the Governor to represent broader public interests.

AS 12.62.110

This section sets out the powers and duties of the Commissioner of Public Safety, based on similar provisions in numerous state laws, and requires the commissioner to develop a central state repository for criminal history records and other criminal justice information. At the present time, the Alaska Public Safety Information Network (APSIN) serves as the central repository, and it is anticipated that it will continue in that role. The commissioner must consult with the Criminal Justice Information Board, and cooperate with other state and federal law enforcement agencies.

This section also specifically requires the commissioner to promulgate regulations governing the central repository. Based upon Alaska's past experience with the long-inactive Governor's Commission on the Administration of Justice, it is more efficient and workable to vest rule-making authority in the official, i.e., the commissioner, who is responsible for the day-to-day operation of the system.

There is regulatory authority in this area in nearly every state in the country. Dept. of Justice Overview at page 20. This bill limits the commissioner's rule-making authority to the development and operation of the central repository and enforcement of the statutory requirements concerning the reporting of information to the central repository. The commissioner also is authorized to issue regulations necessary to insure that criminal justice agencies maintain records sufficient to facilitate the audit responsibilities imposed by the statute,

Although regulations would not be strictly necessary to prescribe the forms on which information is to be reported. In other respects, criminal justice agencies in the state are free to establish their own agency rules and procedures to comply with the substantive requirements of the chapter. The section specifically authorizes the commissioner to cooperate with NLETS, NCIC, the Interstate Identification Index (III) system and other interstate, national or international identification and record systems.

This section also provides that any regulations adopted by the commissioner will not affect agencies or officials of the judicial branch. This avoids legal questions concerning the separation of powers. It is anticipated that rules affecting operation of the court will be adopted by the supreme court, and it is the intent of this legislation that the court cooperate with executive branch agencies in providing workable criminal justice information systems. As a member of the Criminal Justice Information Board, the chief justice will be familiar with the issues involved in criminal justice data collection, and participation on the board will provide a basis for cooperation with other agencies concerning such issues as court disposition reporting, taking of fingerprints and use of tracking numbers. According to SEARCH, such an approach has worked well in other states.

#### AS 12.62.120 - 150: Applicability

Based on preliminary comments from a number of criminal justice agencies, an applicability section at the end of the bill will apply the fingerprinting and reporting requirements of AS 12.62.120 - 150 only to persons arrested for felony offenses. It was felt that meeting the fingerprinting and reporting requirements for the many thousands of misdemeanor cases proceedings through the courts every year in Alaska would be burdensome to state and municipal agencies. In order to hold down the initial costs of this legislation, and to enable justice agencies to streamline procedures, these sections will not apply to misdemeanor offenses until July 1, 1996.

#### AS 12.62.120

This section imposes a mandatory fingerprinting requirement for all offenses that will be included in the central criminal history record system. Since fingerprints provide positive identification, thereby ensuring the integrity of the records, it is important that fingerprints be uniformly obtained and forwarded to the central repository. National standards adopted by the Justice Department call for increased collection of fingerprint data.

It has been suggested that routine taking of fingerprints in all criminal cases may violate an offender's right of privacy. Given the minimal intrusiveness of fingerprinting, however, and its common acceptance as a standard police practice, it is doubtful a person under

arrest or charged with a crime would have a subjective expectation of privacy with respect to fingerprints, nor is it likely society would be willing to recognize any such expectation as reasonable. It is therefore unlikely a court would conclude that the right of privacy is implicated.

Subsection (a), requiring arresting officers to take fingerprints, and requiring a court to order a person charged with a crime to submit to fingerprinting if not arrested, is modeled after a provision in New York's law (N.Y. Crim. Proc. Law § 160.10). See, also 18 Pa. Cons. Stat. Ann. § 9112 (Purdon). Subsection (b) ensures that fingerprints are obtained at the time of conviction in cases in which, for whatever reason, fingerprints were not obtained earlier.

Subsection (c) is modeled after provisions in many state laws requiring correctional institutions to obtain fingerprints of persons committed to such institutions. E.g., Ga. Code Ann. § 35-3-36(f) (1981); Del. Code Ann. tit. 11, § 8509-8510. In addition, most other states follow this practice, though it is not expressly required by law.

Subsection (d) sets a time limit for the forwarding of fingerprints to the central repository. Fingerprints are required to be forwarded within five days. The most common time frame in use (by law or practice) in other states is seventy-two hours, although fingerprint reporting requirements vary from twenty-four hours to a week or more. Five days is a reasonable standard that criminal justice agencies in Alaska can meet in practice. This subsection also deals with poor quality fingerprints by requiring the originating agency to attempt to obtain better prints.

Subsection (e) is modeled after a provision in New York's law specifically requiring the central repository to use reasonable efforts to confirm the identity of the person being fingerprinted. N.Y. Crim. Proc. Law, § 160.30. If the central repository discovers that the person has an alias, the original agency must be notified. It is anticipated that in the vast majority of cases the sole effort to confirm identity would be through the department's automated fingerprint system. This will be sufficient to meet the requirement of "reasonable" efforts.

Subsection (f) permits the commissioner to adopt regulations to exempt certain classes of offenders from the fingerprinting requirement. For example, the commissioner may determine that it is not necessary for purposes of prison security or data accuracy to take repeated sets of fingerprints of prisoners transferred between institutions or of persons rearrested for violations of bail conditions, as would be required by subsection (c).

AS 12.62.130

This section establishes a framework for requiring that every significant event in the criminal justice process be reported to the Department of Public Safety. The current record system is ordinarily based only on the first event (usually an arrest) and the last event (usually a court judgment). Because of delays in the court process, records may show no disposition of the charges for long periods of time unless the department is notified of intervening events, such as dismissals of or amendments to criminal charges.

Reporting requirements set out in this section are modeled after the approach followed in Maryland. Md. Ann. Code art. 27, § 747 (1957). This section identifies all decisions or actions that occur in the course of the processing of criminal offenders and anticipates that the agency responsible for each "reportable event" will forward relevant information to the central repository. This section, however, leaves it to the commissioner to specify by regulation which agency is responsible for reporting each event.

At the present time this level of information is not uniformly reported to the department, and the APSIN system currently in operation is not capable of collecting all of this information. It is anticipated that the ability to collect and report this information will be developed over a period of time, and this section requires the commissioner to consult with the Criminal Justice Information Board and with affected agencies such as municipal police departments, prosecutors, courts, probation and parole officers, and others. Although this section will not be implemented immediately, the basic framework should be set forth in statute.

The form, content, and timing of the reports may be specified by the department without regulation. It is anticipated that different events will be required to be reported under different deadlines, depending on the importance of the information. For example, it may be reasonable to require that information about arrests and arrest warrants be reported within 48 hours, whereas information about other events could be reported within 30-60 days. A 30-day requirement is consistent with California's statutes for court disposition reporting (Cal. Penal Code § 13151) and with laws and policies of several other states. The national average, however, is about 60 days. See, e.g., Maryland Ann. Code art. 27, § 747 (1957) (60 days), 18 Pennsylvania Cons. Stat. Ann. § 9113(a) (Purdon) (90 days); Delaware Code Ann. tit. 11, § 8509 (90 days). Given the wide variation in personnel, equipment and telecommunication capabilities in Alaska, the specific requirements are best left to the commissioner, after consultation with local criminal justice agencies.

Subsection (b) is a relatively complete list of reportable events, but a catch-all category is included authorizing the commissioner to specify other events or actions to be reported.

AS 12.62.140 and AS 12.62.150

These two provisions are not strictly necessary to deal with the most immediate issues concerning criminal justice information systems, but they are useful and appropriate recommendations made by the SEARCH group in order to establish a statutory framework for a workable central criminal justice reporting system.

Proposed AS 12.62.140 imposes a legal requirement on criminal justice agencies to submit information to the Department of Public Safety for uniform crime reports and to cooperate with the central repository in efforts to ensure compliance with national and state uniform crime reporting requirements. It is modeled after provisions in Georgia. Ga. Code Ann. of 1981, § 35-3-36 (i), (k) (1981).

Proposed AS 12.62.150 is modeled after provisions in the laws of other states, requiring the reporting of information relating to wanted persons, stolen vehicles and identifiable stolen property.

AS 12.62.160

This section sets out data quality requirements applicable to the central records repository and to other criminal justice information systems in the state.

All criminal justice systems are subject to the general requirement in subsection (a) that procedures be adopted to ensure that criminal history record information is complete, accurate and secure. Such steps may include the use of manual procedures such as standard data collection forms and reporting procedures to detect inaccurate or missing information, or automated procedures to edit and verify required data fields and to perform a wide variety of checks on the accuracy and consistency of information entered into the systems.

The security provisions set out in (a) are taken from the federal regulations but in somewhat abbreviated form. They set out basic requirements for physical, personnel and computer security. Subsection (a) also requires that when a criminal justice agency utilizes a shared automated information system operated by a non-criminal justice agency, such as a municipal or regional data processing center, the criminal justice agency must insure that the system utilizes security procedures that are adequate to comply with the statutory security requirements.

Subsection (b) requires that procedures be developed for linking of charges and dispositions. Such a procedure might include use of a unique tracking number. The few extensive audits of state repositories that have been undertaken (including recent audits in Texas and Maryland) have demonstrated that tracking systems utilizing unique case numbers can solve

most problems encountered in linking reported disposition data to the right rap sheet and to the correct charges. In this way all charges can be accounted for and the criminal history record can accurately and clearly reflect the outcome of the case.

The requirement that the department adopt "reasonable" procedures recognizes that there is a large amount of information already maintained in APSIN, which was not collected using a uniform arrest tracking number or which was received from another jurisdiction, and missing information within this data cannot reasonably be linked to dispositions of the charges. This limitation on existing data is well known within the criminal justice system and this bill does not require modification of that data.

Subsection (c) requires the department to perform audits every two years, and to obtain an independent audit every four years, of the central repository and of a sample of other agencies to verify compliance with legal requirements. It should be noted that the sample need not be a random sample or a representative sample. This will permit the central repository to audit problem agencies or large agencies in a particular year, if appropriate or necessary. The independent audit could be performed by a private contractor or by an agency such as the Division of Legislative Audit. Subsection (a) also requires criminal justice agencies to maintain source documents and other records necessary to facilitate the performance of the audits.

#### AS 12.62.170

Even in criminal justice information systems that are federally-funded, a detailed state law will govern dissemination – rather than federal regulations. "When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State." Commentary to 28 CFR 20.21(b) (7-1-91 Edition).

Unfortunately, current Alaska law does not directly address the confidentiality of criminal history records on state computers.<sup>4</sup> This section makes criminal justice information confidential and prohibits its release, except as provided in this chapter. The rules for dissemination in this section are taken in general form from recommendations by the SEARCH group.

Criminal justice information is made confidential in subsection (a), and may not be disseminated except pursuant to subsection (b) or AS 12.62.190(d). Information may be

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<sup>4</sup> The United States Supreme Court, however, has held that public disclosure of such information would constitute an "unwarranted invasion of personal privacy" as that term is used in the federal Freedom of Information Act, and dissemination of such information at the federal level is limited. *United States v. Reporters Committee For Freedom of the Press*. 489 U.S. 749. 103 L.Ed.2d 774. 109 S.Ct. 1468 (1989).

released only by the agency than maintains it. The information cannot be provided unless it is up-to-date and accompanied by proper identification, and once provided, the information must be used only for the purpose for which it was released. Subsection (c). The department of public safety is permitted to establish fees for certain services in providing information under this section. Subsection (d).

Subsection (b) specifies several categories of criminal justice information that may be disseminated by criminal justice agencies. Even if the information may be disseminated under subsection (b), it is recognized that some other provision of law or court rule may prohibit its release. The types of information that may be provided by criminal justice agencies under subsection (b) are:

- An assessment or summary of criminal justice information can be provided to anyone if necessary to avoid imminent danger to life or extensive damage to property. Subsection (b)(1).

- Criminal justice information may be provided pursuant to court rule or court order. Subsection (b)(2).

- Agencies would be permitted to publicly release information about recent police activity, such as posters, announcements, notices, press releases, bulletins, police blotters, including data derived from a criminal justice information system. Subsection (b)(3). This is a common and traditional practice, recognized in current 6 AAC 60.070(g) and in most other states and the federal regulations.

- Criminal justice information would be provided to criminal justice agencies for criminal justice purposes. Subsection (b)(4). This includes making full criminal histories available to federal and out-of-state criminal justice agencies, such as the FBI and to central repositories in other states by means of the Interstate Identification Index (III) system. By exchanging information in this way, the state is permitted to participate in the III system.

- Criminal justice information would also be provided to non-criminal justice governmental agencies for official purposes (that is, those related to an agency's statutory duties), to other persons authorized by law to receive the information. Subsections (b)(5) and (b)(6).

Under (b)(5) the Public Defender Agency or the Office of Public Advocacy would be able to directly obtain information necessary for representation of indigent defendants, to the same extent as is available currently. Private defense attorneys would be able to obtain the same

information through the court or court rules under subsection (b)(2), or as a member of the public under (b)(10) or (b)(11).<sup>5</sup>

Government agencies would also be able to obtain information for purposes of licensing, security clearances, and other official purposes, as is available currently through written agreements with the Department of Public Safety. It is not anticipated, however, that employment of non-criminal justice personnel will be "necessary" for the enforcement of a law, and therefore full criminal justice information will not be made available for general government employment purposes unless there is specific statutory authorization in another law. Government employers would, however, be able to obtain more limited records to the same extent as other employers under subsections (b)(10), (b)(11) and (b)(12).

- The governor, lieutenant governor and state legislators would also be entitled to receive criminal justice information under (b)(7) and (b)(8) for security purposes and for purposes of appointment of exempt or partially-exempt state officials.

- Information for research purposes may be disseminated under (b)(9), subject to written conditions to safeguard security and privacy.

- Any person would be permitted to receive "current offender information". Subsection (b)(10). The definition of "current offender information" includes many pieces of information about a person currently charged with a crime or in the custody or under the supervision of the state, including the location of incarceration of inmates, and the conditions under which such inmates are released. Much of this information is presently provided only to victims of crimes under AS 33.16.120(f).

- Anyone would also be permitted to receive "past conviction information", if less than 10 years has elapsed from the date the offender was released from all state supervision. Subsection (b)(11). The 10-year limitation on past records is designed to assure that very old conviction records are not freely disseminated.

Although current law does not explicitly make criminal justice information confidential, the United States Supreme Court has held that such information is exempt from the federal "freedom of information" statutes that formed the basis for current state public records laws in AS 09.25.120(6). *United States Dept. of Justice v. Reporters Committee for Freedom of the Press, et al.*, 489 U.S. 749, 103 L.Ed.2d 774, 109 S.Ct. 1468 (1989), (criminal conviction

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<sup>5</sup> Current regulations in 6 AAC 60 (which no longer apply to APSIN; see footnote 2) adopt a procedure that would permit private defense attorneys to get criminal justice information directly from the Public Defender Agency. It was felt that this procedure is not workable because if it became a routine practice it would greatly add to the workload of the Public Defender Agency and because the normal safeguards applied to agency access would be missing.

records on computers are not subject to disclosure under federal law). In addition, current AS 12.62.035 could be construed as a legislative expression that conviction records be provided to the public only if the person requesting the information is an employer of persons who work with children, and only for specified crimes. For these, and other reasons, the Department of Public Safety does not currently disseminate criminal justice information to the public.

Taken together, however, subsections (b)(10) and (b)(11) provide the public with a great deal of information that is either not available under current law, or is only available by expending great effort to search manual or microfilm files in the possession of the court system. These provisions reflect a strong public policy interest in permitting criminal justice agencies to respond to press or public inquiries about ongoing criminal cases and about offenders currently or recently under state supervision.

Florida, Oklahoma and Wisconsin currently have "open" record policies and several other states permit criminal history records to be made available for a wide range of non-criminal justice purposes. Based on a study in Florida by SEARCH, the main recipients of this information are businesses and agencies that use the information for employment screening purposes. Only a small percentage of the requests for such information are for "curiosity". "Availability of Criminal History Records: The Effect of an Open Records Policy", SEARCH Group, Inc. 1990.

- The current provisions in AS 12.62.035 are retained in subsection (b)(12). This current statute permits dissemination of certain conviction records, regardless of the passage of time, in order to evaluate someone for a position involving supervision of children or dependent adults.

- Finally, a person can have access to his or her own criminal justice information. Subsection (b)(13).

Subsection (c)(3) provides that criminal justice information may not be released unless the subject's identity is confirmed by fingerprint comparison or some other approved means of identification. There are other instances, however, when the requirement of fingerprint identification or other positive identification is not feasible or necessary, and this subsection permits the commissioner to exempt certain requesters (such as criminal justice agencies, for example) from the strict identification requirements.<sup>6</sup>

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<sup>6</sup> For the public and the press it is not feasible to obtain fingerprint identification for current offenders. Because most such inquiries will likely be made of local criminal justice agencies by persons within the community where the crime was committed, fingerprints are probably not required to obtain information about the correct person. Moreover, newly developed name search techniques used in Florida are regarded as extremely accurate. "Availability of Criminal History Records: The Effect of

Subsection (c)(4) requires that criminal justice agencies maintain logs of persons to whom criminal history record information is provided. This facilitates audits of the system, and permits notification in case of errors or corrections. Here, too, there are instances when the requirement of maintaining logs is not warranted, and this subsection permits the commissioner to exempt agencies from maintaining logs for certain classes of recipients, such as criminal justice agencies.

#### AS 12.62.180

The provisions in the bill authorizing persons to request corrections to their own records are similar to existing law in AS 12.62.030 (c), (e) and (f). Under this bill, however, if a court undertakes a review of an agency's refusal to modify records, the burden is placed on the person to prove that the information is inaccurate or incomplete, rather than on the criminal justice agency. It is appropriate to place the burden on the person challenging the information, because that person is usually in the best position to have access to relevant evidence to support the challenge. Although less than half of the states provide for judicial review (Dept. of Justice Overview at 25), it was felt that this provision in Alaska law should be continued.

#### AS 12.62.190

This section permits criminal justice agencies to "seal" past or current conviction records if the records resulted, beyond a reasonable doubt, from mistaken identity or false accusation. It is anticipated that, upon request, the central repository or other agency will voluntarily seal records in appropriate circumstances.

Like the provisions for revising information in proposed AS 12.62.180, an administrative appeal of the agency's decision may be made to the court, but the appellant bears the burden on appeal of showing that the agency's decision was clearly mistaken. This heavy burden reflects the intent that proceedings to seal records should be rare. As noted by the court of appeals, "no court has seriously questioned the legitimacy or importance of the government's interest in obtaining and retaining records dealing with individuals who pass through our criminal justice system . . ." *Journey v. State*, 850 P.2d 663, 666 (Alaska App. 1993).

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<sup>4</sup>(...continued)

an Open Records Policy", SEARCH Group, Inc. 1990. at page 7. It is also not required that the person requesting current offender information present positive identification.

If the state or a municipal prosecutor pursues a criminal case in good faith, it is unlikely a defendant could muster the necessary level of proof beyond a reasonable doubt, much less that the department's decision to retain the records was clearly mistaken. Thus sealing will not become a common practice following dismissal or acquittal of criminal charges. Moreover, a proceeding to seal information should not be used as another avenue of collateral attack on court judgments, or on other actions taken by prison, probation or parole authorities. Unless the person is successful in an appeal or post-conviction relief action, a court judgment or prison administrative decision will be conclusive evidence that the record should not be sealed.

Under current Alaska law, it is not clear that persons have a right to have their records sealed. *Journey v. State*. This section thus establishes a procedure for persons to use to seal their records and, to the extent that subsection (d) permits a person to deny the existence of a sealed record, this statute provides a broader remedy than would be available under a the "inherent" power of the courts.

Subsection (d) authorizes a person whose record has been sealed to deny the existence of the record and any related arrest or other action. This provision reflects the view in half the states (Dept. of Justice Overview at 21) that if a person can be required to reveal the existence of a sealed record, in answer to a question on an employment application, for example, the sealing remedy is ineffective. Records that have been sealed may only be disseminated for specific limited purposes under this section.

#### AS 12.62.200

This section permits criminal justice agencies to "purge" (i.e., destroy) criminal justice information for a variety of administrative reasons, if the information is devoid of any usefulness to a criminal justice agency.

#### AS 12.62.210

Given the many thousands of arrests made each year, and the remoteness of many locations in Alaska, it is likely that in many instances fingerprints will not be taken or will not be submitted to the department, that backlogs in reporting of events or in data entry may cause delays in processing and compiling data in an information system, or that other errors may occur. Therefore, subsection (a) provides immunity from civil liability if the requirements of the chapter or regulations (including requirements for accurate and complete data), are not strictly followed, but such conduct can be used as a basis for employee discipline or administrative action to restrict agency access to the system. Public officials could, however, be subject to criminal sanctions in extreme cases in which confidential information is misused.

This civil immunity provision is generally based on AS 13.50.014(a) and 016(a), providing immunity from liability for failure of hospital or law enforcement personnel to search for information relating to anatomical gifts. It is also based on similar immunity provisions relating to reporting or not reporting cases of abuse of the elderly (AS 47.24.010(f) and (g)) and reporting abuse of children. AS 47.17.050. This provision is, however, also specifically intended to reverse the decision in *Zerbe v. State*, 578 P.2d 597 (Alaska 1978), and to make clear that there is no cause of action for errors made in recordkeeping.

A legal remedy for damages is provided, however, if criminal justice information is released or used in knowing violation of this chapter. The civil remedy and defense set out in this section is based on current AS 12.62.060. This section does not create a separate criminal offense because current AS 11.56.860 already makes misuse of confidential information by a "public servant" a class A misdemeanor. The definition of "public servant" is broad, and includes contractors and consultants to government agencies. Although current law does not provide a criminal penalty for misuse by other persons, such as members of the public and the press, the civil damage remedies are likely to be an adequate deterrent.

#### AS 12.62.900

The definitions are generally consistent with, although more detailed than, those found in the federal regulations (28 CFR Part 20, § 20.3). They are also consistent with recommendations made by the SEARCH Group.

The definition section contains many important provisions that specify the applicability of this legislation. For example, the word "information" is defined to mean, unless the context clearly indicates otherwise, data compiled within a "criminal justice information system". That latter term, in turn, is defined to mean an "automatic data processing" system (i.e., a computer) linked to another computer in another department, branch of government, or in another jurisdiction, in such a way that access to the information in the system can occur directly, without action by the agency maintaining the information. This concept of a direct connection between agency computers is contained in current 6 AAC 60.900(1), and reflects the desire to limit interference with internal agency files that cannot be electronically accessed by another agency.

Because of these definitions, this chapter does not apply to the paper records in the possession of criminal justice agencies (which continue to be covered by the general public records statutes) nor to records contained in computers commonly referred to as "stand-alone" computers that are used solely within one department or agency (in this bill a multi-jurisdictional task force is considered a single "agency"). It was not the intent of this bill to regulate the paper files, notebooks, binders, microfilm or other internal records maintained by dozens of state, municipal or judicial branch agencies, if that information is not susceptible to being directly

accessed from outside of that agency by way of a computer system. This definition is also not intended to regulate the exchange of photographs or original documents, whether by facsimile transmission or otherwise.

The criminal justice process produces many different types of information, and therefore a large number of definitions are required.

The broad definition of "criminal justice information" includes all types of data generally collected by criminal justice and public safety agencies, with the exception of court records, drivers license records and records relating to juveniles within the juvenile justice system. It includes criminal history record information, nonconviction information, correctional treatment information, as well as data about wanted or missing persons and stolen property. These various types of information are defined in terms of "identifiable persons". This limitation means that statistical information that does not identify a person is not "criminal justice information".

This legislation leaves to the supreme court the task of regulating court record systems. This legislation also recognizes that the confidentiality and dissemination of drivers license records are already covered by AS 28.15.181.

Each type of information has different uses, and each may be subject to differing rules, depending on the sensitivity of the information and the need for its easy accessibility by the public, the press, and other agencies.

The most sensitive is correctional treatment information. This includes data from confidential sources such as prison medical and psychological files, and presentence reports. Another type of information subject to limited dissemination is "nonconviction" information, which includes data about old arrests or other old charges without dispositions. Oftentimes criminal history records show arrests or charges, but no dispositions of those charges. If the arrest is recent (less than a year old) or prosecution is ongoing, this data is treated, consistently with federal regulations, as "current offender information", which has greater accessibility to the public. However, once a year has passed with no indication that prosecution is ongoing, an arrest record without a disposition is treated as "nonconviction information". Under this bill, information in these categories is not available to the general public or the press, and is only provided for official agency activities.

The definition of "criminal history record information" is functionally equivalent to the one found in the federal regulations and in general use in the laws in other states. Within that broad term there are three categories: (A) past conviction information; (B) current offender information; and (C) criminal identification information.

"Past conviction information" relates only to old convictions where the sentence has already been served and the person has been unconditionally discharged. Such information can include not only the fact of conviction but any specific data related to that conviction, such as dates of proceedings. Convictions that have been set aside under AS 12.55.085 following a suspended imposition of sentence, or that have been vacated or reversed, are included. Under this bill, "past conviction data" less than 10 years old is available to the public when accompanied by adequate identification of both the subject of the records and the person who is requesting the information.

"Current offender information" includes all data of public interest about current or recent cases, or those in which the offender is still under the custody or supervision of the state. Included are conditions of bail or probation and the location of incarceration or community supervision.

"Criminal justice activity" is defined as broadly inclusive of all official activities of criminal justice agencies, including the traditional law enforcement activities of police agencies and activities involved in the processing of criminal cases from arrest through correctional supervision. Also included is criminal justice employment activities. Criminal defense is not an included activity; however, the Public Defender Agency and the Office of Public Advocate will continue to have access to discoverable information under Alaska Rules of Criminal Procedure 16, as well as proposed AS 12.62.170(b)(5).

#### Section 2 of the bill.

Section 2 of the bill amends AS 44.99.310(f) to exempt criminal justice information from the provisions in that statute governing challenges to accuracy and completeness of "personal information". The provisions of this bill address such issues more comprehensively and directly.

#### Section 3: Repealer.

All of current AS 12.62, much of it over 20 years old, is repealed, as are AS 18.65.060 and AS 44.41.040, which relate to subjects covered comprehensively in the bill.

#### Section 4: Transition.

This transition section permits agencies to adopt regulations under this Act at any time, but the regulations do not become effective until the Act takes effect. This allows agencies to avoid delays in adopting regulations. This section has an immediate effective date.

Section 5: Applicability.

Based on preliminary comments from a number of criminal justice agencies, an applicability section at the end of the bill will apply the fingerprinting and reporting requirements of AS 12.62.120 – 150 only to persons arrested for felony offenses. It was felt that it would be burdensome to state and municipal agencies to immediately begin meeting the fingerprinting and reporting requirements for the many thousands of misdemeanor cases proceeding through the courts every year in Alaska. In order to hold down the initial costs of this legislation, and to enable justice agencies to streamline procedures, these sections will not apply to misdemeanor offenses until July 1, 1996.

Sections 6 and 7: Effective dates.

CRIMINAL HISTORY DATABASE	PROPOSED CRIMINAL HISTORY RECORD CONTENTS	CONTRIBUTOR	CURRENTLY	CONDITIONS/RECOMMENDED ACTION
	Source: December 1990 Search Report, September 26, 1991 University of Alaska White Paper	SYSTEM/AGENCY	PROVIDED	
<p><i>The importance of complete and accurate criminal history records cannot be over-emphasized at this time. Within the criminal justice system, criminal history records are needed for decisions relating to pretrial release, offense charging, prosecution priorities, sentencing and correctional assignments. Similarly, such data are increasingly necessary for noncriminal justice purposes to meet requirements relating to licensing, security clearances and employment of individuals in sensitive positions. A Bureau of Justice Statistics (BJS) survey found that, as of October 1990, almost all states had enacted some legislation which required that criminal history record information be considered in connection with criminal justice decisions. (Source: Report of the National Task force on Criminal History Record disposition Reporting)</i></p> <p><b>ALASKA'S CRIMINAL HISTORY REPOSITORY</b></p> <p>Alaska's criminal history database contains approximately 500,000 criminal record entries representing approximately 300,000 persons;</p> <p>Alaska's fingerprint database contains approximately 170,000 sets of ten print records;</p> <p>Alaska's fingerprint database contains approximately 2,500 latent fingerprints from crime scenes;</p> <p>Alaska's criminal history database is updated or queried approximately 50,000 times per month by courts, police, corrections, prosecutors and on behalf of employers;</p> <p>Alaska's criminal history database is accessed through 900 terminals and 2,000 users in state and nationally via the Law Enforcement Telecommunications System ( NLETS );</p> <p>Preliminary results of a sample of 300 FY 91 arrests disclosed that approximately one third were supported by fingerprints and one third had dispositions reported. Currently, State Correctional facilities are fingerprinting approximately 40% of people accused of committing crimes; Contract Jails fingerprint approximately 50% and smaller facilities approximately 30%.</p>	(1) ISSUANCE OR WITHDRAWAL OF AN ARREST WARRANT	APSN - POLICE PROMIS - AG DOL	YES	<p>Passage of legislation addressing the management of criminal justice information needed. The current proposal includes the following sections and are discussed:</p> <p>1. 12.62.100 - Discontinues the Governor's Commission on Criminal Justice; establishes a criminal justice advisory group to the Commissioner Department of Public Safety;</p> <p>2. 12.62.110 - Defines the responsibilities of the Commissioner, Department of Public Safety with respect to criminal justice information systems;</p> <p>3. 12.62.120 - Prescribes mandatory fingerprinting for all serious offenses in authentic entries to a person's criminal history record and to facilitate future identification;</p> <p>4. 12.62.130 - Authorizes the reporting of criminal justice information;</p> <p>5. 12.62.140 - Authorizes the reporting of Uniform Crime Information;</p> <p>6. 12.62.150 - Authorizes the reporting of wanted persons and stolen property;</p> <p>7. 12.62.160 - Addresses issues of completeness, accuracy and security of justice information;</p> <p>8. 12.62.170 - Defines criteria for dissemination of criminal justice information;</p> <p>9. 12.62.180 - Prescribes the process for correction of criminal history information;</p> <p>10. 12.62.190 - Makes provision for sealing of criminal history record information;</p> <p>11. 12.62.200 - Makes provision for purging of criminal history record information;</p> <p>12. 12.62.210 - Provides for recourse through civil action and defense;</p> <p>13. 12.62.900 - Provides definitions of terms used in this legislation.</p>
	(2) AN ARREST	APSN - POLICE	YES, BUT NOT TIMELY	
	(3) RELEASE OF A PERSON AFTER ARREST WITHOUT FILING OF A CHARGE	APSN-POLICE	NO	
	(4) DECISION BY A PROSECUTOR NOT TO COMMENCE CRIMINAL PROCEEDINGS OR TO DEFER OR INDEFINITELY POSTPONE PROSECUTION	PROMIS-AG DOL	YES	
	(5) PRESENTMENT OF AN INDICTMENT OR THE FILING OF A CRIMINAL INFORMATION OR OTHER STATEMENT OF CHARGES AFTER ARREST	PROMIS-AG DOL	YES, BUT NOT ENTERED	
	(6) A RELEASE PENDING TRIAL OR APPEAL	COURTS OBSCIS-CORRECTIONS	NO NO	
	(7) COMMITMENT TO OR RELEASE FROM A PLACE OF PRETRIAL CONFINEMENT	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
	(8) THE DISMISSAL OF AN INDICTMENT OR CRIMINAL INFORMATION OR ANY OF THE CHARGES SET OUT IN SUCH INDICTMENT OR CRIMINAL INFORMATION	COURTS	YES	
	(9) AN ACQUITTAL, CONVICTION OR OTHER DISPOSITION AT OR FOLLOWING TRIAL	COURTS	YES	
	(10) IMPOSITION OF A SENTENCE	COURTS	YES	
	(11) COMMITMENT TO OR RELEASE FROM A CORRECTIONAL FACILITY, WHETHER STATE OR LOCALLY OPERATED, INCLUDING COMMITMENT TO OR RELEASE FROM A PAROLE OR PROBATION AGENCY	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
	(12) COMMITMENT TO OR RELEASE FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES AS INCOMPETENT TO STAND TRIAL OR AS NOT CRIMINALLY RESPONSIBLE	HASS	NO	
	(13) AN ESCAPE FROM DETENTION OR CONFINEMENT	OBSCIS-CORRECTIONS CONTRACT JAIL-DPS	NO NO	
	(14) ENTRY OF AN APPEAL TO AN APPELLATE COURT	COURTS PROMIS-AG DOL	NO NO	
	(15) JUDGMENT OF AN APPELLATE COURT	COURTS	NO	
	(16) A PARDON, REPRIEVE, COMMUTATION OF SENTENCE OR OTHER CHANGE IN SENTENCE LENGTH, INCLUDING A CHANGE ORDERED BY A COURT	COURTS GOVERNOR	NO NO	
	(17) REVOCATION OF PROBATION OR CHANGE IN PAROLE STATUS	OBSCIS-CORRECTIONS	NO	
	(18) ANY OTHER EVENT ARISING OUT OF OR OCCURRING DURING THE COURSE OF CRIMINAL JUSTICE PROCEEDINGS DECLARED TO BE REPORTABLE BY REGULATIONS ISSUED BY THE DPS COMMISSIONER	APSN, OBSCIS PROMIS, HASS	N/A, CURRENTLY	

# FISCAL NOTE

No. 1  
 Bill Version: SB 276  
 (S) Publish Date: 2-4-94

**STATE OF ALASKA  
 1994 LEGISLATIVE SESSION**

Revision Date: 1/28/94 Dept. Affected: Corrections  
 Title: Criminal Justice Information System BRU: All  
 Sponsor: \_\_\_\_\_ Component: Commissioner, Corrections  
 Requester: Governor Academy, Institutions, D&W Processing  
 COMPONENT SERIAL NO. 694, 703, 698, 708-72

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	120,674	124,294	128,023	131,864	135,820	139,894
TRAVEL	21,200	21,200	21,200	21,200	21,200	21,200
CONTRACTUAL	40,000	0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>181,874</b>	<b>145,494</b>	<b>149,223</b>	<b>153,064</b>	<b>157,020</b>	<b>161,094</b>
<b>CAPITAL EXPENDITURES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004-GF	181,874	145,494	149,223	153,064	157,020	161,094
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>181,874</b>	<b>145,494</b>	<b>149,223</b>	<b>153,064</b>	<b>157,020</b>	<b>161,094</b>

Estimate of any current year (FY94) cont. \$ \_\_\_\_\_

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant Phone: 786-2147/465-4643  
 Division: Corrections Date: 1/28/94  
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 1/29/94  
 Agency: Corrections

The bill establishes a Criminal Justice Information Advisory Board, one member of which will be the Commissioner of Corrections (or designee.) The Board will advise the Commissioner of Public Safety regarding criminal justice information issues. The Commissioner of Public Safety will adopt regulations concerning the collection, reporting, and analysis of criminal justice information. It is difficult to predict the fiscal impact of this bill since it is not currently known what requirements may be imposed through future regulations. The bill mandates fingerprinting in all criminal cases, "in the manner and on forms approved by the department" [of Public Safety.] The bill requires that criminal justice information be accurate and complete, and sets up auditing requirements. The bill also clarifies which criminal justice information can be released, to whom, and by whom, and authorizes agencies to collect fees, through regulations, for processing records requests.

#### Assumptions

1. It is assumed that the Board will meet at least twice per year, and that the Commissioner or designee will be required to travel to Juneau on two occasions. Travel and per diem is estimated at approximately \$600 per trip at current rates.
2. It is assumed that this department will not be required to perform any additional data management, research, data entry, booking procedures, or other information reporting services than are currently being performed, unless specifically informed of the new requirements during the budget process of the year preceding the effective date of the new requirement, in order to be able to request the necessary resources/ funds. It is further assumed that if, at the end of the legislative session, funds were not appropriated to perform the anticipated new requirements, that the Department of Public Safety will not require the new/additional tasks of the Department of Corrections. Therefore, no fiscal impact is estimated for the implementation of any new tasks beyond those explicitly required in the bill.
3. It is assumed that the Department of Public Safety will not require the Department of Corrections to fingerprint criminal cases in any different manner or on any different forms than currently used. (The Department currently fingerprints all felons and misdemeanants upon booking into a state correctional facility.) If this assumption is incorrect, the fiscal note will be amended to reflect any training, machinery, forms, or other staff resources needed to meet the new requirements. It is assumed that the efforts currently made by the Department of Corrections to obtain more legible sets of fingerprints, when notified of an unsatisfactory identification, are considered "reasonable" and that no additional staff resources will be needed to comply with this requirement.

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4. It is assumed that the department's current criminal justice information is not accurate, nor is it complete. It is further assumed that our procedures to protect information are inadequate, that our ability to screen, supervise, and discipline agency personnel in order to avoid security violations is inadequate, that our training resources for employees working with criminal justice information are grossly inadequate, and that we do not have adequate resources to keep records required for audit purposes in this bill. The department has an auditor position which can be assigned to set up a system for auditing. Additional resources will be necessary to bring the department into compliance with this requirement of the bill.

5. It is assumed that additional training will be necessary for all institutional and probation/parole staff, as well as for central records staff, concerning the new rules as to what information can be given to the public and to other criminal justice agencies. It is assumed that the majority of requests for information involving the Department of Corrections will not be likely to be subject to fee collection, since most involve brief questions and answers directed to institutions by phone, around the clock each day and night. Although a review will be done to determine if there are any requests which can be used to generate revenue, at this point no fees are anticipated.

6. The bill will require significant rewriting of regulations and policies governing department operating procedures. Revisions to address information dissemination will be a major need, as will revisions to clarify instructions during the booking process to improve accuracy and completeness of information. The department will contract for these one-time revisions, and anticipates a full-year contract to accomplish the changes.

Operating Expenses

1. Travel:

Two trips per year at \$600 = \$1200 for the Office of the Commissioner. In order to train institutional booking personnel in data entry procedures, to insure accuracy and completeness of criminal justice information, a trainer and the auditor will have to travel to each institution and field probation office at least once per year. Each visit will require a minimum of two days to reach all shift rotations. It is roughly estimated that two individuals traveling to 15 sites will cost \$20,000 in airfare and per diem. This travel is assigned to the Office of the Commissioner, where the Training Academy and auditor positions are located. Total travel expenses for the Office of the Commissioner would be \$21,200 in FY95 and each subsequent year. This does not include an inflation factor.

2. Personal Services:

A new position will be required to provide training on new policies and procedures to improve the accuracy and completeness of criminal justice information, and to help institute a plan to improve security of the system. This individual would travel to all institutions and field offices at least once per year to provide intensive training to data entry staff on all shifts in all locations across the state. This individual would be responsible for training on-site personnel to become trainers, and to coordinate statewide training on criminal justice information issues among all sites. The individual would need to be familiar with booking procedures as well as data entry and data management systems, and would have to be skilled in training, including training on-site trainers for follow-up. This will require an Analyst Programmer IV located in Anchorage area. Total position cost in FY95 would be \$63,842. (See attached Position Information Sheet.)

Training line staff in institutions requires overtime coverage for the positions assigned to attend training. To train eight staff per institution for two days requires 128 hours of overtime pay, at approximately \$37 per hour, at each of 12 institutions.

128 hours X \$37 per hour X 12 institutions = \$56,832 in personal services expenses in FY95.

**TOTAL: \$63,842 + \$56,832 = \$120,674 personal services expense in FY95.**

A 3% inflation factor has been used to calculate personal services increases in succeeding years.

3. Contractual:

Contract funds will be necessary to revise and update policies, procedures, and regulations, and to disseminate them in coordination with the field training referenced above. Much of the FY95 contract year will be spent developing clear instructions regarding information dissemination according to the new guidelines. A full-year contract to coordinate policy development related to criminal justice information is estimated at \$40,000, assigned to the Office of the Commissioner, where Policy and Procedure functions rest.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

No. 4

Bill Version: SB 276

(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to criminal justice information: providing procedural requirements for..." BRU: STATEWIDE  
 Sponsor: Rules Component: Records and Identification  
 Requestor: Governor COMPONENT SERIAL NO. 1190

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE FUND SOURCE:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)  
See Attached

Prepared By: Ken Bischoff Phone: 465-4336  
 Division: Administrative Services Date: 01/05/94  
 Approved by Commissioner: Richard L. Burton Date: 01/06/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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The Department of Public Safety submits a zero fiscal note with the following comments:

1. The legislation establishes a statutory framework that should permit a better allocation of existing resources. To a significant degree, this legislation formalizes the procedures that exist currently. To this extent, the bill should help improve the efficiency of criminal record processing. Efficiency improvements cannot reliably be quantified but would assist the department and contributing agencies in reducing criminal record backlogs;
2. Mandatory provisions have been minimized, sections generally do not take effect until regulations are adopted.
3. To the extent this legislation may increase public access, provision for the adoption of fees to provide services has been made. The Department currently charges fees for a number of services that will continue to be provided, we do not see an immediate need to increase fees. If such a need arises, regulations would be developed subject to public notice prior to adoption.
4. This bill will provide a framework to guide discussion on how to improve the collection of fingerprints and related criminal history record information. That discussion will include all agencies represented by the Criminal Justice Working Group. To implement the full scope of this legislation will require a series of discussions in order to reach implementation agreement. This will take time to negotiate. Accordingly, no immediate fiscal impact is anticipated.

DPS's primary goal is to provide a framework necessary to maintain an accurate and complete and timely criminal history file. DPS depends on all criminal justice agencies to contribute to the database. This bill provides such a framework.

DPS cannot autonomously implement this legislation across the board. DPS will use the Criminal Justice Work Group and its subcommittees as a forum to confirm the need for specific data in the criminal history record and proceed only after concurrence is obtained.

#### Summary

This legislation is required to establish this State's statutory framework for criminal history record information, something which exists in virtually every other state. Criminal history records consist of timely, accurate, and complete files used to make decisions related to investigations, release, sentencing and employment. Defendants are not going to volunteer their previous criminal history. If accurate and complete criminal records are not available on line, criminal justice agencies have no choice but to make ongoing decisions without reliable criminal history record information. This will result in lighter sentencing, improper employment decisions, and less efficient police investigations.

The Criminal Justice Work Group has endorsed the need for this type of legislation and has submitted a written recommendation to the Governor's Office.

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE JUDICIARY COMMITTEE

TC: SB 276

Page 2, line 5:

Delete "and"

Page 2, line 7, following "board":

Insert "; and

(9) the executive director of the Alaska Judicial Council or the  
executive director's designee"

Page 3, line 8:

Delete "shall"

Insert "may"

Page 3, line 30:

Delete "five"

Insert "one"

Delete "days"

Insert "day"

Page 9, line 23, following "records":

Insert ", and maintains for at least three years,"

Page 9, line 24:

Delete "and"

Page 9, line 25, following "information":

Insert ", and the statutory authority that permits the release"



**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

*jud*

DATE: 2/4/94

FURTHER: Finance

Date of 5-Day Notice: 2-10-94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/15/94

Judiciary Committee considered SB 276

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

and recommends: *attach an amendment & report it to a floor*

replace with \_\_\_\_\_ CS \_\_\_\_\_

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

*3 & 11*

**FISCAL NOTE INFORMATION**

Department	Date	Zero	Fiscal
Public Safety	2/7/94	✓	
LAW	2/7/94	✓	
HSS	2/2/94	✓	
Corrections	1/29/94		181,874

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

**DO PASS:**

**OTHER RECOMMENDATIONS:**

*Arthur T. Taylor*

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*Christa A. Ko* NO MR

*Suzanne Little* NO MR

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*John D. [Signature]*  
Chair: Signature and Recommendation