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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM

March 25, 1999

SUBJECT: CSSB 96(JUD) - Criminal History Records and Child, Foster, and Vulnerable Adult Care Licensing (Work Order No. 21-LS0448\D)

TO: Senator Robin Taylor
Attn: Sue

FROM: Gerald P. Luckhaupt *JPL*
Legislative Counsel

Enclosed is the draft CS(JUD) you requested. The draft adds a new bill section that amends AS 12.62.900(23) by removing the inchoate forms (attempt, solicitation, and conspiracy to commit) of AS 11.61.110(a)(7)¹ from the definition of "serious offense."

My work on this bill and the CS(JUD) has exposed a very serious problem in AS 47.35. At least five sections within AS 47.35 relate to criminal history records, criminal history record checks, or disqualification from licensing due to certain criminal convictions or arrests.²

¹AS 11.61.110(a)(7) provides:

(a) A person commits the crime of disorderly conduct if,

...

(7) the offender intentionally exposes the offender's buttock or anus to another with reckless disregard for the offensive or insulting effect the act may have on that person.

²See AS 47.35.017(b)(5) and (6); 47.35.022(a) and (b); 47.35.023(b); 47.35.047(b); and 47.35.130(a). AS 47.35.017(b)(5) and (6) provide:

(b) An application submitted under this section must contain at least the following information:

...

(5) a release for the administrator or foster parent and for each other person who is 16 years of age or older, as specified by the department by regulation, who will have contact with individuals served by the facility or agency, authorizing the department to review all federal, state, and municipal criminal

(continued...)

²(...continued)

justice information, whether of this state, of a municipality of this state, or of another jurisdiction, medical records, licensing records, and protective services records, identified in regulations adopted under this chapter, that are relevant to the person who is the subject of the release and to the type of license for which the application has been submitted;

(6) two sets of fingerprints and the social security number of each person required to provide a release under (5) of this subsection in order for the department to submit the fingerprints to the Department of Public Safety for the purpose of conducting state and national criminal background checks from criminal justice information received under AS 12.62 and regulations adopted under AS 12.62; the department may not approve an application under this section until the results of the criminal background check have been submitted to the department;

AS 47.35.022(a) and (b) provide:

(a) Except as provided in (b) of this section, the department may not place or continue placement of a child for care for payment under AS 47.10 in a foster home that is licensed under this chapter if the department finds that a person for whom fingerprints are required to be submitted for licensure of the foster home is currently under arrest for, charged with, or has been convicted of, or found not guilty by reason of insanity of, a serious offense.

(b) Notwithstanding (a) of this section, the department may place or continue a placement for foster care if the applicant or licensee demonstrates to the satisfaction of the department that the applicant, licensee, or other person committed the conduct described in (a) of this section at least five years before the placement, and the conduct

(1) did not involve a victim who was under 18 years of age at the time the conduct occurred;

(2) was not a crime of domestic violence as defined in AS 18.66.990; and

(3) was not a violent crime under AS 11.41.100 - 11.41.455 or a law or an ordinance of another jurisdiction having similar elements.

AS 47.35.023(b) provides:

(b) Notwithstanding (a) of this section, if an emergency exists and a child must be immediately placed, the department or the department's designee may issue a provisional foster home license on an emergency basis for a period of 90 days or less if the department or the department's designee determines that the applicant meets minimal requirements for emergency conditions and the applicant agrees in writing to provide the fingerprint information described in AS 47.35.017(b) within 30 days of the placement of a child in the foster home. The department may extend a provisional foster home license issued under this subsection for one or two additional periods

(continued...)

^{2/}(...continued)

of up to 90 days each in order to obtain the information from the national criminal background check required under AS 47.35.017(b)(6). The department may not issue a license under this subsection before checking state and national criminal justice information available to the department under AS 12.62 and regulations adopted under AS 12.62 about the administrator or foster parent and each person who is 16 years of age or older in the foster home who will have contact with the child. If the department cannot obtain direct access to the state and federal criminal justice information, the department shall request the agency having primary law enforcement responsibility for the geographic area in which the prospective foster home is located to obtain the information and provide it to the department before the license is issued under this section. If the criminal justice information readily available to the department shows an offense which a person would be required to notify the department under AS 47.35.047(b), the department may not issue the license under this subsection. If the additional criminal justice information available from the fingerprint search or another source after the license is issued reveals that the person has a record for one or more of these offenses, the department shall immediately revoke the license and move the child to an appropriate placement. For purposes of obtaining criminal justice information under this subsection, the department is a criminal justice agency conducting a criminal justice activity under AS 12.62.

AS 47.35.047(b) provides:

(b) A licensee shall notify the department within 24 hours after having knowledge of a conviction or indictment, presentment, or charging by information or complaint of an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person for a violation of the following laws or the laws of another jurisdiction with similar elements:

- (1) offenses against the family and vulnerable adults under AS 11.51;
- (2) perjury under AS 11.56.200;
- (3) offenses included in the definition of "serious offense" under AS 12.62.900.

AS 47.35.130(a)(2) and (3) provide:

(a) In addition to the ground of violation of this chapter or a regulation adopted under this chapter, the department may revoke, or decline to renew, a license issued under this chapter on one or more of the following grounds:

- ...
- (2) the indictment or charging by information or complaint, or a criminal conviction within the last 10 years, of the licensee or administrator, foster parent, member of the licensee's household, regular

(continued...)

Senator Robin Taylor

March 25, 1999

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Despite the obvious interrelation of these statutes that deal with licensing of foster homes, child care facilities, residential child care facilities, semi-secure residential child-care facilities, secure residential psychiatric treatment centers, child placement agencies, and maternity homes, placements of children in or with these facilities, homes, or agencies, and the safeguarding of the children placed by checking the criminal histories of the workers and others in these facilities, homes, or agencies, these statutes are inconsistent with regard to the crimes that disqualify a person from being licensed to provide these services to children or that allow a child to be placed with a person with certain convictions. While AS 47.35.017(b)(6) requires fingerprint cards from applicants to provide these child care services "for the purpose of conducting state and national criminal background checks from criminal justice information received under AS 12.62 and regulations adopted under AS 12.62", neither it nor any other provision of AS 47.35 actually identifies the crimes that disqualify a person from receiving a license. AS 47.35.023(b) allows the issuance of a provisional license in emergencies but provides

[t]he department may not issue a license under this subsection before checking state and national criminal justice information available to the department under AS 12.62 and regulations adopted under AS 12.62 about the administrator or foster parent and each person who is 16 years of age or older in the foster home who will have contact with the child.

This section further provides that

[i]f the criminal justice information readily available to the department shows an offense which a person would be required to notify the department under AS 47.35.047(b), the department may not issue the license under this subsection. If the additional criminal justice information available from the fingerprint search or another source after the license is issued reveals that the person has a record for one or more of these offenses, the department shall

²(...continued)

volunteer, or staff person for

(A) a felony;

(B) a misdemeanor crime of assault, reckless endangerment, contributing to the delinquency of a minor, or misconduct involving a controlled substance; or

(C) the crime of perjury, as defined in AS 11 or the laws of another jurisdiction;

(3) the conviction, indictment, presentment, or charging of the licensee or an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person at any time for a sex crime as defined in AS 12.62.035;

....

immediately revoke the license and move the child to an appropriate placement.

Two conflicts between this statute and the other provisions of AS 47.35 are immediately apparent. First, while this statute prohibits the issuance of, and requires revocation of, a provisional license if a person has a record for a reportable offense under AS 47.35.047(b), AS 47.35.130 does not mandate the revocation of a license for these same offenses. Revocation is not required nor is it even available for some offenses that disqualify a person from initially receiving a license or that require revocation of a provisional license. Second, AS 47.35.023(b) requires the removal of the child if a provisional licensee is found to have a record for a reportable offense under AS 47.34.047(b). AS 47.35.022(a) which also deals with foster care placement requires the removal of the child for a more limited range of offenses than are reportable under AS 47.35.047(b) (which mandate removal under AS 47.35.023(b)) and AS 47.35.022(b) allows the department to waive the removal requirement of AS 47.35.022(a). This section, of course, conflicts with the removal requirement of AS 47.35.023(b) which does not provide for waivers.

All of these sections identify different offenses and different conduct as being significant. For example, under AS 47.35.047(b) all licensees are required to self-report a conviction or indictment, presentment, or charging by information or complaint of an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person for a violation of the following laws or the laws of another jurisdiction with similar elements:

- (1) offenses against the family and vulnerable adults under AS 11.51;
- (2) perjury under AS 11.56.200;
- (3) offenses included in the definition of "serious offense" under AS 12.62.900.

But, AS 47.35.130(a)(2) and (3) only allow revocation of (or a decision to decline to renew) of a license for

- (2) the indictment or charging by information or complaint, or a criminal conviction within the last 10 years, of the licensee or administrator, foster parent, member of the licensee's household, regular volunteer, or staff person for
 - (A) a felony;
 - (B) a misdemeanor crime of assault, reckless endangerment, contributing to the delinquency of a minor, or misconduct involving a controlled substance; or
 - (C) the crime of perjury, as defined in AS 11 or the laws of another jurisdiction;
- (3) the conviction, indictment, presentment, or charging of the licensee or an administrator, foster parent, member of the licensee's household, regular volunteer, or staff person at any time for a sex crime as defined in AS 12.62.035. . .

Senator Robin Taylor

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And compare those sections with AS 47.35.022(a) and (b) which requires the removal of a child from a foster home when a person in the home has the criminal history identified in (a) but also allows the department to leave the child in the home if the person with the criminal history shows the criminal history is mitigated by the factors provided in (b):

(a) Except as provided in (b) of this section, the department may not place or continue placement of a child for care for payment under AS 47.10 in a foster home that is licensed under this chapter if the department finds that a person for whom fingerprints are required to be submitted for licensure of the foster home is currently under arrest for, charged with, or has been convicted of, or found not guilty by reason of insanity of, a serious offense.

(b) Notwithstanding (a) of this section, the department may place or continue a placement for foster care if the applicant or licensee demonstrates to the satisfaction of the department that the applicant, licensee, or other person committed the conduct described in (a) of this section at least five years before the placement, and the conduct

(1) did not involve a victim who was under 18 years of age at the time the conduct occurred;

(2) was not a crime of domestic violence as defined in AS 18.66.990; and

(3) was not a violent crime under AS 11.41.100 - 11.41.455 or a law or an ordinance of another jurisdiction having similar elements.

These are only some of the more serious conflicts in the chapter. It is my opinion that these conflicts may seriously impair the ability of the Department of Health and Social Services to license, and revoke the licenses of, child care providers and to protect children. I am not able at this time to provide you with a draft CS that would resolve these very serious problems, since any attempt to resolve the problems will necessarily require policy choices by the legislature.

GPL:glc
99-128.glc

Enclosure

I-LS0448\D
Luckhaupt
3/25/99

CS FOR SENATE BILL NO. 96(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal history records, to the definition of "serious offense"
2 in statutes, and to revocation of or failure to renew certain licenses based on
3 criminal conduct or alleged criminal conduct; and providing for an effective date."

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

5 * Section 1. AS 12.62.900(23) is amended to read:

6 (23) "serious offense" means a conviction for a violation of of
7 AS 11.61.110(a)(7) or of the laws of another jurisdiction with substantially similar
8 elements or for a violation or an attempt, solicitation, or conspiracy to commit a
9 violation of any of the following laws [,] or of the laws of another jurisdiction with
10 substantially similar elements:

- 11 (A) a felony offense;
- 12 (B) a crime involving domestic violence;
- 13 (C) AS 11.41.410 - 11.41.470;
- 14 (D) AS 11.51.130;

1 (E) [AS 11.61.110(a)(7) OR 11.61.125;

2 (F)] AS 11.66.100 - 11.66.130; [OR]

3 (F) [(G)] former AS 11.15.120, former 11.15.134, or assault
4 with the intent to commit rape under former AS 11.15.160; or

5 (G) [(H)] former AS 11.40.080, 11.40.110, 11.40.130, or
6 11.40.200 - 11.40.420, if committed before January 1, 1980;

7 * Sec. 2. AS 47.05.017(a) is amended to read:

8 (a) State money may not be used for a home care provider unless criminal
9 justice information [RECORDS] under AS 12.62.160 is [AS 12.62.035(a) ARE]
10 requested for the provider within 10 business days after the provider is hired to provide
11 the care and is [ARE] reviewed by the department within five business days after the
12 criminal justice information is [THEY ARE] received. The department shall require
13 the grantee or contractor to request [DO] the criminal justice information
14 [RECORDS REQUEST] and, the department shall review the information
15 [REQUIRED] under this subsection for a home care provider employed by a person
16 who has a grant or contract from the department to provide home care services.

17 * Sec. 3. AS 47.14.100(h) is amended to read:

18 (h) The department may not pay for respite care, as defined in (d) of this
19 section, unless the department or the entity that has contracted with the department to
20 provide the respite care requests criminal justice information [RECORDS] under
21 AS 12.62.160 [AS 12.62.035(a)] for the individual who provides the respite care within
22 10 business days after the individual is hired to provide respite care and, the
23 department reviews the criminal justice information [RECORDS] within five
24 business days after receiving the criminal justice information [THEM].

25 * Sec. 4. AS 47.35.130(a) is amended to read:

26 (a) In addition to the ground of violation of this chapter or a regulation
27 adopted under this chapter, the department may revoke, or decline to renew, a license
28 issued under this chapter on one or more of the following grounds:

29 (1) failure to submit a timely and complete renewal application;

30 (2) the indictment or charging by information or complaint, or a
31 criminal conviction within the last 10 years, of the licensee or administrator, foster

1 parent, member of the licensee's household, regular volunteer, or staff person for

2 (A) a felony;

3 (B) a misdemeanor crime of assault, reckless endangerment,
4 contributing to the delinquency of a minor, or misconduct involving a
5 controlled substance; or

6 (C) the crime of perjury, as defined in AS 11 or the laws of
7 another jurisdiction;

8 (3) the conviction, indictment, presentment, or charging of the licensee
9 or an administrator, foster parent, member of the licensee's household, regular
10 volunteer, or staff person at any time for a serious offense; "serious offense" in this
11 paragraph has the meaning given in AS 12.62.900 [SEX CRIME AS DEFINED IN
12 AS 12.62.035];

13 (4) obtaining or attempting to obtain or retain a license under this
14 chapter by fraudulent means, misrepresentation, or by submitting false information;

15 (5) failure to correct a violation noted in a report of investigation
16 provided under AS 47.35.105(c) or 47.35.110(b);

17 (6) failure to comply with a final administrative order issued by the
18 department under AS 47.35.120.

19 * Sec. 5. AS 47.65.050(b) is amended to read:

20 (b) The commission may not make payments to a sponsor whose program
21 includes family respite care services or home care services unless the sponsor has
22 agreed to request criminal justice information [RECORDS] under AS 12.62.160
23 [AS 12.62.035(a)] for the individual who will provide the services within 10 business
24 days after the individual is hired to provide the services and, the commission reviews
25 [REVIEW] the criminal justice information [RECORDS] within five business days
26 after receiving the criminal justice information [THEM].

27 * Sec. 6. AS 47.65.100(e) is amended to read:

28 (e) The commission may not award a grant under this section for family
29 respite care services or for adult day care services that include home care services
30 unless the grantee has agreed to request criminal justice information [RECORDS]
31 under AS 12.62.160 [AS 12.62.035(a)] for the individual who will provide the services

- 1 within 10 business days after the individual is hired to provide the services and, the
2 commission reviews [REVIEW] the criminal justice information [RECORDS] within
3 five business days after receiving the criminal justice information [THEM].
4 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date: _____
 Title: Relating to access to criminal history records....

 Sponsor: Senate Judiciary
 Requestor: (S) JUD

Department Affected: Administration
 BRU: Division of Senior Services
 Component: Senior Services Grants

 COMPONENT SERIAL NO. 2354

Expenditures/Revenues: (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	135.0	135.0	135.0	135.0	135.0	135.0
MISCELLANEOUS						
TOTAL OPERATING	135.0	135.0	135.0	135.0	135.0	135.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	135.0	135.0	135.0	135.0	135.0	135.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	135.0	135.0	135.0	135.0	135.0	135.0

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill requires that criminal justice information be collected and reviewed by the Alaska Commission on Aging for all individuals (salaried and volunteers) providing respite, home care and adult day services through non-profit agencies receiving grant funding from the Alaska Commission on Aging.

Costs to grantee agency/job applicants: \$135,036 (@\$99/job applicant) for fees to be paid to Dept. Public Safety to secure necessary criminal justice information for 1,364 job applicants/year. Cost breakout: \$20 - 2 sets fingerprints; \$20 initial state background check; \$59 detailed state and FBI/national check. (Most jobs in senior citizens' respite, adult day and chore services, as well as drivers, pay an average of \$8/hour, making this an expensive cost of application if born by the applicant. Depending on grantee agency policy, the agency may carry this cost or share it with the applicant.

Prepared by: Jane Demmert, Executive Director, AK Commission on Aging
 Division: Senior Services

Phone: 465-1879
 Date: _____

Approved by Commissioner: Robert Poe Jr. 
 Agency: Department of Administration

Date: 3/26/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date _____ Dept. Affected Alaska Court System
 Title Access to Criminal History Records BRU Alaska Court System
 Component Trial Courts
 Sponsor Senate Judiciary
 Requester Senate Judiciary Component Serial No. 789

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8285
 Agency: Alaska Court System Date/Time: 3/12/99 1:44 PM
 Approved by: Stephanie J. Cole, Administrative Director Date: 3/12/99
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date/Time (Note if correction): _____
Title: Access to Criminal History Records.

Dept. Affected: Health and Social Services
BRU: Family & Youth Services Management
Component: Family & Youth Services Management
COMPONENT SERIAL NO. 2306
See also (SN#): _____

Sponsor: Senate (JUD)
Requestor: Senate (JUD)

Expenditures/Revenues: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department if enacted.

3/12/99

Prepared by: Theresa Tanouy
Division: Family & Youth Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date/Time: 3/12/99 8.02 AM
Date: 3/12/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 96

Revision Date: _____
Title: "An Act relating to access to criminal history records..."

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

Sponsor: (S) Judiciary
Requestor: (S) JUD

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Date: 3/12/99

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Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



Senator Robin L. Taylor

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SPONSOR STATEMENT

SB 96

Access to criminal history records for revocation of certain licenses based on criminal conduct or alleged criminal conduct

The Legislature passed legislation in 1994 allowing access to criminal records of persons engaged as care givers of children and the elderly to protect them from predation from known offenders. That legislation made reference to certain statutes that were repealed in a subsequent bill the same year.

This problem was brought to the attention of the Legislature by the Department of Law. This legislation originally started out as a revisor's bill but the Senate Judiciary Committee determined that it contained substantive changes in the law and would better be dealt with in a regular bill.

SB 96 makes the changes necessary to conform with federal government requirements for access to federal crime records and provides continuity in our statutes. Requests for criminal information will be made under AS 12.62.160 and the regulatory agency will review the information. Additionally, the list of offenses has been expanded to refer to "serious offenses" as defined in AS 12.62.900.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

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Juneau, Alaska 99801-2105

MEMORANDUM

February 26, 1999

SUBJECT: Criminal History Record Information (Work Order No. 21-LS0488VA)

TO: Senator Robin Taylor
Attn: Mel Krogseng

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed please find the bill you requested to replace SB 41, the bill with corrective amendments to the Alaska Statutes, requested by the Revisor of Statutes. After talking with Diane Schenker of the Department of Public Safety, I drafted the bill to have the requests for the information to be made under AS 12.62.160 and to have the regulatory department (or commission as the case may be) review the information. According to Diane the federal government currently accepts record requests under AS 12.62.160 as adequate to access national databases. I also amended the list of offenses in bill section 3 to instead refer to "serious offenses" which are defined in AS 12.62.900 and which seems to reflect recent legislative intent regarding what offenses are "serious" vis-a-vis caregivers of children or the elderly.

I have also included: (1) copies of federal guidelines on criminal history information that I received from Ms. Schenker; (2) a copy of the letter that DPS sent out to licensing and regulatory agencies that request criminal record information; (3) and federal regulations and statutes on this subject.

GPL:pl
99-030.plm

Enclosure

**ALASKA STATUTE 12.62
CRIMINAL JUSTICE INFORMATION SYSTEMS
SECURITY AND PRIVACY**

**"Interested Person" Criminal History Record Information AS 12.62.160(8),
AS 12.62.160(9) and AS 12.62.160(10); 13 AAC 68.315(b)**

INTERESTED PERSON: A person as defined in AS 01.10.06C that employs, appoints, or permits a person to serve with or without compensation in a position in which the employed, appointed, or permitted person has or would have supervisory or disciplinary power over a minor or dependent adult.

- **Current Offender Information**

Defined- Information showing that an identifiable person:

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

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

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

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

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

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

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

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

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

- **Past Conviction Information for which the subject is required to register as a sex offender under AS 12.63.010**

Defined- Conviction for a crime or attempt to commit a crime under:

AS 11.41.410-Sexual Assault in the First Degree

AS 11.41.420-Sexual Assault in the Second Degree

AS 11.41.425-Sexual Assault in the Third Degree

AS 11.41.434-Sexual Abuse of a Minor in the First Degree

AS 11.41.436-Sexual Abuse of a Minor in the Second Degree

AS 11.41.438-Sexual Abuse of a Minor in the Third Degree

AS 11.41.450-Incest

AS 11.41.455-Unlawful Exploitation of a Minor

AS 11.61.125- Distribution of Child Pornography

AS 11.66.110 Promoting Prostitution in the First Degree

and

Former Statutes 11.15.120, 11.15.134, 11.40.110, 11.40.200 or similar laws in another jurisdiction

- **Past Conviction Information if less than 10 years has elapsed from the date of unconditional discharge from the date of the request**

Defined- information showing that an identifiable person who has been unconditionally discharged has previously been convicted of a crime, including
(A) the terms of any sentence, probation, suspended imposition of sentence, or discretionary or mandatory parole; and
(B) information that a criminal conviction or sentence has been reversed, vacated, set aside, or been the subject of executive clemency.

- Past Conviction Information for a serious offense defined in AS 12.62.900, regardless of the date of unconditional discharge
Defined- A conviction for a felony offense, a crime involving domestic violence, or a violation or attempted violation of any of the following laws, or of the laws of another jurisdiction with substantially similar elements:
AS 11.41.410-Sexual Assault in the First Degree
AS 11.41.420-Sexual Assault in the Second Degree
AS 11.41.425-Sexual Assault in the Third Degree
AS 11.41.434-Sexual Abuse of a Minor in the First Degree
AS 11.41.436-Sexual Abuse of a Minor in the Second Degree
AS 11.41.438-Sexual Abuse of a Minor in the Third Degree
AS 11.41.440-Sexual Abuse of a Minor in the Fourth Degree
AS 11.41.450-Incest
AS 11.41.455-Unlawful Exploitation of a Minor
AS 11.41.460-Indecent Exposure
AS 11.51.130(a)(1)-Contributing to the delinquency of a minor, if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed from general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590.
AS 11.51.130(1)(3)-Contributing to the delinquency of a minor, if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed from general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child under 16 years of age to be repeatedly absent from school without just cause.
AS 11.61.110(a)(7)-Disorderly Conduct, exposure of the buttocks
AS 11.66.100-Prostitution
AS 11.66.110-Promoting Prostitution in the First Degree
AS 11.66.120-Promoting Prostitution in the Second Degree
AS 11.66.130-Promoting Prostitution in the Third Degree
and
Former AS 11.40.080, 11.40.110, 11.40.130, and 11.40.200-11.40.420, if convicted prior to 1-01-80



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

February 8, 1996

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN
OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

At its meeting on 12/6-7/95, the Criminal Justice Information Services (CJIS) Advisory Policy Board endorsed a motion to have the FBI CJIS Division prepare and distribute examples of language that the states can utilize in preparing future legislation for the purpose of obtaining national criminal history record information (CHRI) on applicants for employment, licensing and other noncriminal justice purposes.

The authority for the FBI to conduct a criminal record check for a noncriminal justice licensing or employment purpose is based upon Public Law (Pub. L.) 92-544. Pursuant to Pub. L. 92-544, the FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

The Attorney General's authority to approve the statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j). The standards employed by the FBI in approving statutes under Pub. L. 92-544 have been established by a series of memoranda issued by the Office of Legal Counsel, Department of Justice. The standards are:

1. The authorization must exist as the result of legislative enactment;
2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy;
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicants/licensees.

Fingerprint card submissions to the FBI under Pub. L. 92-544 must be forwarded through the State Identification Bureau (SIB). The state must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment or licensing.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

Following are examples of specific language that the states can utilize in preparing future legislation for the purpose of obtaining national CHRI on applicants for employment, licensing and other noncriminal justice purposes:

1. In order to determine the applicants's suitability for (enter the specific category of employment, license or permit), the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the (enter the name of the SIB) to the FBI for a national criminal history record check.

2. In order to determine the applicant's suitability as a (enter the specific category of employment, license or permit), the (enter the name of the regulatory agency) shall require the applicant to furnish to the (enter the name of the regulatory agency) a full set of fingerprints to enable a criminal background investigation to be conducted. The (enter the name of the regulatory agency) shall submit the completed fingerprint card to the (enter the name of the SIB). The (enter the name of the SIB) is authorized to submit the fingerprints to the FBI for a national criminal history record check.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

3. The (enter the name of the regulatory agency) shall require a background investigation of each applicant for a (enter the specific category of employment, license or permit) by means of fingerprint checks by the (enter the name of the SIB) and the FBI.
4. In addition to other requirements established by law, the submittal of fingerprints shall be a prerequisite to the issuance of a (enter the specific category of permit) by means of fingerprint checks by the (enter the name of the SIB) and the FBI.
5. The (enter the name of the SIB) shall require each person applying for a (enter the specific category of employment or license) pursuant to this section to be fingerprinted. Such fingerprints shall be available for use by the Bureau and for transmittal to the FBI for a national criminal history record check. The information obtained from the national criminal history record check conducted pursuant to this section may be used by the (enter the name of the SIB and/or the name of regulatory agency) to determine the applicant's eligibility for employment or licensing.

TO: ALL NCIC CONTROL TERMINAL OFFICERS (CTO)

SUBJECT: EXAMPLES OF APPROVED LANGUAGE UTILIZED BY STATES IN OBTAINING LEGISLATION UNDER PUBLIC LAW 92-544

If statutes are enacted or proposed and you would like for the Access Integrity Unit (AIU), CJIS Division to review them to determine if they contain language meeting the requirements of Pub. L. 92-544, we would be glad to do so. As indicated in the foregoing examples, the statute must be specific in nature. To summarize, it must identify the category of applicants, require fingerprinting of the applicants, and authorize submission of the fingerprints to the FBI for a national criminal history record check. A governmental institution within the state must be designated as the screening point for receipt of FBI CHRI.

As a matter of information, access to FBI CHRI is subject to numerous restrictive laws and regulations. Dissemination of such information outside the receiving governmental department or related agency to private entities is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made.

If you have any additional questions concerning this matter, please do not hesitate to contact me or any member of the AIU staff at (202) 324-5050.

Sincerely yours,



Bennie F. Brewer
Chief
Programs Support Section
Criminal Justice Information
Services Division

June 20, 1998

Licensing Agency
Licensing Agency Address

Dear:

As you know, employing and licensing agencies have a need to investigate the backgrounds of individuals being considered for employment in sensitive positions, including those working with children or dependent adults and those who working with confidential personal information, such as securities brokers and insurance agents. To assist in employment and licensing decisions, agencies have implemented procedures requiring a criminal history record background check on potential employees. In some cases, the Alaska Legislature has passed laws requiring a state and national criminal history record background check as a condition of employment or licensing.

The Department of Public Safety, Records and Identification Bureau (R&I) is the Central Repository of Alaska Criminal History Record Information. Requests for criminal history background checks, for licensing or employment, must be submitted through R&I. Procedures, based on Alaska and Federal Law, have been established to respond to these requests. Requests by employing or licensing agencies for State and National criminal history information require the submission of the applicant's fingerprints, and, where appropriate, the payment of an established fee. The Department of Public Safety strives to complete these record checks efficiently and accurately.

The increased demand for these record checks has resulted in processing delays at both the State and National level. The Department of Public Safety wishes to reduce these delays in order to provide your agency with more accurate and timely criminal history record reports. To facilitate this reduction, the Records and Identification Bureau will implement the following changes in national criminal history record check response reporting:

- Currently, when R&I receives a national fingerprint-based criminal history record from the FBI, it is examined for completeness. If disposition information is missing, R&I attempts to determine the outcome of that arrest. Often, this effort is difficult, if not impossible, and results in unacceptable delays of weeks or months in reporting criminal history activity to the requesting agency.
- Effective immediately, any and all criminal history record information reported to R&I by the Federal Bureau of Investigation (FBI), as a result of a fingerprint-based national criminal history record background check, will be relayed, in its entirety, to the government employing/licensing agency. The FBI has authorized this change in procedure.
- R&I will continue its effort to resolve Alaska Criminal History Record case disposition information questions.

- If the licensing agency determines that the national criminal history record is missing disposition information, and the outcome of that particular arrest event could impact the hiring decision, the licensing agency should contact the Central Repository of the state reporting the arrest event directly. The agency may also contact R&I for information on how to obtain disposition information from the reporting state.

Two documents are enclosed to assist you in your employment/licensing decisions. The first is a list of disposition reporting contacts for each state. This list will provide you with the name and contact number to use should additional information be required pertaining to a particular arrest in another state. Please note: state dissemination laws vary and each state must comply with its own law pertaining to the release of criminal history record information for employment or licensing purposes.

The second enclosure is a recently produced publication called *Guidelines for the Screening of Persons Working with Children, the Elderly, and Individuals with Disabilities in Need of Support*. This booklet published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides valuable information related to establishing policies and procedures for screening applicants for sensitive positions. Additional copies are available through this office, or you may order them directly from OJJDP.

This change in the national criminal history record release procedure should result in more complete and timely receipt of this vital information by your agency. Please feel free to contact me at 907-269-5581, if you have any questions or comments relating to this procedural change.

Sincerely,

Kathryn M. Monfreda
Identification Bureau Chief

<Date>

<Client Name, Client number>

<Client Address>

<Contact Person>

Dear <Contact Person>:

Our records indicate that your agency wishes to obtain national criminal history record information for employment or licensing purposes. As you are aware, Federal law/regulation (Title 28 U.S.C. 534, Title 28, Code of Federal Regulations (C.F.R.) 20.33 and Pub L. 92-544) **prohibits the release of any actual data** that may be maintained by the FBI to a non-government agency.

In an effort to assist you in making appropriate employment decisions, you must identify an appropriate government certifying/licensing agency for screening purposes. Please provide this office with the following information:

If your business is certified or licensed by a government agency:

- The name of that Certifying/Licensing agency, R&I Agency Client Number, address and contact person.
- Statutory authority allowing the examination of criminal justice information by that certifying/licensing agency. (A copy of statutes approved by the U.S. Attorney General for dissemination of national criminal justice information is included on page 8.)
- Written verification that this certifying/licensing agency has accepted the responsibility of screening your applicants for employment.
- Please complete page 3 of this letter, and return it to this office within 10 working days.

If your business is *not* certified or licensed (other than your business license) by a government agency:

- Written notice that your business is *not* certified or licensed by a government agency.
- Written verification that your agency intends to request national fingerprint based criminal history background checks pursuant to AS 12.62.160(b)(8-10). This means that you/your agency qualifies as an "Interested Person". An Interested Person is defined as:
 - “A person as defined in AS 01.10.060 that employs, appoints, or permits a person to serve with or without compensation in a position in which the employed, appointed, or permitted person has or would have supervisory or disciplinary power over a minor or dependent adult.” [AS 12.62.900(17)]
- A detailed list of **specific criteria** pertaining to criminal history record information that you/your agency utilizes to disqualify employment applicants.

Although this agency cannot provide you legal assistance on what criminal history information is appropriate for disqualification, we will supply, upon request, a copy of a publication entitled "*Guidelines for the Screening of Persons Working with Children, the Elderly, and Individuals with Disabilities in Need of Support*". This booklet published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides valuable information related to establishing policies and procedures for screening applicants for sensitive positions.

- R&I will evaluate your submitted disqualification criteria based on the purpose of your request as defined by AS 12.62, *Criminal Justice Information Systems Security and Privacy Act*. The definition of Criminal Justice Information and a summary of what information is available to a requester according to AS 12.62 are enclosed. Please carefully consider this information when determining your disqualification criteria. For example, if you indicate a desire to disqualify any subject with a criminal record as defined under "Current Offender Information", you will disqualify a person with **any** arrest within the past year, including traffic crimes such as Driving While License Revoked.
- Please complete pages 4 and 5 of this letter, and return them to this office within 10 working days.
- Upon receipt and approval of your criteria for disqualification, your agency will be authorized to receive the enclosed report regarding each applicant for whom you request a fingerprint based criminal history background check. The FBI has approved this form of notification.

Please return the requested information on appropriate form (attached) as soon as possible. This information is necessary to comply with federal law/regulations. Without this information, DPS Records and Identification Bureau will be unable to forward your criminal history record requests to the FBI for a national criminal history record check.

Please contact this office (269-5579) if you have any questions regarding this matter.

Sincerely,

Kathryn M. Monfreda
Identification Bureau Chief

Enc.

To: Records and Identification Bureau
Department of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

From:

R&I Assigned Client Number: _____

_____ This agency is certified/licensed by the below listed government agency.

Government Agency Name: _____

Government Agency Address: _____

Government Agency Contact Name: _____

Phone Number: _____

Licensing Agency Client Number: _____

Statutory Authority: _____

Enclose written verification that the above listed government agency has accepted the responsibility of screening your applicants for employment.

Completed by: _____

Title: _____

Signature: _____

Date: _____

To: Records and Identification Bureau
Department of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

From:

R&I Assigned Client Number: _____

_____ This agency is not certified/licensed by a government agency.

_____ This agency qualifies, according to AS 12.62.160(b)(8-10) as an 'Interested Person' for applicant screening purposes.

An applicant for employment must meet the below listed criteria to be retained in a position with this agency. We understand that the actual data in support of this criteria may not be released to our agency: *(select all that apply)*

_____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Current Offender Information*.

_____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Past Conviction Information for which the subject is required to register as a sex offender Under AS 12.62.010*.

_____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Past Conviction Information if less than 10 years has elapsed from the date of unconditional discharge from the date of the request*.

_____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Past Conviction Information for a serious offense defined in AS 12.62.900, regardless of the date of unconditional discharge*.

_____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search: *(be specific)*

Completed by: _____

Title: _____

Signature: _____

Date: _____

confidential financial reporting requirements;

(c) Monitoring compliance by department officers and employees with applicable requirements for filing and review of financial disclosure reports;

(d) Providing for retention of reports and transmittal, where necessary, of copies of reports to the Director of the Office of Government Ethics;

(e) Establishing procedures for public access to reports filed under title II of the Ethics in Government Act of 1976;

(f) Performing such other functions as may be necessary for the effective implementation of title II of the Ethics in Government Act.

(Order No. 832-79, 44 FR 29891, May 23, 1979, as amended by Order No. 960-81, 46 FR 52347, Oct. 27, 1981)

§0.79 Redlegation of authority.

The Assistant Attorney General for Administration is authorized to redelegate to any Department official any of the power or authority vested in him by this subpart O. Existing redelegations by the Assistant Attorney General for Administration shall continue in force and effect until modified or revoked.

(Order No. 543-73, 38 FR 29585, Oct. 28, 1973. Redesignated by Order No. 565-74, 39 FR 15876, May 6, 1974, and further redesignated by Order No. 832-79, 44 FR 29891, May 23, 1979)

Subpart P—Federal Bureau of Investigation

CROSS REFERENCE: For regulations pertaining to the Federal Bureau of Investigation, see part 3 of this chapter.

§0.85 General functions.

The Director of the Federal Bureau of Investigation shall:

(a) Investigate violations of the laws, including the criminal drug laws, of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The Director's authority to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States is concurrent with

such authority of the Administrator of the Drug Enforcement Administration under §0.100 of this part. In investigating violations of such laws and in collecting evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968, section 1 of Reorganization Plan No. 2 of 1973 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as he determines is necessary. He may also release FBI information on the same terms and for the same purposes that the Administrator of the Drug Enforcement Administration may disclose DEA information under §0.103 of this part. The Director and his authorized delegates may seize, forfeit and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881, 21 CFR 1316.71 through 1316.81, and 28 CFR 9.1 through 9.7.

(b) Conduct the acquisition, collection, exchange, classification and preservation of fingerprint cards and identification records from criminal justice and other governmental agencies, including fingerprint cards voluntarily submitted by individuals for personal identification purposes; provide expert testimony in Federal, State and local courts as to fingerprint examinations; and provide fingerprint training and provide identification assistance in disasters and for other humanitarian purposes.

(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

(d) Carry out the Presidential directive of September 5, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 21, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters.

(e) Establish and conduct law enforcement training programs to provide training for State and local law enforcement personnel; operate the Federal Bureau of Investigation National Academy; develop new approaches, techniques, systems, equipment, and devices to improve and

strengthen law enforcement in conducting State and local programs, pursuant to the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 1907.

(f) Operate a center for police statistics and Crime Reporting Program, a centralized nationwide law enforcement information system, and a National Crime Information Center.

(g) Operate the Federal Bureau of Investigation Laboratory, but also to provide technical and scientific assistance, including expert testimony in local courts, for all law enforcement agencies, and organizational units of the Department of Justice, and other Federal agencies which may desire to use the services. As provided in the agreement entered into between the Secretary of State and the Attorney General, the services of the Federal Bureau of Investigation Laboratory shall be made available to law enforcement agencies and other Federal agencies as may be required.

(h) Make recommendations to the Secretary of Personnel Management under applicable laws and regulations.

(i) Investigate and report on the conduct in connection with the Urban Development Program, and violations of the criminal laws of the National Housing Act, 42 U.S.C. 1010.

(j) Exercise the power vested in the Attorney General and conduct identification records with the Federal Bureau of Investigation to promote the security of those institutions authorized by State statute by the Attorney General, State and local governments and local governments to exercise the power vested in the Attorney General under 78q(f)(2) and 7 U.S.C. 1622 and conduct exchange of information records with the securities industry and commodity Futures Trading Commission, respectively.

thority of the Administrator of Drug Enforcement Administration 0.100 of this part. In investigations of such laws and in collection of evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General as is necessary. He may ease FBI information on the same terms and for the same purposes as the Administrator of the Drug Enforcement Administration may disseminate information under § 0.103 of this part. The Director and his delegates may seize, forfeit and dispose of property to mitigate the forfeiture of such property in accordance with 21 U.S.C. 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Administrator of the Drug Enforcement Administration may disseminate information under § 0.103 of this part. The Director and his delegates may seize, forfeit and dispose of property to mitigate the forfeiture of such property in accordance with 21 U.S.C. 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

conduct the acquisition, collection, exchange, classification and preservation of fingerprint cards and identification records from criminal justice or governmental agencies, including fingerprint cards voluntarily provided by individuals for personal identification purposes; provide expert advice in Federal, State and local fingerprint examinations; provide fingerprint training and identification assistance in disbursement for other humanitarian purposes.

conduct personnel investigations in connection with the work of the Department of Justice and whenever required by law or otherwise.

carry out the Presidential directives of September 6, 1939, as reaffirmed by Executive Order of January 8, 1950, January 24, 1950, and December 15, 1950, relating to the Federal Bureau of Investigation to take charge of investigation in matters relating to espionage, sabotage, subversive activities, and related matters.

establish and conduct law enforcement training programs for State and local law enforcement personnel; operate the Federal Bureau of Investigation National Academy; develop new techniques, systems, equipment, and devices to improve and

strengthen law enforcement and assist in conducting State and local training programs, pursuant to section 404 of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 204.

(f) Operate a central clearinghouse for police statistics under the Uniform Crime Reporting Program, and a computerized nationwide index of law enforcement information under the National Crime Information Center.

(g) Operate the Federal Bureau of Investigation Laboratory to serve not only the Federal Bureau of Investigation, but also to provide, without cost, technical and scientific assistance, including expert testimony in Federal or local courts, for all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other Federal agencies, which may desire to avail themselves of the service. As provided for in procedures agreed upon between the Secretary of State and the Attorney General, the services of the Federal Bureau of Investigation Laboratory may also be made available to foreign law enforcement agencies and courts.

(h) Make recommendations to the Office of Personnel Management in connection with applications for retirement under 5 U.S.C. 8336(c).

(i) Investigate alleged fraudulent conduct in connection with operations of the Department of Housing and Urban Development and other alleged violations of the criminal provisions of the National Housing Act, including 18 U.S.C. 1010.

(j) Exercise the power and authority vested in the Attorney General to approve and conduct exchanges of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing; and exercise the power and authority vested in the Attorney General by 15 U.S.C. 78q(f)(2) and 7 U.S.C. 12a, to approve and conduct exchanges of identification records with certain segments of the securities industry and the Commodity Futures Trading Commission, respectively.

(k) Payment of awards (including those over \$10,000) under 28 U.S.C. 524(c)(2), and purchase of evidence (including the authority to pay more than \$100,000) under 28 U.S.C. 524(c)(1)(F).

(l) Exercise Lead Agency responsibility in investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. Within the United States, this would include the collection, coordination, analysis, management and dissemination of intelligence and criminal information as appropriate. If another Federal agency identifies an individual who is engaged in terrorist activities or in acts in preparation of terrorist activities, that agency is requested to promptly notify the FBI. Terrorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

(m) Carry out the Department's responsibilities under the Hate Crime Statistics Act.

(n) Exercise the authority vested in the Attorney General under section 528(a), Public Law 101-509, to accept from federal departments and agencies the services of law enforcement personnel to assist the Department of Justice in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and to coordinate the activities of such law enforcement personnel in the conduct of such investigations and prosecutions.

(o) Carry out the responsibilities conferred upon the Attorney General under the Communications Assistance for Law Enforcement Act, Title I of Pub. L. 103-414 (108 Stat. 4279), subject to the general supervision and direction of the Attorney General.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 0.85, see the List of Sections Affected in the Finding Aids section of this volume.

United States v Blackfeet Tribe of Blackfeet Indian Reservation (1973, DC Mont) 364 F Supp 192, adhered to (DC Mont) 369 F Supp 562.

FBI's investigative authority under 28 USCS § 533 and regulations (28 CFR § 0.85) extends to authorized national security investigations involving foreign influences; question whether FBI's actions in investigation were ultra vires depends on connection between subject of investigation and any potential threat to national security and on reasonable suspicions of FBI gathered from existing evidence. *Jabara v Kelley* (1979, ED Mich) 476 F Supp 561, vacated on other grounds (CA6 Mich) 691 F2d 272, cert den 464 US 863, 78 L Ed 2d 170, 104 S Ct 193 and (disagreed with *MacPherson v IRS* (CA9 Ariz) 803 F2d 479, 86-2 USTC ¶9761, 58 AFTR 2d 86-6101).

Under 28 USCS § 533, official of Federal Bureau of Investigation has affirmative prosecutorial duty to take whatever steps are necessary to bring criminal charges against suspect criminals, including timely informing prosecutorial authorities in Department of Justice that crime has allegedly been committed, and this duty is

especially applicable where FBI's informants have been involved in criminal activity. *Bergman v United States* (1983, WD Mich) 565 F Supp 1353, 37 FR Serv 2d 442, later op (WD Mich) 579 F Supp 911, later proceeding (WD Mich) 648 F Supp 351, 6 FR Serv 3d 803, later proceeding (CA6) 1988 US App LEXIS 5058.

2. Power of prosecutors

FBI is, by statute, organization of officials vested with authority necessary for detection and prosecution of crimes, while United States Attorneys are charged with duty of prosecuting crimes; and since United States Attorneys are vested with complete control over proceedings, in exercise of sound discretion, argument that United States Attorney has no control over FBI, and that he cannot compel its agents to return property illegally seized by agents of FBI for use in prosecution in another district which could not be carried through unless pending removal proceedings were successful is not well founded, such property being as important in removal hearing as it is in final prosecution. *Weinberg v United States* (1942, CA2 NY) 126 F2d 1007.

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

- (1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;
- (2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;
- (3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin); [and]
- (4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

(Sept. 6, 1966, P. L. 89-554, § 4(c), 80 Stat. 616; Oct. 12, 1982, P. L. 97-292, §§ 2, 3(a), 96 Stat. 1259.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 300 (as applicable to acquisition etc. of identification and other records).	Aug. 31, 1964, Pub. L. 88-527, § 201 (1st 105 words of 1st par. under "Federal Bureau of Investigation", as applicable to acquisition etc. of identification and other records), 78 Stat. 717.
.....	5 U.S.C. 340.	June 11, 1930, ch. 455, 46 Stat. 554.

The sections are combined and reorganized for clarity. Former section 300 of title 5 was from the Department of Justice Appropriation Act, 1965. Similar provisions were contained in each appropriation Act for the Department of Justice running back to 1921, which Acts are identified in a note under former section 300 of title 5, U.S.C. 1964 ed.

In subsection (a), the word "shall" is substituted for "has the duty" as a more direct expression. The function of acquiring, collecting, classifying, etc., referred to in former section 340 of title 5 was transferred to the Attorney General by 1950 Reorg., Plan No. 2, § 1, eff. May 24, 1950, 64 Stat. 1261, which is codified in section 509 of this title. Accordingly, the first 29 words and last 30 words of former section 340 are omitted as unnecessary.

In subsection (c), the authority to appoint officials for the cited purposes is implied.

Explanatory notes:

The bracketed word "and" has been inserted in subsec. (a)(3) of this section as the probable intention of Congress to include such matter for continuity.

Amendments:

1982. Act Oct. 12, 1982 substituted the section catchline for one which read: "Acquisition, preservation, and exchange of identification records and information; appointment of officials"; in subsec. (a), in para. (1), deleted "and" following the concluding semicolon, redesignated former para. (2) as para. (4), added paras. (2) and (3), and in para. (4), as redesignated, substituted "exchange such records and information" for "exchange these records"; and in subsec. (b), inserted "and information", and substituted "(a)(4)" for "(a)(2)".

Other provisions:

Funds for exchange of identification records. Act Oct. 25, 1972, P. L. 92-544, Title II, § 201, 86 Stat. 1115, provided: "The funds provided

Legislative Reference Library

which involves any of the sensitive circumstances specified in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, such report shall contain a detailed description of the operation and related matters, including information pertaining to—

- “(I) the results,
“(II) any civil claims, and
“(III) identification of such sensitive circumstances involved, that arose at any time during the course of such undercover operation.

“(6) For purposes of paragraph (5)—

- “(A) the term ‘closed’ refers to the earliest point in time at which—
“(i) all criminal proceedings (other than appeals) are concluded, or
“(ii) covert activities are concluded, whichever occurs later,

“(B) the term ‘employees’ means employees, as defined in section 2105 of title 5 of the United States Code, of the Federal Bureau of Investigation, and

“(C) the terms ‘undercover investigative operations’ and ‘undercover operation’ mean any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration (other than a foreign counterintelligence undercover investigative operation)—

- “(i) in which—
“(I) the gross receipts (excluding interest earned) exceed \$50,000, or
“(II) expenditures (other than expenditures for salaries of employees) exceed \$150,000, and
“(ii) which is exempt from section 3302 or 9102 of title 31 of the United States Code,

except that clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of such paragraph.”.

Provisions similar to those of this note were contained in Acts Nov. 28, 1983, P. L. 98-166, Title II, § 205(b)(4), (5), 97 Stat. 1087; Aug. 30, 1984, P. L. 98-411, Title II, § 203(b)(4), (5), 98 Stat. 1560; Dec. 13, 1985, P. L. 99-180, Title II, § 204(b)(4), (5), 99 Stat. 1148; Oct. 18, 1986, P. L. 99-500 and Oct. 30, 1986, P. L. 99-591, Title I, § 101(b), 100 Stat. 3341-52; Dec. 22, 1987, P. L. 100-202, § 101(a) [Title II, § 204(b)(4), (5)], 101 Stat. 1329-16; Nov. 21, 1989, P. L. 101-162, Title II, § 204(b)(4), (5), 103 Stat. 1004; Dec. 1, 1990, P. L. 101-650, Title III, § 325(c)(2), 104 Stat. 5121; Nov. 5, 1990, P. L. 101-515, Title II, § 202(b)(4), (5), 104 Stat. 2118; Oct. 28, 1991, P. L. 102-140, Title I, § 102(b)(4), (5), 105 Stat. 793.

Exemption authority. Act April 24, 1996, P. L. 104-132, Title VIII, Subtitle B, § 815(d), 110 Stat. 1315, provides: “Notwithstanding any other provision of law, section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (Public Law 102-395) [note to this section], shall remain in effect until specifically repealed, subject to any limitation on appropriations contained in any Department of Justice Appropriation Authorization Act.”.

CODE OF FEDERAL REGULATIONS

Add:
28 CFR Part 77.

RESEARCH GUIDE

Am Jur:
7 Am Jur 2d, Attorney General §§ 45, 46.

INTERPRETIVE NOTES AND DECISIONS

2. Power of prosecutors

Supremacy Clause renders Virginia's laws and regulations governing private security services inapplicable to contractors in Background Investigation Contract Services (BICS) Program, where Congress clearly granted broad authority to Attorney General to appoint officials to conduct background

investigations, because Virginia's law is in conflict with FBI regulations since it imposes additional requirements on individual contractors who have already been judged qualified by FBI. United States v Virginia (1997, ED Va) 972 F Supp 1008.

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a)-(c) [Unchanged]

(d) For purposes of this section, the term “other institutions” includes—

(1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and

(2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.

(e)(1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.

(2) Federal and State criminal justice agencies authorized to enter information into criminal information databases may include—

(A) arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

(B) protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

(3) As used in this subsection—

(A) the term “national crime information databases” means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

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DEPARTMENT OF JUSTICE

28 USCS § 534

(B) the term "protection order" includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(As amended Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle I, § 7333, 102 Stat. 4469; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle F, § 40601(a), 108 Stat. 1950.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988, Act Nov. 18, 1988 added subsec. (d).

1994, Act Sept. 13, 1994 added subsec. (e).

Other provisions:

Parimutuel Licensing Simplification Act of 1988, Act Aug. 22, 1988, P. L. 100-413, 102 Stat. 1101, provides:

"Section 1. Short title.

"This Act may be cited as the 'Parimutuel Licensing Simplification Act of 1988'.

"Sec. 2. Submission by association of State regulatory officials.

"(a) In general. An association of State officials regulating parimutuel wagering, designated for the purpose of this section by the Attorney General, may submit fingerprints to the Attorney General on behalf of any applicant for State license to participate in parimutuel wagering. In response to such a submission, the Attorney General may, to the extent provided by law, exchange for licensing and employment purposes, identification and criminal history records with the State governmental bodies to which such applicant has applied.

"(b) Definition. As used in this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"Sec. 3. Effective date.

"This Act [this note] shall take effect on July 1, 1989."

Uniform Federal Crime Reporting Act of 1988, Act Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle I, § 7332, 102 Stat. 4468, effective Jan. 1, 1989 as provided by subsec. (g) of this note, provides:

"(a) Short title. This section may be cited as the 'Uniform Federal Crime Reporting Act of 1988'.

"(b) Definitions. For purposes of this section, the term 'Uniform Crime Reports' means the reports authorized under section 534 of title 28, United States Code, and administered by the Federal Bureau of Investigation which compiles nationwide criminal statistics for use in law enforcement administration, operation, and management and to assess the nature and type of crime in the United States.

"(c) Establishment of system. (1) In general. The Attorney General shall acquire, collect, classify, and preserve national data on Federal criminal offenses as part of the Uniform Crime Reports.

"(2) Reporting by Federal agencies. All departments and agencies within the Federal government (including the Department of Defense) which routinely investigate complaints of criminal activity, shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General. The reporting required by this subsection shall be limited to the reporting of those crimes comprising the Uniform Crime Reports.

"(3) Distribution of data. The Attorney General shall distribute data received pursuant to paragraph (2), in the form of annual Uniform Crime Reports for the United States, to the President, Members of the Congress, State governments, and officials of localities and penal and other institutions participating in the Uniform Crime Reports program.

"(d) Role of Federal Bureau of Investigation. The Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and may appoint or establish such advisory and oversight boards as may be necessary to assist the Bureau in ensuring uniformity, quality, and maximum use of the data collected.

"(e) Inclusion of offenses involving illegal drugs. The Director of the Federal Bureau of Investigation is authorized to classify offenses involving illegal drugs and drug trafficking as a part I crime in the Uniform Crime Reports.

"(f) Authorization of appropriations. There are authorized to be appropriated \$350,000 for fiscal year 1989 and such sums as may be necessary to carry out the provisions of this section after fiscal year 1989.

"(g) Effective date. The provisions of this section shall be effective on January 1, 1989."

Data collection and reporting, Act Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle O, § 7609, 102 Stat. 4517, provides:

"(a) Family violence reporting. Under the authority of section 534 of title 28, United States Code, the Attorney General shall require, and include in uniform crime reports, data that indicate—

"(1) the age of the victim; and

"(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

"(b) National crime survey. The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

"(c) Authorization of appropriations. There are authorized to be appropriated in fiscal years 1989, 1990, 1991, and 1992, such sums as are necessary to carry out the purposes of this section."

Hate Crime Statistics Act, Act April 23, 1990, P. L. 101-275, 104 Stat. 140; Sept. 13, 1994, P. L. 103-322, Title XXXII, Subtitle I, § 320926, 108 Stat. 2131; July 3, 1996, P. L. 104-155, § 7, 110 Stat. 1394, provides:

"[Sec. 1.] (a) This Act may be cited as the 'Hate Crime Statistics Act'.

"(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault; simple assault, intimidation; arson; and destruction, damage or vandalism of property.

"(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

"(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term 'sexual orientation' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act [5 USCS §§ 551 et seq. or 28 USCS § 1651].

"(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

"(5) The Attorney General shall publish an annual summary of the data acquired under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

"Sec. 2. (a) Congress finds that—

"(1) the American family life is the foundation of American Society.

"(2) Federal policy should encourage the well-being, financial security, and health of the American family.

"(3) schools should not de-emphasize the critical value of American family life.

"(b) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality."

Fees for fingerprint identification records and name checks. Act Nov. 5, 1990, P. L. 101-515, Title II, 104 Stat. 2112; Jan. 6, 1996, P. L. 104-91, Title I, § 101(a), 110 Stat. 11; Jan. 26, 1996, P. L. 104-99, Title II, § 211, 110 Stat. 37 (enacting into law § 113 of H.R. 2076 of the 104th Congress, as passed by the House of Representatives on Dec. 6, 1995); Jan. 26, 1996, P. L. 104-99, Title II, § 211, 110 Stat. 37, provides: "For fiscal year 1991 and hereafter the Director of the Federal Bureau of Investigation may establish and collect fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes and for certain employees of private sector contractors with classified Government contracts, and notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services, and that the Director of the Federal Bureau of Investigation may establish such fees at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs".

National Crime Information Center Project 2000. Act Nov. 29, 1990, P. L. 101-647, Title VI, Subtitle B, 104 Stat. 4823, provides:

"Sec. 611. Short title.

"This section may be cited as the 'National Law Enforcement Cooperation Act of 1990'.

"Sec. 612. Findings.

"The Congress finds that—

"(1) cooperation among Federal, State and local law enforcement agencies is critical to an effective national response to the problems of violent crime and drug trafficking in the United States;

"(2) the National Crime Information Center, which links more than 16,000 Federal, State and local law enforcement agencies, is the single most important avenue of cooperation among law enforcement agencies;

"(3) major improvements to the National Crime Information Center are needed because the current system is more than twenty years old; carries much greater volumes of enforcement information; and at this time is unable to incorporate technological advances that would significantly improve its performance; and

"(4) the Federal Bureau of Investigation, working with State and local law enforcement agencies and private organizations, has developed a promising plan, 'NCIC 2000', to make the necessary upgrades to the National Crime Information Center that should meet the needs of United States law enforcement agencies into the next century.

"Sec. 613. Authorization of appropriations.

"There are authorized to be appropriated the following sums to implement the 'NCIC 2000' project:

"(1) \$17,000,000 for fiscal year 1991;

"(2) \$25,000,000 for fiscal year 1992;

"(3) \$22,000,000 for fiscal year 1993;

"(4) \$9,000,000 for fiscal year 1994; and

"(5) such sums as may be necessary for fiscal year 1995.

"Sec. 614. Report.

"By February 1 of each fiscal year for which funds for NCIC 2000 are requested, the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000."

Rulemaking to carry out subsec. (e). Act Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle F, § 40601(b), 108 Stat. 1951, provides: "The Attorney General may make rules to carry out the subsection added to section 534 of title 28, United States Code [subsec. (e) of this section], by subsection (a), after consultation with the officials charged with managing the National Crime Information Center and the Criminal Justice Information Services Advisory Policy Board."

Compilation of statistics relating to intimidation of government employees. Act April 24, 1996, P. L. 104-132, Title VIII, Subtitle A, § 808, 110 Stat. 1310, provides:

"(a) Findings. The Congress finds that—

"(1) threats of violence and acts of violence against Federal, State, and local government employees and their families are increasing as the result of attempts to stop public servants from performing their lawful duties;

"(2) these acts are a danger to the constitutional form of government of the United States; and

"(3) more information is needed relating to the extent and nature of the danger to these employees and their families so that actions can be taken to protect public servants at all levels of government in the performance of their duties.

"(b) Statistics. The Attorney General shall collect data, for the calendar year 1990 and each succeeding calendar year thereafter, relating to crimes and incidents of threats of violence and acts of violence against

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1996, P. L. 101-515, Title II, 104 Stat. 1368, P. L. 104-99, Title II, 110 Stat. 37, provides: "For the purpose of establishing and collecting information on non-law enforcement contractor contractors with classified information, credit such fees to this account, and that the Director shall include an additional amount to the automation of fingerprint

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is critical to an effective law enforcement in the United States;

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"NCIC 2000" project:

J, the Director of the Federal Bureau of Investigation, by and with the advice and consent of the Senate and House of Representatives, to complete

IV, Subtitle F, § 40601(h), the subsection added to section 46314, after consultation with the Criminal Justice Informa-

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of government employees and their families in the performance of their lawful

of the United States; and to carry out the provisions of this section.

of 1990 and each succeeding year, and acts of violence against

DEPARTMENT OF JUSTICE

28 USCS § 540

Federal, State, and local government employees and their families in the performance of their lawful duties. Such data shall include—

"(1) in the case of crimes against such employees and their families, the nature of the crime; and
"(2) in the case of incidents of threats of violence and acts of violence, including verbal and implicit threats against such employees and their families, the deterrent effect on the performance of their jobs.

"(c) Guidelines. The Attorney General shall establish guidelines for the collection of the data under subsection (b), including a definition of the sufficiency of evidence of noncriminal incidents required to be reported.

"(d) Use of data. (1) Annual publishing. The Attorney General shall publish an annual summary of the data collected under this section.

"(2) Use of data. Except with respect to the summary published under paragraph (1), data collected under this section shall be used only for research and statistical purposes.

"(e) Exemption. The Attorney General, the Secretary of State, and the United States Secret Service is not required to participate in any statistical reporting activity under this section with respect to any direct or indirect threat made against any individual for whom that official or Service is authorized to provide protection."

RESEARCH GUIDE

Federal Procedure L Ed:

8 Fed Proc L Ed, Criminal Procedure § 22:27.

15 Fed Proc L Ed, Freedom of Information § 38:103.

Am Jur:

7 Am Jur 2d, Attorney General §§ 45, 55.

Forms:

3 Am Jur Legal Forms 2d, Attorney General § 29:2.

Annotations:

Expunction of federal arrest records in absence of conviction. 97 ALR Fed 652.

Law Review Articles:

Pendo, Recognizing violence against women: gender and the Hate Crimes Statistics Act. 17 Harv Women's LJ 157, Spring, 1994.

INTERPRETIVE NOTES AND DECISIONS

V. ACTIONS

19. Expungement, generally

Former serviceman's criminal record is expunged under court's narrow power to override 28 USCS § 534(a) crime record-keeping requirements, where serviceman, convicted of making false credit union entries in order to arrange loans for dishonest friends, successfully completed 5 years' probation, because criminal acts he committed as credit union examiner were small aberration from otherwise clean background and should not prevent him from now returning to service of his country in accordance with his expressed desire to be reinstated to state bar and to rejoin Army Reserve as infantryman in Saudi Arabia. *United States v Smith* (1990, CD Cal) 745 F Supp 1553.

21. —Scope of court's inquiry

District Court did not abuse its discretion in denying

request for expungement of petitioner's criminal records without holding evidentiary hearing where petitioner did not provide court with even suggestion of existence of any facts that would show unusual or extraordinary nature of case. *Geary v United States* (1990, CA8 Mo) 901 F2d 679.

22. —Federal-state comity

Ex-felon seeking expungement of his federal conviction can get no relief in District Court, where state expungement statute cannot be construed as affecting federal records either maintained or in custody of federal officers, because state statute having such effect would conflict with express statutory duty of federal officials, under 28 USCS § 534(a)(1), "to acquire, collect, classify and preserve" criminal records. *Schwab v Gallas* (1989, ND Ohio) 724 F Supp 509.

§ 535. Investigation of crimes involving Government officers and employees; limitations

Add:
34 CFR Part 73.

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7 Am Jur 2d, Attorney General § 55.

§ 538. Investigation of aircraft piracy and related violations

The Federal Bureau of Investigation shall investigate any violation of section 46314 or chapter 465 of title 49 [49 USCS § 46314 or §§ 46501 et seq.]. (Added July 5, 1994, P. L. 103-272, § 4(e)(1), 108 Stat. 1361.)

§ 540. Investigation of felonious killings of State or local law enforcement officers

The Attorney General and the Federal Bureau of Investigation may investigate felonious killings of officials and employees of a State or political subdivision thereof while engaged in or on account of the performance of official duties relating to the prevention, detection, investigation, or prosecution of an offense against the criminal laws of a State or political subdivision, when such investigation is requested by the head of the agency employing the official or employee killed, and under such guidelines as the Attorney General or his designee may establish.

(Added Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle I, § 7331(a), 102 Stat. 4468.)

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