

ALASKA LEGISLATURE

1203

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

277

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE JUDICIARY COMMITTEE

TO: SB 276

⊕ Page 2, line 5:

Delete "and"

⊕ Page 2, line 7, following "board":

Insert "; and

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

~~Page 3, line 8:~~

~~Delete "shall"~~

~~Insert "may"~~

⊕ Page 3, line 30:

Delete "five"

Insert "one"

Delete "days"

Insert "day"

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

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

~~Page 9, line 24:~~

~~Delete "and"~~

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

9-GS2005K
Luckhaupt
3/11/94

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

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 12.62.130. REPORTING OF CRIMINAL JUSTICE INFORMATION.

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

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

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

1 warrant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 criminal justice information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or dependent adult; and

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

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

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

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

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

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

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

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

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

5 Sec. 12.62.180. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

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

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

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

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

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

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

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

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

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

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

10 (2) for criminal justice employment purposes;

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

12 (4) for research and statistical purposes;

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

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

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

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

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

22 (2) age of the information;

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

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

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

1 the superior court.

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

7 Sec. 12.62.900. DEFINITIONS. In this chapter,

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

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

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

12 (B) under AS 12.25.180;

13 (C) under AS 12.30.060; or

14 (D) under AS 12.70;

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

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

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

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

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

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

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

29 (A) past conviction information;

30 (B) current offender information;

31 (C) criminal identification information;

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

4 (11) "criminal justice activity" means

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

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

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

12 (12) "criminal justice agency" means

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

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

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

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

27 (A) criminal history record information;

28 (B) nonconviction information;

29 (C) correctional treatment information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (A) AS 11.41.410 - 11.41.470;

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

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

7 (D) AS 11.66.100 - 11.66.130; or

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

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

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

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

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

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

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

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

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

new work draft
incorporates Dept of
law's demand

copies given to:

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

new work draft
incorporates Dept of
revenue award

copies given to:

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

8-GS2005V
Luckhaupt
3/4/94

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

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

15 (d) The board shall

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 12.62.130. REPORTING OF CRIMINAL JUSTICE INFORMATION.

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

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

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

1 warrant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 criminal justice information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (A) personal or family security; or

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

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

27 (A) personal or family security;

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

31 (C) reviewing a candidate for legislative

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Sec. 12.62.180. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

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

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

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

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

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

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

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

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

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

25 (2) for criminal justice employment purposes;

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

27 (4) for research and statistical purposes;

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

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

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

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

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

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

6 (2) age of the information;

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

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

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

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

22 Sec. 12.62.900. DEFINITIONS. In this chapter,

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

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

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

27 (B) under AS 12.25.180;

28 (C) under AS 12.30.060; or

29 (D) under AS 12.70;

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

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

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

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

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

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

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

13 (A) past conviction information;

14 (B) current offender information;

15 (C) criminal identification information;

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

19 (11) "criminal justice activity" means

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

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

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

27 (12) "criminal justice agency" means

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

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

1 under a law, regulation, or ordinance; or

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

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

11 (A) criminal history record information;

12 (B) nonconviction information;

13 (C) correctional treatment information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (A) AS 11.41.410 - 11.41.470;

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

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

22 (D) AS 11.66.100 - 11.66.130; or

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

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

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

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

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

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

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

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

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

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

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

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To <i>Legal Services</i>	From <i>Marie</i>
Co.	Co. <i>Senate Finance</i>
Dept.	Phone # <i>4935</i>
Fax #	Fax # <i>x 2187</i>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) under AS 12.25.180;

(C) under AS 12.30.060; or

(D) under AS 12.70.

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

8-GS2005E
Luckhaupt
2/16/94

ADOPTED
3-3-94

CS FOR SENATE BILL NO. 276(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

15 (d) The board shall

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

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

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

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

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

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

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

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

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

14 Sec. 12.62.120. MANDATORY FINGERPRINTING IN CRIMINAL CASES.

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

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

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

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

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

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

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

15 Sec. 12.62.130. REPORTING OF CRIMINAL JUSTICE INFORMATION.

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

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

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

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

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

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

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

1 prosecute charges;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 purposes,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (A) personal or family security; or

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

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

20 (A) personal or family security;

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

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

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

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

1 purpose;

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

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

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

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

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

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

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

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

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

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

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

13 Sec. 12.62.180. CORRECTION OF CRIMINAL JUSTICE INFORMATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Sec. 12.62.900. DEFINITIONS. In this chapter,

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (A) past conviction information;

8 (B) current offender information;

9 (C) criminal identification information;

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

13 (11) "criminal justice activity" means

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

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

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

21 (12) "criminal justice agency" means

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

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

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

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

5 (A) criminal history record information;

6 (B) nonconviction information;

7 (C) correctional treatment information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (A) AS 11.41.410 - 11.41.470;

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

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

16 (D) AS 11.66.100 - 11.66.130; or

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

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

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

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

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

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

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

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

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

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101


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

MEMORANDUM

February 15, 1994

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

TO: Senator Drue Pearce

FROM: Jerry Luckhaupt 
Legislative Counsel

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

1. Page 1:

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

2. Page 2:

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

line 21:
Delete "of public safety"

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

3. Page 3:

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

4. Page 4:

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

5. Page 7:

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

6. Page 11:

line 11:
Delete "any"
Insert "an"

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

7. Page 15:

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

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

8. Page 16:

line 31:
Delete "enacted"
Insert "added"

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

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

February 22, 1994

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

Dear Senator Pearce:

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

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

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

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

The Honorable Drue Pearce
February 22, 1994
Page 2

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

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

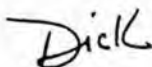
APSIN criminal history information is provided to employers and regulatory authorities to make informed employment and licensing decisions. Certain background checks, such as those for criminal justice employment and school teachers, are provided for by law. Others, such as background checks on foster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

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

The Honorable Drue Pearce
February 22, 1994
Page 3

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

Sincerely,



Richard L. Burton
Commissioner

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

cc: Senate Finance Members

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

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

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

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

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

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

WALTER J. HICKEL
GOVERNOR



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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 4, 1994

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

Dear Mr. President:

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

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

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

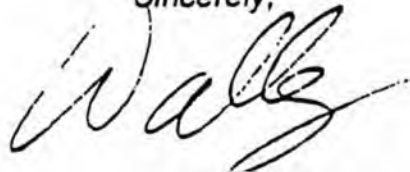
This bill also adopts a trend seen in some other states, to give the press and public greater access to criminal history records and to make those records more "open."

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

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

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

-Sincerely,

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

*Walter J. Hickel
Governor*



alaska judicial council

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

EXECUTIVE DIRECTOR
William T. Cottan

November 2, 1993

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Daniel A. Moore, Jr.
Chief Justice
Supreme Court

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

RE: Criminal Justice Working Group Recommendation concerning Criminal History
Legislation

Dear Governor Hickel:

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

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

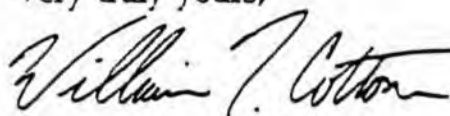
The CJWG endorses the following general objectives of the proposed legislation:

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

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

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

Very truly yours,



William T. Cotton
Executive Director

WTC:pjs

cc: Criminal Justice Working Group Members

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

IMPACT UPON LOCAL POLICE

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

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

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

CRIMINAL HISTORY DATABASE

PROPOSED CRIMINAL HISTORY RECORD CONTENTS

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

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

ALASKA'S CRIMINAL HISTORY REPOSITORY

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

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

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

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

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

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

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

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

February 3, 1994

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

Commentary and section-by-section description

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

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

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

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

There has also been a growing recognition that national standards for criminal justice data collection should be established, and the Anti-Drug Abuse Act of 1988 required the Department of Justice to develop a system for more immediate and accurate identification of offenders. The Justice Department recommended that states (1) implement mandatory reporting of all criminal justice information, (2) monitor case dispositions and adopt unique case-tracking numbers to improve data accuracy, (3) ensure timely submission of fingerprint records, (4) provide standardized data entry, and (5) provide audits, training, and data security. ✓

In addition, federal handgun control efforts, such as the "Brady bill" in 1993, depend to a large extent on the accuracy, completeness and availability of criminal history records. Alaska has recently received a federal grant to improve its data collection, and this bill is a necessary step toward that goal. This legislation provides a framework under which the state can comply with appropriate national standards, to the extent they are practical in Alaska.

Major portions of this legislation are patterned after the laws in other states, the federal regulations in 28 CFR, Part 20, and the recommendations made by SEARCH, Inc., in *Standards for the Security and Privacy of Criminal History Record Information, Third Edition*, published in July, 1988.³ This publication resulted from a three-year effort by the SEARCH Law and Policy Project Advisory Committee, with assistance provided by experts within and outside of the criminal justice community. While the SEARCH publication was not intended as a model statute that would fit the particular needs of every state, it does set out a comprehensive approach to criminal justice information policy based upon articulated standards that reflect the knowledge and experience of a large, nationwide group of criminal justice information experts.

This bill is organized as follows:

AS 12.62.100	Criminal justice information advisory board.
AS 12.62.110	Duties of the commissioner regarding information systems.
AS 12.62.120	Mandatory fingerprinting in criminal cases.
AS 12.62.130	Reporting of criminal justice information.
AS 12.62.140	Reporting of uniform crime information.
AS 12.62.150	Reporting of information regarding wanted persons and stolen property.
AS 12.62.160	Completeness, accuracy and security of criminal justice information.
AS 12.62.170	Release and use of criminal justice information; fees.
AS 12.62.180	Correction of criminal justice information.
AS 12.62.190	Sealing of criminal justice information.
AS 12.62.200	Purging of criminal justice information.
AS 12.62.210	Civil action and defense.
AS 12.62.900	Definitions.

³ That SEARCH publication is known across the country as *Technical Report No. 13 (Revised)*.

AS 12.62.100

Subsection (a) establishes the Criminal Justice Information Board, located for administrative and budgetary purposes within the Department of Public Safety. Although the board's role is advisory, provisions requiring twice yearly meetings and annual reports to the Governor and Legislature should encourage it to be active in its advisory role.

There are boards of this type in about half of the states. *Compendium of State Privacy and Security Legislation*, United States Department of Justice, 1989 Overview (hereafter "Dept. of Justice Overview") at page 21. Experience in other states has shown that an advisory board of this type can be effective and can exert a strong influence on the development of policies.

In order to keep the board to a manageable size, the board's membership is limited to commissioners from the five state departments most directly involved in criminal justice matters, the chief justice, a municipal police chief, as well as a member of the public appointed by the Governor to represent broader public interests.

AS 12.62.110

This section sets out the powers and duties of the Commissioner of Public Safety, based on similar provisions in numerous state laws, and requires the commissioner to develop a central state repository for criminal history records and other criminal justice information. At the present time, the Alaska Public Safety Information Network (APSIN) serves as the central repository, and it is anticipated that it will continue in that role. The commissioner must consult with the Criminal Justice Information Board, and cooperate with other state and federal law enforcement agencies.

This section also specifically requires the commissioner to promulgate regulations governing the central repository. Based upon Alaska's past experience with the long-inactive Governor's Commission on the Administration of Justice, it is more efficient and workable to vest rule-making authority in the official, i.e., the commissioner, who is responsible for the day-to-day operation of the system.

There is regulatory authority in this area in nearly every state in the country. Dept. of Justice Overview at page 20. This bill limits the commissioner's rule-making authority to the development and operation of the central repository and enforcement of the statutory requirements concerning the reporting of information to the central repository. The commissioner also is authorized to issue regulations necessary to insure that criminal justice agencies maintain records sufficient to facilitate the audit responsibilities imposed by the statute,

although regulations would not be strictly necessary to prescribe the forms on which information is to be reported. In other respects, criminal justice agencies in the state are free to establish their own agency rules and procedures to comply with the substantive requirements of the chapter. The section specifically authorizes the commissioner to cooperate with NLETS, NCIC, the Interstate Identification Index (III) system and other interstate, national or international identification and record systems.

This section also provides that any regulations adopted by the commissioner will not affect agencies or officials of the judicial branch. This avoids legal questions concerning the separation of powers. It is anticipated that rules affecting operation of the court will be adopted by the supreme court, and it is the intent of this legislation that the court cooperate with executive branch agencies in providing workable criminal justice information systems. As a member of the Criminal Justice Information Board, the chief justice will be familiar with the issues involved in criminal justice data collection, and participation on the board will provide a basis for cooperation with other agencies concerning such issues as court disposition reporting, taking of fingerprints and use of tracking numbers. According to SEARCH, such an approach has worked well in other states.

AS 12.62.120 -- 150: Applicability

Based on preliminary comments from a number of criminal justice agencies, an applicability section at the end of the bill will apply the fingerprinting and reporting requirements of AS 12.62.120 -- 150 only to persons arrested for felony offenses. It was felt that meeting the fingerprinting and reporting requirements for the many thousands of misdemeanor cases proceedings through the courts every year in Alaska would be burdensome to state and municipal agencies. In order to hold down the initial costs of this legislation, and to enable justice agencies to streamline procedures, these sections will not apply to misdemeanor offenses until July 1, 1996.

AS 12.62.120

This section imposes a mandatory fingerprinting requirement for all offenses that will be included in the central criminal history record system. Since fingerprints provide positive identification, thereby ensuring the integrity of the records, it is important that fingerprints be uniformly obtained and forwarded to the central repository. National standards adopted by the Justice Department call for increased collection of fingerprint data.

It has been suggested that routine taking of fingerprints in all criminal cases may violate an offender's right of privacy. Given the minimal intrusiveness of fingerprinting, however, and its common acceptance as a standard police practice, it is doubtful a person under

arrest or charged with a crime would have a subjective expectation of privacy with respect to fingerprints, nor is it likely society would be willing to recognize any such expectation as reasonable. It is therefore unlikely a court would conclude that the right of privacy is implicated.

Subsection (a), requiring arresting officers to take fingerprints, and requiring a court to order a person charged with a crime to submit to fingerprinting if not arrested, is modeled after a provision in New York's law (N.Y. Crim. Proc. Law § 160.10). See, also 18 Pa. Cons. Stat. Ann. § 2112 (Purdon). Subsection (b) ensures that fingerprints are obtained at the time of conviction in cases in which, for whatever reason, fingerprints were not obtained earlier.

Subsection (c) is modeled after provisions in many state laws requiring correctional institutions to obtain fingerprints of persons committed to such institutions. E.g., Ga. Code Ann. § 35-3-36(f) (1981); Del. Code Ann. tit. 11, § 8509-8510. In addition, most other states follow this practice, though it is not expressly required by law.

Subsection (d) sets a time limit for the forwarding of fingerprints to the central repository. Fingerprints are required to be forwarded within five days. The most common time frame in use (by law or practice) in other states is seventy-two hours, although fingerprint reporting requirements vary from twenty-four hours to a week or more. Five days is a reasonable standard that criminal justice agencies in Alaska can meet in practice. This subsection also deals with poor quality fingerprints by requiring the originating agency to attempt to obtain better prints.

Subsection (e) is modeled after a provision in New York's law specifically requiring the central repository to use reasonable efforts to confirm the identity of the person being fingerprinted. N.Y. Crim. Proc. Law, § 160.30. If the central repository discovers that the person has an alias, the original agency must be notified. It is anticipated that in the vast majority of cases the sole effort to confirm identity would be through the department's automated fingerprint system. This will be sufficient to meet the requirement of "reasonable" efforts.

Subsection (f) permits the commissioner to adopt regulations to exempt certain classes of offenders from the fingerprinting requirement. For example, the commissioner may determine that it is not necessary for purposes of prison security or data accuracy to take repeated sets of fingerprints of prisoners transferred between institutions or of persons rearrested for violations of bail conditions, as would be required by subsection (c).

AS 12.62.130

This section establishes a framework for requiring that every significant event in the criminal justice process be reported to the Department of Public Safety. The current record system is ordinarily based only on the first event (usually an arrest) and the last event (usually a court judgment). Because of delays in the court process, records may show no disposition on the charges for long periods of time unless the department is notified of intervening events, such as dismissals of or amendments to criminal charges.

Reporting requirements set out in this section are modeled after the approach followed in Maryland. Md. Ann. Code art. 27, § 747 (1957). This section identifies all decisions or actions that occur in the course of the processing of criminal offenders and anticipates that the agency responsible for each "reportable event" will forward relevant information to the central repository. This section, however, leaves it to the commissioner to specify by regulation which agency is responsible for reporting each event.

At the present time this level of information is not uniformly reported to the department, and the APSIN system currently in operation is not capable of collecting all of this information. It is anticipated that the ability to collect and report this information will be developed over a period of time, and this section requires the commissioner to consult with the Criminal Justice Information Board and with affected agencies such as municipal police departments, prosecutors, courts, probation and parole officers, and others. Although this section will not be implemented immediately, the basic framework should be set forth in statute.

The form, content, and timing of the reports may be specified by the department without regulation. It is anticipated that different events will be required to be reported under different deadlines, depending on the importance of the information. For example, it may be reasonable to require that information about arrests and arrest warrants be reported within 48 hours, whereas information about other events could be reported within 30-60 days. A 30-day requirement is consistent with California's statutes for court disposition reporting (Cal. Penal Code § 13151) and with laws and policies of several other states. The national average, however, is about 60 days. See, e.g., Maryland Ann. Code art. 27, § 747 (1957) (60 days), 18 Pennsylvania Cons. Stat. Ann. § 9113(a) (Purdon) (90 days); Delaware Code Ann. tit. 11, § 8509 (90 days). Given the wide variation in personnel, equipment and telecommunication capabilities in Alaska, the specific requirements are best left to the commissioner, after consultation with local criminal justice agencies.

Subsection (b) is a relatively complete list of reportable events, but a catch-all category is included authorizing the commissioner to specify other events or actions to be reported.

AS 12.62.140 and AS 12.62.150

These two provisions are not strictly necessary to deal with the most immediate issues concerning criminal justice information systems, but they are useful and appropriate recommendations made by the SEARCH group in order to establish a statutory framework for a workable central criminal justice reporting system.

Proposed AS 12.62.140 imposes a legal requirement on criminal justice agencies to submit information to the Department of Public Safety for uniform crime reports and to cooperate with the central repository in efforts to ensure compliance with national and state uniform crime reporting requirements. It is modeled after provisions in Georgia, Ga. Code Ann. of 1981, § 35-3-36 (i), (k) (1981).

Proposed AS 12.62.150 is modeled after provisions in the laws of other states, requiring the reporting of information relating to wanted persons, stolen vehicles and identifiable stolen property.

AS 12.62.160

This section sets out data quality requirements applicable to the central records repository and to other criminal justice information systems in the state.

All criminal justice systems are subject to the general requirement in subsection (a) that procedures be adopted to ensure that criminal history record information is complete, accurate and secure. Such steps may include the use of manual procedures such as standard data collection forms and reporting procedures to detect inaccurate or missing information, or automated procedures to edit and verify required data fields and to perform a wide variety of checks on the accuracy and consistency of information entered into the systems.

The security provisions set out in (a) are taken from the federal regulations but in somewhat abbreviated form. They set out basic requirements for physical, personnel and computer security. Subsection (a) also requires that when a criminal justice agency utilizes a shared automated information system operated by a non-criminal justice agency, such as a municipal or regional data processing center, the criminal justice agency must insure that the system utilizes security procedures that are adequate to comply with the statutory security requirements.

Subsection (b) requires that procedures be developed for linking of charges and dispositions. Such a procedure might include use of a unique tracking number. The few extensive audits of state repositories that have been undertaken (including recent audits in Texas and Maryland) have demonstrated that tracking systems utilizing unique case numbers can solve

most problems encountered in linking reported disposition data to the right rap sheet and to the correct charges. In this way all charges can be accounted for and the criminal history record can accurately and clearly reflect the outcome of the case.

The requirement that the department adopt "reasonable" procedures recognizes that there is a large amount of information already maintained in APSIN, which was not collected using a uniform arrest tracking number or which was received from another jurisdiction, and missing information within this data cannot reasonably be linked to dispositions of the charges. This limitation on existing data is well known within the criminal justice system and this bill does not require modification of that data.

Subsection (c) requires the department to perform audits every two years, and to obtain an independent audit every four years, of the central repository and of a sample of other agencies to verify compliance with legal requirements. It should be noted that the sample need not be a random sample or a representative sample. This will permit the central repository to audit problem agencies or large agencies in a particular year, if appropriate or necessary. The independent audit could be performed by a private contractor or by an agency such as the Division of Legislative Audit. Subsection (a) also requires criminal justice agencies to maintain source documents and other records necessary to facilitate the performance of the audits.

AS 12.62.170

Even in criminal justice information systems that are federally-funded, a detailed state law will govern dissemination -- rather than federal regulations. "When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State." Commentary to 28 CFR 20.21(b) (7-1-91 Edition).

Unfortunately, current Alaska law does not directly address the confidentiality of criminal history records on state computers.⁴ This section makes criminal justice information confidential and prohibits its release, except as provided in this chapter. The rules for dissemination in this section are taken in general form from recommendations by the SEARCH group.

Criminal justice information is made confidential in subsection (a), and may not be disseminated except pursuant to subsection (b) or AS 12.62.190(d). Information may be

⁴ The United States Supreme Court, however, has held that public disclosure of such information would constitute an "unwarranted invasion of personal privacy" as that term is used in the federal Freedom of Information Act, and dissemination of such information at the federal level is limited. *United States v. Reporters Committee For Freedom of the Press*, 489 U.S. 749, 103 L.Ed.2d 774, 109 S.Ct. 1468 (1989).

released only by the agency that maintains it. The information cannot be provided unless it is up-to-date and accompanied by proper identification, and once provided, the information must be used only for the purpose for which it was released. Subsection (c). The department of public safety is permitted to establish fees for certain services in providing information under this section. Subsection (d).

Subsection (b) specifies several categories of criminal justice information that may be disseminated by criminal justice agencies. Even if the information may be disseminated under subsection (b), it is recognized that some other provision of law or court rule may prohibit its release. The types of information that may be provided by criminal justice agencies under subsection (b) are:

- An assessment or summary of criminal justice information can be provided to anyone if necessary to avoid imminent danger to life or extensive damage to property. Subsection (b)(1).

- Criminal justice information may be provided pursuant to court rule or court order. Subsection (b)(2).

- Agencies would be permitted to publicly release information about recent police activity, such as posters, announcements, notices, press releases, bulletins, police blotters, including data derived from a criminal justice information system. Subsection (b)(3). This is a common and traditional practice, recognized in current 6 AAC 60.070(g) and in most other states and the federal regulations.

- Criminal justice information would be provided to criminal justice agencies for criminal justice purposes. Subsection (b)(4). This includes making full criminal histories available to federal and out-of-state criminal justice agencies, such as the FBI and to central repositories in other states by means of the Interstate Identification Index (III) system. By exchanging information in this way, the state is permitted to participate in the III system.

- Criminal justice information would also be provided to non-criminal justice governmental agencies for official purposes (that is, those related to an agency's statutory duties), to other persons authorized by law to receive the information. Subsections (b)(5) and (b)(6).

Under (b)(5) the Public Defender Agency or the Office of Public Advocacy would be able to directly obtain information necessary for representation of indigent defendants, to the same extent as is available currently. Private defense attorneys would be able to obtain the same

information through the court or court rules under subsection (b)(2), or as a member of the public under (b)(10) or (b)(11).⁵

Government agencies would also be able to obtain information for purposes of licensing, security clearances, and other official purposes, as is available currently through written agreements with the Department of Public Safety. It is not anticipated, however, that employment of non-criminal justice personnel will be "necessary" for the enforcement of a law, and therefore full criminal justice information will not be made available for general government employment purposes unless there is specific statutory authorization in another law. Government employers would, however, be able to obtain more limited records to the same extent as other employers under subsections (b)(10), (b)(11) and (b)(12).

- The governor, lieutenant governor and state legislators would also be entitled to receive criminal justice information under (b)(7) and (b)(8) for security purposes and for purposes of appointment of exempt or partially-exempt state officials.

- Information for research purposes may be disseminated under (b)(9), subject to written conditions to safeguard security and privacy.

- Any person would be permitted to receive "current offender information". Subsection (b)(10). The definition of "current offender information" includes many pieces of information about a person currently charged with a crime or in the custody or under the supervision of the state, including the location of incarceration of inmates, and the conditions under which such inmates are released. Much of this information is presently provided only to victims of crimes under AS 33.16.120(f).

- Anyone would also be permitted to receive "past conviction information", if less than 10 years has elapsed from the date the offender was released from all state supervision. Subsection (b)(11). The 10-year limitation on past records is designed to assure that very old conviction records are not freely disseminated.

Although current law does not explicitly make criminal justice information confidential, the United States Supreme Court has held that such information is exempt from the federal "freedom of information" statutes that formed the basis for current state public records laws in AS 09.25.120(6). *United States Dept. of Justice v. Reporters Committee for Freedom of the Press, et al.*, 489 U.S. 749, 103 L.Ed.2d 774, 109 S.Ct. 1468 (1989) (criminal conviction

⁵ Current regulations in 6 AAC 60 (which no longer apply to APSIN; see footnote 2) adopt a procedure that would permit private defense attorneys to get criminal justice information directly from the Public Defender Agency. It was felt that this procedure is not workable because if it became a routine practice it would greatly add to the workload of the Public Defender Agency and because the normal safeguards applied to agency access would be missing.

records on computers are not subject to disclosure under federal law). In addition, current AS 12.62.035 could be construed as a legislative expression that conviction records be provided to the public only if the person requesting the information is an employer of persons who work with children, and only for specified crimes. For these, and other reasons, the Department of Public Safety does not currently disseminate criminal justice information to the public.

Taken together, however, subsections (b)(10) and (b)(11) provide the public with a great deal of information that is either not available under current law, or is only available by expending great effort to search manual or microfilm files in the possession of the court system. These provisions reflect a strong public policy interest in permitting criminal justice agencies to respond to press or public inquiries about ongoing criminal cases and about offenders currently or recently under state supervision.

Florida, Oklahoma and Wisconsin currently have "open" record policies and several other states permit criminal history records to be made available for a wide range of non-criminal justice purposes. Based on a study in Florida by SEARCH, the main recipients of this information are businesses and agencies that use the information for employment screening purposes. Only a small percentage of the requests for such information are for "curiosity". "Availability of Criminal History Records: The Effect of an Open Records Policy", SEARCH Group, Inc. 1990.

The current provisions in AS 12.62.035 are retained in subsection (b)(12). This current statute permits dissemination of certain conviction records, regardless of the passage of time, in order to evaluate someone for a position involving supervision of children or dependent adults.

Finally, a person can have access to his or her own criminal justice information. Subsection (b)(13).

Subsection (c)(3) provides that criminal justice information may not be released unless the subject's identity is confirmed by fingerprint comparison or some other approved means of identification. There are other instances, however, when the requirement of fingerprint identification or other positive identification is not feasible or necessary, and this subsection permits the commissioner to exempt certain requesters (such as criminal justice agencies, for example) from the strict identification requirements.⁶

⁶ For the public and the press it is not feasible to obtain fingerprint identification for current offenders. Because most such inquiries will likely be made of local criminal justice agencies by persons within the community where the crime was committed, fingerprints are probably not required to obtain information about the correct person. Moreover, newly developed name search techniques used in Florida are regarded as extremely accurate. "Availability of Criminal History Records: The Effect of

Subsection (c)(4) requires that criminal justice agencies maintain logs of persons to whom criminal history record information is provided. This facilitates audits of the system, and permits notification in case of errors or corrections. Here, too, there are instances when the requirement of maintaining logs is not warranted, and this subsection permits the commissioner to exempt agencies from maintaining logs for certain classes of recipients, such as criminal justice agencies.

AS 12.62.180

The provisions in the bill authorizing persons to request corrections to their own records are similar to existing law in AS 12.62.030 (c), (e) and (f). Under this bill, however, if a court undertakes a review of an agency's refusal to modify records, the burden is placed on the person to prove that the information is inaccurate or incomplete, rather than on the criminal justice agency. It is appropriate to place the burden on the person challenging the information, because that person is usually in the best position to have access to relevant evidence to support the challenge. Although less than half of the states provide for judicial review (Dept. of Justice Overview at 25), it was felt that this provision in Alaska law should be continued.

AS 12.62.190

This section permits criminal justice agencies to "seal" past or current conviction records if the records resulted, beyond a reasonable doubt, from mistaken identity or false accusation. It is anticipated that, upon request, the central repository or other agency will voluntarily seal records in appropriate circumstances.

Like the provisions for revising information in proposed AS 12.62.180, an administrative appeal of the agency's decision may be made to the court, but the appellant bears the burden on appeal of showing that the agency's decision was clearly mistaken. This heavy burden reflects the intent that proceedings to seal records should be rare. As noted by the court of appeals, "no court has seriously questioned the legitimacy or importance of the government's interest in obtaining and retaining records dealing with individuals who pass through our criminal justice system . . ." *Journey v. State*, 850 P.2d 663, 666 (Alaska App. 1993).

⁶(...continued)

an Open Records Policy", SEARCH Group, Inc. 1990, at page 7. It is also not required that the person requesting current offender information present positive identification.

If the state or a municipal prosecutor pursues a criminal case in good faith, it is unlikely a defendant could muster the necessary level of proof beyond a reasonable doubt, much less that the department's decision to retain the records was clearly mistaken. Thus sealing will not become a common practice following dismissal or acquittal of criminal charges. Moreover, a proceeding to seal information should not be used as another avenue of collateral attack on court judgments, or on other actions taken by prison, probation or parole authorities. Unless the person is successful in an appeal or post-conviction relief action, a court judgment or prison administrative decision will be conclusive evidence that the record should not be sealed.

Under current Alaska law, it is not clear that persons have a right to have their records sealed. *Journey v. State*. This section thus establishes a procedure for persons to use to seal their records and, to the extent that subsection (d) permits a person to deny the existence of a sealed record, this statute provides a broader remedy than would be available under a the "inherent" power of the courts.

Subsection (d) authorizes a person whose record has been sealed to deny the existence of the record and any related arrest or other action. This provision reflects the view in half the states (Dept. of Justice Overview at 31) that if a person can be required to reveal the existence of a sealed record in answer to a question on an employment application, for example, the sealing remedy is ineffective. Records that have been sealed may only be disseminated for specific limited purposes under this section.

AS 12.62.200

This section permits criminal justice agencies to "purge" (i.e., destroy) criminal justice information for a variety of administrative reasons, if the information is devoid of any usefulness to a criminal justice agency.

AS 12.62.210

Given the many thousands of arrests made each year, and the remoteness of many locations in Alaska, it is likely that in many instances fingerprints will not be taken or will not be submitted to the department, that backlogs in reporting of events or in data entry may cause delays in processing and compiling data in an information system, or that other errors may occur. Therefore, subsection (a) provides immunity from civil liability if the requirements of the chapter or regulations (including requirements for accurate and complete data), are not strictly followed, but such conduct can be used as a basis for employee discipline or administrative action to restrict agency access to the system. Public officials could, however, be subject to criminal sanctions in extreme cases in which confidential information is misused.

This civil immunity provision is generally based on AS 13.50.014(a) and 016(a), providing immunity from liability for failure of hospital or law enforcement personnel to search for information relating to anatomical gifts. It is also based on similar immunity provisions relating to reporting or not reporting cases of abuse of the elderly (AS 47.24.010(f) and (g)) and reporting abuse of children. AS 47.17.050. This provision is, however, also specifically intended to reverse the decision in *Zerbe v. State*, 578 P.2d 597 (Alaska 1978), and to make clear that there is no cause of action for errors made in recordkeeping.

A legal remedy for damages is provided, however, if criminal justice information is released or used in knowing violation of this chapter. The civil remedy and defense set out in this section is based on current AS 12.62.060. This section does not create a separate criminal offense because current AS 11.56.860 already makes misuse of confidential information by a "public servant" a class A misdemeanor. The definition of "public servant" is broad, and includes contractors and consultants to government agencies. Although current law does not provide a criminal penalty for misuse by other persons, such as members of the public and the press, the civil damage remedies are likely to be an adequate deterrent.

AS 12.62.900

The definitions are generally consistent with, although more detailed than, those found in the federal regulations (28 CFR Part 20, § 20.3). They are also consistent with recommendations made by the SEARCH Group.

The definition section contains many important provisions that specify the applicability of this legislation. For example, the word "information" is defined to mean, unless the context clearly indicates otherwise, data compiled within a "criminal justice information system". That latter term, in turn, is defined to mean an "automatic data processing" system (i.e., a computer) linked to another computer in another department, branch of government, or in another jurisdiction, in such a way that access to the information in the system can occur directly, without action by the agency maintaining the information. This concept of a direct connection between agency computers is contained in current 6 AAC 60.900(l), and reflects the desire to limit interference with internal agency files that cannot be electronically accessed by another agency.

Because of these definitions, this chapter does not apply to the paper records in the possession of criminal justice agencies (which continue to be covered by the general public records statutes) nor to records contained in computers commonly referred to as "stand-alone" computers that are used solely within one department or agency (in this bill a multi-jurisdictional task force is considered a single "agency"). It was not the intent of this bill to regulate the paper files, notebooks, binders, microfilm or other internal records maintained by dozens of state, municipal or judicial branch agencies, if that information is not susceptible to being directly

accessed from outside of that agency by way of a computer system. This definition is also not intended to regulate the exchange of photographs or original documents, whether by facsimile transmission or otherwise.

The criminal justice process produces many different types of information, and therefore a large number of definitions are required.

The broad definition of "criminal justice information" includes all types of data generally collected by criminal justice and public safety agencies, with the exception of court records, drivers license records and records relating to juveniles within the juvenile justice system. It includes criminal history record information, nonconviction information, correctional treatment information, as well as data about wanted or missing persons and stolen property. These various types of information are defined in terms of "identifiable persons". This limitation means that statistical information that does not identify a person is not "criminal justice information".

This legislation leaves to the supreme court the task of regulating court record systems. This legislation also recognizes that the confidentiality and dissemination of drivers license records are already covered by AS 28.15.181.

Each type of information has different uses, and each may be subject to differing rules, depending on the sensitivity of the information and the need for its easy accessibility by the public, the press, and other agencies.

The most sensitive is correctional treatment information. This includes data from confidential sources such as prison medical and psychological files, and presentence reports. Another type of information subject to limited dissemination is "nonconviction" information, which includes data about old arrests or other old charges without dispositions. Oftentimes criminal history records show arrests or charges, but no dispositions of those charges. If the arrest is recent (less than a year old) or prosecution is ongoing, this data is treated, consistently with federal regulations, as "current offender information", which has greater accessibility to the public. However, once a year has passed with no indication that prosecution is ongoing, an arrest record without a disposition is treated as "nonconviction information". Under this bill, information in these categories is not available to the general public or the press, and is only provided for official agency activities.

The definition of "criminal history record information" is functionally equivalent to the one found in the federal regulations and in general use in the laws in other states. Within that broad term there are three categories: (A) past conviction information; (B) current offender information; and (C) criminal identification information.

"Past conviction information" relates only to old convictions where the sentence has already been served and the person has been unconditionally discharged. Such information can include not only the fact of conviction but any specific data related to that conviction, such as dates of proceedings. Convictions that have been set aside under AS 12.55.085 following a suspended imposition of sentence, or that have been vacated or reversed, are included. Under this bill, "past conviction data" less than 10 years old is available to the public when accompanied by adequate identification of both the subject of the records and the person who is requesting the information.

"Current offender information" includes all data of public interest about current or recent cases, or those in which the offender is still under the custody or supervision of the state. Included are conditions of bail or probation and the location of incarceration or community supervision.

"Criminal justice activity" is defined as broadly inclusive of all official activities of criminal justice agencies, including the traditional law enforcement activities of police agencies and activities involved in the processing of criminal cases from arrest through correctional supervision. Also included is criminal justice employment activities. Criminal defense is not an included activity; however, the Public Defender Agency and the Office of Public Advocate will continue to have access to discoverable information under Alaska Rules of Criminal Procedure 16, as well as proposed AS 12.62.170(b)(5).

Section 2 of the bill.

Section 2 of the bill amends AS 44.99.310(f) to exempt criminal justice information from the provisions in that statute governing challenges to accuracy and completeness of "personal information". The provisions of this bill address such issues more comprehensively and directly.

Section 3: Repealer.

All of current AS 12.62, much of it over 20 years old, is repealed, as are AS 18.65.060 and AS 44.41.040, which relate to subjects covered comprehensively in the bill.

Section 4: Transition.

This transition section permits agencies to adopt regulations under this Act at any time, but the regulations do not become effective until the Act takes effect. This allows agencies to avoid delays in adopting regulations. This section has an immediate effective date.