

CONFIDENTIAL RECORDS STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
First Session of the Sixty-fifth General Assembly

FINAL REPORT
Of the
CONFIDENTIAL RECORDS STUDY COMMITTEE

The Confidential Records Study Committee was established by the Legislative Council on September 12, 1972. The Council appointed the following members:

Representative William H. Harbor, Chairman
Senator Lee H. Gaudineer, Jr.
Senator Eugene M. Hill
Senator George F. Milligan
Senator George L. Shawver
Senator John M. Walsh
Representative Philip B. Hill
Representative Charles Knoblauch, Sr.
Representative Arthur A. Small, Jr.
Representative Jewell O. Waugh

The Committee held its first meeting on September 22, 1972. Senator John M. Walsh was elected Vice Chairman of the Committee.

At its first meeting the Committee received copies of statutes of other states and other relevant materials. The Committee met with Mr. Michael Sellers, Commissioner of Public Safety and Mr. Verne Tanner, Director, Division of Data Processing, State Comptroller's Office.

The Committee held its second meeting on October 17, 1972. The Committee met with: Mr. Donald Briggs, Director, Department of Revenue; Mr. James Gillman, Commissioner, Department of Social Services; Mr. Michael Sellers, Commissioner, Department of Public Safety; Mr. Craig Beek, Director, Bureau of Criminal Investigation; Assistant Chief of Police Harold Fryman, Police Department, Des Moines, Iowa; Mrs. Katheryn Williams, Assistant Director, Bureau of Family and Children Services, Department of Social Services; Mr. Jim Rowen, Department of Social Services; Mr. Gary Hoxmeier, Dubuque County, Department of Social Services.

The Committee held its third meeting on November 21, 1972 and met with the following individuals: Mr. Michael Sellers, Commissioner of Public Safety; Mr. Verne Tanner, Director, Division of Data Processing, State Comptroller's Office; Mr. Craig Beek, Director, Bureau of Criminal Investigation; Mr. Emmet Rathbun, Bureau of Criminal Investigation; Mr. Terry Swanson, Director, TRACIS; Mr. John H. Robb, President, Credit Bureau of Des Moines; Mr. George Covert, Systems Analyst, Iowa State University Computer Center; Mr. Kent Bloom, law student, University of Iowa.

At this meeting the Committee determined that due to the complexity of the problem area and the short amount of time remaining before the start of the 65th General Assembly any legislation to be prepared by the Committee would of necessity be limited to the criminal justice area. The Committee provided the Legislative Service Bureau with basic instructions for the preparation of a discussion draft to be reviewed by the Committee.

The Committee met to review various discussion drafts on December 18, December 27, and December 29, 1972, and was assisted by officials of the Department of Public Safety, Comptroller's Office, and Iowa Crime Commission.

The Committee has received and reviewed many statutes, materials, and points of view and submits the attached bill draft to the 1973 session of the 65th General Assembly for its consideration.

The bill draft provides that criminal history data may be disseminated by the Department of Public Safety only to criminal justice agencies or agencies approved by the Commissioner of Public Safety and restricts the manner of redissemination.

Citizens are given the right to review their file and to request corrections and to appeal to the court if corrections are not made. Both civil and criminal sanctions are provided and provisions are included to review files and purge certain data.

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to disclosure of criminal history and intelli-
2 gence data and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS OF WORDS AND PHRASES.

2 As used in this Act, unless the context otherwise requires:

3 1. "Department" means the department of public safety.

4 2. "Bureau" means the department of public safety, divi-
5 sion of criminal investigation and bureau of identification.

6 3. "Criminal history data" means any or all of the follow-
7 ing information maintained by the department or bureau in
8 a manual or automated data storage system and individually
9 identified:

10 a. Arrest data.

11 b. Conviction data.

12 c. Disposition data.

13 d. Correctional data.

14 e. Juvenile data.

15 4. "Arrest data" means information pertaining to an arrest
16 for a public offense and includes the charge, date, time,
17 and place. Arrest data includes arrest warrants for all
18 public offenses outstanding and not served and includes the
19 filing of charges, whether by preliminary information or
20 indictment, the date and place of alleged commission and
21 county of jurisdiction.

22 5. "Conviction data" means information that a person was
23 convicted of a public offense and includes the date and
24 location of commission and place and court of conviction.

25 6. "Disposition data" means information pertaining to
26 a recorded court proceeding subsequent to a public offense
27 arrest and includes suspension or deferral of sentence.

28 7. "Correctional data" means information pertaining to
29 the status, location and activities of persons under the
30 supervision of the county sheriff, the division of corrections
31 of the department of social services, board of parole or any
32 other state or local agency performing the same or similar
33 function, but does not include investigative, sociological,
34 psychological, economic or other subjective information main-
35 tained by the division of corrections of the department of

1 social services or board of parole.

2 8. "Juvenile data" means information pertaining to com-
3 pleted court action regarding a juvenile delinquency adjudi-
4 cation and includes the date, court, and basis for the adjudi-
5 cation.

6 9. "Individually identified" means criminal history data
7 which relates to a specific person by one or more of the fol-
8 lowing means of identification:

9 a. Name and alias, if any.

10 b. Social security number.

11 c. Fingerprints.

12 d. Other index cross-referenced to paragraphs a, b, or
13 c.

14 e. Other individually identifying characteristics.

15 10. "Criminal justice agency" means any agency or depart-
16 ment of any level of government which performs as its princi-
17 pal function the apprehension, prosecution, adjudication,
18 incarceration, or rehabilitation of criminal offenders.

19 11. "Intelligence data" means information collected by
20 peace officers concerning a particular crime or the alleged
21 or suspected involvement of any person to a criminal activity.
22 Intelligence data does not include information on individuals
23 pertaining to activities protected by the Constitution of
24 the United States.

25 Sec. 2. NEW SECTION. DISSEMINATION OF CRIMINAL HISTORY
26 DATA. The department and bureau may provide copies or commu-
27 nicate information from criminal history data only to criminal
28 justice agencies or such other public agencies as are
29 authorized by the commissioner of public safety. The bureau
30 shall maintain a list showing the individual or agency to
31 whom the data is disseminated and the date of dissemination.

32 Authorized agencies shall request criminal history data
33 only when:

34 1. The data is for official purposes in connection with
35 prescribed duties, and

1 2. The request for data is based upon name, fingerprints,
2 or other individual identifying characteristics.

3 Sec. 3. NEW SECTION. REDISSEMINATION. A criminal justice
4 agency shall not redisseminate criminal history data, within
5 or without the agency, received from the department or bureau,
6 unless:

7 1. The data is for official purposes in connection with
8 prescribed duties of a criminal justice agency, and

9 2. The agency maintains a list of the persons receiving
10 the data and the date and purpose of the dissemination, and

11 3. The request for data is based upon name, fingerprints,
12 or other individual identification characteristics.

13 Sec. 4. NEW SECTION. STATISTICS. The department, bureau,
14 or a criminal justice agency may compile and disseminate
15 criminal history data in the form of statistical reports
16 derived from such information or as the basis of further study
17 provided individual identities are not ascertainable.

18 The bureau may with the approval of the commissioner of
19 public safety disseminate criminal history data to persons
20 conducting bona fide research, provided the data is not indi-
21 vidually identified or the researcher has executed an agree-
22 ment providing that the data will be kept secure and will
23 not be redisseminated and that the research results will be
24 compiled in a manner which does not allow for individual
25 identities to be ascertained.

26 Sec. 5. NEW SECTION. RIGHT OF NOTICE, ACCESS AND
27 CHALLENGE. Any person or his attorney with written authori-
28 zation and fingerprint identification, shall have the right
29 to examine criminal history data filed with the bureau that
30 refers to him. The bureau may prescribe reasonable hours
31 and places of examination and may impose such additional
32 restrictions, including fingerprinting, as are reasonably
33 necessary to assure the information's security and to verify
34 the identity of the person who seeks to examine the
35 information.

1 Any person who files with the bureau a written statement
2 to the effect that a fact contained in the criminal history
3 data that refers to him is incorrect and requests a correction
4 or elimination of that information that refers to him shall
5 be notified within twenty days by the bureau, in writing,
6 of the bureau's decision or order regarding the correction
7 or elimination. The bureau's decision or order or failure
8 to allow examination may be appealed to the district court
9 of Polk county by the person requesting said examination,
10 correction or elimination. Immediately upon such appeal the
11 court shall order the bureau to file with the court a certified
12 copy of the criminal history data and in no other situation
13 shall the bureau furnish an individual or his attorney with
14 a certified copy, except as provided by this Act.

15 Whenever the bureau corrects or eliminates data as requested
16 or as ordered by the court, the bureau shall advise all agen-
17 cies or individuals who have received the incorrect information
18 to correct their files and the individual may request and
19 obtain a copy of the list of persons and agencies who received
20 copies of his criminal history file.

21 Sec. 6. NEW SECTION. CIVIL REMEDY. Any person may
22 institute a civil action for damages under chapter twenty-
23 five A (25A) or six hundred thirteen A (613A) of the Code
24 or to restrain the dissemination of his criminal history or
25 intelligence data in violation of this Act, any agency or
26 governmental body proven to have disseminated or to have
27 requested and received criminal history or intelligence data
28 in violation of this Act shall be liable for actual damages
29 and exemplary damages for each violation and shall be liable
30 for court costs, expenses, and reasonable attorneys' fees
31 incurred by the party bringing the action. In no case shall
32 the award for damages be less than one hundred dollars.

33 Sec. 7. NEW SECTION. CRIMINAL PENALTIES.

34 1. Any person who willfully requests, obtains, or seeks
35 to obtain criminal history data under false pretenses, or

1 who willfully communicates or seeks to communicate criminal
2 history data to any agency or person except in accordance
3 with this Act, or any person connected with any research
4 program authorized pursuant to this Act who willfully falsifies
5 criminal history data or any records relating thereto, shall
6 for each such offense be fined not more than one thousand
7 dollars or by imprisonment in the state penitentiary not more
8 than two years, or both. Any person who knowingly, but without
9 criminal purposes, communicates or seeks to communicate
10 criminal history data except in accordance with this Act shall
11 for each such offense be fined not more than one hundred
12 dollars or be imprisoned not more than ten days.

13 2. Any person who willfully requests, obtains, or seeks
14 to obtain intelligence under false pretenses, or who willfully
15 communicates or seeks to communicate intelligence to any
16 agency or person except in accordance with this Act, or any
17 person connected with any research program authorized pursuant
18 to this Act who willfully falsifies intelligence or any records
19 relating thereto, shall for each such offense be fined not
20 more than five thousand dollars or by imprisonment in the
21 state penitentiary not more than three years, or both. Any
22 person who knowingly, but without criminal purposes, communi-
23 cates or seeks to communicate intelligence except in accor-
24 dance with this Act shall for each such offense be fined not
25 more than five hundred dollars or be imprisoned not more than
26 six months, or both.

27 3. If the person convicted under this section is a peace
28 officer, the conviction shall be grounds for discharge or
29 suspension from duty without pay and if the person convicted
30 is a public official or public employee, the conviction shall
31 be grounds for removal from office.

32 4. Any reasonable grounds that a public employee has
33 violated any provision of this Act shall be grounds for
34 immediate removal from access of any kind to criminal history
35 data or suspension from duty without pay.

1 Sec. 8. NEW SECTION. INTELLIGENCE DATA. Intelligence
2 data contained in the files of the bureau shall only be dis-
3 closed to a peace officer or public agency after the commis-
4 sioner of public safety or his delegate has been advised of
5 the officer's need to know and the intended use of the
6 intelligence.

7 Automated intelligence data shall not be disseminated to
8 any agency through telecommunications access terminals.

9 Sec. 9. NEW SECTION. RULES. The department shall adopt
10 rules and regulations designed to assure the security and
11 confidentiality of all criminal history and intelligence data
12 systems.

13 Sec. 10. NEW SECTION. EDUCATION PROGRAM. The department
14 shall make available an educational program for its employees
15 and the employees of criminal justice agencies on the proper
16 use and control of criminal history and intelligence data.

17 Sec. 11. NEW SECTION. DATA PROCESSING. Nothing in this
18 Act shall preclude the use of the equipment and hardware of
19 the data processing service center provided for in section
20 nineteen B point three (19B.3), subsection five (5), of the
21 Code for the storage and retrieval of criminal history data.
22 Files shall be stored on the computer in such a manner as
23 they cannot be modified, destroyed, accessed, changed or
24 overlaid in any fashion by noncriminal justice agency
25 terminals or personnel. That portion of any computer,
26 electronic switch or manual terminal having access to criminal
27 history data stored in the state computer must be under the
28 management control of a criminal justice agency.

29 Sec. 12. NEW SECTION. REVIEW. The department shall
30 initiate periodic review procedures designed to determine
31 compliance with the provisions of this Act within the
32 department and by criminal justice agencies and to determine
33 that data furnished to them is factual and accurate.

34 Sec. 13. NEW SECTION. SYSTEMS FOR THE EXCHANGE OF CRIMINAL
35 HISTORY DATA. The department shall regulate the participation

1 by all state and local agencies in any automated system for
2 the exchange of criminal history data, and shall be responsible
3 to assure the consistency of such participation with the terms
4 and purposes of this Act.

5 Direct access to such automated systems shall be limited
6 to such criminal justice agencies as are expressly designated
7 for that purpose by the department. The department shall
8 with respect to telecommunications terminals employed in the
9 dissemination of criminal history data, insure that security
0 is provided over an entire terminal or that portion actually
1 authorized access to criminal history data.

Sec. 14. NEW SECTION. REPORTS TO DEPARTMENT. When it
comes to the attention of a sheriff, police department, or
14 other law enforcement agency that a public offense has been
committed in its jurisdiction, it shall be the duty of the
15 law enforcement agency to report information concerning such
16 crimes to the bureau on a form to be furnished by the bureau
17 within seven days of the time the crime first comes to the
18 attention of such law enforcement agency. These reports shall
19 be used to generate crime statistics. The bureau shall submit
20 statistics to the governor, legislature and crime commission
21 on a quarterly and yearly basis.

23 When a sheriff, police department or other law enforcement
24 agency makes an arrest which is reported to the bureau, the
25 arresting law enforcement agency and any other law enforcement
26 agency which obtains custody of the arrested person shall
27 furnish a disposition report to the bureau whenever the
28 arrested person is transferred to the custody of another
29 law enforcement agency or is released without having a com-
30 plaint or information filed with any court.

31 Whenever a criminal complaint or information is filed in
32 any court, the clerk, or if there be no clerk, the judge of
33 the court shall furnish a disposition report of such case.

34 The disposition report, whether by a law enforcement agency
35 or court, shall be sent to the bureau within thirty days after

1 disposition on a form provided by the bureau.

2 Sec. 15. NEW SECTION. REVIEW AND REMOVAL. At least every
3 six months the bureau shall review and determine current
4 status of all arrests reported after the effective date of
5 this Act. Any arrest record within an automated system and
6 which has no disposition data after five years shall be removed
7 unless there is an outstanding arrest warrant or detainer
8 on such charge.

9 Sec. 16. NEW SECTION. EXCLUSIONS. Criminal history data
10 does not include:

11 1. Juvenile data after the person has reached twenty-five
12 years of age and has had no intervening convictions for an
13 indictable misdemeanor or felony.

14 2. Arrest data after the person has been acquitted or
15 the charges dismissed, unless the person has previously been
16 convicted of an indictable public offense.

17 Sec. 17. NEW SECTION. PUBLIC RECORDS. Nothing in this
18 Act shall prohibit the public from examining and copying the
19 official public records of any public body or agency as
20 authorized by chapter sixty-eight A (68A) of the Code.

21 The collection of criminal history and intelligence data
22 by the department or bureau and the dissemination of this
23 data to criminal justice agencies is not a public record
24 within the provisions of chapter sixty-eight A (68A) of the
25 Code.

26

EXPLANATION

27 This bill provides that criminal history data may only
28 be disseminated by the Department of Public Safety to criminal
29 justice agencies or agencies approved by the Commissioner
30 of Public Safety and restricts the manner of redissemination.

31 The bill provides citizens with a right to review their
32 file and to request corrections and appeal to court if cor-
33 rections are not made.

34 The bill provides civil and criminal liability for viola-
35 tions and requires that arrests and dispositions of criminal

S.F. _____ H.F. _____

1 cases be reported to the Department of Public Safety.

2 The bill provides for review of the files and purging of
3 certain data.

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