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MAR 5 1996

Place On Calendar

HOUSE FILE 2448
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 579)

Passed House, Date ^(P. 788) 3/18/96 Passed Senate, Date ^(P. 1296) 4/10/96
Vote: Ayes 97 Nays 0 Vote: Ayes 45 Nays 0
Approved 4/23/96

A BILL FOR

1 An Act relating to public access to criminal history data
2 maintained by the department of public safety.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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HOUSE FILE 2448

H-5358

1 Amend House File 2448 as follows:
2 1. Page 3, line 3, by inserting after the figure
3 "~~692-3-~~" the following: "However, the fee for
4 conducting a criminal history data check for a person
5 seeking release of a certified copy of the person's
6 own criminal history data to a potential employer, if
7 that employer requests the release in writing, shall
8 not be paid by the person but shall be paid by the
9 employer."

By FALLON of Polk

H-5358 FILED MARCH 12, 1996

Adopted 3/18/96
(P. 787)

HF 2448

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1 Section 1. Section 22.7, subsection 9, Code Supplement
2 1995, is amended to read as follows:

3 9. Criminal identification files of law enforcement
4 agencies. However, records of current and prior arrests and
5 criminal history data shall be public records.

6 Sec. 2. Section 692.2, subsections 1 through 5, Code
7 Supplement 1995, are amended by striking the subsections and
8 inserting in lieu thereof the following:

9 1. The department may provide copies or communicate
10 information from criminal history data to the following:

- 11 a. Criminal or juvenile justice agencies.
- 12 b. A person or public or private agency, upon written
13 application on a form approved by the commissioner of public
14 safety and subject to the following restrictions:

15 (1) A request for criminal history data must be submitted
16 in writing by mail. However, the department shall accept a
17 request presented in person if it is from an individual or an
18 individual's attorney and requests the individual's personal
19 criminal history data.

20 (2) The request must identify a specific person by name
21 and date of birth. Fingerprints of the person named may be
22 required.

23 (3) Criminal history data that does not contain any
24 disposition data after eighteen months from the date of arrest
25 may only be disseminated by the department to criminal or
26 juvenile justice agencies, to the person who is the subject of
27 the criminal history data or the person's attorney, or to a
28 person requesting the criminal history data with a signed
29 release from the person who is the subject of the criminal
30 history data authorizing the requesting person access to
31 criminal history data.

32 2. Requests for criminal history data from criminal or
33 juvenile justice agencies shall take precedence over all other
34 requests.

35 3. A person who requests criminal history data shall not

1 be liable for damages to the person whose criminal history
2 data is requested for actions the person requesting the
3 information may reasonably take in reliance on the accuracy
4 and completeness of the criminal history data received from
5 the department if all of the following are true:

6 a. The person requesting the criminal history data in good
7 faith believes the criminal history data to be accurate and
8 complete.

9 b. The person requesting the criminal history data has
10 complied with the requirements of this chapter.

11 c. The identifying information submitted to the department
12 by the person requesting the criminal history data is accurate
13 regarding the person whose criminal history data is sought.

14 4. A person other than the department of public safety
15 shall not disseminate criminal history data maintained by the
16 department to persons who are not criminal or juvenile justice
17 agencies.

18 Sec. 3. Section 692.2, subsection 6, Code Supplement 1995,
19 is amended to read as follows:

20 ~~6. 5.~~ The department ~~may~~ shall charge a fee to any nonlaw-
21 enforcement person or agency to conduct criminal history
22 record data checks and ~~otherwise administer this section and~~
23 ~~other sections of the Code providing access to criminal~~
24 ~~history records. The fee shall be set by the commissioner of~~
25 ~~public safety equal to the cost incurred not to exceed twenty~~
26 ~~dollars for each individual check requested. Notwithstanding~~
27 any other limitation, the department ~~is authorized to~~ may use
28 revenues generated from the fee to administer this section and
29 other sections of the Code providing access to criminal
30 history data and to employ clerical personnel to process
31 criminal history data checks ~~for nonlaw enforcement purposes.~~

32 ~~In cases in which members of the department are~~
33 ~~participating in the investigation or arrest, or where~~
34 ~~officers of other criminal or juvenile justice agencies~~
35 ~~participating in the investigation or arrest consent, the~~

1 department-may-disseminate-criminal-history-data-and
2 intelligence-data-when-the-dissemination-complies-with-section
3 692.3-

4 Sec. 4. Section 692.5, unnumbered paragraph 3, Code 1995,
5 is amended to read as follows:

6 Upon the request of the petitioner, the record and evidence
7 in a judicial review proceeding shall be closed to all but the
8 court and its officers, and access thereto shall be refused
9 unless otherwise ordered by the court. The clerk shall
10 maintain a separate docket for such actions. No A person,
11 other than the petitioner, shall not permit a copy of any of
12 the testimony or pleadings or the substance thereof to be made
13 available to any person other than a party to the action or
14 the party's attorney. Violation ~~of the provisions~~ of this
15 section shall be a public offense, punishable under section
16 692.7. The provisions of this section shall be the sole right
17 of action against the department, its subdivisions, or
18 employees regarding improper storage or release of criminal
19 history data.

20 Sec. 5. Section 692.6, Code 1995, is amended to read as
21 follows:

22 692.6 CIVIL REMEDY.

23 Any person may institute a civil action for damages under
24 chapter 669 or 670 or to restrain the dissemination of the
25 person's ~~criminal-history-data-or~~ intelligence data in
26 violation of this chapter, and any person, agency, or
27 governmental body proven to have disseminated or to have
28 requested and received ~~criminal-history-data-or~~ intelligence
29 data in violation of this chapter shall be liable for actual
30 damages and exemplary damages for each violation and shall be
31 liable for court costs, expenses, and reasonable attorneys'
32 fees incurred by the party bringing the action. In no case
33 shall the award for damages be less than one hundred dollars.

34 Sec. 6. Section 692.7, subsection 1, Code 1995, is amended
35 to read as follows:

1 1. Any A person who willfully requests, obtains, or seeks
2 to obtain criminal history data under false pretenses, or who
3 willfully communicates or seeks to communicate criminal
4 history data to any agency or person except in accordance with
5 this chapter, or any a person connected with any a research
6 program authorized pursuant to this chapter who willfully
7 falsifies criminal history data or any records relating
8 thereto, shall, upon conviction, for each such offense be
9 guilty of an aggravated misdemeanor. ~~Any person who~~
10 ~~knowingly, but without criminal purposes, communicates or~~
11 ~~seeks to communicate criminal history data except in~~
12 ~~accordance with this chapter shall be guilty of a simple~~
13 ~~misdemeanor.~~

14 Sec. 7. NEW SECTION. 692.8A REDISSEMINATION OF
15 INTELLIGENCE DATA.

16 A criminal or juvenile justice agency, state or federal
17 regulatory agency, or a peace officer shall not disseminate
18 intelligence data, which has been received from the department
19 or bureau or from any other source, outside the agency or the
20 peace officer's agency unless all of the following apply:

21 1. The intelligence data is for official purposes in
22 connection with prescribed duties of a criminal or juvenile
23 justice agency.

24 2. The agency maintains a list of the persons receiving
25 the intelligence data and the date and purpose of the
26 dissemination.

27 3. The request for intelligence data is based upon name,
28 fingerprints, or other individually identified
29 characteristics.

30 Sec. 8. Section 692.18, unnumbered paragraph 2, Code 1995,
31 is amended to read as follows:

32 ~~Criminal history data and intelligence~~ Intelligence data in
33 the possession of the department or bureau, or disseminated by
34 the department or bureau, are not public records within the
35 provisions of chapter 22.

1 Sec. 9. Section 692.20, Code 1995, is amended to read as
2 follows:

3 692.20 MOTOR VEHICLE OPERATOR'S RECORD EXEMPT.

4 The provisions of ~~sections~~ section 692.2 and ~~692.3~~ shall
5 not apply to the certifying of an individual's operating
6 record pursuant to section 321A.3.

7 Sec. 10. Section 692.3, Code Supplement 1995, is repealed.

8 EXPLANATION

9 This bill provides for public access to criminal history
10 data maintained by the department of public safety. Criminal
11 history data includes arrest, conviction, disposition, and
12 correctional data.

13 The bill authorizes any person to request the criminal
14 history data of another person by mail. The request must
15 contain the name and birthdate of the individual whose
16 criminal history data is requested. In-person requests are
17 prohibited except that an individual or the individual's
18 attorney may request the individual's own criminal history
19 data in person. Requests for criminal history data by law
20 enforcement agencies have priority over other requests under
21 the bill. The bill adds language in chapter 22 which makes
22 criminal history data a public record. The bill also limits
23 the dissemination of criminal history data which does not
24 contain any disposition data.

25 The bill also provides that a person who requests criminal
26 history data is not liable to the person whose data was
27 requested for damages if the person is accurately identified
28 to the department, the person requesting the data believes in
29 good faith that the data is accurate and complete, and the
30 person requesting the data complies with the requirements of
31 chapter 692. Only the department of public safety may
32 disseminate criminal history data maintained by the department
33 to persons who are not criminal or juvenile justice agencies
34 or individuals.

35 The bill requires the department of public safety to charge

1 a fee to persons other than criminal or juvenile justice
2 agencies. The fee is to offset the costs of administering the
3 dissemination of criminal history data, including staff costs.

4 The bill repeals section 692.3 regarding the
5 redissemination of criminal history data by peace officers,
6 criminal or juvenile justice agencies, regulatory agencies, or
7 the departments of human services or public health. The bill
8 provides that criminal intelligence data shall not be
9 redisseminated by peace officers, criminal or juvenile justice
10 agencies, or regulatory agencies unless the data is to be used
11 for official purposes, the agency maintains a list of the
12 persons who receive the data and when and why they get it, and
13 the person whose information is requested is identified by
14 name, fingerprints, or other individually identified
15 characteristics.

16 The bill provides that no action for damages or relief may
17 be maintained against the department of public safety or its
18 employees regarding inaccurate criminal history data or
19 improper dissemination of the data. The bill also provides
20 that a civil cause of action may only be maintained by a
21 person to restrain the release of or for damages due to the
22 release of intelligence data regarding the person. Further,
23 the bill eliminates the simple misdemeanor penalty for a
24 person who communicates criminal history data without criminal
25 intent.

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Substituted for SF 2216
4-10-96 (P. 1295)

HOUSE FILE 2448
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 579)

(As Amended and Passed by the House, March 18, 1996)

Re Passed House, Date 4/11/96 (P. 1549) Passed Senate, Date (P. 1296) 4/10/96
Vote: Ayes 94 Nays 0 Vote: Ayes 45 Nays 0
Approved 4/23/96

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House Amendments _____

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13 application on a form approved by the commissioner of public
14 safety and subject to the following restrictions:

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16 in writing by mail. However, the department shall accept a
17 request presented in person if it is from an individual or an
18 individual's attorney and requests the individual's personal
19 criminal history data.

20 (2) The request must identify a specific person by name
21 and date of birth. Fingerprints of the person named may be
22 required.

23 (3) Criminal history data that does not contain any
24 disposition data after eighteen months from the date of arrest
25 may only be disseminated by the department to criminal or
26 juvenile justice agencies, to the person who is the subject of
27 the criminal history data or the person's attorney, or to a
28 person requesting the criminal history data with a signed
29 release from the person who is the subject of the criminal
30 history data authorizing the requesting person access to
31 criminal history data.

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4 and completeness of the criminal history data received from
5 the department if all of the following are true:

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7 faith believes the criminal history data to be accurate and
8 complete.

9 b. The person requesting the criminal history data has
10 complied with the requirements of this chapter.

11 c. The identifying information submitted to the department
12 by the person requesting the criminal history data is accurate
13 regarding the person whose criminal history data is sought.

14 4. A person other than the department of public safety
15 shall not disseminate criminal history data maintained by the
16 department to persons who are not criminal or juvenile justice
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22 ~~record data~~ checks ~~and otherwise administer this section and~~
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24 ~~history records.~~ ~~The fee shall be set by the commissioner of~~
25 ~~public safety equal to the cost incurred not to exceed twenty~~
26 ~~dollars for each individual check requested.~~ Notwithstanding
27 any other limitation, the department ~~is authorized to~~ may use
28 revenues generated from the fee to administer this section and
29 other sections of the Code providing access to criminal
30 history data and to employ clerical personnel to process
31 criminal history data checks ~~for nonlaw-enforcement purposes.~~

32 ~~In cases in which members of the department are~~
33 ~~participating in the investigation or arrest, or where~~
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35 ~~participating in the investigation or arrest consent, the~~

1 ~~department-may-disseminate-criminal-history-data-and~~
2 ~~intelligence-data-when-the-dissemination-complies-with-section~~
3 ~~692.3-~~ However, the fee for conducting a criminal history
4 data check for a person seeking release of a certified copy of
5 the person's own criminal history data to a potential
6 employer, if that employer requests the release in writing,
7 shall not be paid by the person but shall be paid by the
8 employer.

9 Sec. 4. Section 692.5, unnumbered paragraph 3, Code 1995,
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12 in a judicial review proceeding shall be closed to all but the
13 court and its officers, and access thereto shall be refused
14 unless otherwise ordered by the court. The clerk shall
15 maintain a separate docket for such actions. No A person,
16 other than the petitioner, shall not permit a copy of any of
17 the testimony or pleadings or the substance thereof to be made
18 available to any person other than a party to the action or
19 the party's attorney. Violation of-the-provisions of this
20 section shall be a public offense, punishable under section
21 692.7. The provisions of this section shall be the sole right
22 of action against the department, its subdivisions, or
23 employees regarding improper storage or release of criminal
24 history data.

25 Sec. 5. Section 692.6, Code 1995, is amended to read as
26 follows:

27 692.6 CIVIL REMEDY.

28 Any person may institute a civil action for damages under
29 chapter 669 or 670 or to restrain the dissemination of the
30 person's ~~criminal-history-data-or~~ intelligence data in
31 violation of this chapter, and any person, agency, or
32 governmental body proven to have disseminated or to have
33 requested and received ~~criminal-history-data-or~~ intelligence
34 data in violation of this chapter shall be liable for actual
35 damages and exemplary damages for each violation and shall be

1 liable for court costs, expenses, and reasonable attorneys'
2 fees incurred by the party bringing the action. In no case
3 shall the award for damages be less than one hundred dollars.

4 Sec. 6. Section 692.7, subsection 1, Code 1995, is amended
5 to read as follows:

6 1. Any A person who willfully requests, obtains, or seeks
7 to obtain criminal history data under false pretenses, or who
8 willfully communicates or seeks to communicate criminal
9 history data to any agency or person except in accordance with
10 this chapter, or any a person connected with any a research
11 program authorized pursuant to this chapter who willfully
12 falsifies criminal history data or any records relating
13 thereto, shall, upon conviction, for each such offense be
14 guilty of an aggravated misdemeanor. ~~Any person who~~
15 ~~knowingly, but without criminal purposes, communicates or~~
16 ~~seeks to communicate criminal history data except in~~
17 ~~accordance with this chapter shall be guilty of a simple~~
18 ~~misdemeanor.~~

19 Sec. 7. NEW SECTION. 692.8A REDISSEMINATION OF
20 INTELLIGENCE DATA.

21 A criminal or juvenile justice agency, state or federal
22 regulatory agency, or a peace officer shall not disseminate
23 intelligence data, which has been received from the department
24 or bureau or from any other source, outside the agency or the
25 peace officer's agency unless all of the following apply:

26 1. The intelligence data is for official purposes in
27 connection with prescribed duties of a criminal or juvenile
28 justice agency.

29 2. The agency maintains a list of the persons receiving
30 the intelligence data and the date and purpose of the
31 dissemination.

32 3. The request for intelligence data is based upon name,
33 fingerprints, or other individually identified
34 characteristics.

35 Sec. 8. Section 692.18, unnumbered paragraph 2, Code 1995,

1 is amended to read as follows:

2 ~~Criminal-history-data-and-intelligence~~ Intelligence data in
3 the possession of the department or bureau, or disseminated by
4 the department or bureau, are not public records within the
5 provisions of chapter 22.

6 Sec. 9. Section 692.20, Code 1995, is amended to read as
7 follows:

8 692.20 MOTOR VEHICLE OPERATOR'S RECORD EXEMPT.

9 The provisions of ~~sections~~ section 692.2 and-692.3 shall
10 not apply to the certifying of an individual's operating
11 record pursuant to section 321A.3.

12 Sec. 10. Section 692.3, Code Supplement 1995, is repealed.

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HOUSE FILE 2448

S-5556

- 1 Amend House File 2448, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, line 16, by inserting after the word
- 4 "mail" the following: "or as otherwise provided by
- 5 rule".
- 6 2. Page 1, by inserting after line 31 the
- 7 following:
- 8 "(4) Upon receipt of official notification of the
- 9 successful completion of probation following a
- 10 deferred judgment, criminal history data regarding the
- 11 person who successfully completed the probation shall
- 12 only be disseminated by the department to a criminal
- 13 or juvenile justice agency, to the person who is the
- 14 subject of the criminal history data or the person's
- 15 attorney, or to another person with a signed release
- 16 from the person who is the subject of the criminal
- 17 history data authorizing the requesting person access
- 18 to the criminal history data."
- 19 3. Page 2, line 20, by striking the words "may
- 20 shall" and inserting the following: "may".
- 21 4. By striking page 3, line 25, through page 4,
- 22 line 3.
- 23 5. By renumbering as necessary.

By ANDY McKEAN
RANDAL J. GIANNETTO
TOM VILSACK

S-5556 FILED MARCH 27, 1996.

Adopted 4-10-96
(P.1295)

HOUSE FILE 2448

S-5534

- 1 Amend House File 2448, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, by inserting after line 31 the
- 4 following:
- 5 "(4) Upon receipt of official notification,
- 6 criminal history data regarding a person who
- 7 successfully completed probation following a deferred
- 8 judgment shall only be disseminated by the department
- 9 to a criminal or juvenile justice agency, to the
- 10 person who is the subject of the criminal history data
- 11 or the person's attorney, or to another person with a
- 12 signed release from the person who is the subject of
- 13 the criminal history data authorizing the requesting
- 14 person access to the criminal history data."

By RANDAL J. GIANNETTO

S-5534 FILED MARCH 26, 1996

Out of order 4-10-96 (P.1295)

HOUSE FILE 2448

S-5599

- 1 Amend House File 2448 as follows:
- 2 1. Page 2, by inserting after line 13 the
- 3 following:
- 4 "____. Unless otherwise provided by law, access
- 5 under this section to criminal history data by a
- 6 person or public or private agency does not create a
- 7 duty upon a person, or employer, member, or volunteer
- 8 of a public or private agency to examine the criminal
- 9 history data of an applicant, employee, or volunteer."
- 10 2. By renumbering as necessary.

By ANDY McKEAN
RANDAL J. GIANNETTO
TOM FLYNN

WITHDRAWN

4-10-96

(P. 1296)

S-5599 FILED MARCH 28, 1996

HOUSE FILE 2448

S-5601

- 1 Amend House File 2448, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, line 14, by inserting after the word
- 4 "and" the following: "provided by the department to
- 5 law enforcement agencies,".

By ANDY McKEAN

S-5601 FILED MARCH 28, 1996

Adopted 4-10-96 (P. 1295)

HOUSE FILE 2448

S-5663

- 1 Amend House File 2448, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. By striking page 3, line 25, through page 4,
- 4 line 3.
- 5 2. By renumbering as necessary.

By TOM VILSACK

S-5663 FILED APRIL 3, 1996

Out of Order 4-10-96 (P. 1296)

HOUSE FILE 2448

S-5665

- 1 Amend House File 2448, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, by inserting after line 31 the
- 4 following:
- 5 "(4) Any release of criminal history data by the
- 6 department shall prominently display the statement:
- 7 "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF
- 8 GUILT.""

By JOHNIE HAMMOND
ANDY McKEAN

Adopted 4-10-96

(P. 1296)

S-5665 FILED APRIL 3, 1996

HOUSE FILE 2448

S-5561

1 Amend House File 2448, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting after line 5 the
4 following:

5 "Sec. ____ . Section 216A.136, Code 1995, is amended
6 to read as follows:

7 216A.136 STATISTICAL ANALYSIS CENTER -- ACCESS TO
8 RECORDS.

9 The division shall maintain an Iowa statistical
10 analysis center for the purpose of coordinating with
11 data resource agencies to provide data and analytical
12 information to federal, state, and local governments,
13 and assist agencies in the use of criminal and
14 juvenile justice data. ~~The division of criminal and~~
15 ~~juvenile justice planning and the statistical analysis~~
16 ~~center are considered criminal justice agencies for~~
17 ~~the purposes of receiving criminal history data.~~
18 Notwithstanding any other provision of state law,
19 unless prohibited by federal law or regulation, the
20 division shall be granted access, for purposes of
21 research and evaluation, to criminal history records,
22 official juvenile court records, juvenile court social
23 records, and any other data collected or under control
24 of the board of parole, department of corrections,
25 district departments of correctional services,
26 department of human services, judicial department, and
27 department of public safety. Any record, data, or
28 information obtained by the division under this
29 section and the division itself are subject to the
30 federal and state confidentiality laws and regulations
31 which are applicable to the original record, data, or
32 information obtained by the division and to the
33 original custodian of the record, data, or
34 information. The access shall include but is not
35 limited to all of the following:

WVARCHTIW

36 1. Juvenile court records and all other
37 information maintained under sections 232.147 through
38 232.153.

39 2. Child abuse information under sections 235A.15
40 through 235A.19.

41 3. Dependent adult abuse records maintained under
42 chapter 235B.

43 4. Criminal history and intelligence data
44 maintained under chapter 692.

45 5. Sex offender registry information maintained
46 under chapter 692A.

47 6. Presentence investigation reports maintained
48 under section 901.4.

49 7. Corrections records maintained under sections
50 904.601 and 904.602.

S-5561

S-5561

Page 2

- 1 8. Community-based correctional program records
 2 maintained under chapter 905.
 3 9. Parole records maintained under chapter 906.
 4 10. Deferred judgment, deferred or suspended
 5 sentence, and probation records maintained under
 6 chapter 907.
 7 11. Violation of parole or probation records
 8 maintained under chapter 908.
 9 12. Fines and victim restitution records
 10 maintained under chapters 909 and 910."
 11 2. Title page, by striking lines 1 and 2 and
 12 inserting the following: "An Act relating to access
 13 to criminal history and other records maintained by
 14 state agencies."
 15 3. By renumbering as necessary.

By RANDAL J. GIANNETTO

S-5561 FILED MARCH 27, 1996

Adapted 4-10-96 (P. 1295)

HOUSE FILE 2448

S-5564

- 1 Amend House File 2448, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. Page 4, by inserting after line 3 the
 4 following:
 5 "Sec. ____ . NEW SECTION. 692.6A IMMUNITY --
 6 NONPROFIT ORGANIZATIONS.
 7 A cause of action shall not arise against a
 8 nonprofit organization for damages caused by an
 9 employee or volunteer of the nonprofit organization
 10 due to the failure of the nonprofit organization to
 11 check the criminal history record of the employee or
 12 volunteer prior to hiring the employee or volunteer."
 13 2. By renumbering as necessary.

WITHDRAWN

By TOM FLYNN

4-10-96 (P. 1296)

S-5564 FILED MARCH 27, 1996

HOUSE FILE 2448

S-5683

- 1 Amend House File 2448, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. Page 2, by inserting after line 13 the
 4 following:
 5 " ____ . Unless otherwise provided by law, access
 6 under this section to criminal history data by a
 7 person or public or private agency does not create a
 8 duty upon a person, or employer, member, or volunteer
 9 of a public or private agency to examine the criminal
 10 history data of an applicant, employee, or volunteer."
 11 2. By renumbering as necessary.

By ANDY MCKEAN

RANDAL J. GIANNETTO
TOM FLYNN*ADAPTED 4-10-96 (P. 1296)*

S-5683 FILED APRIL 8, 1996

SENATE AMENDMENT TO HOUSE FILE 2448

H-5917

1 Amend House File 2448, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting after line 5 the
4 following:

5 "Sec. ____ . Section 216A.136, Code 1995, is amended
6 to read as follows:

7 216A.136 STATISTICAL ANALYSIS CENTER -- ACCESS TO
8 RECORDS.

9 The division shall maintain an Iowa statistical
10 analysis center for the purpose of coordinating with
11 data resource agencies to provide data and analytical
12 information to federal, state, and local governments,
13 and assist agencies in the use of criminal and
14 juvenile justice data. ~~The division of criminal and
15 juvenile justice planning and the statistical analysis
16 center are considered criminal justice agencies for
17 the purposes of receiving criminal history data.~~
18 Notwithstanding any other provision of state law,
19 unless prohibited by federal law or regulation, the
20 division shall be granted access, for purposes of
21 research and evaluation, to criminal history records,
22 official juvenile court records, juvenile court social
23 records, and any other data collected or under control
24 of the board of parole, department of corrections,
25 district departments of correctional services,
26 department of human services, judicial department, and
27 department of public safety. Any record, data, or
28 information obtained by the division under this
29 section and the division itself are subject to the
30 federal and state confidentiality laws and regulations
31 which are applicable to the original record, data, or
32 information obtained by the division and to the
33 original custodian of the record, data, or
34 information. The access shall include but is not
35 limited to all of the following:

36 1. Juvenile court records and all other
37 information maintained under sections 232.147 through
38 232.153.

39 2. Child abuse information under sections 235A.15
40 through 235A.19.

41 3. Dependent adult abuse records maintained under
42 chapter 235B.

43 4. Criminal history and intelligence data
44 maintained under chapter 692.

45 5. Sex offender registry information maintained
46 under chapter 692A.

47 6. Presentence investigation reports maintained
48 under section 901.4.

49 7. Corrections records maintained under sections
50 904.601 and 904.602.

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1 8. Community-based correctional program records
2 maintained under chapter 905.

3 9. Parole records maintained under chapter 906.

4 10. Deferred judgment, deferred or suspended
5 sentence, and probation records maintained under
6 chapter 907.

7 11. Violation of parole or probation records
8 maintained under chapter 908.

9 12. Fines and victim restitution records
10 maintained under chapters 909 and 910."

11 2. Page 1, line 14, by inserting after the word
12 "and" the following: "provided by the department to
13 law enforcement agencies,".

14 3. Page 1, line 16, by inserting after the word
15 "mail" the following: "or as otherwise provided by
16 rule".

17 4. Page 1, by inserting after line 31 the
18 following:

19 "(4) Upon receipt of official notification of the
20 successful completion of probation following a
21 deferred judgment, criminal history data regarding the
22 person who successfully completed the probation shall
23 only be disseminated by the department to a criminal
24 or juvenile justice agency, to the person who is the
25 subject of the criminal history data or the person's
26 attorney, or to another person with a signed release
27 from the person who is the subject of the criminal
28 history data authorizing the requesting person access
29 to the criminal history data."

30 5. Page 1, by inserting after line 31 the
31 following:

32 "(5) Any release of criminal history data by the
33 department shall prominently display the statement:
34 "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF
35 GUILT.""

36 6. Page 2, by inserting after line 13 the
37 following:

38 "_____. Unless otherwise provided by law, access
39 under this section to criminal history data by a
40 person or public or private agency does not create a
41 duty upon a person, or employer, member, or volunteer
42 of a public or private agency to examine the criminal
43 history data of an applicant, employee, or volunteer."

44 7. Page 2, line 20, by striking the words "may
45 shall" and inserting the following: "may".

46 8. By striking page 3, line 25, through page 4,
47 line 3.

48 9. Title page, by striking lines 1 and 2 and
49 inserting the following: "An Act relating to access
50 to criminal history and other records maintained by

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1 state agencies."

2 10. By renumbering, relettering, or redesignating

3 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-5917 FILED APRIL 10, 1996

House concurred 4/11/96 (p. 1549)

1 Section 1. Section 22.7, subsection 9, Code Supplement
2 1995, is amended to read as follows:

3 9. Criminal identification files of law enforcement
4 agencies. However, records of current and prior arrests and
5 criminal history data shall be public records.

6 Sec. 2. Section 692.2, subsections 1 through 5, Code
7 Supplement 1995, are amended by striking the subsections and
8 inserting in lieu thereof the following:

9 1. The department may provide copies or communicate
10 information from criminal history data to the following:

11 a. Criminal or juvenile justice agencies.

12 b. A person or public or private agency, upon written
13 application on a form approved by the commissioner of public
14 safety and subject to the following restrictions:

15 (1) A request for criminal history data must be submitted
16 in writing by mail. However, the department shall accept a
17 request presented in person if it is from an individual or an
18 individual's attorney and requests the individual's personal
19 criminal history data.

20 (2) The request must identify a specific person by name
21 and date of birth. Fingerprints of the person named may be
22 required.

23 2. Requests for criminal history data from criminal or
24 juvenile justice agencies shall take precedence over all other
25 requests.

26 3. A person who requests criminal history data shall not
27 be liable for damages to the person whose criminal history
28 data is requested for actions the person requesting the
29 information may reasonably take in reliance on the accuracy
30 and completeness of the criminal history data received from
31 the department if all of the following are true:

32 a. The person requesting the criminal history data in good
33 faith believes the criminal history data to be accurate and
34 complete.

35 b. The person requesting the criminal history data has

1 complied with the requirements of this chapter.

2 c. The identifying information submitted to the department
3 by the person requesting the criminal history data is accurate
4 regarding the person whose criminal history data is sought.

5 4. A person other than the department of public safety
6 shall not disseminate criminal history data maintained by the
7 department to persons who are not criminal or juvenile justice
8 agencies.

9 Sec. 3. Section 692.2, subsection 6, Code Supplement 1995,
10 is amended to read as follows:

11 ~~6.~~ 5. The department ~~may~~ shall charge a fee to any nonlaw-
12 enforcement person or agency to conduct criminal history
13 ~~record~~ data checks ~~and otherwise administer this section and~~
14 ~~other sections of the Code providing access to criminal~~
15 ~~history records. The fee shall be set by the commissioner of~~
16 ~~public safety equal to the cost incurred not to exceed twenty~~
17 ~~dollars for each individual check requested.~~ Notwithstanding
18 any other limitation, the department ~~is authorized to~~ may use
19 revenues generated from the fee to administer this section and
20 other sections of the Code providing access to criminal
21 history data and to employ clerical personnel to process
22 criminal history data checks ~~for nonlaw enforcement purposes.~~

23 ~~In cases in which members of the department are~~
24 ~~participating in the investigation or arrest, or where~~
25 ~~officers of other criminal or juvenile justice agencies~~
26 ~~participating in the investigation or arrest consent, the~~
27 ~~department may disseminate criminal history data and~~
28 ~~intelligence data when the dissemination complies with section~~
29 ~~692-3.~~

30 Sec. 4. Section 692.5, unnumbered paragraph 3, Code 1995,
31 is amended to read as follows:

32 Upon the request of the petitioner, the record and evidence
33 in a judicial review proceeding shall be closed to all but the
34 court and its officers, and access thereto shall be refused
35 unless otherwise ordered by the court. The clerk shall

1 maintain a separate docket for such actions. No A person,
2 other than the petitioner, shall not permit a copy of any of
3 the testimony or pleadings or the substance thereof to be made
4 available to any person other than a party to the action or
5 the party's attorney. Violation ~~of the provisions~~ of this
6 section shall be a public offense, punishable under section
7 692.7. The provisions of this section shall be the sole right
8 of action against the department, its subdivisions, or
9 employees regarding improper storage or release of criminal
10 history data.

11 Sec. 5. Section 692.6, Code 1995, is amended to read as
12 follows:

13 692.6 CIVIL REMEDY.

14 Any person may institute a civil action for damages under
15 chapter 669 or 670 or to restrain the dissemination of the
16 person's ~~criminal-history-data-or~~ intelligence data in
17 violation of this chapter, and any person, agency, or
18 governmental body proven to have disseminated or to have
19 requested and received ~~criminal-history-data-or~~ intelligence
20 data in violation of this chapter shall be liable for actual
21 damages and exemplary damages for each violation and shall be
22 liable for court costs, expenses, and reasonable attorneys'
23 fees incurred by the party bringing the action. In no case
24 shall the award for damages be less than one hundred dollars.

25 Sec. 6. Section 692.7, subsection 1, Code 1995, is amended
26 to read as follows:

27 1. Any A person who willfully requests, obtains, or seeks
28 to obtain criminal history data under false pretenses, or who
29 willfully communicates or seeks to communicate criminal
30 history data to any agency or person except in accordance with
31 this chapter, or any a person connected with any a research
32 program authorized pursuant to this chapter who willfully
33 falsifies criminal history data or any records relating
34 thereto, shall, upon conviction, for each such offense be
35 guilty of an aggravated misdemeanor. ~~Any-person-who~~

1 ~~knowingly, but without criminal purposes, communicates or~~
2 ~~seeks to communicate criminal history data except in~~
3 ~~accordance with this chapter shall be guilty of a simple~~
4 ~~misdemeanor.~~

5 Sec. 7. NEW SECTION. 692.8A REDISSEMINATION OF
6 INTELLIGENCE DATA.

7 A criminal or juvenile justice agency, state or federal
8 regulatory agency, or a peace officer shall not disseminate
9 intelligence data, which has been received from the department
10 or bureau or from any other source, outside the agency or the
11 peace officer's agency unless all of the following apply:

12 1. The intelligence data is for official purposes in
13 connection with prescribed duties of a criminal or juvenile
14 justice agency.

15 2. The agency maintains a list of the persons receiving
16 the intelligence data and the date and purpose of the
17 dissemination.

18 3. The request for intelligence data is based upon name,
19 fingerprints, or other individually identified
20 characteristics.

21 Sec. 8. Section 692.18, unnumbered paragraph 2, Code 1995,
22 is amended to read as follows:

23 ~~Criminal history data and intelligence~~ Intelligence data in
24 the possession of the department or bureau, or disseminated by
25 the department or bureau, are not public records within the
26 provisions of chapter 22.

27 Sec. 9. Section 692.20, Code 1995, is amended to read as
28 follows:

29 692.20 MOTOR VEHICLE OPERATOR'S RECORD EXEMPT.

30 The provisions of ~~sections~~ section 692.2 and ~~692.3~~ shall
31 not apply to the certifying of an individual's operating
32 record pursuant to section 321A.3.

33 Sec. 10. Section 692.3, Code Supplement 1995, is repealed.

34 EXPLANATION

35 This bill provides for public access to criminal history

1 data maintained by the department of public safety. Criminal
2 history data includes arrest, conviction, disposition, and
3 correctional data.

4 The bill authorizes any person to request the criminal
5 history data of another person by mail. The request must
6 contain the name and birthdate of the individual whose
7 criminal history data is requested. In-person requests are
8 prohibited except that an individual or the individual's
9 attorney may request the individual's own criminal history
10 data in person. Requests for criminal history data by law
11 enforcement agencies have priority over other requests under
12 the bill. The bill adds language in chapter 22 which makes
13 criminal history data a public record.

14 The bill also provides that a person who requests criminal
15 history data is not liable to the person whose data was
16 requested for damages if the person is accurately identified
17 to the department, the person requesting the data believes in
18 good faith that the data is accurate and complete, and the
19 person requesting the data complies with the requirements of
20 chapter 692. Only the department of public safety may
21 disseminate criminal history data maintained by the department
22 to persons who are not criminal or juvenile justice agencies
23 or individuals.

24 The bill requires the department of public safety to charge
25 a fee to persons other than criminal or juvenile justice
26 agencies. The fee is to offset the costs of administering the
27 dissemination of criminal history data, including staff costs.

28 The bill repeals section 692.3 regarding the
29 redissemination of criminal history data by peace officers,
30 criminal or juvenile justice agencies, regulatory agencies, or
31 the departments of human services or public health. The bill
32 provides that criminal intelligence data shall not be
33 redisseminated by peace officers, criminal or juvenile justice
34 agencies, or regulatory agencies unless the data is to be used
35 for official purposes, the agency maintains a list of the

1 persons who receive the data and when and why they get it, and
2 the person whose information is requested is identified by
3 name, fingerprints, or other individually identified
4 characteristics.

5 The bill provides that no action for damages or relief may
6 be maintained against the department of public safety or its
7 employees regarding inaccurate criminal history data or
8 improper dissemination of the data. The bill also provides
9 that a civil cause of action may only be maintained by a
10 person to restrain the release of or for damages due to the
11 release of intelligence data regarding the person. Further,
12 the bill eliminates the simple misdemeanor penalty for a
13 person who communicates criminal history data without criminal
14 intent.

15 BACKGROUND STATEMENT

16 SUBMITTED BY THE AGENCY

17 Criminal history data are currently disseminated to a wide
18 variety of agencies through specific statutory authority.
19 Groups not authorized statutory access may petition the
20 commissioner of public safety to receive criminal history
21 information. Requests for access to such information have
22 continued to grow throughout the years for a wide variety of
23 legitimate purposes, including checking prospective employees
24 in youth service agencies, nursing homes, and child care
25 providers.

26 This proposal makes criminal history information a public
27 record and permits public access to criminal history data
28 maintained by the division of criminal investigation of the
29 department of public safety.

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HOUSE FILE 2448

AN ACT

RELATING TO ACCESS TO CRIMINAL HISTORY AND OTHER RECORDS
MAINTAINED BY STATE AGENCIES.

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

Section 1. Section 22.7, subsection 9, Code Supplement 1995, is amended to read as follows:

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records.

Sec. 2. Section 216A.136, Code 1995, is amended to read as follows:

216A.136 STATISTICAL ANALYSIS CENTER -- ACCESS TO RECORDS.

The division shall maintain an Iowa statistical analysis center for the purpose of coordinating with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data. ~~The division of criminal and juvenile justice planning and the statistical analysis center are considered criminal justice agencies for the purposes of receiving criminal history data.~~ Notwithstanding any other provision of state law, unless prohibited by federal law or regulation, the division shall be granted access, for purposes of research and evaluation, to criminal history records, official juvenile court records, juvenile court social records, and any other data collected or under control of the board of parole, department of corrections, district departments of correctional services, department of human services, judicial department, and department of public safety. Any record, data, or information obtained by the division under this section and the division itself are subject to the federal and state confidentiality

laws and regulations which are applicable to the original record, data, or information obtained by the division and to the original custodian of the record, data, or information. The access shall include but is not limited to all of the following:

1. Juvenile court records and all other information maintained under sections 232.147 through 232.153.
2. Child abuse information under sections 235A.15 through 235A.19.
3. Dependent adult abuse records maintained under chapter 235B.
4. Criminal history and intelligence data maintained under chapter 692.
5. Sex offender registry information maintained under chapter 692A.
6. Presentence investigation reports maintained under section 901.4.
7. Corrections records maintained under sections 904.601 and 904.602.
8. Community-based correctional program records maintained under chapter 905.
9. Parole records maintained under chapter 906.
10. Deferred judgment, deferred or suspended sentence, and probation records maintained under chapter 907.
11. Violation of parole or probation records maintained under chapter 908.
12. Fines and victim restitution records maintained under chapters 909 and 910.

Sec. 3. Section 692.2, subsections 1 through 5, Code Supplement 1995, are amended by striking the subsections and inserting in lieu thereof the following:

1. The department may provide copies or communicate information from criminal history data to the following:
 - a. Criminal or juvenile justice agencies.

b. A person or public or private agency, upon written application on a form approved by the commissioner of public safety and provided by the department to law enforcement agencies, subject to the following restrictions:

(1) A request for criminal history data must be submitted in writing by mail or as otherwise provided by rule. However, the department shall accept a request presented in person if it is from an individual or an individual's attorney and requests the individual's personal criminal history data.

(2) The request must identify a specific person by name and date of birth. Fingerprints of the person named may be required.

(3) Criminal history data that does not contain any disposition data after eighteen months from the date of arrest may only be disseminated by the department to criminal or juvenile justice agencies, to the person who is the subject of the criminal history data or the person's attorney, or to a person requesting the criminal history data with a signed release from the person who is the subject of the criminal history data authorizing the requesting person access to criminal history data.

(4) Upon receipt of official notification of the successful completion of probation following a deferred judgment, criminal history data regarding the person who successfully completed the probation shall only be disseminated by the department to a criminal or juvenile justice agency, to the person who is the subject of the criminal history data or the person's attorney, or to another person with a signed release from the person who is the subject of the criminal history data authorizing the requesting person access to the criminal history data.

(5) Any release of criminal history data by the department shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT."

2. Requests for criminal history data from criminal or juvenile justice agencies shall take precedence over all other requests.

3. A person who requests criminal history data shall not be liable for damages to the person whose criminal history data is requested for actions the person requesting the information may reasonably take in reliance on the accuracy and completeness of the criminal history data received from the department if all of the following are true:

a. The person requesting the criminal history data in good faith believes the criminal history data to be accurate and complete.

b. The person requesting the criminal history data has complied with the requirements of this chapter.

c. The identifying information submitted to the department by the person requesting the criminal history data is accurate regarding the person whose criminal history data is sought.

4. Unless otherwise provided by law, access under this section to criminal history data by a person or public or private agency does not create a duty upon a person, or employer, member, or volunteer of a public or private agency to examine the criminal history data of an applicant, employee, or volunteer.

5. A person other than the department of public safety shall not disseminate criminal history data maintained by the department to persons who are not criminal or juvenile justice agencies.

Sec. 4. Section 692.2, subsection 6, Code Supplement 1995, is amended to read as follows:

6. 5. The department may charge a fee to any nonlaw-enforcement person or agency to conduct criminal history record data checks and otherwise administer this section and other sections of the Code providing access to criminal history records. The fee shall be set by the commissioner of public safety equal to the cost incurred not to exceed twenty

~~dollars for each individual check requested.~~ Notwithstanding any other limitation, the department ~~is authorized to~~ may use revenues generated from the fee to administer this section and other sections of the Code providing access to criminal history data and to employ clerical personnel to process criminal history data checks for nonlaw enforcement purposes.

~~In cases in which members of the department are participating in the investigation or arrest, or where officers of other criminal or juvenile justice agencies participating in the investigation or arrest consent, the department may disseminate criminal history data and intelligence data when the dissemination complies with section 692.3.~~ However, the fee for conducting a criminal history data check for a person seeking release of a certified copy of the person's own criminal history data to a potential employer, if that employer requests the release in writing, shall not be paid by the person but shall be paid by the employer.

Sec. 5. Section 692.5, unnumbered paragraph 3, Code 1995, is amended to read as follows:

Upon the request of the petitioner, the record and evidence in a judicial review proceeding shall be closed to all but the court and its officers, and access thereto shall be refused unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No A person, other than the petitioner, shall not permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this section shall be a public offense, punishable under section 692.7. The provisions of this section shall be the sole right of action against the department, its subdivisions, or employees regarding improper storage or release of criminal history data.

Sec. 6. Section 692.7, subsection 1, Code 1995, is amended to read as follows:

1. ~~Any A~~ person who willfully requests, obtains, or seeks to obtain criminal history data under false pretenses, or who willfully communicates or seeks to communicate criminal history data to any agency or person except in accordance with this chapter, or ~~any a~~ person connected with ~~any a~~ research program authorized pursuant to this chapter who willfully falsifies criminal history data or any records relating thereto, shall, upon conviction, for each such offense be guilty of an aggravated misdemeanor. ~~Any person who knowingly, but without criminal purposes, communicates or seeks to communicate criminal history data except in accordance with this chapter shall be guilty of a simple misdemeanor.~~

Sec. 7. NEW SECTION. 692.8A REDISSEMINATION OF INTELLIGENCE DATA.

A criminal or juvenile justice agency, state or federal regulatory agency, or a peace officer shall not disseminate intelligence data, which has been received from the department or bureau or from any other source, outside the agency or the peace officer's agency unless all of the following apply:

1. The intelligence data is for official purposes in connection with prescribed duties of a criminal or juvenile justice agency.
2. The agency maintains a list of the persons receiving the intelligence data and the date and purpose of the dissemination.
3. The request for intelligence data is based upon name, fingerprints, or other individually identified characteristics.

Sec. 8. Section 692.18, unnumbered paragraph 2, Code 1995, is amended to read as follows:

~~Criminal history data and intelligence~~ Intelligence data in the possession of the department or bureau, or disseminated by

the department or bureau, are not public records within the provisions of chapter 22.

Sec. 9. Section 692.20, Code 1995, is amended to read as follows:

692.20 MOTOR VEHICLE OPERATOR'S RECORD EXEMPT.

The provisions of ~~sections~~ section 692.2 and ~~692.3~~ shall not apply to the certifying of an individual's operating record pursuant to section 321A.3.

Sec. 10. Section 692.3, Code Supplement 1995, is repealed.

RON J. CORBETT
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2448, Seventy-sixth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 4/23/96, 1996

TERRY E. BRANSTAD
Governor