

**ALASKA CRIMINAL HISTORY RECORD INFORMATION PROGRAM**

**A White Paper**

Prepared  
for  
The Records and Identification Section  
Alaska Department of Public Safety

by  
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Following a 1989 study it conducted for the Department of Public Safety, the SEARCH Group (the National Consortium for Justice Information and Statistics) developed a series of recommendations for the administration of the Alaska Public Safety Information Network (APSIN) system. One of these recommendations is to expand the range of events captured and reported by Criminal History Record Information (CHRI). The SEARCH Corporation suggested that the Alaska CHRI be revised to include eighteen (18) events.

The purpose of the present paper is to examine these suggested eighteen events to determine the viability of this inclusion in Alaska CHRI. The issues to be addressed are: Which events are needed to meet the federal standards promulgated by the FBI? Are all of these eighteen recommendations necessary? Who should enter each event? What would be the benefits to criminal justice agencies to have such data consolidated within the CHRI?

### **SEARCH GROUP'S RECOMMENDATIONS**

In their *Statutory Recommendations* submitted to the Alaska Department of Public Safety (December 1, 1989) the SEARCH Group recommended that the state report and track the following eighteen events:

- (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; and
- (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 Commissioner [of the Department of Public Safety] (pp. 17-18).

### **Federal Notice of Recommended Voluntary Standards for CHRI**

In assessing the pertinence of the SEARCH Group's recommendations, the first issue to be addressed involves determining which events need to be captured to meet the FBI-suggested standards. These ten standards, published by the FBI and the Bureau of Justice Statistics, U.S. Department of Justice, under the title

"Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information" became effective on February 13, 1991. (The Recommended Voluntary Standards are found in Appendix A.)

A comparison of these federal standards with Alaska's CHRI reveals that the state is in general compliance with, or near compliance with, nine of the ten recommendations. The one area in which the state is currently not in compliance in any way is with Standard #8: "Every State shall ensure that annual audits of a representative sample of State and local criminal justice agencies shall be conducted by the State to verify adherence to State and Federal standards and regulations." However, the Department of Public Safety is developing a plan which would facilitate such auditing. (See Appendix B, page B3, for a more detailed discussion of this issue.)

A more complete treatment of these ten federal standards and the state's present or proposed status was prepared by Peter Davis, Supervisor, Records and Identification Administrative Services, Department of Public Safety for Ken Bischoff, Director Administrative Services, Department of Public Safety (August 16, 1991). A copy of this document, "CHRI Standards," is found in Appendix B. In the context of this discussion it is sufficient to say that Alaska is already in virtual compliance with the federal standards.

## **GENERAL PROBLEMS WITH CURRENT CRIMINAL HISTORY RECORD INFORMATION**

Which of SEARCH's eighteen recommendations concerning reportable events should be incorporated into Alaska's Criminal History Record Information (CHRI)? This question encompasses several sub-questions: What information should CHRI contain to benefit the uniformed police officer working in the community; what CHRI information is required by an investigator; what information is required by a district

attorney; by a court; by the Department of Corrections; and what CHRI information is germane to an outside agency (e.g., the District Attorney's Office of Los Angeles County prosecuting an Alaska resident for homicide)? In pursuing their work these individuals and agencies may require data differing in degree of detail. The suggestions of the SEARCH Group form a reasonable and comprehensive list of events to be included in CHRI in order to provide a complete criminal history for the needs of the various segments of the criminal justice system as presented in these questions.

Presently, the Records and Information section of the Department of Public Safety administers the criminal history information contained in APSIN, but the current data are inadequate at best. For example, individual law enforcement agencies are free to input or not input data as they desire. Much arrest data are often not put into APSIN by Alaska law enforcement agencies because of actual or perceived budgetary constraints. Currently there is no statutory requirement that law enforcement or other justice agencies contribute any part of their criminal history data to APSIN. (Part of the problem with law enforcement agencies failing to input data was addressed by the SEARCH Group in their "Statutory Recommendations." The SEARCH Group recommended revisions in Alaska Statutes Chapter 62. (See Appendix C.)

Currently, none of the other state criminal justice agencies—the Departments of Law, Corrections, and Health and Social Services and the court system—regularly provide criminal history data to APSIN. Rather, their data are confined to their own individual internal computerized systems, i.e., the Prosecutor's Management Information System (PROMIS) in the Department of Law, the courts' computer system, the Offender Based State Corrections Information System (OBSCIS) at the Department of Corrections and the computer system at Health and Social Services.

This dispersed approach to criminal history data maintenance does not serve the needs of the system as a whole.

To further illuminate the criminal history record picture, it is instructive to examine the status of criminal history information in another state. One state that maintains a rather comprehensive criminal offender record is the State of California. Unlike Alaska, California statutorily mandates that all law enforcement agencies, prosecutors and courts record criminal offender record information, when applicable and available, with the California Department of Justice, Division of Law Enforcement, Criminal Identification and Information Branch. The offenders are tracked through the criminal justice process and data are reported to the Department of Justice by utilizing a "Disposition of Arrest and Court Action" form. [See Appendix D for data required by statute in an individual's criminal offender record in California (Penal Code of the State of California, section 13125 P.C.). A copy of the "Disposition of Arrest and Court Action" form utilized by California's Department of Justice is found in Appendix F.]

## **INCORPORATION OF THE SEARCH GROUP'S RECOMMENDATIONS**

All of the eighteen reportable events which SEARCH recommends be incorporated into the Alaska CHRI are presently recorded by one or more state criminal justice agencies. However, these data are not shared among the various agencies. The following list details which state agency records the individual events:

- (1) Issuance or withdrawal of an arrest warrant—Currently this information can be found in full or in part in APSIN and/or PROMIS;
- (2) An arrest—APSIN;
- (3) Release of a person after arrest without filing of a charge—PROMIS;

- (4) Decision by a prosecutor not to commence criminal proceedings or to defer or indefinitely postpone prosecution—PROMIS;
- (5) Presentment of an indictment or the filing of a criminal information or other statement of charges after arrest—PROMIS;
- (6) A release pending trial or appeal—PROMIS and OBSCIS;
- (7) Commitment to or release from a place of pretrial confinement—OBSCIS;
- (8) The dismissal of an indictment or criminal information or any of the charges set out in such indictment or criminal information—PROMIS and APSIN;
- (9) An acquittal, conviction or other disposition at or following trial - PROMIS and APSIN;
- (10) Imposition of a sentence—OBSCIS, partial information in APSIN;
- (11) Commitment to or release from a correctional facility, whether state or locally operated, including commitment to or release from a parole or probation agency—OBSCIS;
- (12) Commitment to or release from the Department of Health and Social Services as incompetent to stand trial or as not criminally responsible—HSS, partial information in PROMIS, OBSCIS and APSIN;
- (13) An escape from detention or confinement—OBSCIS, partial information in APSIN;
- (14) Entry of an appeal to an appellate court—PROMIS;
- (15) Judgment of an appellate court—PROMIS, partial information in APSIN,
- (16) A pardon, reprieve, commutation of sentence or other change in sentence length, including a change ordered by a court—OBSCIS;
- (17) Revocation of probation or change in parole status—OBSCIS; and
- (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

Commissioner [of the Department of Public Safety]—APSIN, OBSCIS, PROMIS, HSS.

The problems the Department of Public Safety Records and Information section faces in accessing data frustrate its ability to maintain and disseminate a viable CHRI when requested. This inadequacy can be illustrated by a recent situation: A DPS records clerk received a fingerprint card from a law enforcement agency indicating that a subject had been arrested in 1991 for sexual assault. As she started to update the individual's CHRI in APSIN she noticed that the subject had had an identical arrest with a subsequent conviction in 1986.

Something in the data caused the clerk to question the 1991 sexual assault charge. Believing that the most recent charge might be a reporting error which duplicated the 1986 event, she checked these events in the OBSCIS data system. (It is worth noting that not all records clerks imputing data into APSIN are authorized to access OBSCIS, as this clerk was.)

When the OBSCIS file was accessed, it was discovered that the individual had a rather extensive record—approximately five pages—and that the 1986 and 1991 sexual assault charges *did* stem from two distinct events. The clerk also discovered that between 1986 and 1991 the individual had three, or possibly four, arrests and convictions for sexual misconduct that *were not reflected* in any fashion in the individual's CHRI in APSIN. As a result of this inquiry the CHRI has been updated to truly reflect the subject's criminal activities. If the 1991 arrest information had been handled by a less conscientious employee or one who did not have access to OBSCIS, the individual's CHRI would still only reflect the 1986 arrest and conviction and the most recent 1991 arrest. This example illustrates some of the flaws in the current record-keeping/sharing process in state agencies.

## REMEDIES

In an effort to reduce state spending, administrators are being asked to make more judicious use of their existing resources. Workloads exceed the capacities of troopers, probation/parole officers, Department of Motor Vehicle employees, district attorneys and corrections officers. Even if access to other systems were authorized, there are too few record clerks assigned to the Records and Information Section of DPS to obtain all desired CHRI data from the various criminal justice agencies that actually maintain the data. A system which utilizes existing resources and does not require extensive changes within existing justice data banks must be adopted to improve state CHRI.

It is true that the state's criminal justice agencies require individual data bases, because each of these agencies have unique needs and statutory provisions they must meet and statutory provisions they must adhere to. It would not be efficient to require that each agency input all of its data into one system such as APSIN when APSIN's CHRI may only require one or two items, e.g., location of confinement, release date, etc. However, it *would* be sound to require that each agency permit the Department of Public Safety to access those entries which would complete the state's CHRI.

By utilizing a distributed data tracking system with the Arrest Tracking Number (ATN), DPS would be able to *interface* between APSIN and each of the data bases of the other agencies. Each agency could program its system to answer APSIN CHRI inquiries with information on one or more of the specific events which SEARCH recommended be included in the state's CHRI. For example, OBSCIS could be programmed to release information to an APSIN CHRI inquiry on such agency-specific data as "a release pending trial or appeal" and "commitment to or release from a place of pretrial confinement."

A distributed data tracking system would allow each agency to assist in establishing an adequate CHRI which would benefit everyone while still maintaining the direct control and security of its own system. (This approach would also be fiscally sound because DPS would not have to devote additional resources to the storage of unrelated data.) In practice the Department of Public Safety would become a central CHRI repository but in reality not a hard copy storage area for all systems. This type of system would serve the best interests of individual agencies as well as those of the criminal justice system as a whole.

### STATUTORY REMEDIES

Legislative intervention in this area is warranted and required. The legislature can provide direction for the criminal justice system as a whole with appropriate legislation. Such legislation should encompass several points. First, the legislature would identify by statute the components of an adequate CHRI for the state. Second, the legislature would mandate that law enforcement agencies or those agencies which take custody of an individual input arrest information into APSIN CHRI immediately. Finally, various state agencies such as Corrections, Law, and the court system, as well as agencies such as Anchorage Police Department with its PLIMS system, would be required to share those data germane to the CHRI with the Department of Public Safety.

Examining the Alaska Criminal History Record Information system is timely. Developing the APSIN CHRI system into a viable tool for assisting the criminal justice system in combating crime is both a sound civic undertaking as well as a rational fiscal decision. This is the type of endeavor where legislative insight and oversight are warranted. This same issue was addressed by the California State legislature in California Penal Code section 13100 P.C.:

Legislative Declaration (§ 13100 P.C.)

- (a) That the criminal justice agencies in this state require, for the performance of their official duties, accurate and reasonably complete criminal offender information
- (b) That the Legislature and other governmental policymaking or policy researching bodies, and criminal justice agency management units require greatly improved aggregate information for the performance of their duties.
- (c) That policing agencies and courts require speedy access to information concerning all felony and selected misdemeanor arrests and final dispositions of such cases.
- (d) That criminal justice agencies may require regular access to detailed criminal histories relating to any felony arrest that is followed by the filing of a complaint.
- (e) That, in order to achieve the above improvements, the recording, reporting, storage, analysis, and dissemination of *criminal offender record information in this state must be made more uniform and efficient, and better controlled and coordinated* (emphasis added).

[Appendix E contains copies of California Penal Code sections that address such *Criminal History Reporting Requirements* as Arrest (§ 13150 P.C.), Disposition Reporting by Police Agency (§ 11115 P.C.), and Court Reporting (§ 13151 P.C.)]

CONCLUSION

While the present Criminal History Record Information system maintained by the Alaska Department of Public Safety provides some limited benefit to most criminal justice agencies in the state, the basic APSIN format restricts more

comprehensive use. The format provides for data input, primarily by law enforcement agencies, of a type that is helpful to the operations of those agencies, but which is not as beneficial to other specific justice functions such as prosecution, corrections, courts, and probation, and is not entirely useful to out-of-state and federal justice agencies. The primary reason for this shortcoming is that there has been no legislation or statutory regulation establishing a central repository for the collection, coordination and management of criminal justice information (CHRI). Until that occurs, the current fragmented, independent and uncommunicative collection of justice information systems will continue to retain and provide bits and pieces of an individual's criminal record (CHRI). In light of the above it is recommended that the eighteen recommendations of SEARCH be followed and that specific legislation be enacted that:

1. Defines the Alaska Safety Information Network (APSIN) as the central repository for Criminal History Record Information (CHRI);
2. Defines the CHRI that would be maintained by APSIN;
3. Requires that justice data systems such as OBSCIS or PLIMS (Anchorage Police Department's criminal record computer system) containing CHRI data not normally available to APSIN share these data through an inter-system network;
4. Appropriates sufficient funds to implement networking and information sharing; and
5. Requires all law enforcement agencies statewide to speedily input into APSIN the required criminal history information.

## Appendix A

### RECOMMENDED VOLUNTARY STANDARDS FOR IMPROVING THE QUALITY OF CRIMINAL HISTORY RECORD INFORMATION

*Reprinted from 56 Fed. Reg. 5849 (1991)*

**AGENCY:** Federal Bureau of Investigation and Bureau of Justice Statistics, Department of Justice.

**ACTION:** Notice.

**SUMMARY:** This Notice contains the voluntary reporting standards for State and local law enforcement agencies to improve the quality of criminal history record information.

**EFFECTIVE DATE:** February 13, 1991.

**FOR FURTHER INFORMATION CONTACT:** Melvin D. Mercer, Jr., Chief of the Correspondence and Special Services Section, Identification Division, FBI, Washington, DC 20537-9700, telephone number (202) 324-5454.

#### **SUPPLEMENTARY INFORMATION:**

##### **Part 1. Introduction of Standards**

The Anti-Drug Abuse Act of 1988 (section 6213(a) of Public Law 100-690, November 18, 1988) required the Attorney General to develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The Attorney General was further required to make a report to Congress describing such a system no later than one year after passage of the Act and to begin implementation of the system 30 days later.

A Task Force on Felon Identification in Firearm Sales was established by the Attorney General to study and develop a range of options that would comply with this statute. In October 1989, the Task Force completed its final report and submitted it to the Attorney General for consideration. The report set forth a variety of possible options for a system of identifying felons who attempt to purchase firearms; however, the Task Force did not recommend any specific option.

By letter dated November 20, 1989, the Attorney General advised the Congress of his recommendations based upon the report by the Task Force. In his letter, the Attorney General noted that several major obstacles had to be overcome in order to achieve the goal of immediate and accurate identification of felons. One of the obstacles cited by the Attorney General was the current state of record-keeping by local law enforcement agencies. The Attorney General concluded as follows:

No one list of felons exists. In addition, many of the criminal history records maintained by law enforcement are either out of date or incomplete, or both. Finally, current records often contain arrest information without notification of final disposition.

To address the problems of inaccurate, incomplete, and inaccessible criminal history records, the Attorney General directed the Federal Bureau of Investigation (FBI) in conjunction with the Bureau of Justice Statistics (BJS) to develop voluntary reporting standards for State and local law enforcement. The Attorney General further directed that since the most urgent need is to identify criminals, these standards should emphasize enhanced record-keeping for all arrests and convictions made within the last five years and in the future.

During February 1990, the National Crime Information Center (NCIC) Advisory Policy Board (APB) Identification Services Subcommittee (ISS) met with representatives of the FBI, BJS, and SEARCH Group, Inc. (SGI) to discuss the Attorney General's proposal and his directive to the FBI. The subcommittee recommended that the voluntary reporting standards include the following topics: arrests, dispositions, timeliness, audits, maintenance and security. It was also agreed that the first draft of the standards be forwarded to the NCIC APB Regional Working Groups (RWG).

An initial draft of the standards and guidelines was issued on March 12, 1990, for review by the ISS, the four RWGs and by the Ad Hoc Identification Division Issues Committee of SGI. Comments and concerns received in response to the initial draft were carefully considered in preparing a revised draft of the standards for further review.

As directed by the Attorney General, to ensure that the standards take into account the burden placed on states, the revised draft standards were issued May 18, 1990, for public comment for a period of 120 days. The draft was forwarded to the NCIC APB, SGI, which has representation in all 50 states and the District of Columbia, all state identification bureaus and selected public interest groups devoted to criminal justice issues.

During June 1990, the ISS redrafted the standards and recommended the ISS draft to the NCIC APB [*sic*]. The APB adopted the revised draft standards and forwarded a copy to the FBI on June 6, 1990. Additional comments were received from SGI and several states and public interest groups.

FBI and BJS representatives subsequently met to consider comments and to finalize the draft standards. The standards being promulgated are those proposed by the NCIC APB. The standards were approved by the Attorney General on December 28, 1990.

The purpose of these standards is not to supersede current regulations or to diminish the impact of existing standards and guidelines. The standards are voluntary. Their adoption by criminal history records systems nationwide should be viewed as a goal and not as a requirement.

## **Part II. Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information**

1. Every State shall maintain fingerprint impressions or copies thereof as the basic source document for each arrest (including incidents based upon a summons issued in lieu of an arrest warrant) recorded in the criminal history record system.

2. Arrest fingerprint impressions submitted to the State repository and the FBI Identification Division (ID) should be complete, but shall at least contain the following data elements: date of arrest, originating agency identification number, arrest charges, a unique tracking number (if available) and the subject's full name, date of birth, sex, race and social security number (if available).

3. Every State shall ensure that fingerprint impressions of persons arrested for serious and/or significant offenses are included in the national criminal history records system.

4. All disposition reports submitted to the State repository and the FBI ID shall contain the following: FBI number (if available), name of subject, date of birth, sex, state identifier number, social security number (if available), date of arrest, tracking number (if available), arrest offense literal, court offense literal, and agency identifier number of agency reporting arrest.

5. All final disposition reports submitted to the State repository and the FBI ID that report a conviction for an offense classified as a felony (or equivalent) within the State shall include a flag identifying the conviction as a felony.

6. States shall ensure to the maximum extent possible that arrest and/or confinement fingerprints are submitted to the State repository and, when appropriate, to the FBI ID within 24 hours; however, in the case of single-source states, State repositories shall forward fingerprints, when appropriate, to the FBI ID within two weeks of receipt.

7. States shall ensure to the maximum extent possible that final dispositions are reported to the State repository and, when appropriate, to the FBI ID within a period not to exceed 90 days after the disposition is known.

8. Every State shall ensure that annual audits of a representative sample of State and local criminal justice agencies shall be conducted by the State to verify adherence to State and Federal standards and regulations.

9. Wherever criminal history record information is collected, stored, or disseminated, each State shall institute procedures to assure the physical security of such information to prevent unauthorized access, disclosure or dissemination, and to ensure that such information cannot be improperly modified, destroyed, accessed, changed, purged, or overlaid.

10. Every State shall accurately identify to the maximum extent feasible all State criminal history records maintained or received in the future that contain a conviction for an offense classified as a felony (or equivalent) within the State.

January 31, 1991

Lawrence K. York, *Assistant Director, FBI Identification Division*  
Steven D. Dillingham, *Director, Bureau of Justice Statistics*

## Appendix B

### CHRI STANDARDS

*Memorandum to Ken Bischoff, Director, Administrative Services, Department of Public Safety from Peter Davis, Supervisor, Records & Identification, Administrative Services, Department of Public Safety, August 16, 1991*

The following is a brief outline of the "voluntary" standards for improving the quality of Criminal History Record Information (CHRI) proposed by the FBI, applicable sections of the SEARCH statute recommendations, and our present or proposed status:

**Standard #1.** . . . Maintenance of fingerprint impressions as the basic source document for each arrest recorded in the CHRI system. (SEARCH Ref.: Section 7. Fingerprinting. (a)(2), Pg. 15)

We are in general compliance with this standard. The FBI specifies fingerprints as the basic source document for each arrest and points only to summons in lieu of arrest, as a recognized loophole to close. We are in the process of doing just that. Inception of the Arrest Tracking Number (ATN) will positively impact this problem, and will be reinforced by the proposed SEARCH statute. That statute states: "The court shall determine whether such defendant has previously been fingerprinted in connection with the criminal proceedings leading to the conviction and, if not, shall order that the defendant be fully fingerprinted." Once each or either are in place, we shall be in full compliance.

However, there still remains the questionable exactness of the term "arrest." Most enforcement personnel do not consider the issuance of a citation an arrest. To them physical custody, handcuffs, booking etc., is an arrest, though most attorneys would probably take issue with that conception. Additionally, over the last twenty years or so much federal money has been spent developing programs for the use of citation in lieu of arrests. Consequently I feel it would be safe to say that those agencies with such programs, implemented with the usual goals of reducing arrest processing time for street officers, and jail crowding, will be reluctant to step backward. Also, the FBI does not accept fingerprints for an extensive list of "minor offenses," i.e. littering, shoplifting, drunk in public etc. even if they are physically arrested. We, on the other hand, put all physical arrests in our system and many of the citations. From a records perspective the value of positive identification by fingerprints is obvious and important. But, if we are required to validate each arrest (citations included), practically speaking, it would probably double the work volume in AAFIS and R&I, and require reorganization of the arrest booking process with increased emphasis on enforcement processing rather than corrections. It seems to make more sense to concentrate on fingerprints for physical arrests and to develop an automated identifier to note "Citation Issued" for those events in our system.

**Standard #2.** Arrest fingerprint impressions submitted to the State repository and the FBI should be complete, but shall at least contain: date of arrest, ORI, arrest charges, a unique tracking number, full name, DOB, sex, race, and social security number. (No specific SEARCH section.)

We are in compliance with all aspects of this standard and will be in full compliance with ATN inception.

**Standard #3.** Every State shall ensure that fingerprint impressions of persons arrested for serious and/or significant offenses are included in the national criminal history records system. (SEARCH Ref: Section 7, Fingerprinting. (a) (4), Pg. 15)

Again, with help from the ATN, we will be in full compliance as of January 1992. The only reason for reliance on the ATN is to have a means to assure the summons in lieu of arrest are printed. A copy of all arrest prints are presently sent to the FBI ID Section and, as a sole source state, cards from any other agency will be returned. Within a year, maybe sooner, we anticipate the FBI procedures to change. We will then send only first arrest fingerprints to the ID Section. Subsequent arrests verified with fingerprints will be retained only in our CHRI and accessed through III.

**Standard #4.** All disposition reports submitted to the State and FBI shall contain the following: FBI number, name, DOB, sex, state ID number, date of arrest, ATN, arrest offense literal, court offense literal, and ORI of agency reporting arrest. (SEARCH Ref: Section 11. Completeness and Accuracy of Criminal History Record Information. (c) Pg. 24)

We no longer submit disposition data to the FBI. With III participation all dispositions entered into APSIN are available to the national system. We DO NOT, however, obtain all the data suggested by the FBI off of the disposition. Information contained on that court document is meager to say the least and even the format is different in judicial districts. Only the names, the docket number, and conviction charge are consistent bits of information. Sometimes there is a DOB, and/or a social security number, sometimes even a state ID and a date of violation.

We do have verbal commitment from Mr. Delaplain, of the Courts Technical Operations, to include a felony indicator and the ATN on a revised disposition form when their updated system is completed.

That leaves the FBI number, sex, social security number, arrest offense, and agency case number to account for. If, and when, we factor the ATN form into the disposition process only the social security number and FBI number will be absent. However, that information along with the majority of that specified by the FBI in this standard, is already usually entered into APSIN with the original arrest and verification by fingerprints. As long, then, as the ATN is on the disposition document it can be tied to the correct APSIN entry. Most other identifiers will already be there. There will however have to be some reformatting of the PF8 conviction screen to display elements such as: arresting agency ORI, and the ATN.

**Standard #5.** All final disposition reports submitted to the State repository and the FBI ID that report a conviction for an offense classified as a felony, shall include a flag identifying the conviction as a felony. (No specific SEARCH Section)

As referred to above, verbal commitment has been obtained for placement of felony indicators on disposition documents under development.

**Standard #6.** States shall assure . . . that arrest and/or confinement fingerprints are submitted to the State repository within 24 hours; in the case of single-source states, State repositories shall forward fingerprints to the FBI ID within two weeks of receipt. (Search Ref: Section 7. Fingerprints (a) (4) Pg. 15)

We are in compliance as a single source state. Once cards are received in AAFIS—given normal work flow and staffing—we comfortably meet the two week standard. Where our problem presently lies is with the irregular receipt of fingerprint cards from some correctional institutions and contract jails. The proposed SEARCH statute would be a step in the direction of correcting that. The five (5) days proposed by SEARCH is much more reasonable than the 24 hours of the FBI given our geography, but even then there is going to have to be some sanction or teeth in the statute to make it work.

**Standard #7.** States shall insure . . . that final dispositions are reported to the State repository . . . within a period not to exceed 90 days after the disposition is known. (SEARCH Ref: Section 8. Reporting of Criminal History Record Information. (c) (3) Pg.19)

The vast majority of dispositions (judgments) from the courts arrive in R&I well within the FBI 90 day period. There then is about a 30 day backlog in the APSIN entry process. (One position is dedicated to that function and others assist as duties allow. This entry process may well be slowed further as, of if, the ATN document gets phased into use for this purpose. Then again, if an automated interface is developed in the near future, the same process would be accelerated.

The SEARCH statute suggests a 30 day submittal requirement. I believe this will be difficult to get the courts to comply with. And what if they don't? Dispositions on dismissals or discharge from the prosecutors level are not presently obtained. The ATN document will temporarily fill that void although it will cause another function to be added to R&I/AAFIS procedures. The automated exchange of dismissal data from PROMIS to APSIN will be the ultimate solution, though I think even getting the automated data within the 5 days suggested by SEARCH will be difficult.

**Standard #8.** Every State shall ensure that annual audits of a representative sample of State and local criminal justice agencies shall be conducted by the State to verify adherence to State and Federal standards and regulations. (SEARCH Ref: Section 11. Completeness and Accuracy of Criminal History Record Information. (a) thru (f). Pgs. 24 & 25)

This is the one area where we do not, in any form, meet the suggested standard. We have made a feeble attempt in developing a self-audit for the NCIC functions, but this is more procedural than data oriented. The SEARCH proposal develops the required functions and outlines the authority. The application will probably necessitate the development of an audit unit and/or staff for dedication to this function. These auditors could also function in the mandated NCIC role.

**Standard #9.** . . . each State shall institute procedures to assure the physical security of Criminal History Record Information. . . . (SEARCH Ref: Section 14. Security of Criminal History Record Information (a) thru (c) Pgs. 36 & 37)

We are in compliance with this standard. Our APSIN automated procedures, passwords, user IDs, etc., CTA Directives, and compliance with NCIC policies, along with the physical security of DPS and other criminal justice facilities, assure this. The SEARCH statute will somewhat formalize existing conditions.

**Standard #10, Every State shall accurately identify State criminal history records that contain a conviction for an offense classified as a felony within the State. (No specific SEARCH section)**

We are in compliance with this standard. As of July 15, 1991, the APSIN system automatically identifies felonies and felony convictions.

**Appendix C**  
**STATUTORY RECOMMENDATIONS**  
**by SEARCH Group, Inc.**

# STATUTORY RECOMMENDATIONS

*Submitted To*

**ALASKA DEPARTMENT OF PUBLIC SAFETY**

*By*

**SEARCH GROUP, INC.**

**December 1, 1989**



***SEARCH Group, Inc.***

**The National Consortium for Justice Information and Statistics  
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**CHAPTER 62. CRIMINAL JUSTICE INFORMATION SYSTEMS  
SECURITY AND PRIVACY**

**SECTION 1. PURPOSE AND FINDINGS.**

- (a) The purpose of this chapter is to provide for the creation and maintenance of an accurate and efficient criminal justice information system in Alaska consistent with this chapter and applicable federal laws and regulations, with the need of criminal justice agencies of the state for accurate and current criminal history record information, and with the right of individuals to be free from unwarranted intrusions into their privacy.
  
- (b) In order to achieve this result, the legislature finds that there is a need:
  - (1) To designate the Department of Public Safety as the central state repository for criminal history record information and for information relating to wanted persons, stolen vehicles and identifiable stolen property;
  
  - (2) To require the timely taking, transmission and filing of fingerprints;
  
  - (3) To require the timely reporting of accurate, relevant and current criminal justice information to the repository by all criminal justice agencies;
  
  - (4) To insure that criminal justice information is kept accurate, current and secure against damage or unauthorized access; and
  
  - (5) To prohibit the improper dissemination of such information.

- (c) This chapter is intended to provide a statutory framework within which these objectives can be attained.

*Commentary*

*This section sets out the purpose of the statute and legislative findings that there is a need for the law. The section is brief and direct and needs no explanation.*

**SECTION 2. COVERAGE.**

**This chapter applies to the collection, processing, storage or dissemination of criminal justice information by the Alaska Public Safety Information Network or by any other criminal justice agency or criminal justice information system in the state.**

*Commentary*

*This section makes it clear that the law applies not only to APSIN but to other criminal justice information systems in the state, such as OBSCIS and PROMIS, and to other criminal justice agencies in the state that maintain or disseminate criminal justice information. Some of the substantive requirements and limitations in the law are stated to be applicable only to the repository (the Department of Public Safety), but most are applicable to all criminal justice agencies and systems in the state at any level of government.*

**SECTION 3. DEFINITIONS.**

**For purposes of this chapter:**

- (a) "Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial or post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. The term includes criminal identification activities; the collection, storage and dissemination of criminal

justice information; the performance of support services required by criminal justice agencies, pursuant to a specific agreement providing for the security and confidentiality of any criminal history record information made available; the employment of criminal justice personnel; and the activities of state or federal Inspector General offices;

- (b) "Arrest information" means information indicating that an identifiable individual has been arrested, detained or indicted, or that criminal charges have otherwise been brought against the individual;
- (c) "Board" means the Criminal Justice Information Advisory Board created by Section 6;
- (d) "Commissioner" means the Commissioner of the Department of Public Safety;
- (e) "Criminal history record information" means information collected by criminal justice agencies relating to identifiable individuals, consisting of notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information, such as fingerprint records, if the information does not indicate involvement of the individual in the criminal justice process. The term also does not include:
  - (1) posters, announcements or lists utilized for identifying or apprehending fugitives or wanted persons;
  - (2) chronologically organized initial records of arrest maintained at police stations, such as police blotters and incident reports, if such records are not indexed or accessible by name and if they are permitted by law or long-standing custom to be made public;

- (3) court records;
- (4) information or reports on individuals compiled in connection with bail, pretrial or post-trial release proceedings, presentence investigations, proceedings to determine physical or mental condition, participation by inmates in correctional or rehabilitative programs, probation or parole proceedings or other such social, medical or treatment files;
- (5) records of traffic offenses maintained only for the purpose of regulating the issuance, suspension, revocation or renewal of drivers licenses; or
- (6) statistical or analytical records or reports in which individuals are not identified and from which their identities cannot be ascertained;
- (f) "Criminal intelligence and investigative information" means information on identifiable persons compiled by criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity or obtained in the course of the investigation of specific alleged criminal acts that have not resulted in an arrest being made, charges being filed or a case being referred for prosecution;
- (g) "Criminal justice agency" means any court with criminal jurisdiction; any governmental agency or subunit thereof which performs activities relating to the administration of criminal justice pursuant to a statute, local ordinance or executive order and which allocates a substantial part of its annual budget to such activities; and any public or private agency which, by contract with one of the aforementioned agencies, performs an activity related to the administration of criminal justice, to the extent of that activity;

- (h) "Criminal justice information" includes criminal history record information, criminal intelligence and investigative information and information relating to wanted persons, stolen vehicles or identifiable stolen property;
- (i) "Criminal justice information system" means any system, including the equipment, facilities, procedures, agreements and organizations thereof, for the collection, processing, maintenance or dissemination of criminal justice information;
- (j) "Purge" means to destroy, blot out, strike out or efface a record so that no trace of the individual's identity remains; and
- (k) "Seal" means to retain a record in a criminal justice information system subject to additional specified restrictions on access or dissemination.

#### *Commentary*

*The definitions are generally consistent with those found in the federal regulations (28 CFR Part 20, § 20.3), and in Standards for the Security and Privacy of Criminal History Record Information, Third Edition, published by SEARCH in July, 1988 as Technical Report No. 13 (Revised). This report, which is the basis for some of the substantive provisions included in this draft statute, resulted from a three-year effort by the SEARCH Law and Policy Project Advisory Committee and the SEARCH Membership Group, with assistance provided by SEARCH staff and with input from many knowledgeable persons within and outside of the criminal justice community. While Technical Report No. 13 was not intended as a model statute that would fit the particular needs and political climate of any 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 group of criminal justice information experts.*

*It is important to keep the definitions clearly in mind when reading the substantive provisions of the draft, since coverage of particular provisions is determined by the terms used, particularly terms applicable to various types of information. For example, Section 8 (reporting to the central repository), Section 11 (completeness and accuracy), Section 13*

*(dissemination), Section 14 (security), Section 15 (review and correction by record subjects) and Section 16 (sealing and purging) apply only to "criminal history record information", which is defined in Section 3(d). The definition is essentially identical to the one found in the federal regulations and in general use in state laws, with the usual exclusions relating to such records as police files that are not name-indexed, social, medical and other treatment files, and motor vehicle files. The term does not include criminal intelligence or investigative information, nor does it include information on wanted persons or stolen vehicles or property. These classes of information are covered by other provisions of the draft relating specifically to them and by provisions relating to "criminal justice information," a broad term which includes criminal history record information, criminal intelligence and investigative information and information relating to wanted persons and stolen vehicles and property.*

*Another important distinction is the difference between "conviction information" and "nonconviction information". Although those definitions (found in Section 13 (a)) are in general use and familiar, it is important to note that conviction records include not only findings and pleas of guilty, but also arrest records without dispositions if less than a year has elapsed since the date of arrest or if the case is still actively pending. These record entries would be available to anyone for any purpose under the dissemination approach set out in Section 13 of the draft. If, however, a year or more has elapsed since the date of a particular arrest, and there is no recorded disposition and no recent information on the record or otherwise available indicating that the case is still under active prosecution, information about the arrest and any arrest charges is considered to be "nonconviction information" and is subject to the restrictions set out in Section 13 relating to dissemination for noncriminal justice purposes.*

*Two other definitions found in Section 13 (a), "criminal justice purpose" and "noncriminal justice purpose," relate to the definition of "administration of criminal justice" (Section 3 (a)). This term is 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. It should be noted that criminal defense is not an included activity; however, defense attorneys will continue to have access under ALASKA R. CRIM. P. 16.*

**SECTION 4. ESTABLISHMENT OF ALASKA PUBLIC SAFETY INFORMATION NETWORK; POWERS AND DUTIES.**

- (a) *Establishment.* There is established within the Alaska Department of Public Safety a statewide criminal justice information system for the collection, maintenance and communication of vital information relating to crimes, criminals and criminal activity, to be known as the Alaska Public Safety Information Network. Responsibility for the development, maintenance and operation of the system shall be vested in the Commissioner of the Department of Public Safety with the assistance and guidance of the Criminal Justice Information Advisory Board. The Department shall be the central state repository for criminal justice information and shall be referred to hereafter in this chapter as "the repository."
- (b) *Powers and Duties of the Repository.* The repository is authorized to:
- (1) Obtain and file fingerprints, descriptions, photographs, and other pertinent identifying data on persons arrested for or charged with offenses specified in Section 7 of this chapter;
  - (2) Upon request and payment of applicable fees, compare all fingerprints and other identifying information received with information already on file and promptly inform the requesting agency or requesting person of all criminal history record information that may be released pursuant to applicable security and privacy restrictions set out in this chapter;
  - (3) Develop, operate and maintain an information system which will support the collection, storage, retrieval and dissemination of all crime and offender information described in this chapter consistent with principles of

scope, security, confidentiality and responsiveness set out in this chapter;

- (4) Provide a uniform crime reporting system for the periodic collection, analysis and reporting of crimes processed by or reported to criminal justice agencies in the state;
- (5) Compile statistics on the nature and extent of crime in the state and compile other information related to planning for and operating agencies, programs and activities involved with the reduction of crime or the administration of the criminal justice system;
- (6) Periodically publish statistics that accurately reflect the extent and nature of crime in the state and the operations of agencies within the criminal justice system;
- (7) Make available, upon request and upon payment of any applicable fee, to all state, federal and out-of-state criminal justice agencies any information in the files of the repository that will aid these agencies in the performance of their official duties;
- (8) Provide availability, by means of data processing, to files listing motor vehicle driver's license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of assistance to criminal justice agencies;
- (9) Cooperate with other agencies of the state, the criminal record repositories of other states, the Interstate Identification Index, the National Law Enforcement Telecommunications System, the National Crime Information Center, the FBI's Uniform Crime Reports program and other appropriate agencies or systems in

developing and operating an effective interstate, national and international system of criminal identification, records and statistics;

- (10) Cooperate with all criminal justice agencies within the state in providing forms, procedures, standards, and training necessary for the effective operation of the repository and the establishment of efficient local record systems;
- (11) Provide the administrative mechanisms necessary to respond to individuals who file requests to inspect and seek correction of their own records, as provided for in this chapter, and cooperate in the correction of the repository's records and those of contributing agencies when those records have been successfully challenged; and
- (12) Institute the necessary measures in the design, implementation and operation of the Alaska Public Safety Information Network to insure the privacy and security of the system consistent with standards set by this chapter as well as standards set by nationally operated systems for interstate sharing of information.

*Commentary*

*Subsection (a) formalizes the establishment of APSIN within the Department of Public Safety and designates the Department as the state's central record repository for criminal justice information (which includes all classes of information covered by the law). Responsibility for the development and operation of APSIN is vested in the Commissioner of Public Safety, with the assistance and guidance of the Criminal Justice Information Advisory Board established by Section 6.*

*Subsection (b) sets out the powers and duties of the Department of Public Safety in its role as the central repository. The section is based upon similar provisions in numerous state laws (particularly Georgia's law establishing its statewide Crime Information Center, GA. CODE ANN., § 35-3-33 (1981)). It is designed to provide specific legal authority for the Department's various record and information systems, including criminal history*

*records, uniform crime reports, wanted persons, stolen vehicles, stolen identifiable property and motor vehicle files. It also authorizes the Department to provide information and assistance to criminal justice agencies in the state and to out-of-state agencies and to establish and operate information systems to support this role. The section specifically authorizes the Department to cooperate with NLETS, NCIC, the Interstate Identification Index (III) system and other interstate, national or international identification and record systems. In brief, the section is intended to be a broad grant of authority to the Department covering all identification and record activities in which it engages.*

*It should be noted that this Section does not require the Department to engage in all of the recordkeeping and service-providing activities enumerated. It is a grant of authority, not a specific imposition of responsibility.*

## **SECTION 5. ISSUANCE OF REGULATIONS**

- (a) The Commissioner of Public Safety is authorized, after appropriate consultation with the Criminal Justice Information Advisory Board and with representatives of state and local criminal justice agencies, to promulgate regulations necessary to promote the effective and efficient operation of the repository. Such regulations shall not affect the recordkeeping practices or other operations of any criminal justice agency in the state except to the extent necessary to facilitate the audits required by this chapter, to insure the timely reporting of information required by this chapter to be reported to the repository, and to prescribe the form and content of such information. Any such regulations affecting agencies or officials in the judicial branch of government shall be approved prior to issuance by the Chief Justice of the Alaska Supreme Court.**
- (b) The notice and hearing requirements of the Administrative Procedure Act (A.S. 44.62) relating to the adoption of regulations shall apply to regulations adopted under this chapter.**

*Commentary*

*Subsection (a) specifically authorizes the Commissioner of Public Safety to promulgate regulations governing APSIN. The Commissioner is expressly required to consult with the Criminal Justice Information Advisory Board and with representatives of user agencies in the state. Final authority, however, to promulgate and enforce regulations governing APSIN is vested solely in the Commissioner.*

*Based upon Alaska's past experience with the Governor's Commission on the Administration of Justice, it is considered more efficient and workable to vest rulemaking authority in the Commissioner rather than in a board or commission which may not provide the leadership and action necessary to ensure that APSIN operates effectively and that the security and privacy requirements of the statute are enforced.*

*The Commissioner's rulemaking authority is limited to the development and operation of the repository and enforcement of the statutory requirements and limitations concerning the reporting of information to the repository and access to and use of information maintained by the 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. In all other respects, criminal justice agencies in the state are free to establish their own agency rules and procedures to comply with the substantive requirements and limitations of the statute, such as limits on the dissemination and use of information for noncriminal justice purposes, data quality, security, and review and challenge by record subjects.*

*Since there is a separation of powers issue concerning the application of executive branch rules to the courts, the draft provides that any rules proposed by the Commissioner that would affect agencies or officials of the judicial branch must be approved prior to issuance by the Chief Justice of the Alaska Supreme Court. This provides the basis for the cooperation of the courts in the Commissioner's rulemaking role concerning such issues as court disposition reporting, utilization of tracking numbers and the handling of seal orders. Such an approach has worked well in Maryland, where the Commissioner of Public Safety and the Chief Judge of the Court of Appeals have developed an amicable and productive working relationship.*

**SECTION 6. ESTABLISHMENT OF CRIMINAL JUSTICE INFORMATION  
ADVISORY BOARD; POWERS AND DUTIES.**

**(a) *Establishment.***

**(1) There is established a Criminal Justice Information Advisory Board which, for administrative and budgetary purposes only, shall be within the Department of Public Safety. The Board shall consist of the following members:**

- (a) The Attorney General;**
- (b) The Commissioner of Corrections;**
- (c) The Chief Justice of the Alaska Supreme Court;**
- (d) A municipal police chief appointed by the Governor;  
and**
- (e) A member of the general public appointed by the Governor.**

**(2) The Governor shall designate one of the above members to act as chair. Members shall receive no compensation for their services, but shall be reimbursed for their reasonable expenses as provided in the state budget.**

**(3) The Board shall meet semi-annually and at such other times as the chair shall deem necessary. The location, time and agenda of meetings shall be set by the Chair.**

**(b) *Powers and Duties.* The Board is authorized to:**

- (1) Advise the Commissioner on matters pertaining to the development, operation and maintenance of the Alaska Public Safety Information Network;**
- (2) Make proposals to and consult with the Commissioner concerning the issuance of regulations governing the**

collection, maintenance and exchange of criminal justice information, as provided for in this chapter;

- (3) Recommend to the state legislature any legislation necessary for the implementation, operation and maintenance of criminal justice information systems in the state;
- (4) Provide the mechanism for administrative appeal of agency decisions concerning the review by individuals of their own records pursuant to Section 15, and insure that its orders for administrative relief concerning appropriate purging or altering of records are carried out; and
- (5) Report as necessary to the Commissioner and to the Governor on the operation of the Alaska Public Safety Information Network and other criminal justice information systems covered by this chapter.

#### *Commentary*

*Subsection (a) establishes the Criminal Justice Information Advisory Board, located for administrative and budgetary purposes within the Department of Public Safety. Although the Board's role is advisory, provisions are made to encourage it to be active and to permit it to be effective in its advisory role. First, it is required to meet at least twice a year. Second, it is specifically authorized to report to the Commissioner and to the Governor on the operation of APSIN and other systems and agencies covered by the law. Experience in other states, particularly in Maryland, has shown that an advisory board of this type can be effective and can exert a strong influence on the development of policies. The key is the degree to which the members of the Board wish to play an active role in the policymaking process. If the Board is active and committed, it can use its interagency influence and its access to the Governor and to the legislature to ensure that its advice is considered and followed. On the other hand, if the Board is not committed and does not take an active interest in the operations of APSIN and the development of criminal justice information policy, the system will not be hampered by the absence of leadership, and the lack of active policy development as it has been for most of the past decade.*

*The membership of the Board is not as broadly representative as the Governor's Commission on the Administration of Justice, since the scope of the Board's activities and concerns is more limited than the Commission's. The Commission was established initially to administer a comprehensive program to improve the administration of the criminal justice system in Alaska, including the administration of a federally-supported grant program. The Board's authority is limited to information policy issues concerning the maintenance and utilization of criminal justice information and, accordingly, its membership is limited to officials who are directly concerned with such issues, as well as a member of the public appointed by the Governor to represent broader public policy interests.*

*The Board is designated as the forum for administrative review of agency decisions concerning challenges by record subjects of the accuracy of their criminal history records. This role is vested in the Governor's Commission on the Administration of Justice by A.S. § 12.62.030 (c).*

## **SECTION 7. FINGERPRINTING.**

### **(a) *Duties of Criminal Justice Agencies***

**(1) Following an arrest, or following the arraignment or first appearance of a defendant whose court attendance has been secured by a summons or citation, the arresting officer or other appropriate officer or agency shall take or cause to be taken fingerprints of the arrested person or defendant if an offense which is the subject of the arrest or the accusatory instrument pursuant to which the summons or citation was issued is:**

**(a) a felony;**

**(b) a misdemeanor defined in the statutes of Alaska unless exempted from the coverage of this section by the Commissioner; or**

**(c) being a fugitive from justice.**

- (2) When a defendant is convicted by a court of this state of an offense set out in subsection (a) (1) above the court shall determine whether such defendant has previously been fingerprinted in connection with the criminal proceedings leading to the conviction and, if not, shall order that the defendant shall be fully fingerprinted. The court shall also order that the defendant's thumbprints be placed upon the judgment of conviction at the time of sentencing and that a copy of the judgment and fingerprints be forwarded to the repository. The defendant and the person administering the fingerprinting shall sign their names upon the fingerprints.
- (3) Persons in charge of correctional facilities shall obtain fingerprints of all offenders received on criminal commitment to such facilities.
- (4) Fingerprints taken after arrest or court appearance pursuant to subsection (a) (1) shall be forwarded to the repository within five days. Fingerprints taken pursuant to subsections (a) (2) or (a) (3) shall be forwarded to the repository within five days after the conviction or the reception of committed persons. In all cases, such fingerprints shall be accompanied by any other identifying information required by regulations issued by the Commissioner.

(b) *Duties of the Repository.*

- (1) Upon receiving fingerprints from a criminal justice agency pursuant to this section, the repository shall search its records for information concerning a previous criminal history record of the subject and shall, upon request, promptly transmit to the agency a report containing all criminal history record information relating to the subject or a notice stating that the individual has no previous record on file at the repository.

- (2) If the fingerprints so received are not sufficiently legible to permit accurate identification, the repository shall so advise the forwarding agency and request that the subject's fingerprints be retaken if possible and forwarded to the repository.

#### *Commentary*

*This section imposes a mandatory fingerprinting requirement for all offenses that will be included in the APSIN criminal history record system. Since fingerprints provide positive identification of record subjects, thereby ensuring the integrity of the record system, it is imperative that fingerprints be obtained and forwarded to the repository for all criterion offenses. The section requires the taking of fingerprints for all felonies and for all serious misdemeanors (that is, all misdemeanors defined in Alaska's statutes except those nonserious offenses excluded by the Commissioner).*

*Subsection (a) (1) provides for the taking of fingerprints of persons arrested for criterion offenses, as well as persons who are brought to court by summons or citation without prior arrest. In the latter cases, the courts in which the persons first appear must either have them fingerprinted or order them to report to a police or correctional agency to be fingerprinted. This provision is modeled after a provision in New York's law (N.Y. CRIM. PROC. LAW § 160.10). Pennsylvania's criminal history record law includes a similar provision (18 PA. CONS. STAT. ANN. § 9112 (Purdon)). Maryland is instituting a procedure for obtaining the fingerprints of persons who come directly to court without arrest; this new procedure results from an audit finding that a large number of such offenses are not currently included in the criminal history database because fingerprints are not obtained.*

*Subsection (a) (2) incorporates a provision of existing law in Alaska requiring the fingerprinting of convicted persons who have not already been fingerprinted (A.S. § 12.55.147). This will ensure that fingerprints are obtained in cases in which, for whatever reason, fingerprints are not obtained at arrest or first appearance. This provision applies to all all felonies and serious misdemeanors, thereby expanding the current coverage of A.S. § 12.55.147 which applies only to felony convictions.*

*Subsection (a) (3) is modeled after provisions in numerous state laws requiring penal institutions to obtain fingerprints of persons committed to such institutions. (GA.*

*CODE ANN. § 35-3-36 (f) (1981); DEL. CODE ANN. tit. 11, § 8509- 8510). In addition, most other states follow this practice, though not expressly required by law.*

*Subsection (a) (4) sets time limits for the forwarding of fingerprints to the repository. Fingerprints taken at arrest or first appearance in court (for persons processed by summons or citation) are required to be reported 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 law enforcement agencies and courts can meet in practice.*

*The subsection requires fingerprints taken after conviction or upon commitment to a penal institution to be forwarded to the repository within five days. Again, this is a reporting requirement that seems reasonable and can be complied with in practice.*

*Subsection (b) (1) is modeled after a provision in New York's law specifically requiring the repository to respond to criminal justice agencies that submit fingerprints. (N.Y. CRIM. PROC. LAW, § 160.30)*

*Subsection (b) (2) deals with poor quality fingerprints that are not classifiable and/or searchable. It requires the repository to attempt to obtain better prints. This subsection also is modeled after the New York provision.*

## **SECTION 8. REPORTING OF CRIMINAL HISTORY RECORD INFORMATION.**

**(a) Reportable Events.** The following events are reportable events under this chapter:

- (1) Issuance or withdrawal of an arrest warrant;**
- (2) An arrest;**
- (3) Release of a person after arrest without the 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; and

(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 Commissioner.

(b) *Responsibility for Reporting.* Information concerning reportable events related to offenses specified in Section 7 shall be reported to the repository by the criminal justice official or agency directly responsible for the reportable action, event or decision. The form and content of reported information and the method of reporting to the repository shall be specified by regulations issued by the Commissioner. The Commissioner may at his discretion provide for the reporting of information by agencies or officials other than those directly responsible for the reportable events to which the information relates, provided such other agencies or officials agree.

(c) *Reporting Time Periods.* Criminal justice agencies shall report criminal history record information, whether collected manually or by means of an automated system, to the repository in accordance with the following provisions:

- (1) Information pertaining to the issuance of an arrest warrant as set forth in subsection (a) (1) of this section shall be reported within twenty-four hours;
- (2) Information pertaining to the arrest as required by subsection (a) (2), or release of a person after arrest without the filing of a charge as required by subsection (a) (3), or pursuant to a decision by a prosecutor not to commence criminal proceedings as required by subsection (a) (4), shall be reported within five days;
- (3) Information pertaining to any other reportable event as required by subsections (a) (5) through (a) (18), shall be reported within 30 days.

## *Commentary*

*The reporting approach set out in this section is modeled after the approach followed in Maryland (MD. ANN. CODE art. 27, § 747 (1957)). The intent is to identify all decisions or actions that occur in the course of the processing of criminal offenders and that are reflected on the criminal history record and to require the agency responsible for each "reportable event" to forward relevant information about the action or decision to the repository. California law embodies a similar approach, but the law is very detailed; it enumerates the specific data elements that must be reported by each reporting agency concerning each reportable event. (See CAL. PENAL CODE §§ 13125-13153.) The intent of the draft is to pinpoint the basic responsibility for reporting information about enumerated reportable events and to leave it to the Commissioner to specify in regulations the data elements to be reported by each reporting agency.*

*Subsection (a) lists the reportable events. The list is intended to be complete, but a catch-all category is included (Subsection (a)(18)) authorizing the Commissioner to declare (by regulation) other events or actions to be reportable, such as the filing of habeas corpus petitions, other appellate petitions, or petitions for parole or probation revocation.*

*Subsection (b) provides that the criminal justice agency or official directly responsible for a reportable action or decision shall have the responsibility for reporting relevant information about the event to the repository. The Commissioner, however, is empowered to provide for the reporting of particular reportable events by agencies or officials other than those with the basic statutory reporting responsibility. For example, the Commissioner may provide for the reporting of court dispositions by prosecutors by means of the PROMIS system, provided PROMIS officials agree. This should be regarded as an interim measure, however, and full reporting of disposition information by the courts should be pursued as an important goal.*

*Subsection (b) specifically authorizes the Commissioner to issue regulations concerning the content of reported information and the method of reporting — by mail, by direct computer link or by computer tape, for example. This provision would authorize the Commissioner to prescribe standard forms and procedures for reporting.*

*Subsection (c) sets out mandatory reporting time periods. Information concerning arrests or the issuance of arrest warrants is the most time-critical of the reportable events. Such information is required to be reported within twenty-four hours. This requirement is related to the fingerprint reporting requirement set out in Section 7. Of next importance is information concerning the release of an arrested person without the filing of charges or a decision by a prosecutor not to commence criminal proceedings, which must be reported*

*within five days. All other reportable information must be forwarded to the repository within thirty days. This thirty-day requirement is consistent with California's statutory thirty-day requirement for court disposition reporting (CAL. PENAL CODE § 13151) and with laws and policies of several other states. It is stricter, however, than the requirements imposed in most of the states that have mandatory reporting laws, which average about sixty days. For example, Maryland's reporting time for reportable events other than arrests and release-without-charging is sixty days (MD. ANN. CODE art. 27, § 747 (1957)). In Pennsylvania and Delaware the reporting deadline is ninety days (18 PA. CONS. STAT. ANN. § 9113(a) (Purdon); DEL CODE ANN. tit. 11, § 8509). Missouri law requires disposition reporting "without undue delay" (MO. ANN. STAT. § 43.503 (Vernon)). Several other states also use this nonspecific approach.*

*The intent of this section is to require reporting promptly, but within a realistic time frame. Thirty days is a workable requirement, as California and other states have demonstrated. For this reason, the section sets thirty days as the general disposition reporting deadline. There is little point in enacting a time limit with which criminal justice agencies in Alaska cannot reasonably be expected to comply under present and foreseeable circumstances.*

## **SECTION 9. REPORTING OF UNIFORM CRIME INFORMATION.**

**All criminal justice agencies within the state shall submit to the repository, at such times and in such form as the Commissioner shall prescribe, information regarding cases within their jurisdiction and in which they are or have been actively engaged. Such information shall be compiled in a report series which shall contain information concerning crimes reported to or processed by criminal justice agencies, including the number and nature of offenses committed, the disposition of such offenses and such other information as the Commissioner shall specify relating to the method, frequency, cause and prevention of crime.**

### *Commentary*

*This section imposes a legal requirement on criminal justice agencies to submit information to the repository for the crime reports and to cooperate with the repository in*

*efforts to ensure compliance with national and state uniform crime reporting requirements. It is modeled after provisions in Georgia's law (GA. CODE ANN. of 1981, § 35-3-36 (i), (k) (1981)). Despite the importance of the uniform crime reporting program few states have specific legal reporting requirements relating to such information.*

**SECTION 10. REPORTING OF INFORMATION REGARDING WANTED PERSONS AND STOLEN VEHICLES OR PROPERTY.**

- (a) All criminal justice agencies within the state shall report to the repository, at such times, in such manner and in such form as the Commissioner shall prescribe, information concerning all persons wanted by and all vehicles and property stolen from their jurisdictions. The reports shall be made as soon as is practical, but not exceeding twenty-four hours after an investigating department or agency either (1) obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed a crime or (2) ascertains that a vehicle or identifiable property has been stolen.
- (b) If at any time after making a report as required by subsection (a), it is determined by the reporting criminal justice agency that a person is no longer wanted due to his apprehension or any other factor or that a vehicle or property reported stolen has been recovered, the agency shall immediately update the information. If the agency making the apprehension or recovery is not the agency which made the original wanted person or stolen property report, the apprehending or recovering agency shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery, and the originating agency shall immediately update the information.
- (c) If after making a report of the issuance of an arrest warrant pursuant to this chapter, the reporting agency determines that the warrant cannot be served, it shall immediately notify the repository. If the warrant is subsequently served or withdrawn,

the agency shall immediately notify the repository of such service or withdrawal.

- (d) All criminal justice agencies shall, annually and at other times when requested by the repository, confirm arrest warrants and reports of stolen vehicles and identifiable property which continue to be outstanding, and shall cooperate with the repository in periodic audits to validate the information contained in warrants and stolen property reports.

#### *Commentary*

*This section is modeled after provisions in the laws of Alabama, Georgia and Mississippi requiring the reporting and updating of information for inclusion in files relating to wanted persons, stolen vehicles and identifiable stolen property. (ALA. CODE §§ 41-9-621, 627, 633, 634; GA. CODE ANN. § 35-3-36 (e), (l), (m)(1981); MISS. CODE ANN. §§ 45-27 (l)(a), (g), §§ 45-27-9 (4), (8), (9)(1972)). Despite the importance of the so-called "hot files" and their heavy use at the state and national levels, these are the only three states that currently have statutory provisions specifically requiring the reporting of such information and requiring measures to keep the information current and accurate. See Criminal Justice Information Policy: Criminal Justice "Hot" Files, U.S. Department of Justice, Bureau of Justice Statistics, Nov. 1986, at 48.*

*The proposed section requires criminal justice agencies in Alaska to report information to the repository concerning the issuance, service or withdrawal of arrest warrants and the theft or recovery of vehicles or other identifiable property. The section would also require submitting agencies to cooperate with the repository in periodically validating hot file entries pursuant to the FBI's validation program (subsection (d)). This provision is intended to help insure the accuracy and completeness of information relating to wanted persons and stolen vehicles and property. It should be noted that such information is not subject to the completeness and accuracy requirements of section 11, since it is not covered by the definition of "criminal history record information."*

**SECTION 11. COMPLETENESS AND ACCURACY OF CRIMINAL HISTORY RECORD INFORMATION.**

- (a) *Completeness of Records.* The repository and all criminal justice agencies shall institute operational procedures designed to insure that criminal history record information maintained in their information systems or files is current and complete. Procedures instituted by the repository shall include computer programs or other procedures to generate lists of arrest and disposition information that has not been reported within the time periods specified in this chapter and actions to attempt to obtain such delinquent information. To the extent reasonably possible, information maintained by the repository relating to arrests must contain any information relating to dispositions occurring within the state within thirty days after the receipt of the dispositions.
- (b) *Accuracy of Records.* The repository and all criminal justice agencies shall implement operational procedures designed to insure that criminal history record information maintained in their information systems or files is accurate. Such procedures shall include processes of data collection, entry, storage and systematic audit reasonably designed to minimize the possibility of recording and storing inaccurate information, and procedures for communicating appropriate notices to criminal justice agencies known to have received inaccurate information of a material nature.
- (c) *Linking of Arrest and Disposition Information.* The repository shall develop and implement procedures for the assignment of unique case-cycle tracking numbers to insure that arrest and disposition information can be accurately linked and that disposition information can be properly associated with the charges to which it relates. Criminal justice agencies shall insure that such tracking numbers are included with criminal

history record information reported to the repository and with case files transmitted to other criminal justice agencies.

- (d) *Biannual Audits.* At least biannually, the repository shall undertake an audit of its files and procedures and those of a sample of state and local criminal justice agencies to verify adherence to the requirements of this chapter and other applicable laws. The final reports of such audits shall be made available to the Criminal Justice Information Advisory Board.
- (e) *Independent Audits.* At least once every four years, the Commissioner shall include in the Department's budget request funds to contract for an independent audit of the repository and of a randomly-selected representative sample of state and local criminal justice agencies to evaluate the completeness and accuracy of the repository's files and to evaluate the level of compliance with the requirements of this chapter by the repository and state and local criminal justice agencies. Final audit results shall be made available to the Governor, the Legislative Auditor and the Criminal Justice Information Advisory Board.
- (f) *Cooperation by Local Agencies.* All criminal justice agencies shall maintain, for at least three years, source documents and other records necessary to enable auditors to verify the accuracy and completeness of information maintained by the repository, and shall make such records available for inspection for the audit purposes specified in this section.

*Commentary*

*This section sets out data quality requirements applicable to the repository and to other information systems and criminal justice agencies in the state. Some of the requirements are applicable only to the repository, while others also apply to other criminal justice systems and agencies.*

*All criminal justice agencies and criminal justice information systems are subject to the general requirement that they must institute operational procedures to insure that criminal history record information is complete and accurate. Such procedures may include the use of standard data collection forms and reporting procedures specified by the Commissioner. All criminal justice agencies can institute manual procedures to review information before entry and before dissemination to detect inaccurate or missing information. Automated systems can utilize a wide range of computer edit and verification programs to check for required data fields and to perform a wide variety of checks on the accuracy and consistency of information entered into the systems. All systems and agencies can keep dissemination logs to facilitate audits and notification procedures. Automated systems, particularly the repository, can log a wide range of transactions and data, including inquiries, responses, updates, data rejections, changes and modifications, source document numbers and operator identification codes. In addition to facilitating audits and notification procedures, such logs can help to identify operators who make frequent errors and who need additional training. All agencies and systems can implement programs of random inspection of sample records to verify the accuracy of entries and to ensure that data-handling procedures are being followed properly.*

*In addition to these data quality procedures applicable to all criminal justice agencies and systems in the state, the repository is subject to additional procedures. It must implement a delinquent disposition monitoring system, that is, a computer program to generate periodic lists of arrests and dispositions that appear not to have been reported within applicable time periods, and must undertake actions to obtain such delinquent information. The repository is also subject to a requirement to record dispositions within ninety days after they occur, to the extent reasonably possible. This requirement is based upon the federal regulations (28 CFR Part 20, § 20.21 (a) (1)).*

*Subsection (c) requires the repository to develop and implement a tracking number system to facilitate the linking of arrest and disposition information, and requires all criminal justice agencies in the state to utilize the tracking number in the reporting of information to the repository. The few extensive audits of state repositories that have been undertaken (including a recent audit in Texas and an ongoing statewide audit in Maryland) have demonstrated that tracking systems utilizing unique case cycle numbers assigned at arrest or first appearance can entirely solve the problems encountered in linking reported disposition data to the right rap sheet and to the right charges. The design of the system to be utilized by APSIN is left up to the Commissioner, but the requirement envisions a procedure for assigning a unique number to be associated with the fingerprints taken from an offender in a particular case thereby providing positive identification. This number*

would identify the case cycle and all of the charges or additional counts growing out of it. Each separate charge or count should be numbered and disposition information should be reported by tracking number and charge/count number. This ensures that the disposition information can be entered on the right rap sheet and can be associated with the charges to which it relates. In this way all charges can be accounted for and the criminal history record can accurately and clearly reflect the outcome of the case.

Subsection (d) requires the repository to perform biannual audits of its files and procedures and those of a sample of user 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 repository to audit problem agencies or large agencies in a particular year, if appropriate or necessary. Subsection (e) requires the Commissioner to seek funds for an independent audit of the APSIN system at least once every four years. This audit would be performed by a private contractor or by an agency such as the Legislative Auditor's office. It would entail a review of the repository and of a randomly-selected sample of state and local criminal justice agencies. Although these required audit activities will be expensive, they are perhaps the most prudent data quality investment the state can make. They will enable the repository to assess existing data quality levels and the extent of compliance with legal requirements, to identify problems and formulate solutions, and to measure the success of data quality improvement initiatives and other improvement programs.

Subsection (f) requires criminal justice agencies to maintain source documents and other records necessary to facilitate the performance of the audits.

## **SECTION 12. STORAGE, DISSEMINATION AND USE OF CRIMINAL INTELLIGENCE AND INVESTIGATIVE INFORMATION.**

- (a) ***Segregation from Criminal History Record Information.*** Criminal intelligence and investigative information shall be physically or logically segregated from criminal history record information. Criminal history record information shall contain no indication or suggestion that a criminal intelligence or investigative file exists on the record subject.

**(b) *Dissemination and Use.***

- (1) Within a criminal justice agency, access to and use of criminal intelligence and investigative information shall be strictly limited to officers and employees who are authorized to have access and use and who have a demonstrable need for particular information.**
  - (2) Criminal intelligence and investigative information may be disseminated outside of the collecting agency only for the following purposes:**
    - (a) confirmation of information in the files of another criminal justice agency;**
    - (b) for criminal justice employment; or**
    - (c) for other purposes related to the administration of criminal justice, such as an investigation of an individual, if the requesting agency gives assurances that the information is relevant to such purpose.**
  - (3) An assessment or summary of criminal intelligence and investigative information may be provided to a governmental official or to any other individual when necessary to avoid imminent danger to life or property.**
- (c) *Periodic Review.* Criminal intelligence and investigative information shall be reviewed at regular intervals by the collecting agency and, at a minimum, upon any request for dissemination of particular information, to determine whether grounds for retaining the information still exist and, if not, it shall be purged.**

*Commentary*

*This section sets out standards for the gathering and use of intelligence and investigative information. These standards are taken from Technical Report No. 13:*

*Standards for the Security and Privacy of Criminal History Record-Information, Third Edition, (July 1988), published by SEARCH.*

*Subsection (a) requires that intelligence and investigative information must be segregated physically or logically (by computer software or configuration) from criminal history record information. This reflects the fact that intelligence and investigative information is particularly sensitive and often unverified. For the same reasons, criminal history record information may not contain any indication that an intelligence or investigative file exists on the record subject.*

*Subsection (b) sets out limitations on the dissemination and use of criminal intelligence and investigative information. Within a particular criminal justice agency, access to and use of such information must be restricted to authorized officials and employees with a demonstrable need for the information, i.e., access and use must be on a need-to-know, right-to-know basis. Criminal intelligence or investigative information may be disseminated outside of the collecting agency only for valid criminal justice purposes, including confirmation of information in another criminal justice agency's files or for investigative purposes based upon legally valid grounds. Criminal justice agencies also may make summaries or "assessments" of criminal intelligence or investigative information available to government officials or other individuals to avoid imminent danger to life or property. Such disclosure could include release of information to national security agencies in emergency circumstances, but not for national security background investigations.*

*Subsection (c) provides that intelligence and investigative information cannot be retained indefinitely in individually-indexed files in the absence of a reasonable basis for concluding that the information is still relevant to known or suspected criminal activity. At a minimum, a review of continued validity and relevancy must be conducted whenever a request for dissemination of particular information is received.*

### **SECTION 13. DISSEMINATION AND USE OF CRIMINAL HISTORY RECORD INFORMATION.**

#### **(a) Definitions**

**As used in this section,**

- (1) "conviction information" means information indicating that an identifiable individual has pleaded guilty or *nolo contendere* to or been found guilty of a criminal offense and**

the terms of the sentence, and arrest information without a recorded disposition if prosecution of the case is actively pending or if less than a year has elapsed since the date of the arrest;

(2) "nonconviction information" means arrest information without a recorded disposition if one year or more has elapsed from the date of arrest and no active prosecution of the charge is pending, or information disclosing that a criminal justice agency has elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings or that criminal proceedings have been indefinitely postponed, as well as all dismissals and all acquittals;

(3) "criminal justice purpose" means a purpose included within the scope of the administration of criminal justice as defined in Section 3 (a); and

(4) "noncriminal justice purpose" means a purpose outside of the scope of the administration of criminal justice as defined in Section 3 (a).

(b) *Dissemination for Criminal Justice Purposes.* The repository and criminal justice agencies in the state may make criminal history record information available to state, local, federal or out-of-state criminal justice agencies for purposes related to the administration of criminal justice, including the employment of criminal justice personnel.

(c) *Dissemination for Noncriminal Justice Purposes.*

(1) *Dissemination of Conviction Information.* The repository and criminal justice agencies in the state may make conviction information available to any person, agency or organization for any purpose.

(2) *Dissemination of Nonconviction Information.* The repository may make nonconviction information available for the following purposes:

- (a) To any local, state, federal or out-of-state governmental agency that certifies that the information is necessary for the enforcement of local, state or federal law;
- (b) To any nongovernmental agency or individual authorized to receive such information by a state statute;
- (c) To any federal agency or to any central criminal record repository in another state requesting the information for an authorized purpose by means of the Interstate Identification Index system or any similar system for the interstate or federal-state exchange of criminal history records; or
- (d) To qualified persons for research related to the administration of criminal justice under regulations issued by the Commissioner to assure the security of the information and the privacy of individuals to whom the information relates.

(3) *Use of Criminal History Records for Employment or Licensing.* No criminal history records obtained pursuant to this chapter shall be used in consideration of an application for a license, certificate, registration or permit or for purposes of employment decisions relating to the record subject unless such records relate to the suitability of the record subject for the license, certificate, registration, permit or employment. Whenever any decision to refuse, suspend or revoke any license, certificate, registration or permit or to refuse or terminate employment of a record subject is based in whole or in part on criminal history record information obtained pursuant to this

chapter, the person making the decision shall so notify the record subject in writing.

- (4) *Positive Identification of Record Subjects.* Unless exempted by regulations issued by the Commissioner, no criminal history record information shall be made available by the repository for noncriminal justice purposes unless the identity of the record subject is confirmed by fingerprint comparison or some other equally reliable means of identification approved by the Commissioner.
- (5) *Limitations on Use.* Criminal history record information disseminated for noncriminal justice purposes pursuant to this section shall be used only for the purpose for which it was made available and may not be redisseminated. Such information shall include a notice of the requirements and limitations of this section and of the penalties provided in this chapter for misuse of the information.
- (6) *Fees for Noncriminal Justice Record Searches.* The Department of Public Safety may charge reasonable fees for processing requests for criminal history searches for noncriminal justice purposes. In addition to fees assessed under AS 44.41.025 for processing fingerprints through the Alaska Automated Fingerprint Identification System, the Department may assess and collect fees for other services in connection with the processing of such requests, including fees for contacting other jurisdictions to determine the disposition of out-of-state arrests or to clarify the nature of out-of-state convictions. The Department may also collect and account for fees charged by the Federal Bureau of Investigation for processing fingerprints forwarded to the Bureau by the Department. The Commissioner of Administration shall separately account for fees collected under this section that the Department of Public Safety deposits in the general fund. The annual estimated balance

in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter.

**(d) *General Policies on Dissemination and Use.***

- (1) No criminal justice agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information pursuant to this section.**
- (2) Nothing in this chapter shall prevent criminal justice agencies from responding to specific inquiries by the public or the press concerning whether a named individual was arrested, charged or indicted on a specified date.**
- (3) Criminal justice agencies shall query the repository to obtain updated information prior to disseminating criminal history record information, unless the information was originated by the disseminating agency or the agency knows that the repository does not maintain the information or is incapable of responding within the necessary time period.**
- (4) Criminal justice agencies shall maintain, for at least three years, dissemination logs recording the identity of other agencies or persons to whom criminal history record information is disseminated, the authority of the requestor, the date of the dissemination, the purpose of the request and the nature of the information provided.**
- (5) Nothing in this chapter shall prevent criminal justice agencies from responding to specific inquiries by the public or press by providing information concerning whether a named individual is presently under arrest, charged with an offense or offenses, has been indicted or convicted on current charges, or the terms of any sentence, probation or**

parole the individual is currently serving, if the prosecution is actively pending, if less than a year has elapsed since the date of the arrest, or if the individual has not been unconditionally discharged, as defined by A.S. 12.55.185.

### *Commentary*

*This section provides a dissemination approach that is relatively simple and easy to administer, although it does require the generation of two types of criminal history records — one with all entries reflected and one with nonconviction information deleted. (See the discussion of the definitions of "conviction information" and "nonconviction information" set out previously in the Commentary to Section 3.)*

*In brief, criminal justice agencies at all levels — local, state, federal or out-of-state — would be entitled to obtain full criminal history records (conviction information and nonconviction information) for any official purpose, including criminal justice employment. In addition, noncriminal justice governmental agencies at all levels would be entitled to obtain full records for official purposes — that is, purposes stated to be necessary to carry out the agencies' legal duties. This would include licensing and employment purposes, security clearances, military recruitment, etc. The "certification" that the use for which the information is requested is an official government purpose can be stated on the form utilized for request purposes; alternatively, it can be embodied in signed user agreements, at the Commissioner's discretion.*

*Full criminal histories would also be made available to the FBI and to central repositories in other states requesting the records by means of the Interstate Identification Index system. This authority permits the state of Alaska to participate in the III system as a record-providing state, for both criminal justice purposes as well as noncriminal justice purposes. The III dissemination standard utilized during testing of the system and embodied in proposals for full implementation of the system requires record-providing states to make full criminal histories available in response to requests for authorized noncriminal justice purposes, with the understanding that the information in the records will be screened by the requesting state repository in accordance with the laws of the receiving state.*

*Disclosure of information to defense attorneys in a criminal proceeding shall continue to be governed by ALASKA R. CRIM. P. 16.*

*Private (nongovernmental) agencies and individuals would be entitled to receive full criminal histories for noncriminal justice purposes only if authorized by a state statute. In*

*the absence of such a statute, such nongovernmental requesters could obtain only conviction information.*

*Finally, all types of criminal history record information could be made available for appropriate research projects under appropriate safeguards.*

*Although this approach makes criminal history record information more widely available for noncriminal justice purposes than has been the practice in Alaska previously, the section includes a safeguard designed to prevent the misuse of the information. Subsection (c) (3) provides that such information may not be used for licensing, employment, or related purposes unless it relates to the suitability of the record subject for the license, employment or other entitlement. This provision is modeled after similar provisions in the laws of Pennsylvania (18 PA. CONS. STAT. ANN., §§ 9124, 9125). It is intended to place the primary responsibility for the proper use of criminal history records for licensing and employment purposes, and the risk of liability for misuse of such records for such purposes, on the agencies or persons obtaining and using the records, rather than on the repository which makes the records available. Under this approach, the repository would release records for noncriminal justice purposes in accordance with the proposed dissemination standards described above. The responsibility for proper use of the records and of particular record entries would rest on the recipient agencies. Misuse of records — requesting a record for a nonofficial purpose or denying employment or licensing because of information not relevant to the record subject's suitability — would subject the record recipient to the civil and criminal penalties set out in Section 17. A notice to this effect would be included on all records released for noncriminal justice purposes (Subsection (c) (5)).*

*It should be noted that the draft permits criminal justice agencies at all levels in the state to make conviction records available for any purpose. Only the repository, however, may make nonconviction information available for noncriminal justice purposes.*

*Subsection (c) (4) provides that, unless exempted by regulations issued by the Commissioner, criminal history records may not be released by the repository for noncriminal justice purposes unless the record subject's identity is positively confirmed by fingerprint comparison or some other means of positive identification approved by the Commissioner. The provision permits the Commissioner to exempt certain requesters, such as federal agencies requesting records under the Security Clearance Information Act, from the positive identification requirement. The assumption is that fingerprint comparison will be the required method of positive identification, but the Commissioner may approve other methods if they prove reliable and come into general use at some future time.*

*Subsection (c) (6) authorizes the Department of Public Safety to charge fees for processing noncriminal justice file searches and for other activities related to such searches. This fee authority is in addition to the authority under A.S. § 44.41.025 to assess fees for AFIS processing.*

*Subsection (d) sets out some general policies on dissemination and use taken from the federal regulations and Technical Report 13. These policies are reflected in some form in the laws of most of the states that have enacted comprehensive criminal history record statutes, and, for the most part, need no comment. A comment may be in order, however, concerning Subsection (d) (2), which permits criminal justice agencies to respond to specific inquiries by the public or the press concerning whether a named individual was arrested, charged or indicted on a specified date. This provision is taken from the federal regulations (28 CFR Part 20, § 20.20 (c)). It reflects a strong public policy interest in permitting criminal justice agencies to respond to press or public inquiries that are specific as to particular events, as opposed to inquiries that seek full or partial criminal histories of named individuals. In responding to such inquiries, criminal justice agencies may provide factual information that might otherwise be restricted under provisions of the draft governing the release of nonconviction information. Responses may be made to such inquiries without requiring fingerprint identification. Criminal justice agencies may also continue to respond to inquiries about a current or newsworthy event concerning a particular individual in the criminal justice system pursuant to subsection (d) (5).*

#### **SECTION 14. SECURITY OF CRIMINAL HISTORY RECORD INFORMATION.**

- (a) Physical Security.** The repository and all criminal justice agencies shall have adequate procedures and facilities to protect criminal history record information from unauthorized access and from accidental or deliberate damage or destruction by such hazards as theft, sabotage, fire, flood, wind or power failure.
- (b) Personnel Security.** The repository and all criminal justice agencies shall have procedures for screening, supervising and disciplining agency personnel in order to minimize the risk of security violations. All employees working with or having access to criminal history record information shall be made familiar with applicable security requirements and shall be advised that violations of such requirements shall be grounds

for administrative sanctions, including termination of employment.

**(c) *Additional Requirements for Automated Systems***

- (1) The repository and all criminal justice agencies operating automated criminal history record information systems shall employ effective hardware and software designs and programs to prevent unauthorized access to information and to prevent unauthorized tampering with, destruction of, or modification of such information.**
- (2) Where a criminal justice agency utilizes a shared automated information system operated by a noncriminal justice agency, the criminal justice agency shall have the right to develop or approve system operating procedures to comply with the above security requirements and to monitor the implementation of such procedures to insure that they are effective.**

*Commentary*

*The security provisions set out in this section are taken from the federal regulations but in somewhat abbreviated form. They set out basic requirements for physical, personnel and computer security. For the most part the requirements are clear and straightforward and need no comment. Subsection (c) (2) may need a note of clarification, however. It requires that when a criminal justice agency utilizes a shared automated information system operated by a noncriminal justice agency, such as a municipal or regional system operated by a data processing center serving criminal justice and noncriminal justice users, the criminal justice users must insure that the system utilizes security procedures that are adequate to comply with the statutory security requirements and must be able to monitor such procedures to insure that they are effective.*

## SECTION 15. REVIEW AND CORRECTION BY RECORD SUBJECTS.

- (a) *Right to Review and Correction.* Any person shall have the right to inspect criminal history record information relating to him or her maintained by the repository or any criminal justice agency. If such person proves by a preponderance of the evidence that the information is inaccurate, incomplete or misleading, he or she may request that the information be purged, modified or supplemented and that notices of such corrections be communicated to all agencies or persons known to have received the incorrect information. The person shall, upon request, be provided with a copy of the record or of challenged portions of the record.
- (b) *Administrative Appeal.* If the agency declines to correct the record as requested or if the person believes the agency's decision to be otherwise unsatisfactory, the person may, within 30 days of the agency's decision, request review by the Criminal Justice Information Advisory Board. If the Board finds a basis for complaint, it shall conduct a hearing at which the person may appear with counsel, present evidence and examine and cross-examine witnesses. The Board shall issue written findings and conclusions.
- (c) *Administrative Relief.* If the Board finds the record in question to be inaccurate, incomplete or inappropriately maintained, it shall order the agency having custody or control of the record to purge it or to make appropriate corrections. The agency shall promptly have every copy of the record purged or corrected in accordance with the Board's order and shall promptly communicate notice of such corrective action to every person or agency known to have received the inaccurate record.
- (d) *Additional Requirements for Review.* Reasonable hours and places of inspection and any additional restrictions, including fingerprinting, that are reasonably necessary to verify the

identities of persons who seek to inspect records under this section and to insure compliance with security requirements, may be prescribed by published agency rules consistent with this chapter.

- (e) *Judicial Appeal.* A person or agency aggrieved by an order or decision of the Board under this section may appeal to the Superior Court under applicable rules of procedure for appeals from the decisions of administrative agencies.

*Commentary*

*The provisions authorizing record subjects to review and correct their records are taken from existing law (A.S. §§ 12-62.030 (c), (e), (f)). The only substantive changes are that (1) administrative review authority is vested in the Criminal Justice Information Advisory Board rather than in the Governor's Commission on the Administration of Justice and (2) a provision placing the burden on the criminal justice agency to prove the accuracy of challenged information has been deleted.*

**SECTION 16. SEALING AND PURGING OF CRIMINAL HISTORY RECORD INFORMATION.**

- (a) *Sealing by Court Order.*

- (1) Any individual may petition an appropriate court at any time for an order to seal criminal history record information relating to the individual. The court may issue such an order when the individual proves by a preponderance of the evidence that the record information resulted from mistaken identity; false accusations; or other circumstances establishing innocence in fact; or illegality or unconstitutionality of the underlying statute as applied to the individual.
- (2) The repository and criminal justice agencies shall seal criminal history record information upon receipt of a court

order to do so. A record that has been sealed shall be available only for:

- (a) record management purposes, including auditing;
- (b) criminal justice employment purposes;
- (c) review by the record subject;
- (d) research and statistical purposes; and
- (e) a use authorized by statute or court order.

(3) The repository shall maintain an index of sealed records to facilitate access to the records for authorized purposes. Access to such an index shall be limited to officials and employees of the repository whose duties require them to have access.

(4) A court of appropriate jurisdiction may issue an order to unseal criminal history record information if it determines that the information is needed for sentencing in a subsequent proceeding, to determine eligibility for first offender status or repeat offender status, in an investigation or criminal proceeding or to protect the life or safety of an individual.

(5) A record subject whose record has been sealed may deny the existence of the record and any arrest, conviction or sentence to which it pertains.

(b) *Purging for Record Management Purposes.* Pursuant to regulations issued by the Commissioner or published agency rules, the repository or a criminal justice agency may purge criminal history record information deemed no longer useful due to such factors as the age of the record subject, the death of the record subject, the passage of a substantial period of time during which the record subject has had no contact with the criminal justice system, the nature of the record, the agency's

*Note (31 May 2013):* pp. 41 and 42 of the SEARCH report were missing from the copy of the report made available for the appendix. This includes SEARCH's statutory recommendations for the two following sections:

Section 17. Civil and Criminal Remedies

Section 18. Exemption from Public Records Law

## Appendix D

### STANDARD DATA ELEMENTS (CALIFORNIA PENAL CODE)

13125 P.C. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

#### PERSONAL IDENTIFICATION DATA:

- Name (full name)
  - Aliases
  - Monikers
- Race
- Sex
- Date of birth
- Place of birth
- Height
- Weight
- Hair color
- Eye color
- CII number
- FBI number
- Social Security number
- California operators licence number
- Fingerprint classification number
- Address

#### ARREST DATA:

- Arresting agency
- Booking number
- Date of arrest
- Offense(s) charged
  - Statute citations
  - Literal descriptions
- Police disposition
  - Released
  - Cited and release
  - Turned over to
  - Complaint filed

#### LOWER COURT DATA:

- County and court name
- Date complaint filed
- Original offense(s) charged in complaint
  - Held to answer
  - Certified plea

- Disposition
  - Not convicted
  - Dismissed
  - Acquitted
    - Court trial
    - Jury trial
  - Convicted
    - Court trial
    - Jury trial
- Date of disposition
- Convicted offense(s)
- Sentence
- Proceedings suspended
  - Reason suspended

**SUPERIOR COURT DATA:**

- County
- Date of proceeding
- Type of proceeding
  - Indictment
  - Information
  - Certification
- Original offenses charge in indictment or information
- Disposition
  - Not convicted
  - Dismissed
  - Acquitted
    - Court trial
    - Jury trial
    - On transcript
- Convicted of disposition
  - Plea
  - Court trial
  - On transcript
- Date of disposition
- Convicted offense(s)
- Sentence
- Proceedings suspended
  - Reason suspended
- Source of reopened cases

## Appendix E

### CALIFORNIA CRIMINAL HISTORY SYSTEM REPORTING REQUIREMENTS (CALIFORNIA PENAL CODE)

#### Legislative Declaration

13100 P.C. The legislature finds and declares as follows:

- (a) That the criminal justice agencies in this state require, for the performance of their official duties, accurate and reasonably complete criminal offender record information.
- (b) That the Legislature and other governmental policymaking or policy-researching bodies, and criminal justice agency management units require greatly improved aggregate information for the performance of their duties.
- (c) That policing agencies and courts require speedy access to information concerning all felony and selected misdemeanor arrests and final dispositions of such cases.
- (d) That criminal justice agencies may require regular access to detailed criminal histories relating to any felony arrest that is followed by the filing of a complaint.
- (e) That, in order to achieve the above improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in this state must be made more uniform and efficient, and better controlled and coordinated.

#### Arrest

13150 P.C. For each arrest made, the reporting agency shall report to the Department of Justice, concerning each arrest, the applicable identification and arrest data described in Section 13125 and fingerprints, except as otherwise provided by law or as prescribed by the Department of Justice.

#### Disposition Reporting by Police Agency

11115 P.C. In any case in which a sheriff, police department or other law enforcement agency makes an arrest and transmits a report of the arrest to the Department of Justice or to the Federal Bureau of Investigation, it shall be the duty of such law enforcement agency to furnish a disposition report to such agencies whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court. The disposition report in such cases shall be furnished to the appropriate agencies within 30 days of release or transfer to another agency.

## **Court Reporting**

13151 P.C. The superior, municipal, or justice court that disposes of a case for which an arrest was required to be reported to the Department of Justice pursuant to Section 13150 or for which fingerprints were taken and submitted to the Department of Justice by order of the court shall assure that a disposition report of such case containing the applicable data elements enumerated in Section 13125, or Section 13151.1 if such disposition is one of dismissal, is furnished to the Department of Justice within 30 days according to the procedures and on a format prescribed by the department.

13151 P.C. The court shall also furnish a copy of such disposition report to the law enforcement agency having primary jurisdiction to investigate the offense alleged in the complaint or accusation. Whenever a court shall order any action subsequent to the initial disposition of a case, the court shall similarly report such proceedings to the department.

**Appendix F**

**DISPOSITION OF ARREST AND COURT ACTION FORM**

**(STATE OF CALIFORNIA)**

20058619

DISPOSITION OF ARREST AND COURT ACTION

RECORD TYPE

CORRECTION  COURT INITIATED

FINGERPRINTED FOR DOJ

TYPE OF EVENT

ARREST  CITATION  LETTER/NOTICE TO APPEAR  COURT ORDERED BOOKING

A. LAW ENFORCEMENT INFORMATION

NAME (LAST, FIRST, MIDDLE) FP CARD/OCA NO. CII NO. SEX RACE HGT DOB AGE ARRESTING AGENCY BOOKING/CITE NO. FBI NO. ARREST DATE BOOKING AGENCY CRIME REPORT NO. S.S. NO. CHARGE 1 (SECTION, CODE) CHARGE 2 (SECTION, CODE) CHARGE 3 (SECTION, CODE) CHARGE 4 (SECTION, CODE) IN-COUNTY WARR. NO. D.L. NO. REMARKS REASON FOR RELEASE 849(b)(1) PC RELEASED DATE OUT-OF-COUNTY WARRANT INFORMATION WARRANT NO. ISSUING AGENCY MAJOR OFFENSE RELEASE DATE COMPL. REFUSES TO PROS. ARRESTEE EXONERATED FURTHER INVEST. ADMISS. EVID. INSUFF. ASCERT. EVID. INSUFF. 849(b)(2) PC 849(b)(3) PC OTHER LAW ENFORCEMENT DISPOSITION (SPECIFY) JUVENILE DISPOSITION (SPECIFY) RELEASED ON BAIL EXTRADITION PROCEEDINGS RELEASED/ENROUTE TO OTHER AGENCY/JURISDICTION (SPECIFY)

B. PROSECUTION INFORMATION

DATE REASON FOR REJECTION CHRG 1 CHRG 2 CHRG 3 CHRG 4 1203.2 PC - IN LIEU OF FILING ORIG. COURT JUD. DIST. NUMBER REFILED - ORIGINAL CASE DISMISSED ORIG. COURT CASE NUMBER

C. COURT LOWER COURT

Table with columns: CHRG, FILE LEVEL, FIRST PLEA, FINAL PLEA, DISPOSITION, DISPO DATE, CHARGES AND ENHANCEMENTS AT DISPOSITION, DISPO LEVEL, HTA/CERT. Includes rows 1-4.

SUPERIOR COURT

TYPE OF FILING INFORMATION CERTIFICATION INDICTMENT TYPE OF TRIAL JURY COURT TRANSCRIPT

Table with columns: CHRG, FILE LEVEL, FIRST PLEA, FINAL PLEA, DISPOSITION, DISPO DATE, CHARGES AND ENHANCEMENTS AT DISPOSITION, DISPO LEVEL, 17 PC. Includes rows 1-4.

D. SENTENCE INFORMATION

Table with columns: CHRG, 17 PC, ISS, PROB, JAIL, FINE, RSTN, JAIL OR FINE, CONC, CONS, VOL WRK, COSTS, CYA, PRISON SENTENCE INFORMATION, STAYED INFORMATION. Includes rows 1-4.

REMARKS

E. PROCEEDINGS SUSPENDED

DATE LC/SC BENCH WARRANT ISSUED LC/SC DIVERSION LC/SC 1026 PC - NOT GLTY. INSANE LC/SC 3050 WI - NARC. COMM. LC/SC 1368/1370 PC - FOUND MENTALLY INCOMPETENT-COMMITTED SC 3051 WI - NARC. COMM. SC 1203.03 PC - 90 DAY OB. SC 707.2 WI - 90 DAY OB.