

No. 1979-127

AN ACT

HB 830

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for probation and for criminal history records.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subsection (c) of section 1354 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended to read:

§ 1354. Order of probation.

* * *

(c) Specific conditions.—The court may as a condition of its order require the defendant:

(1) To meet his family responsibilities.

(2) To devote himself to a specific occupation or employment.

(2.1) To participate in a public or nonprofit community service program unless the defendant was convicted of murder, rape, aggravated assault, arson, theft by extortion, terroristic threats, robbery or kidnapping.

(3) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose.

(4) To pursue a prescribed secular course of study or vocational training.

(5) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

(6) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons.

(7) To have in his possession no firearm or other dangerous weapon unless granted written permission.

(8) To make restitution of the fruits of his crime or to make reparations, in an amount he can afford to pay, for the loss or damage caused thereby.

(9) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment.

(10) To report as directed to the court or the probation officer and to permit the probation officer to visit his home.

(11) To pay such fine as has been imposed.

(12) To participate in drug or alcohol treatment programs.

(13) To satisfy any other conditions reasonably related to the

rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

* * *

Section 2. The definitions of "criminal history record information" and "secondary dissemination" in section 9102 of Title 18, added July 16, 1979 (No.47), are amended and definitions are added to read:

§ 9102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Automated systems." A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data and data storage devices.

* * *

"Criminal history record information." Information collected by criminal justice agencies concerning individuals, ***and arising from the initiation of a criminal proceeding***, consisting of identifiable descriptions, dates and notations of arrests, [detentions,] indictments, informations or other formal ***criminal*** charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

* * *

"Intelligence information." Information concerning the habits, practices, characteristics, history, possessions, associations or financial status of any individual.

"Investigative information." Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.

* * *

[***"Secondary dissemination."*** The subsequent transmission or disclosure of criminal history record information received from a repository or confirmation of the existence or nonexistence of criminal history record information received from a repository.]

"Treatment information." Information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual.

Section 3. Sections 9104(d), (e) and (f), 9106, 9112(b), 9121, 9123(a), 9124(b), 9125(b) and 9182 of Title 18, added July 16, 1979 (No.47), are amended to read:

§ 9104. Scope.

* * *

[(d) **Cases in progress.**—Nothing in this chapter must be interpreted to limit the disclosure by the arresting authority, a court, or other criminal justice agency having legal jurisdiction over the individual to any individual or agency of the current status of an individual involved in a criminal case in progress or for which an individual is currently in the criminal justice system so long as such information is disseminated no more than 180 days from the occurrence of any final official action by or final release from the supervision, custody or jurisdiction of that agency.

(e) [(d) **Certain disclosures authorized.**—Nothing in this chapter shall prohibit a criminal justice agency from disclosing an individual's prior criminal activity to an individual or agency if the information disclosed is based on records set forth in subsection (a).

[(f) (e) **Noncriminal justice agencies.**—Information collected by noncriminal justice agencies and individuals from the sources identified in this section shall not be considered criminal history record information. § 9106. **Prohibited information.**

[The following kinds of information shall not be collected in the central repository nor in any automated or electronic criminal justice information system:

- (1) **Intelligence information.**
- (2) **Investigative information.**
- (3) **Treatment information, including but not limited to medical or psychological information.]**

Intelligence information, investigative information and treatment information shall not be collected in the central repository nor in any automated or electronic criminal justice information system. This prohibition shall not preclude the collection in the central repository or in any automated or electronic criminal justice information system of names, words, numbers, phrases or other similar index keys to serve as indices to investigative reports.

§ 9112. **Mandatory fingerprinting.**

* * *

(b) **[Retail theft] Other cases.**—Where private complaints for a felony or misdemeanor result in a conviction *or where persons are proceeded against by a summons*, or for offenses under section 3929 (relating to retail theft), the **[issuing authority] court of proper jurisdiction** shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or, in the absence of a police department, the State Police. Fingerprints so obtained shall be forwarded immediately to the central repository.

* * *

§ 9121. **General regulations.**

[(a) **Promulgation of dissemination regulations.**—The Attorney General shall establish, in accordance with the provisions of the Commonwealth Documents Law, regulations concerning the dissemination of criminal history record information which shall distinguish between conviction and nonconviction data.]

(a) Dissemination to criminal justice agencies.—Criminal history record information maintained by any criminal justice agency shall be disseminated to any criminal justice agency or a noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.

(b) Dissemination to noncriminal justice agencies.—Criminal history record information shall only be disseminated by a law enforcement agency to any individual or agency other than a criminal justice agency upon request:

(1) A fee may be charged by a law enforcement agency for each request for the criminal history record information by an individual or agency other than a criminal justice agency.

(2) Before a law enforcement agency disseminates criminal history record information to an individual or agency other than a criminal justice agency, it shall extract from the record all notations of arrests, indictments or other information relating to the initiation of criminal proceedings where there is a disposition of acquittal, charges are dismissed or withdrawn, a nolle prosequi is entered, the proceedings are indefinitely postponed or the individual is otherwise not found guilty of committing an alleged criminal act where three years have elapsed from the time of arrest and no proceedings are pending seeking conviction or where the conviction has occurred.

[(b)] (c) Data required to be kept.—Any criminal justice agency which disseminates criminal history record information must indicate to the recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

[(c) Secondary dissemination.—Except during joint criminal investigations, no secondary dissemination of criminal history record information is permitted except as provided for by this chapter.]

(d) Extracting from the record.—When criminal history record information is maintained by a criminal justice agency in records containing investigative information, intelligence information, treatment information or other nonpublic information, the agency may extract and disseminate only the criminal history record information if the dissemination is to be made to a noncriminal justice agency or individual.

[(d) Duplication.—No duplication of criminal history record information by any criminal justice agency except for its own internal use, or by any individual receiving criminal history record information, is permitted.

(e) Return or destruction of information.—All noncriminal justice agencies or individuals or agencies receiving criminal history record information must return to the disseminating agency or destroy, in accordance with an agreement with the repository, all such information received upon completion of the specific purpose for which criminal history record information was received. Such information shall not be

permanently incorporated into the files or records of the agency or individual receiving it.]

(e) Dissemination procedures.—Criminal justice agencies may establish reasonable procedures for the dissemination of criminal history record information.

(f) Notations on record.—Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

[(g) Noncriminal justice officials, etc.—Any noncriminal justice official, agency or organization requesting criminal history record information prior to receipt of any such criminal history record information, must sign a contract with the repository from which it is seeking criminal history record information, agreeing to abide by the provisions of this chapter. Any such noncriminal justice official, agency or organization entering into such a contract with a repository is bound by and subject to the provisions of this chapter.]

(h) Prohibition on incorporation of records.—Except as otherwise provided in this chapter, no criminal history record information acquired from repositories other than the central repository shall be permanently incorporated into the files or records of the criminal justice agency or individual and must be destroyed upon completion of the specific purpose for which such information was received.]

§ 9123. Juvenile records.

(a) Expungement of juvenile records.—Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after ten days notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court *other than as a result of an informal adjustment*,

(2) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(3) the individual is 21 years of age or older and a court orders the expungement.

* * *

§ 9124. Use of records by licensing agencies.

* * *

(b) Prohibited use of information.—The following information shall not be used in consideration of an application for a license, certificate, registration or permit:

(1) Records of arrest if there is no conviction of a crime based on the arrest.

(2) Convictions which have been annulled or expunged.

(3) Convictions of a summary offense.

(4) **[Information that] Convictions for which** the individual has received a pardon from the Governor.

(5) Convictions which do not relate to the applicant's suitability for the license, certificate, registration or permit.

* * *

§ 9125. Use of records for employment.

* * *

(b) Use of information.—**[Convictions for felonies, as well as misdemeanor convictions and arrests for offenses, which relate to the applicant's suitability for employment in the position for which he has applied may be considered by the employer. Misdemeanor convictions and arrests for offenses which do not] Arrests and misdemeanor convictions may be considered by the employer only to the extent to which they** relate to the applicant's suitability for employment in the position for which he has applied **[shall not be considered by the employer].**

* * *

[§ 9182. Criminal penalties.

A person employed by a government agency commits a misdemeanor of the third degree if such person:

(1) knowingly requests, obtains or seeks to obtain criminal history record information in violation of this chapter; or

(2) disseminates, maintains or uses criminal history record information knowing such dissemination, maintenance or use to be in violation of this chapter.]

Section 4. (a) The provisions of 18 Pa.C.S. § 9122(a)(1) (relating to expungement) shall not be applicable to criminal proceedings initiated or completed prior to the effective date of this amendatory act unless requested by an individual as provided in 18 Pa.C.S. Ch. 91 Subch. F (relating to individual right of access and review).

(b) The provisions of 18 Pa.C.S. § 9152(d)(3) and (4) (relating to procedure) shall only apply to criminal history record information disseminated after the effective date of this amendatory act.

Section 5. This act shall take effect immediately.

APPROVED—The 14th day of December, A. D. 1979.

DICK THORNBURGH