

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Jordan**

A Bill

HOUSE BILL 1786

For An Act To Be Entitled

8 "AN ACT TO REQUIRE THE ACCURACY AND COMPLETENESS OF
9 CRIMINAL HISTORY INFORMATION; TO ESTABLISH REPORTING
10 STANDARDS; TO LIMIT DISCLOSURE OF SUCH RECORDS; AND FOR
11 OTHER PURPOSES."

Subtitle

14 "TO REQUIRE ACCURACY AND COMPLETENESS OF CRIMINAL HISTORY
15 INFORMATION AND ESTABLISH REPORTING STANDARDS."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. DEFINITIONS. As used in this act:

20 (1) "Administration of criminal justice" means performing functions of
21 investigation, apprehension, detention, prosecution, adjudication,
22 correctional supervision, or rehabilitation of accused persons or criminal
23 offenders. The administration of criminal justice also includes criminal
24 identification activities and the collection, maintenance, and dissemination
25 of criminal justice information.

26 (2) "Central Repository" means the Arkansas Crime Information Center,
27 which is authorized to collect, maintain and disseminate criminal history
28 information.

29 (3) "Conviction information" means criminal history information
30 disclosing that a person has plead guilty, nolo contendere, or was found
31 guilty of a criminal offense in a court of law, together with sentencing
32 information.

33 (4) "Criminal history information" means a record compiled by a central
34 repository or identification bureau on an individual consisting of name(s) and
35 identification data, notations of arrests, detentions, indictments,

1 informations, or other formal criminal charges. This record also includes any
2 dispositions of these charges, as well as notations on correctional
3 supervision and release. This term does not include fingerprint records on
4 individuals not involved in the criminal justice system, or driver history
5 records.

6 (5) "Criminal history information system" means the equipment,
7 procedures, agreements, and organizations thereof, for the compilation,
8 processing, preservation and dissemination of criminal history information.

9 (6) "Criminal justice agency" means a government agency, or any subunit
10 thereof, which is authorized by law to perform the administration of criminal
11 justice, and which allocates more than half its annual budget to the
12 administration of criminal justice.

13 (7) "Criminal justice official" means an employee of a criminal justice
14 agency, performing the administration of criminal justice.

15 (8) "Disposition" means information describing the outcome of any
16 criminal charges, including notations that law enforcement officials have
17 elected not to refer the matter to a prosecutor, that a prosecutor has elected
18 not to commence criminal proceedings, or that proceedings have been
19 indefinitely postponed. Dispositions also include acquittals, dismissals,
20 probations, charges pending due to mental disease or defect, guilty pleas,
21 nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender
22 determinations, first offender programs, pardons, commuted sentences,
23 mistrials - defendant discharged, executive clemencies, paroles, releases from
24 correctional supervision, or deaths.

25 (9) "Dissemination" means disclosing criminal history information or the
26 absence of criminal history information to any person or organization outside
27 the agency possessing the information.

28 (10) "Expunge" means to restrict access to specific criminal justice
29 purposes as other laws permit.

30 (11) "Identification Bureau" means the Arkansas State Police
31 Identification Bureau, which is authorized to maintain fingerprint card files
32 and other identification information on individuals.

33 (12) "Nonconviction information" means arrest information without
34 disposition if an interval of one year has elapsed from the date of arrest and
35 no active prosecution of the charge is pending, as well as all acquittals and

1 all dismissals.

2 (13) "Pending information" means criminal history information in some
3 stage of active prosecution or processing.

4

5 SECTION 2. SCOPE. (a) This act governs the collection, maintenance and
6 dissemination of criminal history information on identifiable individuals
7 charged or pleading guilty, nolo contendere, or being found guilty of criminal
8 offenses under the laws of the State of Arkansas.

9 (b) The Arkansas Crime Information Center shall have general authority
10 to issue regulations and implement the provisions of this act.

11 (c) The reporting requirements in this act apply to law enforcement
12 officials, prosecuting attorneys, judges and court officials, probation,
13 correction and parole officials, within the limits defined in Sections 5 and
14 6.

15 (d) This act does not apply to records of traffic offenses, including
16 misdemeanor offenses of driving while intoxicated, maintained by the
17 Department of Finance and Administration.

18 (e) Criminal history information collected and maintained by the
19 Arkansas Crime Information Center is not considered public record information
20 within the intent and meaning of the Arkansas Freedom of Information Act,
21 A.C.A. 25-19-101 et seq.

22

23 SECTION 3. COMPLETENESS AND ACCURACY. (a) The Arkansas Crime
24 Information Center shall implement procedures that will, to the maximum extent
25 feasible, ensure the completeness and accuracy of all criminal history
26 information in this state.

27 (b) It shall be the duty of all criminal justice agencies and officials
28 to maintain complete and accurate records, as may be appropriate to their area
29 of operation, and to report information from such records as required in
30 Sections 5 and 6.

31 (c) It shall be the duty of the Arkansas Crime Information Center to
32 maintain all information reported under this act in a complete and permanent
33 manner, to ensure that no records are altered, purged or otherwise lost.

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35 SECTION 4. IDENTIFICATION BUREAU. (a) The Identification Bureau shall

1 collect and maintain fingerprint identification records required to be
2 reported by this act.

3 (b) The Identification Bureau shall provide arrest and identification
4 information for inclusion in the computerized criminal history file, as
5 specified by the Arkansas Crime Information Center.

6 (c) The Identification Bureau shall be the sole source for the
7 transmission of fingerprint cards or images to and from the Federal Bureau of
8 Investigation.

9

10 SECTION 5. FINGERPRINTING. (a) Immediately following an arrest, the
11 arresting official shall take, or cause to be taken, the fingerprints of the
12 arrested person if the offense is a felony or a class A misdemeanor.

13 (b) When the first appearance of a defendant in court is caused by a
14 citation or summons, the arresting official shall take, or cause to be taken,
15 the fingerprints of the arrested person when the offense is a felony or a
16 class A misdemeanor.

17 (c) When felony or class A misdemeanor charges are brought against a
18 person already in the custody of a law enforcement or correctional agency, and
19 such charges are separate from the charges for which the person was previously
20 arrested or confined, the agency shall again take the fingerprints of the
21 person in connection with the new charges.

22 (d) When a defendant pleads guilty, nolo contendere or is found guilty
23 of any felony or class A misdemeanor charge, the court shall inquire whether
24 such defendant has previously been fingerprinted in connection with the
25 criminal proceedings leading to the conviction and, if not, shall order that
26 the defendant be immediately fingerprinted by the appropriate law enforcement
27 official.

28 (e) Fingerprints taken after arrest or court appearance pursuant to
29 subsections (a) and (b), or taken from persons already in custody pursuant to
30 subsection (c), shall be forwarded to the Identification Bureau within
31 forty-eight (48) hours after such arrest or appearance. Fingerprints taken
32 pursuant to subsection (d) shall be forwarded to the Identification Bureau by
33 the fingerprinting official within five (5) working days after such plea or
34 finding of guilt.

35

1 SECTION 6. REPORTING REQUIREMENTS. (a) Certain events occurring during
2 the course of criminal prosecution must be reported for inclusion in a
3 criminal history record. The following events shall be reportable events:

4 (1) an arrest;

5 (2) the release of a person after arrest without filing of a
6 charge;

7 (3) a decision by a prosecutor not to commence criminal
8 proceedings or to defer or indefinitely postpone prosecution;

9 (4) an indictment or criminal information or other statement of
10 charges;

11 (5) the dismissal of an indictment or criminal information, or
12 any of the charges set out in such indictment or criminal information;

13 (6) an acquittal, finding of guilt or other court disposition at
14 or following trial, including dispositions of probationary status;

15 (7) the terms and conditions of a sentence;

16 (8) a commitment to a state or local correctional facility;

17 (9) a commitment to a hospital or other facility as not being
18 criminally responsible or as incompetent to stand trial;

19 (10) the entry of an appeal to an appellate court;

20 (11) the judgment of an appellate court;

21 (12) a pardon, reprieve, commutation or other change in sentence;

22 (13) other events occurring during the course of the criminal
23 proceedings determined to be reportable.

24 (b) Reportable events specified in subsection (a) shall be reported by
25 those criminal justice officials or agencies directly responsible for the
26 reportable action, event or decision.

27 (c) The form and content of reported information and the method of
28 reporting shall be specified by the Arkansas Crime Information Center and the
29 Administrative Office of the Courts.

30 (d) Criminal justice agencies shall report criminal history
31 information, whether directly or indirectly, manually or by means of an
32 automated system, in accordance with the following provisions:

33 (1) Information pertaining to the release of a person arrested
34 without the filing of charges as required in subsection (a)(2), or to a
35 decision by the prosecutor not to commence criminal proceedings or to defer or

1 postpone prosecution indefinitely as required by subsection (a)(3) shall be
2 reported within five (5) working days;

3 (2) Information pertaining to any other reportable events
4 specified in subsections (a)(4) through (a)(13) shall be reported at least
5 monthly.

6
7 SECTION 7. DISSEMINATION FOR CRIMINAL JUSTICE PURPOSES. (a) Pending,
8 conviction and nonconviction information available through the Arkansas Crime
9 Information Center, plus information obtained through the Interstate
10 Identification Index or from another state's record system, shall be
11 disseminated to criminal justice agencies and officials for the administration
12 of criminal justice.

13 (b) Criminal justice agencies shall query the Arkansas Crime
14 Information Center to obtain the latest updated information prior to
15 disseminating criminal history information, unless the agency knows that the
16 Arkansas Crime Information Center does not maintain the information or is
17 incapable of responding within the necessary time period.

18 (c) If a criminal justice agency disseminates criminal history
19 information received from the Arkansas Crime Information Center to another
20 criminal justice agency, the disseminating agency shall maintain, for at least
21 one year, a dissemination log recording the identity of the record subject,
22 the agencies or persons to whom the criminal history information was
23 disseminated, and the date it was provided.

24 (d) Expunged records will be made available to criminal justice
25 agencies for criminal justice purposes as other laws permit.

26
27 SECTION 8. DISSEMINATION OF CONVICTION INFORMATION FOR NONCRIMINAL
28 JUSTICE PURPOSES. (a) Conviction information shall be made available for the
29 following noncriminal justice purposes:

30 (1) To any local, state, or federal governmental agency that
31 requests the information for the enforcement of a local, state or federal law;

32 (2) To any nongovernmental entity authorized either by the record
33 subject in writing or by state law to receive such information;

34 (3) To any federal agency or central repository in another state
35 requesting the information for purposes authorized by law.

1 (b) Conviction information disseminated for noncriminal justice
2 purposes under this act shall only be used for the purposes for which it was
3 made available and may not be redisseminated.

4 (c) Nonconviction information shall not be available under the
5 provisions of this act for noncriminal justice purposes.

6 (d) No agency or individual shall confirm the existence or nonexistence
7 of criminal history information to any person or organization that would not
8 be eligible to receive the information pursuant to this act.

9 (e) Local agencies may release their own agency records according to
10 their own policies.

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12 SECTION 9. DISSEMINATION FOR OTHER PURPOSES. (a) Criminal history
13 information shall be made available to the office of the governor for purposes
14 of carrying out the governor's constitutional authority involving pardons,
15 executive clemencies, extraditions, or other duties specifically authorized by
16 law.

17 (b) Criminal history information may be made available to persons
18 performing research related to the administration of criminal justice, subject
19 to conditions approved by the Central Repository or Identification Bureau to
20 assure the security of the information and the privacy of individuals to whom
21 the information relates.

22 (c) Criminal history information shall be made available according to
23 the provisions of the Interstate Compact on the exchange of criminal history
24 records for noncriminal justice purposes following the adoption of such
25 compact by the Arkansas General Assembly.

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27 SECTION 10. DISSEMINATION LIMITED. (a) Release of criminal history
28 information for noncriminal justice purposes shall only be made by the
29 Identification Bureau or Central Repository, under the limitations contained
30 in section 8, and such compiled records will not be released or disclosed for
31 noncriminal justice purposes by other agencies in the state.

32 (b) Intelligence and investigative files maintained by law enforcement
33 agencies shall be kept separated from criminal history information and shall
34 not be subject to dissemination under the provisions of this act.

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1 SECTION 11. FEES FOR NONCRIMINAL JUSTICE RECORD SEARCHES. (a) A fee
2 may be charged for providing criminal history information for noncriminal
3 justice purposes. The amount of such fees will be determined jointly by the
4 Identification Bureau and the Central Repository and shall not exceed twenty
5 dollars (\$20.00).

6 (b) All fees shall be deposited immediately in the state treasury as
7 special revenue to the credit of the State Police Equipment Fund, which is
8 hereby created on the books of the State Treasurer, State Auditor and Chief
9 Fiscal Officer of the state, there to be used for the acquisition of an
10 automated fingerprint identification system. Effective July 1, 1998, such
11 fees shall then be credited 75 percent (75%) to the Crime Information System
12 Fund and 25 percent (25%) to the State Police Equipment Fund, there to be used
13 for the continued operation and expansion of the automated criminal history
14 system and for the operation of the automated fingerprint identification
15 system, subject to legislative appropriations. Special revenues deposited in
16 the Crime Information System Fund and the State Police Equipment Fund unused
17 at the end of any fiscal year shall be carried forward.

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19 SECTION 12. RIGHT OF REVIEW AND CHALLENGE. (a) A person, upon positive
20 verification of his or her identity, may review criminal history information
21 pertaining to such person compiled and maintained by the Identification Bureau
22 or the Central Repository, and may challenge the completeness or accuracy of
23 such information. The criminal history information may be reviewed only by
24 the subject, or by the subject and his or her attorney, or the subject's
25 attorney authorized in writing by the subject.

26 (b) If the subject, after appropriate review, believes that the records
27 are incorrect or incomplete in any way, he or she may request an examination
28 and correction of the records by the agency responsible for the records.

29 (c) Should it be determined as a result of the challenge that the
30 criminal history information is inaccurate, incomplete or improperly
31 maintained, that information shall be appropriately corrected. Immediately
32 thereafter, the agency responsible for the records shall notify every agency
33 or person known to have received this information within the previous one year
34 period and provide them with corrected information. A person whose record has
35 been corrected shall be entitled to ascertain the names of those agencies or

1 individuals known to have received the previously incorrect criminal history
2 information.

3 (d) Criminal history information which was recorded prior to the
4 effective date of this act is subject to the right of review and challenge in
5 accordance with this section. However, the duty is to make a reasonable
6 search for such information. There is no duty to provide access to that
7 segment of criminal history information that cannot be located after a
8 reasonable search.

9 (e) The right of a person to review his or her criminal history record
10 shall not be used by a prospective employer or others as a means to circumvent
11 procedures or fees for accessing records for noncriminal justice purposes.

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13 SECTION 13. SECURITY OF CRIMINAL HISTORY INFORMATION. (a) The Arkansas
14 Crime Information Center shall be authorized to develop standards and
15 implement procedures that will, to the maximum extent feasible, ensure the
16 security and confidentiality of criminal history records.

17 (b) The Arkansas Crime Information Center shall be authorized to
18 inspect the criminal history records maintained by criminal justice agencies;
19 to evaluate security procedures; and to issue reports on compliance with
20 security standards.

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22 SECTION 14. AUDIT OF CRIMINAL HISTORY RECORDS. The Arkansas Crime
23 Information Center shall be authorized to develop standards and implement a
24 program of audits of all criminal justice agencies that establish, maintain,
25 report or disseminate criminal history records, to ensure compliance with all
26 provisions of this act. Audit procedures pertaining to the courts shall be
27 coordinated and implemented through the Administrative Office of the Courts.

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29 SECTION 15. PENALTIES. (a) Any criminal justice agency or official
30 subject to fingerprinting or reporting requirements under this act that
31 knowingly fails to comply with such reporting requirements shall be deemed
32 guilty of a Class B misdemeanor.

33 (b) Every person who shall knowingly release or disclose to any
34 unauthorized person any information collected and maintained under this act,
35 and any person who knowingly obtains such information for purposes not

1 authorized by this act, shall be deemed guilty of a Class D felony.

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3 SECTION 16. All provisions of this act of a general and permanent
4 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
5 Code Revision Commission shall incorporate the same into the Code.

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7 SECTION 17. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of this act which can be given effect without
10 the invalid provisions or applications, and to this end the provisions of this
11 act are declared to be severable.

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13 SECTION 18. All laws and parts of laws in conflict with this act are
14 hereby repealed.

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/s/James T. Jordan

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