

PART III

MISCELLANEOUS PROVISIONS

Chapter

- 91. Criminal History Record Information
- 93. Independent Counsel

Enactment. Part III was added July 16, 1979, P.L.116, No.47, effective January 1, 1980.

CHAPTER 91

CRIMINAL HISTORY RECORD INFORMATION

Subchapter

- A. General Provisions
- B. Completeness and Accuracy
- C. Dissemination of Criminal History Record Information
- D. Security
- E. Audit
- F. Individual Right of Access and Review
- G. Responsibility of Attorney General
- H. Public Notice
- I. Sanctions

Enactment. Chapter 91 was added July 16, 1979, P.L.116, No.47, effective January 1, 1980.

Cross References. Chapter 91 is referred to in section 6109 of this title; sections 1202, 1317.2, 1517, 1801 of Title 4 (Amusements); section 3705 of Title 22 (Detectives and Private Police); section 6344 of Title 23 (Domestic Relations); section 925 of Title 34 (Game); section 7713 of Title 35 (Health and Safety); sections 1904, 6309, 9798, 9798.1, 9799.2 of Title 42 (Judiciary and Judicial Procedure); section 702 of Title 54 (Names).

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

- 9101. Short title of chapter.
- 9102. Definitions.
- 9103. Applicability.
- 9104. Scope.
- 9105. Other criminal justice information.
- 9106. Information in central repository or automated systems.

§ 9101. Short title of chapter.

This chapter shall be known and may be cited as the "Criminal History Record Information Act."

§ 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:

"Administration of criminal justice." The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders;

criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.

"Audit." The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

"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.

"Central repository." The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

"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, 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).

"Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.

"Disposition." Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismissed, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

"Dissemination." The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

"Expunge."

(1) To remove information so that there is no trace or indication that such information existed;

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes; or

(3) maintenance of certain information required or authorized under the provisions of section 9122(c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or posttrial diversion or probation program.

"Intelligence information." Information concerning the habits, practices, characteristics, possessions, associations or financial status of any individual compiled in an effort to anticipate, prevent, monitor, investigate or prosecute criminal activity. Notwithstanding the definition of "treatment information" contained in this section, intelligence information may include information on prescribing, dispensing, selling, obtaining or using a controlled substance as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

"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.

"Police blotter." A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.

"Repository." Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

"Treatment information." Information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.; June 11, 1982, P.L.476, No.138, eff.180 days; Dec. 19, 1990, P.L.1332, No.207, eff. imd.; Nov. 29, 2004, P.L.1349, No.173, eff. 60 days)

2004 Amendment. Act 173 amended the def. of "criminal justice agency."

1990 Amendment. Act 207 amended the defs. of "intelligence information" and "treatment information."

1982 Amendment. Act 138 amended the defs. of "criminal justice agency," "expunge" and "intelligence information" and added the def. of "police blotter."

1979 Amendment. Act 127 amended the def. of "criminal history record information," added the defs. of "automated systems," "intelligence information," "investigative information" and "treatment information" and deleted the def. of "secondary dissemination."

Cross References. Section 9102 is referred to in section

6309 of Title 42 (Judiciary and Judicial Procedure); section 2303 of Title 44 (Law and Justice); section 2162 of Title 53 (Municipalities Generally).

§ 9103. Applicability.

This chapter shall apply to persons within this Commonwealth and to any agency of the Commonwealth or its political subdivisions which collects, maintains, disseminates or receives criminal history record information.

§ 9104. Scope.

(a) **General rule.**--Except for the provisions of Subchapter B (relating to completeness and accuracy), Subchapter D (relating to security) and Subchapter F (relating to individual right of access and review), nothing in this chapter shall be construed to apply to:

- (1) Original records of entry compiled chronologically, including, but not limited to, police blotters and press releases that contain criminal history record information and are disseminated contemporaneous with the incident.
- (2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.
- (3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.
- (4) Announcements of executive clemency.

(b) **Court dockets, police blotters and press releases.**--Court dockets, police blotters and press releases and information contained therein shall, for the purpose of this chapter, be considered public records.

(c) **Substitutes for court dockets.**--Where court dockets are not maintained any reasonable substitute containing that information traditionally available in court dockets shall, for the purpose of this chapter, be considered public records.

(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).

(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.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.; June 11, 1982, P.L.476, No.138, eff. 180 days)

1982 Amendment. Act 138 amended subsecs. (a) and (b).

1979 Amendment. Act 127 deleted subsec. (d) and relettered subsec. (e) to (d) and subsec. (f) to (e).

Cross References. Section 9104 is referred to in sections 9102, 9122 of this title.

§ 9105. Other criminal justice information.

Nothing in this chapter shall be construed to apply to information concerning juveniles, except as provided in section 9123 (relating to juvenile records), unless they have been adjudicated as adults, nor shall it apply to intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons

information, stolen property information, missing persons information, employment history information, personal history information, nor presentence investigation information. Criminal history record information maintained as a part of these records shall not be disseminated unless in compliance with the provisions of this chapter.

Cross References. Section 9105 is referred to in section 9123 of this title; section 6309 of Title 42 (Judiciary and Judicial Procedure).

§ 9106. Information in central repository or automated systems.

(a) **General rule.**--Intelligence information, investigative information and treatment information shall not be collected in the central repository. This prohibition shall not preclude the collection in the central repository of names, words, numbers, phrases or other similar index keys to serve as indices to investigative reports.

(b) **Collection of protected information.**--

(1) Intelligence information may be placed in an automated or electronic criminal justice system only if the following apply:

(i) The criminal justice agency has reasonable suspicion of criminal activity.

(ii) Access to the intelligence information contained in the automated or electronic criminal justice system is restricted to the authorized employees of the criminal justice agency and cannot be accessed by any other individuals inside or outside of the agency.

(iii) The intelligence information is related to criminal activity that would give rise to prosecution for a State offense graded a misdemeanor or felony, or for a Federal offense for which the penalty is imprisonment for more than one year. Intelligence information shall be categorized based upon subject matter.

(iv) The intelligence information is not collected in violation of State law.

(2) Intelligence information may not be collected or maintained in an automated or electronic criminal justice system concerning participation in a political, religious or social organization, or in the organization or support of any nonviolent demonstration, assembly, protest, rally or similar form of public speech, unless there is a reasonable suspicion that the participation by the subject of the information is related to criminal activity or prison rule violation.

(3) Investigative information and treatment information contained in files of any criminal justice agency may be placed within an automated or electronic criminal justice information system, provided that access to the investigative information and treatment information contained in the automated or electronic criminal justice information system is restricted to authorized employees of that agency and cannot be accessed by individuals outside of the agency.

(c) **Dissemination of protected information.**--

(1) Intelligence information may be placed within an automated or electronic criminal justice information system and disseminated only if the following apply:

(i) The information is reliable as determined by an

authorized intelligence officer.

(ii) The department, agency or individual requesting the information is a criminal justice agency which has policies and procedures adopted by the Office of Attorney General in consultation with the Pennsylvania State Police which are consistent with this act and include:

(A) Designation of an intelligence officer or officers by the head of the criminal justice agency or his designee.

(B) Adoption of administrative, technical and physical safeguards, including audit trails, to insure against unauthorized access and against intentional or unintentional damages.

(C) Labeling information to indicate levels of sensitivity and levels of confidence in the information.

(iii) The information is requested in connection with the duties of the criminal justice agency requesting the information, and the request for information is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

(2) If an intelligence officer of a disseminating agency is notified that intelligence information which has been previously disseminated to another criminal justice agency is materially misleading, obsolete or otherwise unreliable, the information shall be corrected and the recipient agency notified of the change within a reasonable period of time.

(3) Criminal justice agencies shall establish retention schedules for intelligence information. Intelligence information shall be purged under the following conditions:

(i) The data is no longer relevant or necessary to the goals and objectives of the criminal justice agency.

(ii) The data has become obsolete, making it unreliable for present purposes and the utility of updating the data would be worthless.

(iii) The data cannot be utilized for strategic or tactical intelligence studies.

(4) Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

(5) Each municipal police department accessing automated information shall file a copy of its procedures with the Pennsylvania State Police for approval. Such plan shall be reviewed within 60 days.

(6) Each district attorney accessing automated information shall file a copy of its procedures with the Office of Attorney General for approval. Such plan shall be reviewed within 60 days.

(d) Secondary dissemination prohibited.--A criminal justice agency which possesses information protected by this section, but which is not the source of the information, shall not disseminate or disclose the information to another criminal justice agency but shall refer the requesting agency to the

agency which was the source of the information. This prohibition shall not apply if the agency receiving the information is investigating or prosecuting a criminal incident in conjunction with the agency possessing the information. Agencies receiving information protected by this section assume the same level of responsibility for the security of such information as the agency which was the source of the information.

(e) Notations of the record.--Criminal justice agencies maintaining intelligence information, investigative information or treatment information must enter, as a permanent part of an individual's information file, a listing of all persons and agencies to whom they have disseminated that particular information, the date of the dissemination and the purpose for which the information was disseminated. This listing shall be maintained separate from the record itself.

(f) Security requirements.--Every criminal justice agency collecting, storing or disseminating intelligence information, investigative information or treatment information shall insure the confidentiality and security of such information by providing that, wherever such information is maintained, a criminal justice agency must:

(1) institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or manmade disasters;

(2) select, supervise and train all personnel authorized to have access to intelligence information, investigative information or treatment information;

(3) insure that, where computerized data processing is employed, the equipment utilized for maintaining intelligence information, investigative information or treatment information is dedicated solely to purposes related to the administration of criminal justice or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency is accorded equal management participation in computer operations used to maintain the intelligence information, investigative information or treatment information.

(g) Penalties.--Any person, including any agency or organization, who violates the provisions of this section shall be subject to the administrative penalties provided in section 9181 (relating to general administrative sanctions) and the civil penalties provided in section 9183 (relating to civil actions) in addition to any other civil or criminal penalty provided by law.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.; Dec. 19, 1990, P.L.1332, No.207, eff. 60 days)

Cross References. Section 9106 is referred to in section 9141 of this title.

SUBCHAPTER B

COMPLETENESS AND ACCURACY

Sec.

9111. Duties of criminal justice agencies.

9112. Mandatory fingerprinting.

9113. Disposition reporting by criminal justice agencies.

9114. Correction of inaccurate information.

Cross References. Subchapter B is referred to in section 9104 of this title.

§ 9111. Duties of criminal justice agencies.

It shall be the duty of every criminal justice agency within the Commonwealth to maintain complete and accurate criminal history record information and to report such information at such times and in such manner as required by the provisions of this chapter or other applicable statutes.

§ 9112. Mandatory fingerprinting.

(a) **General rule.**--Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.

(b) **Other cases.**--

(1) Where private complaints for a felony or misdemeanor result in a conviction, the court of proper jurisdiction shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense was allegedly committed or in the absence of a police department, the State Police. Fingerprints so obtained shall, within 48 hours, be forwarded to the central repository in a manner and in such form as may be provided by the central repository.

(2) Where defendants named in police complaints are proceeded against by summons, or for offenses under section 3929 (relating to retail theft), the court of proper jurisdiction shall order the defendant to submit within five days of such order 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, within 48 hours, be forwarded to the central repository in a manner and in such form as may be provided by the central repository.

(c) **Transmittal of information.**--The central repository shall transmit the criminal history record information to the criminal justice agency which submitted a complete, accurate and classifiable fingerprint card.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.; June 11, 1982, P.L.476, No.138, eff.180 days)

Cross References. Section 9112 is referred to in section 6309 of Title 42 (Judiciary and Judicial Procedure).

§ 9113. Disposition reporting by criminal justice agencies.

(a) **Reports of dispositions required.**--All criminal justice agencies, including but not limited to, courts, county, regional and State correctional institutions and parole and probation agencies, shall collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository as provided for in this section.

(b) **Courts.**--Courts shall collect and submit criminal court dispositions as required by the Administrative Office of Pennsylvania Courts.

(c) Correctional institutions.--County, regional and State correctional institutions shall collect and submit information regarding the admission, release and length of sentence of individuals sentenced to local and county institutions as required by the Bureau of Correction.

(d) Probation and parole offices.--County probation and parole offices shall collect and submit information relating to the length of time and charges for which an individual is placed under and released from the jurisdiction of such agency as required by the Pennsylvania Board of Probation and Parole.

(e) State agencies.--The Administrative Office of Pennsylvania Courts, the Bureau of Correction, the Pennsylvania Board of Probation and Parole and the Pennsylvania Board of Pardons shall collect and submit to the central repository such information necessary to maintain complete and accurate criminal history record information. Each State agency listed in this subsection shall submit to the central repository any reports of dispositions occurring within their respective agencies and such information reported from county and local criminal justice agencies.

References in Text. The Bureau of Correction, referred to in subsecs. (c) and (e), is now the Department of Corrections.

Cross References. Section 9113 is referred to in section 6309 of Title 42 (Judiciary and Judicial Procedure).

§ 9114. Correction of inaccurate information.

Within 15 days of the detection of inaccurate data in a criminal history record, regardless of the manner of discovery, the criminal justice agency which reported the information shall comply with the following procedures to effect correction:

(1) Correct its own records.

(2) Notify all recipients, including the central repository, of the inaccurate data and the required correction.

SUBCHAPTER C

**DISSEMINATION OF CRIMINAL HISTORY
RECORD INFORMATION**

Sec.

9121. General regulations.

9122. Expungement.

9123. Juvenile records.

9124. Use of records by licensing agencies.

9125. Use of records for employment.

§ 9121. General regulations.

(a) Dissemination to criminal justice agencies.--Criminal history record information maintained by any criminal justice agency shall be disseminated without charge to any criminal justice agency or to any noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.

(b) Dissemination to noncriminal justice agencies and individuals.--Criminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request. Except as provided in subsection (b.1):

(1) A fee may be charged by a State or local police department for each request for criminal history record information by an individual or noncriminal justice agency, except that no fee shall be charged to an individual who makes the request in order to apply to become a volunteer with an affiliate of Big Brothers of America or Big Sisters of America or with a rape crisis center or domestic violence program.

(2) Before a State or local police department disseminates criminal history record information to an individual or noncriminal justice agency, it shall extract from the record all notations of arrests, indictments or other information relating to the initiation of criminal proceedings where:

- (i) three years have elapsed from the date of arrest;
- (ii) no conviction has occurred; and
- (iii) no proceedings are pending seeking a conviction.

(b.1) Exception.--Subsection (b)(1) and (2) shall not apply if the request is made by a county children and youth agency or the Department of Public Welfare in the performance of duties relating to children and youth under the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, section 2168 of the act of August 9, 1955 (P.L.323, No.130), known as The County Code, the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, 23 Pa.C.S. Ch. 63 (relating to child protective services) or 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(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.

(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.

(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.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.; June 11, 1982, P.L.476, No.138, eff. 180 days; July 2, 1996, P.L.480, No.76, eff. 60 days; Dec. 21, 1998, P.L.1103, No.149, eff. 60 days; Oct. 28, 2002, P.L.888, No.129, eff. imd.)

2002 Amendment. Act 129 amended subsec. (b).

1996 Amendment. Act 76 amended subsec. (b) and added subsec. (b.1).

1982 Amendment. Act 138 amended subsecs. (a) and (b).

Cross References. Section 9121 is referred to in section 1206 of Title 4 (Amusements); section 3705 of Title 22 (Detectives and Private Police); section 6344 of Title 23 (Domestic Relations); section 6309 of Title 42 (Judiciary and Judicial Procedure).

§ 9122. Expungement.

(a) Specific proceedings.--Criminal history record information shall be expunged in a specific criminal proceeding when:

(1) no disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the director of the repository that no disposition is available and no action is pending. Expungement shall not occur until the certification from the court is received and the director of the repository authorizes such expungement;

(2) a court order requires that such nonconviction data be expunged; or

(3) a person 21 years of age or older who has been convicted of a violation of section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages) petitions the court of common pleas in the county where the conviction occurred seeking expungement and the person has satisfied all terms and conditions of the sentence imposed for the violation, including any suspension of operating privileges imposed pursuant to section 6310.4 (relating to restriction of operating privileges). Upon review of the petition, the court shall order the expungement of all criminal history record information and all administrative records of the Department of Transportation relating to said conviction.

(b) Generally.--Criminal history record information may be expunged when:

(1) An individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision.

(2) An individual who is the subject of the information has been dead for three years.

(3) (i) An individual who is the subject of the information petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction for that offense.

(ii) Expungement under this paragraph shall only be permitted for a conviction of a summary offense.

(b.1) Prohibition.--A court shall not have the authority to order expungement of the defendant's arrest record where the defendant was placed on Accelerated Rehabilitative Disposition for a violation of any offense set forth in any of the following where the victim is under 18 years of age:

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).
Section 3123 (relating to involuntary deviate sexual intercourse).
Section 3124.1 (relating to sexual assault).
Section 3125 (relating to aggravated indecent assault).
Section 3126 (relating to indecent assault).
Section 3127 (relating to indecent exposure).
Section 5902(b) (relating to prostitution and related offenses).
Section 5903 (relating to obscene and other sexual materials and performances).

(c) Maintenance of certain information required or authorized.--Notwithstanding any other provision of this chapter, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged where the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program or where the court has ordered expungement under this section. Such information shall be used solely for the purposes of determining subsequent eligibility for such programs, identifying persons in criminal investigations or determining the grading of subsequent offenses. Such information shall be made available to any court or law enforcement agency upon request.

(d) Notice of expungement.--Notice of expungement shall promptly be submitted to the central repository which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.

(e) Public records.--Public records listed in section 9104(a) (relating to scope) shall not be expunged.

(f) District attorney's notice.--The court shall give ten days prior notice to the district attorney of the county where the original charge was filed of any applications for expungement under the provisions of subsection (a)(2).
(June 11, 1982, P.L.476, No.138, eff. 180 days; Oct. 16, 1996, P.L.715, No.128, eff. 60 days; Apr. 22, 1997, P.L.73, No.5, eff. 60 days; Nov. 29, 2004, P.L.1349, No.173, eff. 60 days Nov. 26, 2008, P.L.1670, No.134, eff. 60 days)

2008 Amendment. Act 134 amended subsecs. (b), (b.1) and (c).

2004 Amendment. Act 173 amended subsec. (a).

1982 Amendment. Act 138 amended subsec. (f).

Cross References. Section 9122 is referred to in section 9102 of this title.

§ 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 30 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;

(2) six months have elapsed since the final discharge of

the person from supervision under a consent decree and no proceeding seeking adjudication or conviction is pending;

(3) 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

(4) the individual is 18 years of age or older, the attorney for the Commonwealth consents to the expungement and a court orders the expungement after giving consideration to the following factors:

(i) the type of offense;

(ii) the individual's age, history of employment, criminal activity and drug or alcohol problems;

(iii) adverse consequences that the individual may suffer if the records are not expunged; and

(iv) whether retention of the record is required for purposes of protection of the public safety.

(b) Notice to prosecuting attorney.--The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

(c) Dependent children.--All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.; June 11, 1982, P.L.476, No.138, eff. 180 days; Dec. 11, 1986, P.L.1517, No.164, eff. 60 days; Mar. 15, 1995, 1st Sp.Sess., P.L.978, No.7, eff. 60 days)

Cross References. Section 9123 is referred to in section 9105 of this title.

§ 9124. Use of records by licensing agencies.

(a) State agencies.--Except as provided by this chapter, a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not preclude the issuance of a license, certificate, registration or permit.

(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) 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.

(c) State action authorized.--Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the

following causes:

(1) Where the applicant has been convicted of a felony.

(2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

(d) Notice.--The board, commission or department shall notify the individual in writing of the reasons for a decision which prohibits the applicant from practicing the trade, occupation or profession if such decision is based in whole or part on conviction of any crime.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.)

1979 Amendment. Act 127 amended subsec. (b).

Cross References. Section 9124 is referred to in section 1310 of Title 4 (Amusements).

§ 9125. Use of records for employment.

(a) General rule.--Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) Use of information.--Felony 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.

(c) Notice.--The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

(Dec. 14, 1979, P.L.556, No.127, eff. imd.; June 11, 1982, P.L.476, No.138, eff. 180 days)

1982 Amendment. Act 138 amended subsec. (b).

SUBCHAPTER D

SECURITY

Sec.

9131. Security requirements for repositories.

Cross References. Subchapter D is referred to in section 9104 of this title.

§ 9131. Security requirements for repositories.

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

(1) Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters.

(2) Select, supervise and train all personnel authorized to have access to criminal history record information.

(3) Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice, or, if the

equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

(June 11, 1982, P.L.476, No.138, eff. 180 days)

SUBCHAPTER E

AUDIT

Sec.

9141. Audits.

9142. Quality control.

9143. Regulations.

§ 9141. Audits.

(a) Audit required.--

(1) The Attorney General shall conduct annual audits of the central repository and of a representative sample of all repositories. The Office of Attorney General shall conduct a review of State criminal justice agencies' automated policies and procedures established pursuant to section 9106 (relating to information in central repository or automated systems) to ensure that the provisions of this chapter are upheld within two years of the effective date of this act.

(2) The Pennsylvania State Police shall conduct an annual audit of at least 5% of all municipal police department plans, policies or procedures which are implemented pursuant to section 9106(c) to ensure that the provisions of this chapter are upheld. The first such audit shall be conducted within two years of the effective date of this act. A copy of the audit shall be submitted to the Attorney General.

(b) Access to records.--Persons conducting the audit shall be provided access to all records, reports and listings required to conduct an audit of criminal history record information, and all persons with access to such information or authorized to receive such information shall cooperate with and provide information requested.

(c) Contents of audit.--The audit shall contain a report of deficiencies and recommendations for the correction of such deficiencies. Upon the completion of every audit, the audited agency shall carry out the recommendations within a reasonable period of time unless the audit report is appealed to the Attorney General and the appeal is upheld.

(d) Modification of recommendations.--The Attorney General shall have the power to modify the corrective measures recommended by the audit.

(Dec. 19, 1990, P.L.1332, No.207, eff. imd.)

§ 9142. Quality control.

Each repository shall establish effective procedures, in compliance with rules and regulations promulgated by the Attorney General, for the completeness and accuracy of criminal history record information.

§ 9143. Regulations.

It shall be the duty and responsibility of the Attorney General, in consultation with the Pennsylvania State Police, to adopt rules and regulations pursuant to this act. The Office of

Attorney General, in consultation with the Pennsylvania State Police, shall have the power and authority to promulgate, adopt, publish and use guidelines for the implementation of this act for a period of one year immediately following the effective date of this section pending adoption of final rules and regulations.

(Dec. 19, 1990, P.L.1332, No.207, eff. imd.)

1990 Amendment. Act 207 added section 9143.

SUBCHAPTER F

INDIVIDUAL RIGHT OF ACCESS AND REVIEW

Sec.

9151. Right to access and review.

9152. Procedure.

9153. Individual rights on access and review.

Cross References. Subchapter F is referred to in section 9104 of this title.

§ 9151. Right to access and review.

(a) **General rule.**--Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his criminal history record information.

(b) **Prisoners.**--Persons incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge and appeal.

§ 9152. Procedure.

(a) **Rules and regulations.**--The Attorney General in cooperation with appropriate criminal justice agencies shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

(b) **Requests for information.**--Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists the individual may review a copy of such information without undue delay for the purpose of review and challenge.

(c) **Challenge of accuracy.**--The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is incorrect and what the correct version should be. Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy of any part subsequently challenged upon the individual. Information subsequently added to such record shall also be subject to review, challenge, correction or appeal.

(d) **Review of challenge.**--All criminal justice agencies shall have 60 days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. The decision on the challenge shall include all information, including, but not limited to, the jurisdiction and docket number of any relevant court decision which formed a basis for

the decision. If the challenge is deemed valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected.

(2) A certified and corrected copy of the criminal history record information is provided to the individual.

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies shall be destroyed or returned and replaced with corrected information.

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

(e) Appeals.--

(1) If the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.

(2) The Attorney General shall conduct a hearing de novo in accordance with the Administrative Agency Law. The burden of proof shall be upon the party bearing the burden of proof on the challenge.

(3) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.
(Oct. 17, 2008, P.L.1628, No.131, eff. imd.)

2008 Amendment. Act 131 amended subsecs. (d) and (e).

§ 9153. Individual rights on access and review.

Any individual exercising his or her right to access and review under the provisions of this subchapter shall be informed when criminal history record information is made available that he or she is under no obligation to divulge such information to any person or agency.

SUBCHAPTER G

RESPONSIBILITY OF ATTORNEY GENERAL

Sec.

9161. Duties of the Attorney General.

§ 9161. Duties of the Attorney General.

The Attorney General shall have the power and authority to:

(1) Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

(2) Establish the maximum fees which may be charged for the costs of reproducing criminal history record information for individual access and review for research or statistical purposes and for access by noncriminal justice agencies and individuals.

(3) Make investigations concerning all matters touching the administration and enforcement of this chapter and the rules and regulations promulgated thereunder.

(4) Institute civil proceedings for violations of this chapter and the rules and regulations adopted thereunder.

(5) Conduct annual audits of the central repository and of a representative sample of all repositories within the Commonwealth, collecting, compiling, maintaining and

disseminating criminal history record information.

(6) Appoint such employees and agents as it may deem necessary.

(June 11, 1982, P.L.476, No.138, eff. 180 days)

SUBCHAPTER H PUBLIC NOTICE

Sec.

9171. Requirements of repositories relating to public notice.

§ 9171. Requirements of repositories relating to public notice.

Repositories maintaining criminal history record information shall inform the public and post in a public place, notice of the existence, purpose, use and accessibility of the criminal history record information they maintain and the requirements of the repository for identification on individual access and review.

SUBCHAPTER I SANCTIONS

Sec.

9181. General administrative sanctions.

9182. Criminal penalties (Deleted by amendment).

9183. Civil actions.

§ 9181. General administrative sanctions.

Any person, including any agency or organization, who violates the provisions of this chapter or any regulations or rules promulgated under it may:

(1) Be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate.

(2) Be subject to civil penalties or other remedies as provided for in this chapter.

(3) In the case of an employee of any agency who violates any provision of this chapter, be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

(June 11, 1982, P.L.476, No.138, eff. 180 days)

Cross References. Section 9181 is referred to in section 9106 of this title.

§ 9182. Criminal penalties (Deleted by amendment).

1979 Repeal Note. Section 9182 was deleted by amendment December 14, 1979, P.L.556, No.127, effective immediately.

§ 9183. Civil actions.

(a) **Injunctions.**--The Attorney General or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter.

(b) **Action for damages.**--

(1) Any person aggrieved by a violation of the

provisions of this chapter or of the rules and regulations promulgated under this chapter, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a violation of this chapter or the rules or regulations promulgated under this chapter, shall be entitled to actual and real damages of not less than \$100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than \$1,000 nor more than \$10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful.

Cross References. Section 9183 is referred to in section 9106 of this title.