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OFFICE OF ATTORNEY GENERAL

CRIMINAL HISTORY RECORD
INFORMATION ACT HANDBOOK

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CHAPTER I

INTRODUCTION

1.1 Background

Chapter 91 of the *Crimes Code of Pennsylvania and Pennsylvania Consolidated Statutes Annotated, 18 Pa. C.S.A. 9101 et. seq., the Criminal History Record Information Act* ("Act"), was adopted in January of 1980. The Act applies to any person or agency of the Commonwealth, or its political subdivisions, which collects, maintains, disseminates or receives criminal history record information. The purpose of Act is to provide for an orderly collection and dissemination of criminal history information in the Commonwealth. The Act sets forth procedures for reporting arrest, fingerprinting, final disposition and expungement. Also included in the Act are guidelines for the collection and dissemination of intelligence, investigation and treatment information known as "protected information."

The Act went virtually unchanged until December of 1990 when it was amended. At the same time *Section 9106*, dealing with automated systems and protected information, was expanded. These changes can be found in *18 Pa. C.S.A. §9106 (supp. 1994)*. *Chapter 601 of The Pennsylvania Code, 37 Pa. Code 601.1 et. seq.*, was adopted in April of 1991 which clarified the restrictions and requirements for placing protected information in automated systems.

The Regulatory Compliance and Intelligence Section of the Office of Attorney General has specific authority through the Criminal History Records Information Act ("CHRIA") Unit to perform the duties legislated by the Act and delegated to the Attorney General by *Chapter 91*. These duties include audit and sanction functions to develop accurate and complete criminal records system in the Commonwealth. It is important that each agency recognize its role and responsibilities under the Act and that an efficient method of communication is established between agencies to ensure timely access to the criminal history records data. The CHRIA Unit is charged with the responsibility to advise, assist and educate agencies to achieve these goals.

1.2 Definitions

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.

AFIS - Automated Fingerprint Identification System.

AOPC - Administrative Office of Pennsylvania Courts.

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.

C/C - Clerk of Courts.

CCH - Computerized Criminal History.

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

CHR - Criminal History Record.

CHRI - Criminal History Record Information.

CHRIA - Criminal History Record Information Act.

CJA - Criminal Justice Agency.

CLEAN - Commonwealth Law Enforcement Assistance Network. A computer system maintained by the Pennsylvania State Police to store information on offenses throughout the Commonwealth.

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, information 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 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 correction facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards 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.

Dissemination - The oral, written or electronic 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.

Final 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 dismiss, 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.

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" as its principal function the administration of criminal justice, and which allocates 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.

NCIC - National Crime Information Center. A computerized system run by the Federal Bureau of Investigation in order to track offenses throughout the United States.

OAG - Office of Attorney General.

OCA - Originating Agency Case Number.

ORI - Originating Agency Identifier. A number given to each agency by the Pennsylvania State Police in order to track those agencies submitting information to the central repository.

OTN - Offense Tracking Number. A number given by a court to each specific case.

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.

Protected Information - Protected Information includes three types of information - - Intelligence Information, Investigative Information and Treatment Information. Refer to these definitions.

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

PSP - Pennsylvania State Police.

Rap Sheet - History of individual criminal record.

SID - State Identification Number.

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.

1.3 What are Criminal Justice Agencies (18 Pa. C.S.A. §9102)

Criminal Justice agencies are defined by the Act in *Section 9102*. They are:

1. Any court including the minor judiciary.
Note: The court must have criminal jurisdiction.
2. Governmental agency or subdivision thereof,
 - a) Must be created by state or federal constitution and authorized to perform as its primary function the administration of criminal justice. It must also allocate a substantial portion of its annual budget to this function.
3. Agencies determined to be criminal justice agencies by the Office of Attorney General after **review of applicable statutes**.

Criminal justice agencies include:

Pennsylvania State Police
Municipal Police Departments
County, Regional and State Correctional Facilities
Probation Agencies
District Attorneys
Office of Attorney General
Parole Boards
Pardon Boards
Sheriffs
County Detectives
Clerk of Courts
College and University Police, Act 120 certified
Housing Authority Police
Transit Police

At the time of the publication of this handbook there were approximately 2,790 criminal justice agencies in Pennsylvania. **Chart 1, Criminal Justice Agencies**, shows the approximate break-down according to type of agency as of December, 1997.

1.4 What is Criminal History Record Information (18 Pa. C.S.A. §9102)

Criminal History Record Information is information collected by criminal justice agencies concerning individuals at the initiation of a criminal proceeding. **Chart 2, Criminal History Record Information**, outlines what is and what is not criminal history record information. The chart reflects that original records chronologically entered contemporaneously with the incident are *classified separately*. The reason for this is that this information only needs to comply with *Subsection B* (relating to completeness and accuracy), *Subsection D* (relating to security) and *Subsection F* (relating to individual right of access and review) of the Act. Criminal History Record Information can be contained on "rap sheet," photograph "mug shot," fingerprint cards, and reports. This is not a complete list but some of the more common places to find criminal history record information.

CHAPTER II

PROTECTED INFORMATION

2.1 Protected Information (18 Pa. C.S.A. §9106)

Section 9106 of the Act pertains to protected information and automated systems. While this information may be compiled in conjunction with the investigation and prosecution of individuals engaged in criminal activity the method of collection and dissemination is distinct from the collection and dissemination of criminal history record information.

Protected information, compiled in and out of automated systems is the general description of specific categories of information, namely intelligence, investigative and treatment information.

Intelligence information is 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. Intelligence information may also include information on prescribing, dispensing, selling, obtaining or using a controlled substance as defined in the *Controlled Substance, Drug Device and Cosmetic Act, 35 P.S. §780-102*. As will be shown, intelligence information is treated somewhat differently than investigative and treatment information.

Investigative information is 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 modis operandi information.

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

As a general rule, intelligence, investigative and treatment information should not be collected in the central repository because of this type of information is considered protected. The prohibition does 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.

2.2 Collection (18 Pa. C.S.A. §9106)

Collection of protected information can be manual or automated. A manual collection system is when the criminal justice agency opts for the manual collection of protected information. When the criminal justice agency utilizes an automated system (i.e., computer or word processor), for the collection, analysis or dissemination of protected information the following restriction and regulations need to be followed. (See **Chart 3, Collection of Protected Information**, for a comparative breakdown in requirements for intelligence, investigative and treatment information). In order to place **intelligence information** in an *automated* system, the agency must:

1. Have reasonable suspicion of criminal activity.
2. Restrict access to authorized employees of the criminal justice agency. The system must not allow access by anyone else, inside or outside the agency.
3. Make certain information is related to a possible misdemeanor or felony (or federal offense with a penalty in excess of one year in prison).
4. Categorize the information by subject matter.
5. Not be collected information in violation of state law.
6. Not collect information concerning participation in a political, religious or social organization or participation in the organization or support of any nonviolent form of public speech unless there is a reasonable suspicion that it is related to criminal activity or a prison rule violation.

Investigative, treatment information may be placed in an *automated* system if:

1. Access must be restricted to authorized employees of the criminal justice agency. The system must not allow access by anyone outside the agency.

2.3 Dissemination of Protected Information (18 P.S. §9106)

Dissemination of protected information is permitted when:

1. An authorized intelligence officer determines that the information is reliable.

2. The requesting agency has policies and procedures reviewed or adopted by the Office of Attorney General in consultation with the Pennsylvania State Police, (See **Attachment 1, Sample Policy and Procedures for Dissemination of Protected Information**).
 - X The agency must appoint an intelligence officer.
 - X The agency must adopt technical and physical safeguards, including an audit trail for tracking the disseminated information.
 - X The agency must label information to indicate level of sensitivity and confidence.
3. The information must be requested in connection with the agency's duties and based on an identifying characteristic. (See **Chart 4, Dissemination of Protected Information**).

If an intelligence officer is notified that previously disseminated intelligence information is misleading or unreliable, the information must be corrected and the recipient(s) must be notified of the change in either automated or manual systems.

Retention schedules regarding date of inclusion, receipt, or dissemination are needed for intelligence information either in an automated or manual system. Intelligence information shall be **purged** under the following conditions:

1. The data is no longer relevant or necessary to the goals and objectives of the criminal justice agency.
2. The data has become obsolete, making it unreliable for present purposes and the utility of updating the data would be worthless.
3. The data cannot be utilized for strategic or tactical intelligence studies.

If a police department or district attorney accesses automated information, procedures need to be filed with the following agencies:

1. Police departments shall file plans with the Pennsylvania State Police.
2. District attorneys shall file plans with the Office of Attorney General.

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. A careful reading of **Section 9106(c)(4)** highlights the level of concern that should be given to accessing and disclosing information which may be considered relevant to an investigation. Careful thought should be given prior to disclosure of such information as well as the completion of appropriate disclosure (dissemination) logs.

Secondary dissemination of information received through a formal inquiry of all types of protected information by the receiving criminal justice agency is 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.

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.

Attachment 1 is a sample of policy and procedure for dissemination and receipt of protected information required by Section 9106(c) (5) or (6). **Attachment 2** is a sample dissemination request/agency certification form; **Attachment 3** is a sample dissemination log. Criminal justice agencies should adopt policies and procedures as well as dissemination certification and log reports to comply with the Act. Adoption of those sample forms for use by your agency is acceptable provided they are appropriately modified for use by your agency, which includes setting forth the specific department and officer(s), as required by the statute.

2.4 Security Requirements (18 Pa. C.S.A. §9106)

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. (See **Chart 5, Security of Protected Information**).

CHAPTER III

COMPLETENESS AND ACCURACY

3.1 Fingerprinting and Criminal History Record Information (18 Pa. C.S.A. §9112)

The single most important aspect of compiling criminal history record information is the fingerprinting process. When this process breaks down criminal history record information is not accurately recorded in the central repository (CLEAN) or the federal (NCIC) system. Historically, disclosures related to the collection of fingerprint data confirm the statewide difficulty in compiling accurate fingerprint information. Problems include fingerprints not being taken or ordered when fingerprintable offenses occur. Lost fingerprint records and unreadable prints are just a few of the problems facing the development of a reliable criminal records system in the Commonwealth.

The fingerprint process is depicted in **Chart 6**. The arresting agency must complete a minimum of three (3) fingerprint cards. One (1) card is sent to the FBI (NCIC), one (1) is for the Pennsylvania State Police (central repository). The agencies must have an offense tracking number (OTN) supplied by the court prior to the submission of the fingerprint cards. When private criminal complaints for a felony or misdemeanor result in a conviction, or when certain offenses under **Section 3929** relating to retail theft are proceeded against by summons, the *court must order the defendant to submit himself for fingerprinting* by the municipal police department of jurisdiction or the Pennsylvania State Police. Failure of the court to order printing of this individual and for the arresting agency to follow through on this order is one of the reasons for poor criminal history record keeping in the Commonwealth. *Guidelines for Mandatory Fingerprinting and Preparation of Pennsylvania State Police Cards*, dated January 1, 1995, was prepared by the Pennsylvania State Police and is available from the Pennsylvania State Police Records Division.

All fingerprint cards or live scan images taken by criminal justice agencies must be submitted to the central repository within forty-eight (48) hours. Once the fingerprint cards or images arrive at the central repository, the prints are placed into the AFIS system. In this system, prints are classified and identification is made. Also at this stage, any latent prints that have been submitted to the central repository for possible comparison are compared to the newly obtained prints. An updated criminal history record information report is sent back to the arresting agency. Once classification has been made and positive identification has been obtained, the FBI card is sent to the FBI and the Pennsylvania State Police card is placed in the criminal jacket in the central repository.

The computerized information is now stored in the computerized criminal history database which is accessed by the statewide CLEAN terminals. This is where criminal justice agencies can now obtain the most updated "rap sheet" on a particular individual.

3.2 Disposition and Criminal History Record Information (18 Pa. C.S.A. §9113)

All criminal justice agencies must submit to the central repository reports of dispositions occurring within their agencies for criminal history record information. This must be done within *ninety (90) days* of disposition as outlined in **Section 9113** of the Act and as shown on **Chart 7, Final Disposition**. Various agencies have specific responsibilities regarding criminal history record information which they may possess, and consequently, are required to pass along to the central repository. Set forth below is a synopsis of those agencies and their areas of responsibility.

Courts, including the minor judiciary, will report their final dispositions to the Administrative Office of the Pennsylvania Courts, who will then submit final dispositions for this group to the central repository. This should be the primary mechanism for final criminal court case dispositions for processing in the central repository. County and regional state correctional institutions shall collect and submit information regarding the admission, release and length of sentence of individuals sentenced to local and county institutions to the Pennsylvania Bureau of Corrections which submits this information to the central repository. County probation and parole officers shall collect and submit information relating to the length of time and charge for which an individual placed under and released from the jurisdiction of such agency to the Pennsylvania Board of Probation and Parole which will submit this information to the central repository. The Pennsylvania Board of Pardons shall collect and submit to the central repository information necessary to maintain complete and accurate criminal history record information that may be in their possession.

Police, county detectives, sheriffs and other arresting law enforcement agencies must still submit final dispositions to the central repository. Green final disposition cards are no longer forwarded to the Federal Bureau of Investigation.

3.3 Correction Information (18 Pa. C.S.A. §9114)

The discovery in inaccurate criminal history record information by the criminal justice agency which reported the information shall within fifteen (15) days of the detection of the inaccurate data correct the information by:

1. Correcting its own records.
2. Notifying all *recipients*, including the central repository, of the inaccurate data and required correction.

CHAPTER IV

DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

4.1 General Regulations (18 Pa. C.S.A. §9121)

Section 9121 of the Act regulates how criminal history record information is to be disseminated. These regulations are not to be confused with the dissemination of protected information discussed in **Chapter II**. The general rules of criminal history record information dissemination are listed here and shown on **Chart 8, Dissemination of CHRI**.

All criminal justice agencies shall disseminate criminal history record information to any other criminal justice agency or a noncriminal justice agency that is providing a service for which a criminal justice agency is responsible. This shall be done without a fee.

Only state or local police departments shall disseminate criminal history record information to noncriminal justice agencies and individuals. This shall be done only upon request. These agencies may charge a fee for each request. The fee shall be set by the Office of Attorney General, which is currently \$10. Before the state and local police departments disseminate criminal history record information to noncriminal justice agencies and individuals, it shall extract from the record all notations of arrest, indictments, or other information relating to the initiation of criminal proceedings when three (3) years have elapsed from the date of arrest, no conviction has occurred, and no proceedings are pending seeking a conviction.

Every criminal justice agency that disseminates criminal history record information must indicate to the recipient that the criminal history record information it disseminates only that which is contained. (See **Attachment 4, Sample Criminal History Record Information Notice of Dissemination**). It should be stressed that the Act only obligates criminal justice agencies to disseminate that criminal history record information contained in their own files.

All criminal justice agency repositories of criminal history record information must inform the public and post a notice in a public place of the existence, purpose, use, and accessibility of the criminal history record information they maintain. The notice shall also state the agency's identification requirements for individual access and review of criminal records which will be discussed in **Chapter VII** (See **Attachment 5, Sample Public Notice**).