

TITL: Compendium of State Privacy and Security Legislation: 1997
Overview - ARIZONA ; 13-4651 Revised Statutes Annotated

AUTHOR: US Department of Justice, Bureau of Justice Statistics
Washington, DC 20531

SALE: US Department of Justice, Bureau of Justice Statistics
National Institute of Justice/NCJRS Paper Reproduction Sales
Box 6000, Dept. F
Rockville, MD 20849

DOCUMENT #: 170038

DATE: 1997

PAGE: 32p

ORIG: United States

LANG: English

SUBJECT: Legislation/policy descriptions

ANNOTATION: This is a 1997 overview of State law pertinent to the
privacy and security of criminal justice information.

§ 13-4051. Entry on records; stipulation; court order

A. Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry upon all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared.

B. After a hearing on the petition, if the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on such records, with accompanying justification therefor, and shall cause a copy of such order to be delivered to all law enforcement agencies and courts. The order shall further require that all law enforcement agencies and courts shall not release copies of such records to any person except upon order of the court.

C. Any person who has notice of such order and fails to comply with the court order issued pursuant to this section shall be liable to the person for damages from such failure.

Added as § 13-1761 by Laws 1973, Ch. 126, § 3. As amended Laws 1976, Ch. 154, § 2. Renumbered as § 13-4051 by Laws 1977, Ch. 142, § 163, eff. Oct. 1, 1978.

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ARIZONA REVISED STATUTES
TITLE 41. STATE GOVERNMENT
CHAPTER 11. STATE DEPARTMENT OF CORRECTIONS

§ 41-1606.02. Fingerprinting personnel; affidavit; definition

This section is repealed effective July 1, 1990 by Laws 1989, Ch. 266, § 14.

TITLE 41. STATE GOVERNMENT
CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY
ARTICLE 1. GENERAL PROVISIONS

§ 41-1964. Day care homes; child care personnel; registration; fingerprints; definition

A. Child care personnel shall register with the department in order to work in a certified day care home.

B. Child care personnel shall be fingerprinted and submit the form prescribed in subsection E of this section to the department within twenty days after beginning work at a certified day care home. Registration is conditioned on the results of the fingerprint check.

C. For the purpose of screening child care personnel, the department of public safety shall provide information from its records relating to convictions for public offenses to the department of economic security. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

D. The department shall charge child care personnel for the costs of their fingerprint checks.

E. Child care personnel shall certify on forms that are provided by the department and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

- (a) Sexual abuse of a minor.
- (b) Incest.
- (c) First or second degree murder.
- (d) Kidnapping.
- (e) Arson.
- (f) Sexual assault.
- (g) Sexual exploitation of a minor.
- (h) Contributing to the delinquency of a minor.
- (i) Commercial sexual exploitation of a minor.
- (j) Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
- (k) Burglary.
- (l) Robbery.
- (m) A dangerous crime against children as defined in § 13-604.01.
- (n) Child abuse.
- (o) Sexual conduct with a minor.
- (p) Molestation of a child.

- (q) Manslaughter.
- (r) Aggravated assault.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8-201, paragraph 11.

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

F. The department shall make documented, good faith efforts to contact previous employers of certified day care home personnel to obtain information or recommendations which may be relevant to an individual's fitness for work in a certified day care home.

G. The notarized forms and fingerprint checks are confidential.

H. For the purposes of this section, "child care personnel" means all employees of an persons residing in a day care home which is certified by the department pursuant to § 41-1954, subsection A, paragraph 1, subdivision (b) who are eighteen years of age or older.

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CHAPTER 17.--CRIMINAL JUSTICE INFORMATION SYSTEMS

ARTICLE 1. ARIZONA CRIMINAL .

See

JUSTICE INFORMATION

41-2203. Powers and duties of the board.

SYSTEM

41-2204. System manager; powers and duties.

See

41-2201. Definitions.

41-2205. Criminal justice information

41-2202. Comprehensive data systems

system central repository.

policy board: term, compensation.

41-2206. Disciplinary action; system participants.

Chapter 17, consisting of Article 1, Sec. 41-2201 to 41-2206, was added by Laws 1977, Ch. 131, Sec. 2, effective May 31, 1977.

ARTICLE 1. ARIZONA CRIMINAL JUSTICE

INFORMATION SYSTEM

Article 1, consisting of Sec. 41-2201 to 41-2206, was added by Laws 1977, Ch. 131, Sec. 2, effective May 31, 1977.

Termination under Sunset Law

The comprehensive data systems policy board shall terminate on July 1, 1988, unless continued. See Sec. 41-2365 and 41-2377.

Article 1 relating to the comprehensive data systems policy board is repealed on January 1, 1989. See Sec. 41-2373.

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ARTICLE 1. ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM

§ 41-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the Arizona criminal justice commission.
2. "Component information system" means an independent information system serving one or more criminal justice agencies and which may participate in the criminal justice information system.
3. "Criminal history record information" means data collected on individuals by criminal justice agencies which consists of identifiable descriptions and notations of arrests, detentions, indictments, criminal informations or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. Criminal history record information does not mean identification information, such as fingerprint records, to the extent such information does not indicate involvement of the individual in the criminal justice system, information associated with the administrative functions or correctional treatment process of a criminal justice agency or juvenile justice information.
4. "Criminal justice agency" means any court or government agency or division of such agency which performs the administration of criminal justice pursuant to statutory authority or executive order and which allocates a substantial part of its budget to the administration of criminal justice or which performs child support enforcement services.
5. "Manager" means the criminal justice information system manager.
6. "System" means the criminal justice information system.

Amended by Laws 1996, Ch. 170, § 18.

ARIZONA REVISED STATUTES
TITLE 41. STATE GOVERNMENT

CHAPTER 17. CRIMINAL JUSTICE INFORMATION SYSTEMS

ARTICLE 1. ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM

§§ 41-2202, 41-2203. Repealed by Laws 1988, Ch. 268, § 2, eff. Sept. 30, 1988, retroactively effective to July 1, 1988.

§ 41-2204. System manager; powers and duties

There shall be a system manager who is the director of the department of public safety. The manager shall:

1. Execute the policies of the commission and supervise the operations of the system.
2. Coordinate and standardize the design, development and implementation of the system and subsystem.
3. Provide for system and subsystem planning.
4. Enforce the rules and regulations relating to the security, privacy, confidentiality and dissemination of criminal history record information.
5. Submit recommendations to the commission concerning establishment of research, statistical and planning programs including a study of the system.
6. Provide criminal justice agencies with criminal history record information for operational and management purposes in accordance with the rules and regulations established by the commission governing the dissemination of such information.
7. Perform such other powers and duties as may be prescribed or delegated by the commission.

§ 41-2205. Criminal justice information system central repository

A. There shall be a central repository for the collection, storage and dissemination of criminal history record information. The department of public safety shall operate the central repository pursuant to the rules and regulations adopted by the commission. The department of public safety shall conduct annual audits to insure each criminal justice agency is complying with rules and regulations governing the maintenance and dissemination of criminal history record information.

B. Each criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository pursuant to the provisions of §§ 41-1750 and 41-1751.

Sec. 41-2206. Disciplinary action; system participants

Any agency, company or individual who fails to conform to the rules and regulations adopted pursuant to this chapter may be subject to removal from participation in the system by action of the board. Added Laws 1977, Ch. 131, Sec. 2, eff. May 31, 1977.

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ARTICLE 1. DEFINITIONS

§ 41-1701. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the Arizona peace officer standards and training board.
2. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.
3. "Criminal justice agency" means courts or a government agency or any subunit thereof which performs detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.
4. "Department" means the department of public safety.
5. "Director" means the director of the department of public safety.
6. "Patrol" means the Arizona highway patrol.
7. "Peace officer" means any personnel of the department designated by the director as being a peace officer under the provisions of this chapter.
8. "Reserve" means the department of public safety reserve.

Amended by Laws 1992, Ch. 185, § 2; Laws 1994, Ch. 324, § 1.

§ 41-1750. Central state repository; department of public safety; duties; funds; violation; classification; definitions

Text of section effective January 1, 1997

A. Notwithstanding § 41-2205, the department is responsible for the effective operation of the central state repository in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. The department shall:

1. Procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges and dispositions and such other information as may be pertinent to all persons who have been arrested for or convicted of a felony or misdemeanor offense, except offenses for which incarceration or fingerprinting of the person did not occur.

2. Collect information concerning the number and nature of offenses known to have been committed in this state and of the legal steps taken in connection with these offenses, such other information that is useful in the study of crime and in the administration of criminal justice and all other information deemed necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

3. Collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.

4. Cooperate with the central state repositories in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law.

5. Ensure the rapid exchange of information concerning the commission of crime and the detection of violators of the law among the criminal justice agencies of other states and of the federal government.

6. Furnish assistance to peace officers throughout this state in crime scene investigation for the detection of latent fingerprints and in the comparison of latent fingerprints.

7. Conduct periodic operational audits of the central state repository and of a representative sample of other agencies that contribute records to or receive criminal justice information from the central state repository or through the Arizona criminal justice information system.

8. Establish and enforce the necessary physical and system safeguards to ensure that the criminal justice information maintained and disseminated by the central state repository or through the Arizona criminal justice information system is appropriately protected from unauthorized inquiry, modification, destruction or dissemination as required by this section.

9. Aid and encourage coordination and cooperation among criminal justice agencies through the statewide and interstate exchange of criminal justice information.

10. Provide training and proficiency testing on the use of criminal justice information to agencies receiving information from the central state repository or through the Arizona criminal justice information system.

11. Operate and maintain the Arizona automated fingerprint identification system established pursuant to § 41-2411.

B. The director may establish guidelines for the submission and retention of criminal justice information as deemed useful for the study or prevention of crime and for the administration of criminal justice.

C. The chief officers of criminal justice agencies of this state or its political subdivisions shall provide to the central state repository fingerprints and information concerning personal identification data, descriptions, crimes for which persons are arrested and dispositions and such other information as may be pertinent to all persons who have been arrested for or convicted of felony or misdemeanor offenses that have occurred in this state, except if the arrestee was not incarcerated or fingerprinted as a result of the charge.

D. The chief officers of law enforcement agencies of this state or its political subdivisions shall provide to the central state repository such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

E. The chief officers of criminal justice agencies of this state or its political subdivisions shall comply with the training and proficiency testing guidelines as required by the department to comply with the federal national crime information center mandates.

F. The chief officers of criminal justice agencies of this state or its political subdivisions also shall provide to the criminal identification section information concerning crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.

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G. The director shall authorize the exchange of criminal justice information between the central state repository, or through the Arizona criminal justice information system, whether directly or through any intermediary, only as follows:

1. With criminal justice agencies of the federal government, Indian tribes, this state or its political subdivisions and other states, upon request by the chief officers of such agencies or their designated representatives, specifically for the purposes of the administration of criminal justice and for evaluating the fitness of current and prospective criminal justice employees.

2. With any noncriminal justice agency pursuant to a statute, ordinance or executive order that specifically authorizes the noncriminal justice agency to receive criminal history record information for the purpose of evaluating the fitness of current or prospective licensees, employees, contract employees or volunteers, on submission of the subject's fingerprints and the prescribed fee. Each statute, ordinance, or executive order that authorizes noncriminal justice agencies to receive criminal history record information for these purposes shall identify the specific categories of licensees, employees, contract employees or volunteers, and shall require that fingerprints of the specified individuals be submitted in conjunction with such requests for criminal history record information.

3. With any individual for any lawful purpose on submission of the subject of record's fingerprints and the prescribed fee.

4. With the governor, if the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to ensure that the laws are faithfully executed or as needed to carry out the other responsibilities of the governor's office.

5. With regional computer centers that maintain authorized computer-to-computer interfaces with the department, that are criminal justice agencies or under the management control of a criminal justice agency and that are established by a statute, ordinance or executive order to provide automated data processing services to criminal justice agencies specifically for the purposes of the administration of criminal justice or evaluating the fitness of regional computer center employees who have access to the Arizona criminal justice information system and the national crime information center system.

6. With an individual who asserts that he has reason to believe that criminal history record information relating to him is maintained by an agency or in an information system in this state that is subject to the provisions of this section. On submission of fingerprints, the individual may review this information for the purpose of determining its accuracy and completeness by making application to the agency operating the system. Rules adopted under this section shall include provisions for administrative review and necessary correction of any inaccurate or incomplete information. The review and challenge process authorized by this paragraph is limited to criminal history record information.

7. With individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement if the agreement specifically authorizes access to data, limits the use of data to purposes for which given and ensures the security and confidentiality of the data consistent with the provisions of this section.

8. With individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency if the agreement specifically authorizes access to data, limits the use of data to research, evaluative or statistical purposes and ensures the confidentiality and security of the data consistent with the provisions of this section.

9. With the auditor general for audit purposes.

10. With central state repositories of other states for noncriminal justice purposes for dissemination in accordance with the laws of those states.

11. On submission of the fingerprint card, with the department of economic security to provide criminal history record information on prospective adoptive parents for the purpose of conducting the preadoption certification investigation under title 8, chapter 1, article 1¹ if the department of economic security is conducting the investigation, or with an agency or a

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person appointed by the court, if the agency or person is conducting the investigation. Information received under this paragraph shall only be used for the purposes of the preadoption certification investigation.

12. With the department of economic security and the superior court for the purpose of evaluating the fitness of custodians or prospective custodians of juveniles including parents, relatives and prospective guardians. Information received under this paragraph shall only be used for the purposes of that evaluation. The information shall be provided on submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

13. On submission of a fingerprint card, provide criminal history record information to the superior court for the purpose of evaluating the fitness of investigators appointed under § 14-5303 or 14-5407, or guardians appointed under § 14-5206.

14. With the supreme court to provide criminal history record information on prospective private fiduciaries pursuant to § 14-5651.

15. On submission of the fingerprint card, provide criminal history record information to the Arizona peace officer standards and training board or a board certified law enforcement academy to evaluate the fitness of prospective cadets.

H. The director shall adopt rules necessary to execute the provisions of this section.

I. The director, in the manner prescribed by law, shall remove and destroy records that he determines are no longer of value in the detection or prevention of crime.

J. The director shall establish a fee in an amount necessary to cover the cost of federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. An additional fee may be charged by the department for state noncriminal justice fingerprint processing. Fingerprint cards submitted by local, state and federal noncriminal justice agencies are exempt from this additional fee provision.

K. The director shall establish a fee in an amount necessary to cover the cost of processing copies of department reports, eight by ten inch black and white photographs or eight by ten inch color photographs of traffic accident scenes.

L. Except as provided in subsection O of this section, each agency authorized by this section may charge a fee, in addition to any other fees prescribed by law, in an amount necessary to cover the cost of state and federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. If a person must be fingerprinted by two or more state agencies or departments pursuant to § 8-105, 8-230.02, 36-425.03, 36-594, 36-883.02, 36-897.03, 41-1964, 41-2814, 46-141 or 46-321, one set of fingerprints may be submitted to the department of public safety. The fees prescribed by this section for submission with one set of fingerprints shall be submitted to the department of public safety with the fingerprint card. The fingerprint card shall list each state agency or department requiring fingerprinting and shall cite the statute authorizing the fingerprinting for each agency or department. The department of public safety shall provide the criminal history record information to each agency or department listed on the card.

M. A fingerprint processing fund is established for the purpose of separately accounting for the collection and payment of fees for noncriminal justice fingerprint processing by the department. Monies collected for this purpose shall be credited to the fund and payments by the department to the United States for federal noncriminal justice fingerprint processing shall be charged against the fund. Monies in the fund not required for payment to the United States shall be used by the department in support of the department's noncriminal justice fingerprint processing duties. At the end of each fiscal year, any balance in the fund not required for payment to the United States or to support the department's noncriminal justice fingerprint processing duties reverts to the state general fund.

N. A department of public safety records processing fund is established for the purpose of separately accounting for the collection and payment of fees for department reports and

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photographs of traffic accident scenes processed by the department. Monies collected for this purpose shall be credited to the fund and shall be used by the department in support of functions related to providing copies of department reports and photographs. At the end of each fiscal year, any balance in the fund not required for support of the functions related to providing copies of department reports and photographs reverts to the state general fund.

O. The department of economic security may pay from appropriated monies the cost of federal fingerprint processing or federal criminal history record information checks that are authorized by law for employees and volunteers of the department, guardians pursuant to § 46-134, subsection A, paragraph 15, the licensing of foster parents or the certification of adoptive parents.

P. The director shall adopt rules that provide for:

1. The collection and disposition of fees pursuant to this section.
2. The refusal of service to those agencies that are delinquent in paying these fees.

Q. The director shall ensure that the following limitations are observed regarding dissemination of criminal justice information obtained from the central state repository or through the Arizona criminal justice information system:

1. Any criminal justice agency that obtains criminal justice information from the central state repository or through the Arizona criminal justice information system assumes responsibility for the security of the information and shall not secondarily disseminate this information to any individual or agency not authorized to receive this information directly from the central state repository or originating agency.

2. Dissemination to an authorized agency or individual may be accomplished by a criminal justice agency only if the dissemination is for criminal justice purposes in connection with the prescribed duties of the agency and not in violation of this section.

3. Criminal history record information disseminated to noncriminal justice agencies or to individuals shall be used only for the purposes for which it was given. Secondary dissemination is prohibited unless otherwise authorized by law.

4. The existence or nonexistence of criminal history record information shall not be confirmed to any individual or agency not authorized to receive the information itself.

5. Criminal history record information to be released for noncriminal justice purposes to agencies of other states shall only be released to the central state repositories of those states for dissemination in accordance with the laws of those states.

6. Criminal history record information shall be released to noncriminal justice agencies of the federal government pursuant to the terms of the federal security clearance information act (P.L. 99-169).

R. This section and the rules adopted under this section apply to all agencies and individuals collecting, storing or disseminating criminal justice information processed by manual or automated operations if the collection, storage or dissemination is funded in whole or in part with monies made available by the law enforcement assistance administration after July 1, 1973, pursuant to title I of the crime control act of 1973, and to all agencies that interact with or receive criminal justice information from or through the central state repository and through the Arizona criminal justice information system.

S. This section does not apply to criminal history record information contained in:

1. Posters, arrest warrants, announcements or lists for identifying or apprehending fugitives or wanted persons.
2. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if these records are organized on a chronological basis.
3. Transcripts or records of judicial proceedings if released by a court or legislative or administrative proceedings.
4. Announcements of executive clemency or pardon.

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T. Nothing in this section prevents a criminal justice agency from disclosing to the public criminal history record information that is reasonably contemporaneous to the event for which an individual is currently within the criminal justice system, including information noted on traffic accident reports concerning citations, blood alcohol tests, intoxilyzer tests or arrests made in connection with the traffic accident being investigated.

U. In order to ensure that complete and accurate criminal history record information is maintained and disseminated by the central state repository:

1. The arresting authority shall take legible fingerprints of all persons arrested for offenses specified in subsection C of this section and, within ten days of the arrest, the arresting authority shall forward the fingerprints to the department in the manner or form required by the department.

2. In every criminal case in which the defendant is incarcerated or fingerprinted as a result of the charge, an originating law enforcement agency or prosecutor, within forty days of the disposition, shall advise the central state repository of all dispositions concerning the termination of criminal proceedings against an individual arrested for an offense specified in subsection C of this section. This information shall be submitted on a form or in a manner required by the department.

3. Dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who is arrested for an offense specified in subsection C of this section or § 8-241, subsection O shall be reported to the central state repository within forty days of the date of the disposition. This information shall be submitted on a form or in a manner specified by rules approved by the supreme court.

4. The state department of corrections or the department of juvenile corrections, within forty days, shall advise the central state repository that it has assumed supervision of a person convicted of an offense specified in subsection C of this section or § 8-241, subsection O. The state department of corrections or the department of juvenile corrections shall also report dispositions that occur thereafter to the central state repository within forty days of the date of the dispositions. This information shall be submitted on a form or in a manner required by the department of public safety.

5. Each criminal justice agency shall query the central state repository before dissemination of any criminal history record information to ensure the completeness of the information. Inquiries shall be made before any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be provided as soon as possible.

V. The director shall adopt rules specifying that any agency that collects, stores or disseminates criminal justice information that is subject to the provisions of this section shall establish effective security measures to protect the information from unauthorized access, disclosure, modification or dissemination. The rules shall include reasonable safeguards to protect the affected information systems from fire, flood, wind, theft, sabotage or other natural or man-made hazards or disasters.

W. The department shall make available to agencies that contribute to, or receive criminal justice information from, the central state repository or through the Arizona criminal justice information system a continuing training program in the proper methods for collecting, storing and disseminating information in compliance with this section.

X. Nothing in this section creates a cause of action or a right to bring an action including an action based on discrimination due to sexual orientation.

Y. A person who knowingly or recklessly permits unauthorized access or releases or procures the release of criminal history record information, other than as provided in this section, or who uses such information for a purpose other than as provided by this section is guilty of a class 6 felony.

Z. For purposes of this section:

1. "Administration of criminal justice" means performance of the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervi-

sion or rehabilitation of criminal offenders. Administration of criminal justice includes enforcement of criminal traffic offenses and civil traffic violations, including parking violations, when performed by a criminal justice agency. Administration of criminal justice also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. "Administrative records" means records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and that are designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

3. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic equipment, facilities, procedures and agreements necessary to exchange this information.

4. "Central state repository" means the central location within the department for the collection, storage and dissemination of Arizona criminal history records and related criminal justice information.

5. "Criminal history record information" and "criminal history record" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments and other formal criminal charges, and any disposition arising from those actions, sentencing, formal correctional supervisory action and release. Criminal history record information and criminal history record do not include identification information to the extent that the information does not indicate involvement of the individual in the criminal justice system or information relating to juveniles unless they have been adjudicated as adults.

6. "Criminal justice agency" means either:

(a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.

(b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and that allocates more than fifty per cent of its annual budget to the administration of criminal justice. This subdivision includes agencies of any foreign sovereignty duly recognized by the federal government.

7. "Criminal justice information" means information that is collected by criminal justice agencies and that is needed for the performance of their legally authorized and required functions, such as criminal history record information, citation information, stolen property information, traffic accident reports and wanted persons information. Criminal justice information does not include the administrative records of a criminal justice agency.

8. "Disposition" means information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings have been concluded or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of an appellate review of criminal proceedings or executive clemency.

9. "Dissemination" means the written, oral or electronic communication or transfer of criminal justice information to individuals and agencies other than the criminal justice agency that maintains the information. Dissemination includes the act of confirming the existence or nonexistence of criminal justice information.

10. "Management control":

(a) Means the authority to set and enforce:

(i) Priorities regarding development and operation of criminal justice information systems and programs.

(ii) Standards for the selection, supervision and termination of personnel involved in the development of criminal justice information systems and programs and in the collection, maintenance, analysis and dissemination of criminal justice information.

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(iii) Policies governing the operation of computers, circuits and telecommunications terminals used to process criminal justice information to the extent that the equipment is used to process, store or transmit criminal justice information.

(b) Includes the supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of automated criminal justice information systems.

11. "Secondary dissemination" means the dissemination of criminal justice information from an individual or agency that originally obtained the information from the central state repository or through the Arizona criminal justice information system to another individual or agency.

12. "Sexual orientation" means consensual homosexuality or heterosexuality.

13. "Subject of record" means the person who is the primary subject of a criminal justice record.

Added by Laws 1992, Ch. 247, § 4. Amended by Laws 1993, Ch. 10, § 1, eff. March 26, 1993; Laws 1994, Ch. 68, § 2; Laws 1994, Ch. 184, § 3; Laws 1994, Ch. 267, § 14; Laws 1995, Ch. 48, § 1; Laws 1995, Ch. 186, § 32; Laws 1996, Ch. 241, § 3, eff. Jan. 1, 1997.

¹ Section 8-101 et seq.

For text of section effective until January 1, 1997, see § 41-1750, ante

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41-1751. REPORTING COURT DISPOSITIONS TO DEPARTMENT OF PUBLIC SAFETY

Every magistrate, or judge of a court, or clerk of a court of record who is responsible for court records in this state shall furnish to the criminal identification section of the department of public safety information pertaining to all court dispositions of criminal matters, where incarceration or fingerprinting of the person occurred, including guilty pleas, convictions, acquittals, probations granted and pleas of guilty to reduced charges within ten days of the final disposition. Such information shall be submitted on a form and in accordance with rules approved by the supreme court of the state.

* * *

PUBLIC RECORDS, PRINTING AND NOTICES

§ 39-121.01. Copies; printouts or photographs of public records

In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

2. "Public body" means the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof.

3. All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by funds from the state or any political subdivision thereof.

4. Each public body shall be responsible for the preservation, maintenance and care of that body's public records and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to §§ 41-1344, 41-1347 and 41-1351.

5. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours. The custodian of such records shall furnish such copies, printouts or photographs and may charge a reasonable fee if the facilities are available, subject to the provisions of § 39-122. The fee shall not exceed the commercial rate for like service except as otherwise provided by statute.

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PUBLIC RECORDS, PRINTING & NOTICES

6. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. Added Laws 1975, Ch. 147, § 1. As amended Laws 1976, Ch. 104, § 17.

§ 39-121.02. Action upon denial of access; expenses and attorney fees; damages

A. Any person who has requested to examine or copy public records pursuant to the provisions of this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

B. If the court determines that a person was wrongfully denied access to or the right to copy a public record and if the court finds that the custodian of such public record acted in bad faith, or in an arbitrary or capricious manner, the superior court may award to the petitioner legal costs, including reasonable attorney fees, as determined by the court.

C. Any person who is wrongfully denied access to public records pursuant to the provisions of this article shall have a cause of action against the officer or public body for any damages resulting therefrom. Added Laws 1975, Ch. 147, § 1.

§ 13-905. Restoration of civil rights; persons completing probation

A. A person who has been convicted of two or more felonies and whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction restored by the judge who discharges him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally convicted. The clerk of such superior court shall have the responsibility for processing the application upon request of the person involved or his attorney. The superior court shall cause a copy of the application to be served upon the county attorney.

C. If the person was convicted of a dangerous offense under § 13-604, the person may not file for the restoration of his right to possess or carry a gun or firearm. If the person was convicted of a serious offense as defined in § 13-604, subsection U, the person may not file for the restoration of his right to possess or carry a gun or firearm for ten years from the date of his discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of his right to possess or carry a gun or firearm for two years from the date of his discharge from probation.

Amended by Laws 1994, Ch. 200, § 6, eff. April 19, 1994.

§ 13-906. Applications by persons discharged from prison

A. Upon proper application, a person who has been convicted of two or more felonies and who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally sentenced.

B. A person who is subject to the provisions of subsection A of this section may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the state department of corrections. The clerk of the superior court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, his attorney or a representative of the state department of corrections. The superior court shall cause a copy of the application to be served upon the county attorney.

C. If the person was convicted of a dangerous offense under § 13-604, the person may not file for the restoration of his right to possess or carry a gun or firearm. If the person was convicted of a serious offense as defined in § 13-604, subsection U, the person may not file for the restoration of his right to possess or carry a weapon for ten years from the date of his absolute discharge from imprisonment. If the person was convicted of any other felony offense, the person may not file for the restoration of his right to possess or carry a gun or firearm for two years from the date of his absolute discharge from imprisonment.

Amended by Laws 1994, Ch. 200, § 7, eff. April 19, 1994.

Historical and Statutory Notes

The 1994 amendment added subsec. C and made nonsubstantive changes elsewhere in the text.

§ 13-907. Setting aside judgment of convicted person on discharge; making of application; release from disabilities; exceptions

A. Except as provided in subsection B of this section, every person convicted of a criminal offense may, upon fulfillment of the conditions of probation or sentence and discharge by the court, apply to the judge, justice of the peace or magistrate who pronounced sentence or imposed probation or such judge, justice of the peace or magistrate's successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge. The application to set aside the judgment may be made by the convicted person or by his attorney or probation officer authorized in writing. If the judge, justice of the peace or magistrate grants the application, the judge, justice of the peace or magistrate shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction other than those imposed by the department of transportation pursuant to § 28-445 or 28-446, except that the conviction may be used as a conviction if such conviction would be admissible had it not been set aside and may be pleaded and proved in any subsequent prosecution of such person by the state or any of its subdivisions for any offense or used by the department of transportation in enforcing the provisions of § 28-445 or 28-446 as if the judgment of guilt had not been set aside.

B. This section does not apply to a person convicted of a criminal offense:

1. Involving the infliction of serious physical injury.
2. Involving the use or exhibition of a deadly weapon or dangerous instrument.
3. In violation of chapter 14 of this title.¹
4. In which the victim is a minor under fifteen years of age.
5. In violation of § 28-473, any local ordinance relating to stopping, standing or operation of a vehicle or title 28, chapter 6,² except a violation of § 28-692, 28-693 or 28-697 or any local ordinance relating to the same subject matter as § 28-692 or 28-693.

Amended by Laws 1992, Ch. 330, § 9.

¹ Section 18-1401 et seq.

² Section 28-601 et seq.

§ 13-908. Restoration of civil rights in the discretion of the superior court judge

Except as provided in § 13-912, the restoration of civil rights and the dismissal of the accusation or information under the provisions of this chapter shall be in the discretion of the superior court judge by whom the person was sentenced or his successor in office.

Added as § 13-1745 by Laws 1970, Ch. 221, § 1. Renumbered as § 13-808 and amended by Laws 1977, Ch. 142, § 53, eff. Oct. 1, 1978. Renumbered as § 13-908 and amended by Laws 1978, Ch. 201, §§ 116, 120, eff. Oct. 1, 1978.

§ 13-909. Restoration of civil rights; persons completing probation for federal offense

A. A person who has been convicted of two or more felonies and whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction in a United States district court restored by the presiding judge of the superior court in the county in which he now resides, upon filing of an affidavit of discharge from the judge who discharged him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by an application filed with the clerk of the superior court in the county in which he now resides. The clerk of the superior court shall process the application upon request of the person involved or his attorney.

C. If the person was convicted of an offense which would be a dangerous offense under § 13-604, the person may not file for the restoration of his right to possess or carry a gun or firearm. If the person was convicted of an offense which would be a serious offense as defined in § 13-604, subsection U, the person may not file for the restoration of his right to possess or carry a gun or firearm for ten years from the date of his discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of his right to possess or carry a gun or firearm for two years from the date of his discharge from probation.

Amended by Laws 1994, Ch. 200, § 8, eff. April 18, 1994.

§ 13-910. Applications by persons discharged from federal prison

A. Upon proper application, a person who has been convicted of two or more felonies and who has received an absolute discharge from imprisonment in a federal prison may have any civil rights which were lost or suspended by his conviction restored by the presiding judge of the superior court in the county in which he now resides.

B. A person who is subject to the provisions of subsection A of this section may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the federal bureau of prisons, unless it is shown to be impossible to obtain such certificate. Such application shall be filed with the clerk of the superior court in the county in which the person now resides, and such clerk shall be responsible for processing applications for restoration of civil rights upon request of the person involved or his attorney.

C. If the person was convicted of an offense which would be a dangerous offense under § 13-604, the person may not file for the restoration of his right to possess or carry a gun or firearm. If the person was convicted of an offense which would be a serious offense as defined in § 13-604, subsection U, the person may not file for the restoration of his right to possess or carry a gun or firearm for ten years from the date of his absolute discharge from imprisonment. If the person was convicted of any other felony offense, the person may not file for the restoration of his right to possess or carry a gun or firearm for two years from the date of his absolute discharge from imprisonment.

Amended by Laws 1994, Ch. 200, § 9, eff. April 18, 1994.

§ 13-911. Restoration of civil rights in the discretion of the presiding judge of the superior court

The restoration of civil rights under provisions of §§ 13-909 or 13-910 is within the discretion of the presiding judge of the superior court in the county in which the person resides.

Added as § 13-1754 by Laws 1971, Ch. 159, § 3. Renumbered as § 13-811 and amended by Laws 1977, Ch. 142, § 56, eff. Oct. 1, 1978. Renumbered as § 13-911 and amended by Laws 1978, Ch. 201, §§ 116, 121, eff. Oct. 1, 1978.

§ 13-912. Restoration of civil rights; automatic for first offenders

Upon completion of the term of probation, or upon absolute discharge from imprisonment, and upon the completion of payment of any fine or restitution imposed, any person who has not previously been convicted of any other felony shall automatically be restored any civil rights which were lost or suspended by the conviction.

Added as § 13-812 by Laws 1977, Ch. 142, § 49, eff. Oct. 1, 1978. Renumbered as § 13-912 by Laws 1978, Ch. 201, § 116, eff. Oct. 1, 1978.

§ 13-912.01. Restoration of civil rights; persons adjudicated delinquent

A. A person who was adjudicated delinquent and whose period of probation has been completed may have his right to possess or carry a gun or firearm restored by the judge who discharges the person at the end of his term of probation.

B. A person who was adjudicated delinquent and who has been discharged from probation, on proper application, may have his right to carry or possess a gun or firearm restored by the judge of the juvenile court in the county where the person was adjudicated delinquent or his successors. The clerk of the superior court shall process the application on the request of the person involved or the person's attorney. The applicant shall serve a copy of the application on the county attorney.

C. If the person's adjudication was for a dangerous offense under § 13-604, a serious offense as defined in § 13-604, burglary in the first degree, burglary in the second degree or arson, the person may not file for the restoration of his right to possess or carry a gun or firearm until the person attains thirty years of age. If the person's adjudication was for any other felony offense, the person may not file for the restoration of his right to possess or carry a gun or firearm for two years from the date of his discharge.

Added by Laws 1994, Ch. 201, § 14.

§ 8-247. Destruction of records

A. On application of a person who has been adjudicated delinquent or incorrigible or on the court's own motion, and after a hearing, the juvenile court shall order the destruction of the files and records, including arrest records, in the proceeding, if the court finds:

1. The person has attained his eighteenth birthday.
2. No proceeding is pending seeking his conviction of a crime.
3. He has been rehabilitated to the satisfaction of the juvenile court.
4. He is not under the jurisdiction of the juvenile court, nor under commitment to the department of corrections from the juvenile court.

B. Reasonable notice of the hearing shall be given to:

1. The county attorney.
2. The authority granting the discharge if the final discharge was from an institution or from parole.

C. When a juvenile who has been adjudicated delinquent or incorrigible has attained his or her twenty-third birthday, the juvenile court may order destruction of files and records, including arrest records if the court finds:

1. There is no pending criminal complaint.
2. The department of corrections has no current jurisdiction.
3. There is no adult criminal record. As amended Laws 1975, Ch. 141, § 3.

§ 8-247. Destruction of records

Text of section effective January 1, 1997

A. On application of a person who has been adjudicated delinquent or incorrigible or on the court's own motion, and after a hearing, the juvenile court may order the destruction of the files and records, including arrest records, in the proceeding, if the court finds:

1. The person has attained his eighteenth birthday.
2. No proceeding is pending seeking the person's conviction of a crime.
3. The person has been rehabilitated to the satisfaction of the juvenile court.
4. The person is not under the jurisdiction of the juvenile court, nor under commitment to the department of juvenile corrections from the juvenile court.

B. Reasonable notice of the hearing shall be given to:

1. The county attorney who may oppose the order.
2. The authority granting the discharge if the final discharge was from an institution or from parole.

C. When a juvenile who has been adjudicated delinquent or incorrigible has attained the juvenile's twenty-third birthday, the juvenile court may order destruction of files and records including arrest records if the court finds:

1. There is no pending criminal complaint.
2. The state department of corrections has no current jurisdiction.
3. There is no adult criminal record.

D. This section shall not apply to fingerprint records provided to the department of public safety central state repository pursuant to § 8-241, subsection O.

Amended by Laws 1989, Ch. 268, § 8, eff. July 1, 1990; Laws 1991, Ch. 210, § 6; Laws 1996, Ch. 17 § 9; Laws 1998, Ch. 241, § 2, eff. Jan. 1, 1997.

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Alcoholic Beverages

§ 4-202. Qualifications of licensees; fingerprinting; transfers; prior convictions

A. Every spirituous liquor licensee, other than a club licensee, a corporation licensee or an out-of-state distiller's, brewer's, vintner's, exporter's, importer's or rectifier's licensee, shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state. If a partnership, each partner shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state. If a corporation, it shall be a domestic corporation or a foreign corporation which has qualified to do business in this state and shall hold its license through an agent.

B. Either the board or the superintendent may require any person, other than a bank or licensed lending institution, having any interest, directly or indirectly, as defined by department regulation, in any license or licensee to furnish a complete, satisfactory set of fingerprints.

C. A corporation which conforms to the qualifications prescribed by subsection A shall own the entire equitable interest in its license through an agent provided the agent is otherwise qualified to hold a spirituous liquor license. The agent shall be subject to the penalties prescribed for any violation of the law relating to alcoholic beverages. Upon the death or resignation or discharge of an agent of a corporation holding a spirituous liquor license, the license shall be assigned to another qualified agent selected by the corporation.

D. No license shall be issued to any person who, within one year prior to application, has violated any provision of a spirituous liquor license issued or has had a license revoked. No license shall be issued or renewed to any person who, within five years prior to application, has been convicted of a felony. No corporation shall have its annual license issued or renewed unless it has on file with the department a list of its officers and directors and any stockholders who own ten per cent or more of the corporation. No corporation shall have its spirituous liquor license issued or renewed if any of its officers or directors or any stockholders who own ten per cent or more of the corporation have within five years been convicted of a felony.

E. The department shall receive criminal history record information from the department of public safety criminal identification section for applicants for employment with the department or for a license issued by the department.

Amended by Laws 1978, Ch. 88, § 3; Laws 1980, Ch. 84, § 2; Laws 1980, Ch. 185, § 2.

Laws 1976, Ch. 81, § 3, substituted "licensees" for "licenses" in the section heading.

For intent of Laws 1976, Ch. 81, see note following § 4-203.

For legislative intent regarding termination of provisions added or amended by Laws 1980, Ch. 84, see note following § 4-112.

For legislative intent regarding termination of provisions added or amended by Laws 1980, Ch. 185, see note following § 4-101.

1980 Reviser's Note:

This section contains the amendments made by Laws 1980, chapter 84, section 2 and chapter 185,

section 2 which were blended together as shown above pursuant to authority of section 41-1304.03.

Cross References

Assignment fees, change of agent, see § 4-209.

Grounds for revocation, suspension, and refusal to renew licenses, see § 4-210.

Law Review Commentaries

Resident aliens employment rights. 19 Ariz.L. Rev. 409 (1977).

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Children Adoption

§ 8-105. Preadoption certification; investigation; central adoption registry

A. Before any person may petition to adopt a child the person shall be certified by the court as acceptable to adopt children. Such a certificate shall be issued only after an investigation conducted by an officer of the court or by an agency or by the division. Written application for certification may be made directly to the court or to an agency or to the division, in such form and content as the court, agency or division may require.

B. After receiving the written and completed application of the prospective adoptive parent or parents, which shall include a financial statement, completed fingerprint card and a physician's statement of the physical health of each applicant, the division or the agency or a person or agency designated by the court shall conduct or cause to be conducted an investigation of the prospective adoptive parent or parents to determine if they are fit and proper persons to adopt children.

C. This investigation and report to the court shall consider all relevant and material facts dealing with the prospective adoptive parents' fitness to adopt children, and shall include but is not limited to:

1. A complete social history.
2. The financial condition of the applicant.
3. The moral fitness of the applicant.
4. The religious background of the applicant.
5. The physical and mental health condition of the applicants.

6. The submission of a fingerprint card and the results of a check of official fingerprint records based on such submission.

7. Whether the person or persons wish to be placed on the central registry established in subsection M.

8. All other facts bearing on the issue of the fitness of the prospective adoptive parents that the court, agency or division may deem relevant.

D. As soon as the identity of the child to be adopted is known, an investigation and report to the court shall include, but not be limited to:

1. Whether the natural parents, if living, are willing that the child be adopted and the reasons for such willingness.
2. Whether the natural parents have abandoned the child or are unfit to have custody of the child.
3. Whether the parent-child relationship has been previously terminated by court action and the circumstances of such termination.
4. The heritage of the child and natural parents and the mental and physical condition of the child and the natural parents.
5. The existing and proposed arrangements as to the custody of the child.
6. The adoptability of the child and the suitability of the child's placement with the applicant.

E. At no time shall the investigator reveal to the prospective adoptive parents the identity of a child or its parent or parents, and at no time shall the investigator reveal to the child or its parent or parents the identity of the prospective adoptive parents if these facts are not already known.

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F. Within ninety days after the original application prescribed by subsection A, the division or the agency or a person or agency designated by the court to conduct an investigation shall present to the juvenile court the written report required by subsection C, which shall include a definite recommendation for certifying the applicant as being acceptable or nonacceptable to adopt children with the reasons for the recommendation.

G. Within ninety days after the court, the division or an agency has acquired information that a child has been placed with a prospective adoptive parent or parents, the division, if it placed the child, or an agency, if it placed the child, or an employee of the court, if the child was not placed by the division or an agency, shall investigate and present to the juvenile court the written report required by subsection D, which shall include a definite recommendation for or against certifying the child as being suitable or not suitable for adoption by the prospective adoptive parent or parents and the reasons for the recommendation.

H. The reports required by subsections C and D may be combined into one report at the discretion of the juvenile court.

I. The court, upon receiving the investigation report required by subsections C and F, shall certify the applicant as being acceptable or nonacceptable to adopt children based on the investigation report and recommendations of such report. The court, upon receiving the investigation report required by subsections D and G, shall certify the child as being suitable or not suitable for adoption by the prospective adoptive parent or parents subject to the investigation report and recommendations of such report. A certification shall remain in effect for one year from the date of its issuance and may be extended for additional one year periods if after review the court finds that there have been no material changes in circumstances which would adversely affect the acceptability of the applicant to adopt or the suitability of the child to be adopted by the prospective adoptive parent or parents. Upon the filing of a petition by the prospective adoptive parent or parents to adopt a child, the certification of such persons shall expire. Such persons must be again certified in order to petition for adoption of any other child.

J. The court in its discretion may require additional investigation if it finds that the welfare of the child would be served by such investigation or if additional information is necessary upon which to make an appropriate decision regarding certification.

K. Any applicant who has been certified as nonacceptable may petition the court to review such certification. Notice shall be given to all interested parties and the matter shall be heard by the court, which may affirm or reverse the certification.

L. If the applicant is certified as nonacceptable, he or she may not reapply for certification to the court, or to any agency or to the division, for one year thereafter.

M. The division shall maintain a central adoption registry which shall include the names of all prospective adoptive parents currently certified by the court as acceptable to adopt children, except those who request that their names not be included therein, the names of all children under the jurisdiction of the division who are currently available for adoption, the names of any other children currently available for adoption whose names are voluntarily entered therein by any agency, parent or other person having the right to give consent to the child's adoption, and such other information as the division may elect to include in aid of adoptive placements. Access to information in the registry shall be made available on request to any agency under such assurances as the division may require that the information sought is in furtherance of adoptive placements and that confidentiality of the information is preserved.

N. This section shall not apply where the prospective adoptive parent is the spouse of the natural parent of the child to be adopted or is an uncle, aunt or grandparent of the child of the whole or half-blood or by marriage and the child is not a ward of the court.

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Transportation

§ 28-414. Classification of chauffeurs; special restrictions; requirements for school bus drivers

A. The department upon issuing a chauffeur's license shall indicate on the license the class of license issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules and regulations for the exercise thereof as it may deem necessary for the safety and welfare of the traveling public.

B. No person shall drive a school bus transporting school children or a motor vehicle when in use for the transportation of persons or property for compensation or a tow truck when in use for moving or transporting wrecked, damaged, disabled or abandoned vehicles until he has been licensed as a chauffeur for such purpose and the license so indicates. The department shall not issue a chauffeur's license for any such purpose unless the applicant has had at least one year of driving experience prior thereto and the department is fully satisfied as to the applicant's competency and fitness to be so employed.

C. In addition to the license required by this section, in order to be certified to operate a school bus each applicant shall meet and maintain the minimum standards prescribed by this section and rules adopted by the department and complete an initial course of school bus driver safety and training including behind the wheel instruction.

D. The department shall, by rule, establish minimum standards for certification of school bus drivers and provide, in cooperation with local school districts or the department of education, for school bus driver safety and training courses. The standards established shall include requirements concerning moral character, knowledge of school bus operation, pupil and motor vehicle safety, physical conditions which might affect the person's ability to safely operate a school bus or which might endanger the health or safety of school bus passengers, knowledge of first aid, establishment of school bus safety and training courses and a refresher course to be completed on at least a biannual basis, and such other matters as the department may prescribe for the protection of the public.

E. In carrying out the provisions of this section the department shall require applicants to furnish fingerprints and obtain criminal history record information pursuant to § 41-1750.

F. Notwithstanding subsections C and D of this section, the department may issue a temporary certificate to operate a school bus to an applicant who has demonstrated an ability to exercise control over a school bus. The department shall revoke the temporary certificate of any such driver who fails to complete a school bus driver training course approved by the department, within six months after commencing employment as a school bus driver.

G. Applicants who fully meet the requirements of this section shall be issued a certificate which shall be good so long as the applicant maintains the minimum standards established by this section. The department is authorized to cancel the certificate or temporary certificate if the person's license to drive is suspended, cancelled or revoked. The department shall cancel the certificate if the person fails to maintain minimum standards established pursuant to subsection D of this section. A person whose application for a certificate is refused or whose certificate is cancelled for failure to meet or maintain minimum standards may request and receive a hearing.

§ 36-883.02. Child care personnel; registration; fingerprints; exemptions; definition

A. Child care personnel shall register with the department in order to work in a day care center.

B. Except as provided in subsection E of this section, child care personnel shall be fingerprinted and submit the form prescribed in subsection F of this section to the department within twenty days after the date they begin work for a day care center. Registration is conditioned on the results of the fingerprint check.

C. For the purpose of screening child care personnel, the department of public safety shall provide information from its records relating to convictions for public offenses to the department of health services. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

D. The department shall charge the prospective employer of child care personnel for the costs of fingerprint checks. The employer may charge those costs to its fingerprinted employee.

E. Exempt from the fingerprinting requirements of subsection B of this section are parents, including foster parents and guardians, who are not employees of the day care center and who participate in activities with their children under the supervision of and in the presence of child care personnel.

F. Child care personnel shall certify on forms that are provided by the department and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

- (a) Sexual abuse of a minor.
- (b) Incest.
- (c) First or second degree murder.
- (d) Kidnapping.
- (e) Arson.
- (f) Sexual assault.
- (g) Sexual exploitation of a minor.
- (h) Contributing to the delinquency of a minor.
- (i) Commercial sexual exploitation of a minor.
- (j) Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
- (k) Burglary.
- (l) Robbery.
- (m) A dangerous crime against children as defined in § 13-604.01.
- (n) Child abuse.
- (o) Sexual conduct with a minor.
- (p) Molestation of a child.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8-201, paragraph 11.

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

G. Employers of day care center personnel shall make documented, good faith efforts to contact previous employers of day care center personnel to obtain information or recommendations which may be relevant to an individual's fitness for employment in a day care center.

H. The notarized forms and fingerprint checks are confidential.

I. For the purposes of this section, "child care personnel" means any employee or volunteer working at a day care center.

Amended by Laws 1986, Ch. 292, § 1, eff. May 5, 1986; Laws 1987, Ch. 165, § 1.

§ 8-230.02. Juvenile probation fund; program and contract requirements; definition

A. The juvenile probation fund is established. The supreme court shall administer the fund.

B. The supreme court shall allocate monies in the fund or appropriated to the superior court's juvenile probation services fund line based on its determination of the need for and probable effectiveness of each plan submitted pursuant to this article. The supreme court shall require that the presiding juvenile court judge submit in accordance with rules of the supreme court a plan for the expenditure of monies allocated to the juvenile court pursuant to this section. The supreme court may reject a plan or a modification of a plan submitted pursuant to this subsection.

C. Monies shall be used to fund programs, the participation in which a juvenile probation officer has required as a condition precedent to adjustment of a delinquency complaint or a complaint or citation alleging an alcohol offense pursuant to § 8-230.01 to reduce the number of repetitive juvenile offenders and to provide services, including treatment, testing and residential and shelter care, for children referred to the juvenile court for incorrigibility or delinquency offenses. These services shall be approved by the supreme court. The juvenile court may develop and staff such programs, or the supreme court may enter into the purchase of service contracts with community youth serving agencies.

D. The monies shall be used to supplement, not supplant, funding to the juvenile court by the county.

E. The supreme court shall contract for a periodic evaluation to determine if the provisions of this article reduce the number of repetitive juvenile offenders. The supreme court shall send a copy of the evaluation to the speaker of the house of representatives, the president of the senate and the governor.

F. A contract entered into between the supreme court and any contract provider to provide services pursuant to this section to juveniles shall provide that personnel employed by any contract provider who have direct contact with juveniles shall be fingerprinted as a condition of employment. The contract shall further provide that the contractor shall submit employee fingerprints to the supreme court or designated agency prior to performance of any services by the employee which requires or allows the employee to have direct contact with juveniles.

G. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

H. The contractor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel.

I. Contractor personnel who have direct contact with juveniles shall certify on forms provided by the supreme court and notarized whether they are awaiting trial on or have ever been convicted of or committed any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Arson.
6. Sexual assault.
7. Sexual exploitation of a minor.
8. Contributing to the delinquency of a minor.
9. Commercial sexual exploitation of a minor.
10. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
11. Burglary.
12. Robbery.

13. A dangerous crime against children as defined in § 13-604.01.
14. Child abuse.
15. Sexual conduct with a minor.
16. Molestation of a child.

J. Every service contract with any contract provider which involves the employment of persons who have direct contact with juveniles shall provide that the contract may be cancelled or terminated if the fingerprint check or the certified form of any person who has direct contact with juveniles and is employed by a contract provider discloses that the person has been convicted of or is awaiting trial on or committed any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Sexual assault.
6. Sexual exploitation of a minor.
7. Commercial sexual exploitation of a minor.
8. A dangerous crime against children as defined in § 13-604.01.
9. Child abuse.
10. Sexual conduct with a minor.
11. Molestation of a child.

The contractor may avoid termination of the contract if the person whose fingerprints or certification form shows that he has been convicted of or is awaiting trial or has committed an offense or similar offense as listed in this subsection is immediately prohibited from employment or service with the contractor in any capacity requiring or allowing direct contact with juveniles.

K. Every service contract with any contract provider which involves the employment of persons who have direct contact with juveniles shall contain a provision that the contract may be cancelled or terminated if the fingerprint check or the certified form of any person who has direct contact with juveniles employed by a contract provider discloses that the person has been convicted of or is awaiting trial on or committed any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

1. Arson.
2. Contributing to the delinquency of a minor.
3. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
4. Burglary.
5. Robbery.

The contractor may avoid termination of the contract if the person whose fingerprints or certification form shows that he has been convicted of or is awaiting trial on or has committed an offense or similar offense as listed in this subsection is immediately prohibited from employment or service with the contractor in any capacity requiring or allowing direct contact with juveniles or unless the person has been granted an exception for good cause pursuant to the requirements and procedures of § 41-1954.01. The supreme court may, in its sole discretion, determine whether to submit the application to the director of the department of economic security for review.

L. The requirements of subsections F through K of this section do not apply to personnel who are employed by a contract provider that has a contract for services to juveniles with or is licensed or certified by the department of health services, the department of corrections or the department of economic security and who have been fingerprinted and submitted the required certification form in connection with that employment.

M. For the purposes of this section, "employee" means paid and unpaid personnel who have direct contact with juveniles.

Added by Laws 1984, 1st S.S., Ch. 10, § 1, eff. July 1, 1984. Amended by Laws 1985, Ch. 168, § 3; Laws 1986, Ch. 75, § 1; Laws 1987, Ch. 324, § 1; Laws 1988, Ch. 274, § 2.

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Regulations

CHAPTER 1

DEPARTMENT OF PUBLIC SAFETY CRIMINAL IDENTIFICATION SECTION

(Authority: A.R.S. § 41-1750 et seq.)

ARTICLE 1. GENERAL PROVISIONS

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ARTICLE 1. GENERAL PROVISIONS

R13-1-01. Explanation of Rules and Regulations

The following Rules and Regulations relating to the procurement and dissemination of information in the Criminal Identification Section are authorized by A.R.S. § 41-1750 F. (Supp. 1971-72). All materials and information collected pursuant to A.R.S. § 41-1750 are hereby classified as confidential - the release of, or use of said materials or information except as provided by A.R.S. § 41-1750 is prohibited and access to the files is limited to authorized employees of the Department of Public Safety's Criminal Identification Section.

R13-1-02. Provide Accurate and Timely Information

The primary function of the Department of Public Safety's Criminal Identification Section is to provide accurate and timely information to all law enforcement agencies regarding criminal history information. To disseminate this information to law enforcement agencies, the Department of Public Safety provides toll-free telephone service and teletype service, or information may be obtained in person after providing proper identification.

R13-1-03. Latent Fingerprint Identification Assistance

A. The Criminal Identification Section of the Department of Public Safety shall maintain a latent fingerprint identification laboratory and a sufficient number of latent fingerprint identification officers to provide assistance as needed to any law enforcement agency on a twenty-four-hour-a-day basis for the detection and development of latent fingerprints.

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B. The chief officer of any law enforcement agency, or his authorized representative, may obtain the assistance of these officers by contacting the Criminal Identification Section of the Department of Public Safety.

C. The latent identification officers shall also be available to process evidence submitted to the Criminal Identification Section for the purpose of detecting latent fingerprints and shall provide expert court testimony, as required.

D. The chief officer of any law enforcement agency, or his authorized representative, upon submitting evidence to the Criminal Identification Section, shall complete any form required at the time of submitting such evidence.

R13-1-04. Information Required of Law Enforcement Agencies

All law enforcement agencies of the State of Arizona shall provide the Criminal Identification Section of the Department of Public Safety the following information:

1. A complete set of fingerprints on each initial arrest. Said fingerprints will be imprinted on the appropriate fingerprint form that is provided by the Federal Bureau of Investigation.

2. For each subsequent arrest, each law enforcement agency of the State of Arizona shall provide to the Criminal Identification Section of the Department of Public Safety one of the following:

a. A complete set of fingerprints on the appropriate F.B.I. fingerprint form, and include name, description data, and arrest data; i.e., description of charge, statute number, Arizona Criminal Identification Section number, and F.B.I. number, if available.

b. Department of Public Safety Form 30.60.03 entitled "Additional Arrest Information" completed in full, with Arizona Criminal Identification Section number and the inked impressions of the arrested individual's right four fingers. If the right hand is amputated, imprint the left four fingers and so indicate. In cases where the Criminal Identification Section number is not available, follow instructions in paragraph 2a, above.

3. In all cases where possible on an initial arrest, each law enforcement agency of the State of Arizona shall provide the Criminal Identification Section of the Department of Public Safety with a photograph of the person arrested, and on the back of said photograph shall inscribe the subject's name, date of birth, description of charge, and statute violated.

R13-1-05. Procedures and Restrictions on Dissemination of Information

A. The employees of the Criminal Identification Section of the Department of Public Safety shall not release information until after determining that the requesting party is, in fact, entitled to said information. After this determination has been made, information shall be disseminated in the following manner:

§ 41-1964. Day care homes; child care personnel; registration; fingerprints; definition

A. Child care personnel shall register with the department in order to work in a certified day care home.

B. Child care personnel shall be fingerprinted and submit the form prescribed in subsection E of this section to the department within twenty days after beginning work at a certified day care home. Registration is conditioned on the results of the fingerprint check.

C. For the purpose of screening child care personnel, the department of public safety shall provide information from its records relating to convictions for public offenses to the department of economic security. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

D. The department shall charge child care personnel for the costs of their fingerprint checks.

E. Child care personnel shall certify on forms that are provided by the department and notarized that:

1. They are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:

- (a) Sexual abuse of a minor.
- (b) Incest.
- (c) First or second degree murder.
- (d) Kidnapping.
- (e) Arson.
- (f) Sexual assault.
- (g) Sexual exploitation of a minor.
- (h) Contributing to the delinquency of a minor.
- (i) Commercial sexual exploitation of a minor.
- (j) Felony offenses involving distribution of marijuana or dangerous or narcotic drugs.
- (k) Burglary.
- (l) Robbery.
- (m) A dangerous crime against children as defined in § 13-604.01.
- (n) Child abuse.
- (o) Sexual conduct with a minor.
- (p) Molestation of a child.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in § 8-201, paragraph 11.

3. They have not been denied a license to operate a facility for the care of children for cause in this state or another state or had a license or certificate to operate such a facility revoked.

F. The department shall make documented, good faith efforts to contact previous employers of certified day care home personnel to obtain information or recommendations which may be relevant to an individual's fitness for work in a certified day care home.

G. The notarized forms and fingerprint checks are confidential.

H. For the purposes of this section, "child care personnel" means all employees of and persons residing in a day care home which is certified by the department pursuant to § 41-1954, subsection A, paragraph 1, subdivision (b) who are eighteen years of age or older.

Amended by Laws 1986, Ch. 292, § 2, eff. May 5, 1986.

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1. In-Person Request: Information shall be released after satisfactory identification has been made.

2. Telephone Requests: Requested information shall be recorded along with the requesting party's name, identification number, agency of employment, dated and time-stamped. Information to be disseminated will only be given by return phone call, teletype or letter to a previously designated phone number or address at the agency of employment. Information will not be returned to a private phone number.

3. Mail Requests: Requests for information received by mail will only be accepted on agency letterhead, when signed by the chief officer of the requesting agency or his authorized representative. All written requests must contain the name of the requesting party and the purpose for obtaining the requested information. All requested information shall be return-addressed to the requesting officer and directed to the requesting agency's physical address.

4. Teletype Requests: Teletype requests will be answered as soon as possible by return teletype and, if requested, additional information will be forwarded to the requesting agency by mail.

B. The chief officer of any agency receiving information from the Criminal Identification Section shall cooperate with officers of the Department of Public Safety in the investigation of violations of A.R.S. § 41-1750 and these rules.

C. In addition to the penalties provided by law, any department or agency which misuses or releases information contrary to law or violates any provision of these rules may be temporarily denied information from the Criminal Identification Section pending an investigation by the department and shall not be reinstated until such time as the chief of the Criminal Identification Section is satisfied that the department or agency is in full compliance with the law and these rules.

D. Any person convicted under the provisions of A.R.S. § 41-1750 D shall be denied further information from such files unless such request for information is accompanied by an affidavit signed by the chief of the requesting agency. Such affidavit shall set forth:

1. The facts and circumstances surrounding the prior conviction, and
2. A statement by the chief of the agency stating that he assumes full responsibility for the lawful use of any released information.

R13-1-06. Procedures for Dissemination of Information to Non-law Enforcement Agencies

A. The Department of Public Safety's Criminal Identification Section shall provide information from its records relating to convictions for public offenses to non-law enforcement agencies of the state or its political subdivisions for the purpose of evaluating the fitness of prospective employees of such agencies. Compliance to this rule will be made by the Criminal Identification Section after such agency has fully complied with paragraph G of A.R.S. § 41-1750, and the Criminal Identification Section has received, in writing, proper authorization to disseminate said information to such agency from the Attorney General of the State of Arizona.

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B. Upon receiving said authorization from the Attorney General, the chief of the Criminal Identification Section shall contact the chief officer of such agency and establish rules regarding the procurement and dissemination of information as outlined in R13-1-05.

R13-1-07. Procedures for Dissemination of Information to Licensing and Regulatory Agencies

A. The Department of Public Safety's Criminal Identification Section shall provide information from its records relating to convictions for public offenses to licensing and regulatory agencies of the state or its political subdivisions, for the purpose of evaluating the fitness of prospective licensees.

B. Compliance to this rule will be made by the Criminal Identification Section after such agency has fully complied with paragraph G of A.R.S. §41-1750 and the Criminal Identification Section has received, in writing, proper authorization to disseminate said information to such agency from the Attorney General of the State of Arizona.

C. Upon receiving said authorization from the Attorney General, the chief of the Criminal Identification Section shall contact the chief officer of such agency and establish rules regarding the procurement and dissemination of information as outlined in R13-1-05.

R13-1-08. Procedures for Dissemination to, or Correction of Information by, the Subject of the Records

A. The subject of record or his attorney may be provided information contained on the "Arizona Criminal Offender Identification Records", DPS Form 30.60.04. The information on this record shall consist of dates and arrests, contributors of fingerprints, arrest numbers, charges of dispositions (where possible) which have occurred within the State of Arizona. The listing of this record shall be supported by fingerprints or other official documents contained in the Criminal Identification Section Criminal Offender Jacket relating to the subject of the record.

B. The information may be reviewed, or for specific need a copy obtained, after proper completion of a "Review of Criminal Offender Record Information" form, (DPS Form 30.60.05). The subject of the record to be reviewed must have his fingerprints imprinted upon this form. If a copy of the record is desired, the signature of the individual to whom the copy is released must be in the appropriate spaces both on the "Review of Criminal Offender Record Information" form and the "Arizona Criminal Offender Identification Record" being released. The name and identification number of the employee releasing the information must also be recorded on both forms.

C. The fingerprints on the "Review of Criminal Offender Record Information" form must be verified as being identical to the fingerprints of the subject of record

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on file in the Criminal Identification Section by a Criminal Identification Section fingerprint technician or identification officer prior to any record being reviewed by the individual of record or his attorney.

D. The reviewing individual may challenge any entry contained on the "Arizona Criminal Offender Identification Record" that he knows to be incorrect. To challenge any entry on the "Arizona Criminal Offender Identification Records", DPS Form 30.60.07 the "Exception Taken to Criminal Offender Record Information" form must be properly completed. This form must then be signed by the subject of the record to which exceptions are taken. This form will then be filed with the Criminal Identification Section.

E. Upon receipt of an "Exception Taken to Criminal Offender Record Information" form, the employee accepting the form will place the current date and his/her serial number in the appropriate spaces. An audit of the record in question will begin within five days of receipt of this form and will be completed within fifteen working days.

F. To conduct an audit, the Criminal Identification Section shall contact each agency whose arrest(s) are challenged as exceptions. The Criminal Identification Section will obtain a set of fingerprints relating to the arrest in question and verify whether or not they belong to the subject of the record in question. The Criminal Identification Section will obtain a disposition for each of the entries challenged and record such dispositions in its files and cause such dispositions to be recorded with the appropriate federal agency whose responsibilities involve maintaining records of arrests and dispositions.

G. Upon completion of an audit, the "Exception Taken to Criminal Offender Record Information" form will be filed by the Criminal Information Section in the subject of such record's jacket. The chief of the Criminal Identification Section shall then complete DPS Form 30.60.06 "Notice of Results of Audit of Criminal Offender Record Information". The form shall be prepared in duplicate. The original shall be filed in the Criminal Identification Section jacket of the subject of the record. The copy shall be sent to the individual who submitted the exceptions.

R13-1-09. Right to Hearing After Denial or Restriction of Information

A. Any party or agency who has been denied information or has suffered a penalty or restriction under these Rules and Regulations due to the actions or inactions of the Department of Public Safety shall have a right to a hearing regarding the denial of information or the penalty or restriction suffered - except any temporary denial of information under R13-1-05 pending an investigation by the Department of Public Safety which does not exceed three working days does not constitute a penalty or restriction, and no hearing shall be provided for departments or agencies affected by such temporary denial.

B. The hearing shall be conducted by from two to three officers holding the rank of Lieutenant or above in the Department of Public Safety and one to two chief officers of any agency served or an authorized representative of any such agency, to be appointed by the Director or, in his absence or at his direction, the chief of the Criminal Identification Section.

C. The required notice and hearing shall be in compliance with A.R.S. § 41-1009 et. seq.