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Overview - INDIANA; CH. 4 Revised Statutes Annotated

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privacy and security of criminal justice information.

# INDIANA

## Indiana Statutes Annotated

### CHAPTER 4—CRIMINAL INTELLIGENCE INFORMATION

SECTION.	SECTION.
5-2-4-1. Definitions.	5-2-4-5. Political, religious or social information prohibited.
5-2-4-2. Reference to intelligence file prohibited.	5-2-4-6. Information confidential — Need to know.
5-2-4-3. Grounds required for collecting and keeping information.	5-2-4-7. Unauthorized release of information — Penalty.
5-2-4-4. Review of retention of file.	

5-2-4-1. Definitions [effective October 1, 1977]. — As used in this chapter [5-2-4-1 — 5-2-4-7], unless the context otherwise requires:

(a) "Criminal history information" means information collected by criminal justice agencies or 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.

(b) "Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity. "Criminal intelligence information" does not include criminal investigative information which is information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

(c) "Criminal justice agency" means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders. [IC 5-2-4-1, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-2. Reference to intelligence file prohibited [effective October 1, 1977]. — Criminal intelligence information shall not be placed in a criminal history file, nor shall a criminal history file indicate or suggest that a criminal intelligence file exists on the individual to whom the information relates. Criminal history information may, however, be included in criminal intelligence files. [IC 5-2-4-2, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-3. Grounds required for collecting and keeping information [effective October 1, 1977]. — Criminal intelligence information concerning a particular individual shall be collected and maintained by a state or local criminal justice agency only if grounds exist connecting the individual with known or suspected criminal activity and if the information is relevant to that activity. [IC 5-2-4-3, as added by Acts 1977, P.L. 50, § 1, p. —.]

**35-38-5-2. Disposition upon grant of petition.** — If the petition for expungement is granted, the law enforcement agency shall within thirty [30] days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or arrest records in their possession. [IC 35-38-5-2, as added by P.L.311-1983, § 3.]

**35-38-5-3. Retention of information in any criminal information repository prohibited — Changes in records not to be made.** — Whenever the petition of an individual under section 1 [35-38-5-1] of this chapter is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in any record (such as a police blotter entry) made at the time of the arrest or in the record of any court in which the criminal charges were filed. [IC 35-38-5-3, as added by P.L.311-1983, § 3.]

**35-38-5-4. Action by person whose records are expunged which is defensible with contents of records — Presumption.** — If a person whose records are expunged brings an action that might be defended with the contents of such records, the defendant is presumed to have a complete defense to such an action. In order for the plaintiff to recover, he must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether he had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence. [IC 35-38-5-4, as added by P.L.311-1983, § 3.]

**35-38-5-5. Petition to limit access to limited criminal history.** — (a) A person may petition the state police department to limit access to his limited criminal history to criminal justice agencies if more than fifteen [15] years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.

(b) When a petition is filed under subsection (a), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 5-2-5-5. [IC 35-38-5-5, as added by P.L.311-1983, § 3.]

**35-38-5-6. Violation — Penalty.** — A law enforcement officer who violates this chapter commits a class B misdemeanor. [IC 35-38-5-6, as added by P.L.311-1983, § 3.]

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5-2-4-4. Review of retention of file [effective October 1, 1977]. — Criminal intelligence information shall be reviewed by the chief executive officer of the criminal justice agency at regular intervals to determine whether the grounds for retaining the information still exist and if not, it shall be destroyed. [IC 5-2-4-4, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-5. Political, religious or social information prohibited [effective October 1, 1977]. — No criminal justice agency shall collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, corporation, business or partnership unless such information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities. [IC 5-2-4-5, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-6. Information confidential — Need to know [effective October 1, 1977]. — Criminal intelligence information is hereby declared confidential and may be disseminated only to another criminal justice agency, and only if the agency making the dissemination is satisfied that the need to know and intended uses of information are reasonable and that the confidentiality of the information will be maintained. [IC 5-2-4-6, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-7. Unauthorized release of information — Penalty [effective October 1, 1977]. — Any person who knowingly and intentionally releases criminal intelligence information to an agency or person other than a criminal justice agency commits a class A misdemeanor. [IC 5-2-4-7, as added by Acts 1977, P.L. 50, § 1, p. —.]

## CHAPTER 5

### CRIMINAL HISTORY INFORMATION

#### SECTION.

- 5-2-5-1. Definitions.
- 5-2-5-2. Official state central repository —  
Reports of arrests for reportable offenses.
- 5-2-5-3. Disposition reports.
- 5-2-5-4. Provision of data to and from criminal justice agencies.
- 5-2-5-5. Information to noncriminal justice organizations or individuals —  
Limitation.
- 5-2-5-6. Information to noncriminal justice organizations or individuals —  
Prohibited uses.

#### SECTION.

- 5-2-5-7. Procedure on request for limited criminal history —  
Editing of information.
- 5-2-5-8. Copy to person about whom data maintained —  
Challenge of information.
- 5-2-5-9. Applicability of chapter.
- 5-2-5-10. Rules —  
Procedure upon challenge —  
Inspection.
- 5-2-5-11. Security and privacy council.

**5-2-5-1 Definitions**

*Note: This version of section effective until 7-1-98. See also following version of this section, effective 7-1-98.*

Sec. 1. The following definitions apply throughout this chapter:

(1) "Limited criminal history" means information with respect to any arrest, indictment, information, or other formal criminal charge, which must include a disposition. However, information about any arrest, indictment, information, or other formal criminal charge which occurred less than one (1) year before the date of a request shall be considered a limited criminal history even if no disposition has been entered.

(2) "Council" means the security and privacy council created under section 11 of this chapter.

(3) "Criminal history data" means information collected by criminal justice agencies, the United States Department of Justice for the department's information system, or individuals. The term consists of the following:

(A) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.

(B) Information regarding an offender (as defined in IC 5-2-12-4) obtained through sex offender registration under IC 5-2-12.

(C) Any disposition, including sentencing, and correctional system intake, transfer, and release.

(4) "Criminal justice agency" means any agency or department of any level of government whose principal function is the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders, the location of parents with child support obligations under 42 U.S.C. 653, the licensing and regulating of riverboat gambling operations, or the licensing and regulating of pari-mutuel horse racing operations. The term includes the Medicaid fraud control unit for the purpose of investigating offenses involving Medicaid.

(5) "Department" means the state police department.

(6) "Disposition" means information disclosing that criminal proceedings have been concluded or indefinitely postponed.

(7) "Inspection" means visual perusal and includes the right to make memoranda abstracts of the information.

(8) "Institute" means the Indiana criminal justice institute established under IC 5-2-6.

(9) "Law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

(10) "Release" means the furnishing of a copy, or an edited copy, of criminal history data.

(11) "Reportable offenses" means all felonies and those Class A misdemeanors which the superintendent may designate.

(12) "Request" means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:

(A) reasonably ensures the identification of the subject of the inquiry; and

(B) contains a statement of the purpose for which the information is requested.

(13) "Unidentified person" means a deceased or mentally incapacitated person whose identity is unknown.

*As amended by P.L.38-1991, SEC.1; P.L.45-1993, SEC.2; P.L.10-1994, SEC.3; P.L.20-1994, SEC.1; P.L.11-1994, SEC.2; P.L.12-1994, SEC.2; P.L.2-1995, SEC.13; P.L.50-1995, SEC.13.*

*Note: See also following version of this section, effective 7-1-98.*

**5-2-5-1 Definitions (later effective date)**

*Note: This version of section effective 7-1-98. See also preceding version of this section, effective until 7-1-98.*

Sec. 1. The following definitions apply throughout this chapter:

(1) "Limited criminal history" means information with respect to any arrest, indictment, information, or other formal criminal charge, which must include a disposition. However, information about any arrest, indictment, information, or other formal criminal charge which occurred less than one (1) year before the date of a request shall be considered a limited criminal history even if no disposition has been entered.

(2) "Council" means the security and privacy council created under section 11 of this chapter.

(3) "Criminal history data" means information collected by criminal justice agencies, the United States Department of Justice for the department's information system, or individuals. The term consists of the following:

(A) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.

(B) Information regarding an offender (as defined in IC 5-2-12-4) obtained through sex offender registration under IC 5-2-12.

(C) Any disposition, including sentencing, and correctional system intake, transfer, and release.

(4) "Criminal justice agency" means any agency or department of any level of government whose principal function is the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders, the location of parents

with child support obligations under 42 U.S.C. 653, the licensing and regulating of riverboat gambling operations, or the licensing and regulating of pari-mutuel horse racing operations. The term includes the Medicaid fraud control unit for the purpose of investigating offenses involving Medicaid.

- (5) "Department" means the state police department.
- (6) "Disposition" means information disclosing that criminal proceedings have been concluded or indefinitely postponed.
- (7) "Inspection" means visual perusal and includes the right to make memoranda abstracts of the information.
- (8) "Institute" means the Indiana criminal justice institute established under IC 5-2-6.
- (9) "Law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.
- (10) "Protective order" has the meaning set forth in IC 5-2-9-2.1.
- (11) "Release" means the furnishing of a copy, or an edited copy, of criminal history data.
- (12) "Reportable offenses" means all felonies and those Class A misdemeanors which the superintendent may designate.
- (13) "Request" means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:
  - (A) reasonably ensures the identification of the subject of the inquiry; and
  - (B) contains a statement of the purpose for which the information is requested.
- (14) "Unidentified person" means a deceased or mentally incapacitated person whose identity is unknown.

*As amended by P.L.38-1991, SEC.1; P.L.45-1993, SEC.2; P.L.10-1994, SEC.3; P.L.20-1994, SEC.1; P.L.11-1994, SEC.2; P.L.12-1994, SEC.2; P.L.2-1995, SEC.13; P.L.50-1995, SEC.13; P.L.31-1996, SEC.1 and P.L.32-1996, SEC.1.*

*Note: See also preceding version of this section, effective until 7-1-98.*

**5-2-5-4 Release of data to criminal justice agencies**

Sec. 4. (a) Any criminal justice agency shall provide criminal history data to any other criminal justice agency, upon request, and may receive criminal history data from any other criminal justice agency.

(b) When the request is made by an agency doing a presentence investigation, the information shall be transmitted not later than seven (7) days after the date that the request is received.

(c) The department shall provide criminal history data to any criminal justice agency making a request if the council determines that the agency has complied with this chapter.

*As amended by P.L.38-1991, SEC.2.*

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### **5-2-5-5 Release of data to noncriminal justice organizations or to individuals; national crime information center data restricted; misuse; misdemeanor**

Sec. 5. (a) Except as provided in subsection (b), on request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has applied for a license and criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that his rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;
- (10) is being sought by the parent locator service of the child support bureau of the division of family and children; or
- (11) has been convicted of any of the following:
  - (A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
  - (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
  - (C) Child molesting (IC 35-42-4-3).
  - (D) Child exploitation (IC 35-42-4-4(b)).
  - (E) Possession of child pornography (IC 35-42-4-4(c)).
  - (F) Vicarious sexual gratification (IC 35-42-4-5).
  - (G) Child solicitation (IC 35-42-4-6).
  - (H) Child seduction (IC 35-42-4-7).
  - (I) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for the purpose of employment and licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

*As amended by P.L.24-1991, SEC.2; P.L.2-1992, SEC.46; P.L.4-1993, SEC.5; P.L.5-1993, SEC.16; P.L.11-1994, SEC.3; P.L.59-1995, SEC.1.*



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### **5-2-5-7 Requests for data; duties of law enforcement agency and department**

Sec. 7. (a) Except as provided in subsection (c), on request for release or inspection of a limited criminal history, law enforcement agencies may and the department shall do the following:

- (1) Require a form, provided by them, to be completed. This form shall be maintained for a period of two (2) years and shall be available to the record subject upon request.
- (2) Collect a three dollar (\$3) fee to defray the cost of processing a request for inspection.
- (3) Collect a seven dollar (\$7) fee to defray the cost of processing a request for release. However, law enforcement agencies and the department may not charge the fee for requests received from the parent locator service of the child support bureau of the division of family and children.

(b) Law enforcement agencies and the department shall edit information so that the only information released or inspected is information which:

- (1) has been requested; and
- (2) is limited criminal history information.

(c) The fee required under subsection (a) shall be waived if the request is from the institute for conviction information that will be used to establish or update the sex offender registry under IC 5-2-12.

*As amended by P.L.2-1992, SEC.47; P.L.11-1994, SEC.4.*

### **5-2-5-12 Indiana data and communication system; national crime information center's missing, wanted and unidentified person files; entry of information**

*Note: This version of section effective until 7-1-98. See also following version of this section, effective 7-1-98.*

Sec. 12. (a) On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

- (1) All information concerning stolen or recovered property, including:
  - (A) motor vehicles;
  - (B) firearms;
  - (C) securities;
  - (D) boats;
  - (E) license plates; and
  - (F) other stolen or recovered property.
- (2) All information concerning fugitives charged with a crime, including information concerning extradition.

(3) All information concerning runaways, missing and unidentified persons, and missing children (as defined in IC 10-1-7-2), including information concerning the release of such persons to the custody of a parent or guardian.

(b) On a daily basis, all law enforcement agencies shall:

- (1) enter all information concerning missing children (as defined in IC 10-1-7-2) into the National Crime Information Center's Missing Person File;
- (2) enter into the National Crime Information Center's Wanted Person File all information concerning warrants issued for a person who allegedly abducted or unlawfully retained a missing child; and
- (3) enter all information concerning unidentified persons into the National Crime Information Center's Unidentified Person File.

*As amended by P.L.12-1994, SEC.3.*

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**5-2-5-12 Indiana data and communication system; national crime information center's missing, wanted, and unidentified person files; entry of information; removal of protective order (later effective date)**

*Note: This version of section effective 7-1-98. See also preceding version of this section, effective until 7-1-98.*

Sec. 12. (a) On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

- (1) All information concerning stolen or recovered property, including:
  - (A) motor vehicles;
  - (B) firearms;
  - (C) securities;
  - (D) boats;
  - (E) license plates; and
  - (F) other stolen or recovered property.
- (2) All information concerning fugitives charged with a crime, including information concerning extradition.
- (3) All information concerning runaways, missing and unidentified persons, and missing children (as defined in IC 10-1-7-2), including information concerning the release of such persons to the custody of a parent or guardian.
- (4) Information contained in a protective order, including any modifications or extensions issued by a court and filed with a law enforcement agency as required in IC 5-2-9-6(f).

(b) On a daily basis, all law enforcement agencies shall:

- (1) enter all information concerning missing children (as defined in IC 10-1-7-2) into the National Crime Information Center's Missing Person File;
  - (2) enter into the National Crime Information Center's Wanted Person File all information concerning warrants issued for a person who allegedly abducted or unlawfully retained a missing child; and
  - (3) enter all information concerning unidentified persons into the National Crime Information Center's Unidentified Person File.
- (c) If a protective order is removed from a depository established under IC 5-2-9, the law enforcement agency responsible for the depository shall delete the information entered under subsection (a)(4) from the Indiana data and communication system (IDACS) computer.

*As amended by P.L.12-1994, SEC.3; P.L.31-1996, SEC.2 and P.L.32-1996, SEC.2.*

**5-2-5-13 Fees; nonprofit organizations; family and children division; family and children offices**

Sec. 13. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization that:

- (1) has been in existence for at least ten (10) years; and
- (2) either:
  - (A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization; or
  - (B) is a home health agency licensed under IC 16-27-1.

(b) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

*As amended by P.L.34-1991, SEC.10; P.L.9-1991, SEC.30; P.L.2-1992, SEC.48; P.L.20-1992, SEC.2; P.L.81-1992, SEC.2; P.L.2-1993, SEC.42; P.L.1-1993, SEC.23; P.L.4-1993, SEC.6; P.L.5-1993, SEC.17.*

CHAPTER 3  
ACCESS TO PUBLIC RECORDS

SECTION.	SECTION.
5-14-3-1. Public policy — Construction of chapter.	listing suspected crimes, accidents or complaints.
5-14-3-2. Definitions.	5-14-3-6. Records containing disclosable and nondisclosable information.
5-14-3-3. Right of inspection of public records.	5-14-3-7. Protection of records — Regulation of interference with regular discharge of agency functions.
5-14-3-4. Exceptions to IC 5-14-3-3 — Time limitation on confidentiality of records — Destruction of public records.	5-14-3-8. Copying fee.
5-14-3-5. Availability of information where person is arrested or jailed, or agency maintains daily record	5-14-3-9. Denial of disclosure — Action to compel inspection or copying of record.

**5-14-3-1. Public policy — Construction of chapter.** — A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record. [IC 5-14-3-1, as added by P.L.19-1983, § 6.]

**5-14-3-2. Definitions.** — As used in this chapter:

"Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, and reproducing by any other means.

"Inspect" includes the right to manually transcribe and make notes, abstracts, or memoranda.

"Investigatory record" means information compiled in the course of the investigation of a crime.

"Patient" has the meaning set out in IC 16-4-8-1.

"Person" means an individual, corporation, partnership, unincorporated association, or governmental entity.

"Provider" has the meaning set out in IC 16-4-8-1.

"Public agency" means:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, or legislative power of the state;

**5-2-5-12. Daily IDACS computer entries.** — On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

- (1) All information concerning stolen or recovered property, including:
  - (A) Motor vehicles;
  - (B) Firearms;
  - (C) Securities;
  - (D) Boats;
  - (E) License plates; and
  - (F) Other stolen or recovered property.
- (2) All information concerning fugitives charged with a crime, including information concerning extradition.
- (3) All information concerning runaways, missing persons, and missing children (as defined in IC 10-1-7-2), including information concerning the release of such persons to the custody of a parent or guardian. [P.L.35-1984, § 2; P.L.49-1989, § 1.]

**5-2-5-13. Exceptions to charging fees.** — (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a not-for-profit organization that:

- (1) Has been in existence for at least ten (10) years; and
- (2) Either:
  - (A) Has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization; or
  - (B) Is a home health agency licensed under IC 16-10.

(b) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the state welfare department or a county welfare department if the request is made as part of a background investigation of the following:

- (1) An applicant for licensing as a day care home under IC 12-3-2-3.1.
  - (2) A day care home licensee under IC 12-3-2-3.1.
  - (3) An applicant for licensing as a foster home under IC 12-3-2-3.6.
  - (4) A foster home licensee under IC 12-3-2-3.6.
- [P.L.50-1989, § 1.]

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(2) Any political subdivision as defined by IC 36-1-2-13 or other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power;

(3) Any entity or office that is subject to:

(A) Budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or

(B) A general audit by the state board of accounts;

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities;

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff; and

(6) Any law enforcement agency, which means an agency or department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcoholic beverage commission, and conservation officers of the department of natural resources.

However, "public agency" does not include a branch office operated by a manager appointed under IC 9-1-1-6.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, or any other material, regardless of form or characteristics.

"Standard-sized documents" include all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half inches [8 1/2"] by eleven inches [11"] or eight and one-half inches [8 1/2"] by fourteen inches [14"].

"Trade secret" has the meaning set forth in IC 24-2-3-2. [IC 5-14-3-2, as added by P.L.19-1983, § 6.]

**5-14-3-3. Right of inspection of public records.** — (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the public agency, except as provided in section 4 [5-14-3-4] of this chapter. A request for inspection or copying must identify with reasonable particularity the record being requested.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). [IC 5-14-3-3, as added by P.L.19-1983, § 6.]

**5-14-3-4. Exceptions to IC 5-14-3-3 — Time limitation on confidentiality of records — Destruction of public records [effective January 1, 1984].** — (a) The following public records are excepted from section 3 [5-14-3-3] of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

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- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research (including actual research documents) conducted under the auspices of an institution of higher education, including information:
  - (A) Concerning any negotiations made with respect to the research; and
  - (B) Received from another party involved in the research.
- (b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:
  - (1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 [5-14-3-5] of this chapter.
  - (2) The work product of an attorney representing (pursuant to state employment or an appointment by a public agency):
    - (A) A public agency;
    - (B) The state; or
    - (C) An individual.
  - (3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.
  - (4) Scores of tests or license examinations if the person is identified by name and has not consented to the release of his scores.
  - (5) Records relating to negotiations between the department of commerce, the employment development commission, the film commission, the corporation for science and technology, or economic development commissions with industrial, research, or commercial prospects while negotiations are in progress.
  - (6) Records that contain intraagency or interagency advisory or deliberative material that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decisionmaking.
  - (7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.
  - (8) Personnel files of public employees, except for:
    - (A) The name, compensation, application for employment or appointment, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
    - (B) Information relating to the status of any formal charges against the employee; and
    - (C) Information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative.

- (9) Patient medical records and charts created by a provider, if the patient gives his written consent, and minutes or records of hospital medical staff meetings.
- (10) Administrative or technical information that would jeopardize a recordkeeping or security system.
- (11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it.

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(12) Records specifically prepared for discussion, or developed during discussion in an executive session under IC 5-14-1.5-6.

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if the donor requires nondisclosure of his identity as a condition of making the gift.

(16) Library records which can be used to identify any library patron.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five [75] years after the creation of that record.

(f) Notwithstanding subsection (e) of this section and section 7 [5-14-3-7] of this chapter, public records may be destroyed:

(1) In accordance with record retention schedules under IC 5-15; or

(2) In the ordinary course of business if not contained in a record retention schedule under IC 5-15. [IC 5-14-3-4, as added by P.L.19-1983, § 6; P.L.57-1983, § 1.]

**5-14-3-5. Availability of information where person is arrested or jailed, or agency maintains daily record listing suspected crimes, accidents or complaints.** — (a) If a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

(1) Information that identifies the person including his name, age, and address.

(2) Information concerning any charges on which the arrest or summons is based.

(3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:

(A) Time and location of the arrest or the issuance of the summons;

(B) Investigating or arresting officer (other than an undercover officer or agent); and

(C) Investigating or arresting law enforcement agency.

(b) If a person is received in a jail or lock-up, the following information shall be made available for inspection and copying:

(1) Information that identifies the person including his name, age, and address.

(2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on whose order the person is being held.

(3) The time and date that the person was received and the time and date of his discharge or transfer.

(4) The amount of the person's bail or bond, if it has been fixed.

(c) If an agency maintains a daily log or record that lists suspected crimes, accidents, or complaints, the following information shall be made available for inspection and copying:

(1) The time, substance, and location of all complaints or requests for assistance received by the agency.

(2) The time and nature of the agency's response to all complaints or requests for assistance.

(3) If the incident involves an alleged crime or infraction:

(A) The time, date, and location of occurrence;

(B) The name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4;

(C) The factual circumstances surrounding the incident; and

(D) A general description of any injuries, property, or weapons involved.

(d) This chapter does not affect IC 5-2-4, IC 5-2-5, or IC 5-11-1-9. [IC 5-14-3-5, as added by P.L.19-1983, § 6.]

**5-14-3-6. Records containing disclosable and nondisclosable information.** — If a public record contains disclosable and nondisclosable information, the public agency shall separate the material that may be disclosed and make it available for inspection and copying. [IC 5-14-3-6, as added by P.L.19-1983, § 6.]

**5-14-3-7. Protection of records — Regulation of interference with regular discharge of agency functions.** — A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. However, this section does not operate to deny to any person the rights secured by section 3 [5-14-3-3] of this chapter. [IC 5-14-3-7, as added by P.L.19-1983, § 6.]

**5-14-3-8. Copying fee.** — (a) For the purposes of this section, "state agency" has the meaning set forth in IC 4-13-1-1.

(b) A public agency may not charge any fee under this chapter:

(1) To inspect a public record; or

(2) To search for, examine, or review a record to determine whether the record may be disclosed.

(c) The department of administration shall establish a uniform copying fee for the copying of one [1] page of a standard-sized document by state agencies. The fee may not exceed the average cost of copying records by state agencies or ten cents [10¢] per page, whichever is greater. A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents.

(d) A public agency that is not a state agency may establish a copying fee schedule. The fee may not exceed the actual cost of copying the record by the agency.

(e) If:



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(1) A person is entitled to a copy of a public record under this chapter; and  
(2) The public agency which is in possession of the record has reasonable access to a machine capable of mechanically reproducing the public record; the public agency must provide at least one [1] copy of the public record to the person. However, if a public agency does not have reasonable access to such a machine, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance.

(f) Notwithstanding subsections (b), (c), and (d), a public agency shall collect any copying or search fee that is specified by statute or is ordered by a court. [IC 5-14-3-8, as added by P.L.19-1983, § 6.]

**5-14-3-9. Denial of disclosure — Action to compel inspection or copying of record.** — (a) A denial of disclosure by a public agency occurs when:

(1) The person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) Twenty-four [24] hours after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;

whichever occurs first.

(b) A person who has been denied his right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit him to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue that a request for release of the public record has been denied. Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied his right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

(c) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) [5-14-3-4(b)] of this chapter, the public agency meets its burden of proof under this subsection by proving that the record falls within one [1] of the categories of exempted records under section 4(b) of this chapter. The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.

(d) In any action filed under this section, a court may award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) The plaintiff substantially prevails and the court finds the defendant's violation was knowing or intentional; or

(2) The defendant substantially prevails and the court finds the action was frivolous or vexatious. [IC 5-14-3-9, as added by P.L.19-1983, § 6.]

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## Bureau of Criminal Identification and Investigation

### Chapter 1

**10-1-1-12 [47-857]. Bureau of criminal identification and investigation — Duties — Records.** — The bureau of criminal identification and investigation shall maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The bureau shall obtain from whatever source procurable, and shall file and preserve for record, plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements, and other information about all persons who commit:

(1) Felonies under the Indiana Code; or

(2) Class A misdemeanors under IC 35 [35-1-4-1 — 35-50-6-6].

The bureau may also obtain like information about persons who violate the military or criminal laws of the United States, or who commit a crime in any other state, country, district, or province which, if committed within this state, would be a felony. The bureau shall make a complete and systematic record and index of all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison. [Acts 1945, ch. 344, § 12, p. 1622; 1978, P.L. 2, § 1004.]

**10-1-1-13 [47-858]. Cooperation with sheriffs.** — The bureau shall assist the respective county sheriffs of the state in the establishment of a system for making identification of criminals in each county, and shall give the respective sheriffs such assistance and instruction in the operation and use of such system as may be requested or as may be deemed necessary. The bureau may likewise give such instruction, advice and assistance to chiefs of police and other peace officers as may be deemed wise for the purpose of

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securing the establishment and operation of local identification systems. It shall be the duty of the respective county sheriffs, chiefs of police and other peace officers to cooperate with the bureau in establishing and maintaining an efficient and coordinating system of identification. [Acts 1945, ch. 344, § 13, p. 1622.]

**10-1-1-14 [47-859]. Cooperation with other forces.** — The bureau of criminal identification and investigation shall cooperate with similar bureaus or agencies of the other states, and with the national bureau in the department of justice in Washington, District of Columbia, for the purpose of developing and carrying on a complete interstate, national and international system of criminal identification and investigation. [Acts 1945, ch. 344, § 14, p. 1622.]

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**10-1-1-15 [47-860]. Duty of penal institutions to furnish information.** — It shall be the duty of the wardens of the state prison and the state reformatory, superintendent of the Indiana woman's prison and superintendent of the Indiana state farm, and of the chief administrative officer of every penal institution of the state, to make and furnish to the bureau, in such manner and according to such methods as the bureau may prescribe, photographs, fingerprints, modus operandi statements and other required identification of all prisoners who are confined in the respective institutions, at the time of the taking effect of this act [10-1-1-1 — 10-1-1-24], or who are hereafter confined therein. [Acts 1945, ch. 344, § 15, p. 1622.]

**10-1-1-16 [47-861]. Cooperation with forces of police.** — The bureau shall cooperate with the respective sheriffs, constables, marshals, police and other peace officers of the state in the detection of crime and the apprehension of criminals throughout the state and shall, on the direction of the governor, conduct such investigations as may be deemed necessary to secure the evidence which may be essential to the conviction of alleged violators of the criminal laws of the state. [Acts 1945, ch. 344, § 16, p. 1622.]

**10-1-1-17 [47-862]. Assistance to prosecuting attorney.** — The director is hereby authorized to assist any prosecuting attorney in the prosecution of any criminal case which may, in his judgment, require such cooperation. [Acts 1945, ch. 344, § 17, p. 1622.]

**10-1-1-18 [47-863]. Duty of local officers to furnish information.** — Every law enforcement officer shall furnish to the bureau, upon request, fingerprints, photographs, comprehensive descriptions, and such other data as to identification as the bureau may require of all persons who are arrested and who, in the judgment of the director of the bureau or the officer making the arrest, are persons wanted for commission of a felony. [Acts 1945, ch. 344, § 18, p. 1622; 1978, P.L. 2, § 1005.]

**10-1-1-19 [47-864]. Rules and regulations.** — The director of the bureau, with the approval of the superintendent and the board, shall make and promulgate such rules and regulations from time to time as may be found necessary and proper for the efficient operation of the bureau and the successful administration of the provisions of this act [10-1-1-1 — 10-1-1-24]. [Acts 1945, ch. 344, § 19, p. 1622.]

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10-1-1-20 [47-865]. Fingerprints and identification marks — Authority to take. — The members of the department shall take fingerprints, and such other identification data as shall be prescribed by the superintendent, of persons taken into custody for felonies, but the members may, if they deem it advisable, take the fingerprints and other data of persons taken into custody for other offenses. They shall promptly transmit and file the fingerprints and other data. [Acts 1945, ch. 344, § 320, p. 1622; 1978, P.L. 2, § 1006.]

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10-1-1-21 [47-866]. Exchange of information. — The employees of the department shall cooperate and exchange information with any other department or authority of the state or with other police forces, both within this state and outside it, with federal police forces, toward the end of achieving greater success in preventing and detecting crimes and apprehending criminals. [Acts 1945, ch. 344, § 21, p. 1622.]

### Chapter 2.5

#### CRIMINAL JUSTICE DATA DIVISION

SECTION.		SECTION.	
10-1-2.5-1.	Criminal justice data division—Creation.	10-1-2.5-7.	Rules and regulations — Criminal justice advisory committee — Composition of committee — Appointment of members.
10-1-2.5-2.	Purposes of division.	10-1-2.5-8.	Annual report — Periodic report.
10-1-2.5-3.	Duties — Reports — Nature of data to be collected.	10-1-2.5-9.	Neglect or refusal to comply with requests for data — Denial of benefits of system — Penalties for fraudulent return.
10-1-2.5-4.	Duties of agencies required to report to division — Relief from liability.		
10-1-2.5-5.	Division's equipment to be compatible with similar agencies.		
10-1-2.5-6.	Administrative advice from other agencies.		

10-1-2.5-1 [47-880]. Criminal justice data division—Creation.— A criminal justice data division is hereby established within the Indiana state police department. Such division shall be under the administrative control and jurisdiction of the superintendent of state police who is hereby empowered to staff it with such personnel as may be necessary for its efficient operation, and who shall also be empowered to adopt and promulgate administrative rules and regulations to carry out the purposes of this chapter [10-1-2.5-1—10-1-2.5-9]. [IC 1971, 10-1-2.5-1, as added by Acts 1971, P. L. 146, § 1, p. 612.]

Title of Act. The title of Acts 1971, P. L. 146, reads: "An act to amend IC 1971, 10-1, by adding a new chapter creating a criminal justice data division and providing for its control, administration and operation." In force September 2, 1971.

10-1-2.5-2 [47-881]. Purposes of division.—It shall be the purpose of the criminal justice data division to utilize the most current equipment, methods and systems for the rapid storage and retrieval of criminal justice data necessary for an effective criminal justice system within the state of Indiana. The superintendent shall be authorized to hire consultants to advise him in the most efficient means of establishing, funding and maintaining said criminal justice data system with the ultimate purpose in mind of extending the services and benefits of such a system to all governmental agencies of the state and its political subdivisions having a need for such data. In addition, the criminal justice data division shall be organized and administered to fulfill the following specific purposes:

- (1) To inform the public and responsible governmental officials as to the nature of the crime problem, its magnitude and its trend over time;
- (2) To measure the effects of prevention and deterrence programs, ranging from community action to police patrol;
- (3) To find out who commits crimes by age, sex, family status, income, ethnic and residential background, and other social attributes, in order to find the proper focus of crime prevention programs;

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(4) To measure the workload and effectiveness of all agencies of the criminal justice system, both individually and as an integrated system;

(5) To analyze the factors contributing to success and failure of probation, parole and other correctional alternatives for various kinds of offenders;

(6) To provide criminal justice agencies with comparative norms of performance;

(7) To furnish baseline data for research;

(8) To compute the costs of crime in terms of economic injury inflicted upon communities and individuals, as well as assess the direct public expenditures by criminal justice agencies;

(9) To project expected crime rates and their consequences into the future for more enlightened government planning. [IC 1971, 10-1-2.5-2, as added by Acts 1971, P. L. 146, § 1, p. 612.]

**10-1-2.5-3 [47-882]. Duties—Reports—Nature of data to be collected.**—The criminal justice data division, under the supervision and direction of the superintendent, and in accordance with the rules and regulations promulgated pursuant to this chapter [10-1-2.5-1—10-1-2.5-9] shall: (1) collect data necessary for the accomplishment of the purposes of this chapter from all persons and agencies mentioned in section 4 [10-1-2.5-4]; (2) prepare and distribute to all such persons and agencies, forms to be used in reporting data to the division, these forms also to provide for items of information needed by federal bureaus or departments engaged in the development of national criminal statistics; (3) prescribe the form and content of records to be kept by such persons and agencies to insure the correct reporting of data to the division; (4) instruct such persons and agencies in the installation, maintenance and use of records and equipment and in the manner of reporting to the division; (5) tabulate, analyze and interpret the data collected; (6) supply data, upon request, to federal bureaus of departments engaged in collecting and analyzing national criminal statistics; and (7) annually present to the governor, on or before July 1, a printed report containing the criminal statistics of the preceding calendar year; and present such other times as the superintendent may deem necessary or the governor may request, reports on public aspects of criminal statistics in a sufficiently general distribution for public enlightenment.

No data may be obtained by the division under the provisions of this chapter except that which is a public record and all laws regulating privacy and/or restricting use of such data shall be applicable to any data collected.

The criminal justice data division may accept data and reports from agencies other than those required to report herein when such data and reports are consistent with the purpose of this chapter. [IC 1971, 10-1-2.5-3, as added by Acts 1971, P. L. 146, § 1, p. 612.]

**10-1-2.5-4 [47-883]. Duties of agencies required to report to division—Relief from liability.**—When requested by the division, any public official or public agency dealing with crime or criminals or with delinquency or delinquents shall: (1) install and maintain records

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needed for reporting data required by the division; (2) report to the division, as and when prescribed, all data requested; (3) give the accredited agents of the division access to such records for the purpose of inspection; and (4) cooperate with the division to the end that its duties may be properly performed.

No official required under this chapter [10-1-2.5-1—10-1-2.5-9] to furnish reports, information or statistics to the criminal justice data division and no person employed by such official, shall be subject to liability in any action arising out of his having furnished such information in a manner as may be required by this chapter or the rules and regulations promulgated pursuant thereto. [IC 1971, 10-1-2.5-4, as added by Acts 1971, P. L. 146, § 1, p. 612.]

**10-1-2.5-5 [47-884]. Division's equipment to be compatible with similar agencies.**—Insofar as is practicable the equipment methods and systems used by the criminal justice data division shall be compatible with those used by similar agencies in other states and the federal government so that data necessary for interstate, national and international criminal justice may be readily available. [IC 1971, 10-1-2.5-5, as added by Acts 1971, P. L. 146, § 1, p. 612.]

**10-1-2.5-6 [47-885]. Administrative advice from other agencies.**—In the administration of the criminal justice data division created by this chapter [10-1-2.5-1—10-1-2.5-9], the superintendent shall have the advice and assistance of the criminal justice commission and advisory council and the criminal justice planning agency, as created by law. [IC 1971, 10-1-2.5-6, as added by Acts 1971, P. L. 146, § 1, p. 612.]

**10-1-2.5-7 [47-886]. Rules and regulations—Criminal justice advisory committee—Composition of committee—Appointment of members.**—The superintendent shall promulgate rules and regulations necessary to accomplish the purposes of this chapter [10-1-2.5-1—10-1-2.5-9] and in the formulation of such rules and regulations, he shall have the advice and assistance of a criminal justice advisory committee which shall consist of the following persons or their designated representatives: the superintendent of state police who shall act as chairman; the attorney-general; the executive director of the criminal justice planning agency; the commissioner of corrections; one [1] county sheriff serving in his second or subsequent term of office; one [1] chief of police with two [2] or more years experience as chief; one [1] prosecuting attorney in his second or subsequent term of office; one [1] judge of a court of general criminal jurisdiction; the executive director of the law enforcement training academy; and a criminologist or forensic scientist. All members of said advisory council shall be appointed by the governor on a nonpartisan basis and shall serve at the pleasure of the governor. Such service shall be without compensation except per diem as provided by law. It shall be the duty of said committee to meet as often as is deemed necessary by the superintendent, for the purpose of formulating or revising rules and regulations for the statewide operation of the criminal justice data division. [IC 1971, 10-1-2.5-7, as added by Acts 1971, P. L. 146, § 1, p. 612.]

**10-1-2.5-8 [47-887]. Annual report—Periodic report.**—The annual report of the division shall be organized, insofar as is practicable, so as



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to reflect the purposes enumerated in sec. 2 [10-1-2.5-2]. The superintendent shall so interpret such statistics and so present the annual report that it may be of value in guiding the legislature and those in charge of the apprehension, prosecuting and treatment of criminals and delinquents, or those concerned with the prevention of crime and delinquency. In addition to the annual report required herein, the division shall, within the limits of time and manpower, comply with all reasonable requests for periodic reports and analysis of data as shall be made by any officer or agency required to report data, and which is necessary for the proper performance of the duties of such office or agency. [IC 1971, 10-1-2.5-8, as added by Acts 1971, P. L. 146, § 1, p. 612.]

**10-1-2.5-9 [47-888]. Neglect or refusal to comply with requests for data—Denial of benefits of system—Penalties for fraudulent return.—** It is the intent of this chapter [10-1-2.5-1—10-1-2.5-9] to provide information and data with reference to the total criminal justice system that will be equally beneficial to all officers, agencies and components of said system so that each may better perform his or its respective duties for the over-all improvement of criminal justice. Rules and regulations adopted pursuant to this chapter shall be drafted so as to express this intent. Any public official required by said rules and regulations to report to the division, who neglects or wilfully refuses to comply with the requests of the superintendent for such information or data, or with the governing records and systems and equipment and their maintenance shall, at the discretion of the director of the criminal justice planning agency, be denied the benefits of the system until meeting minimum compliance with said regulations. Any official who knowingly makes, or causes to be made, a fraudulent return of information to the division, shall be subject to the penalties for the crime of official misconduct or perjury, as applicable to the act committed. [IC 1971, 10-1-2.5-9, as added by Acts 1971, P. L. 146, § 1, p. 612.]

## CHAPTER 6

### FAIR INFORMATION PRACTICES

#### SECTION.

4-1-6-1. Definitions.

4-1-6-7. Annual report of state agency.

4-1-6-8. Public access to information —  
Confidential files — Restrictions upon public access as condition of gift.

4-1-6-8.5. Confidential classification to be

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designated on document —  
Interagency treatment of  
confidential information.

4-1-6-8.6. Conditions for access to certain  
confidential records —  
Improper disclosure prohibited.

**4-1-6-1. Definitions [effective January 1, 1984]. —** As used in this chapter, the term:

(a) "Personal information system" means any recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

(b) "Personal information" means any information that describes, locates, or indexes anything about an individual or that affords a basis for inferring personal characteristics about an individual including, but not limited to, his education, financial transactions, medical history, criminal or employment records, finger and voice prints, photographs, or his presence, registration, or membership in an organization or activity or admission to an institution.

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(c) "Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in a personal information system.

(d) "State agency" means every agency, board, commission, department, bureau, or other entity of the administrative branch of Indiana state government, except those which are the responsibility of the auditor of state, treasurer of state, secretary of state, attorney general, superintendent of public instruction, and excepting the department of state police and the state-supported institutions of higher education.

(e) "Confidential" means information which has been so designated by statute or by promulgated rule or regulation based on statutory authority. [IC 4-1-6-1, as added by Acts 1977, P.L. 21, § 1; 1978, P.L. 10, § 1; P.L. 19-1983, § 1.]

**4-1-6-2. Collection of personal information by state agencies — Records required. —** On or before July 1, 1978, any state agency maintaining a personal information system shall:

(a) Collect, maintain, and use only that personal information as is relevant and necessary to accomplish a statutory purpose of the agency;

(b) Collect information to the greatest extent practicable from the data subject directly when the information may result in adverse determinations about an individual's rights, benefits and privileges under federal or state programs;

(c) Collect no personal information concerning in any way the political or religious beliefs, affiliations and activities of an individual unless expressly authorized by law;

(d) Assure that personal information maintained or disseminated from the system is, to the maximum extent possible, accurate, complete, timely, and relevant to the needs of the state agency;

(e) Inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what statutory authority it is solicited, what uses the agency will make of it, what penalties and specific consequences for the individual, which are known to the agency, are likely to result from nondisclosure, whether the information will be treated as a matter of public record or as confidential information, and what rules of confidentiality will govern the information;

(f) Insofar as possible segregate information of a confidential nature from that which is a matter of public record; and, pursuant to statutory authority, establish confidentiality requirements and appropriate access controls for all categories of personal information contained in the system;

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(g) Maintain a list of all persons or organizations having regular access to personal information which is not a matter of public record in the information system;

(h) Maintain a complete and accurate record of every access to personal information in a system which is not a matter of public record by any person or organization not having regular access authority;

(i) Refrain from preparing lists of the names and addresses of individuals for commercial or charitable solicitation purposes except as expressly authorized by law;

(j) Make reasonable efforts to furnish prior notice to an individual before any personal information on such individual is made available to any person under compulsory legal process;

(k) Establish rules and procedures to assure compliance with this chapter [4-1-6-1 — 4-1-6-9] and instruct each of its employees having any responsibility or function in the design, development, operation or maintenance of such system or use of any personal information contained therein of each requirement of this chapter and of each rule and procedure adopted by the agency to assure compliance with this chapter;

(l) Establish appropriate administrative, technical and physical safeguards to insure the security of the information system and to protect against any anticipated threats or hazards to their security or integrity. [IC 4-1-6-2, as added by Acts 1977, P. L. 21, § 1, p. —.]

**4-1-6-3. Disclosure of information — Procedure.** — Unless otherwise prohibited by law, any state agency that maintains a personal information system shall, upon request and proper identification of any data subject, or his authorized agent, grant such subject or agent the right to inspect and to receive at reasonable, standard charges for document search and duplication, in a form comprehensible to such individual or agent:

(a) All personal information about the data subject, unless otherwise provided by statute, whether such information is a matter of public record or maintained on a confidential basis, except in the case of medical and psychological records, where such records shall, upon written authorization of the data subject, be given to a physician or psychologist designated by the data subject;

(b) The nature and sources of the personal information, except where the confidentiality of such sources is required by statute; and

(c) The names and addresses of any recipients, other than those with regular access authority, of personal information of a confidential nature about the data subject, and the date, nature and purpose of such disclosure. [IC 4-1-6-3, as added by Acts 1977, P. L. 21, § 1, p. —.]

**4-1-6-4. Disclosure of information — Business hours — Fees for copies.** — An agency shall make the disclosures to data subjects required under this chapter [4-1-6-1 — 4-1-6-9] during regular business hours. Copies of the documents containing the personal information sought by the data subject shall be furnished to him or his representative at reasonable, standard charges for document search and duplication. [IC 4-1-6-4, as added by Acts 1977, P. L. 21, § 1, p. —.]

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**4-1-6-5. Correction of file — Notice to past recipients of information.** — If the data subject gives notice that he wishes to challenge, correct or explain information about him in the personal information system, the following minimum procedures shall be followed:

(a) The agency maintaining the information system shall investigate and record the current status of that personal information;

(b) If, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained, it shall be promptly corrected or deleted;

(c) If the investigation does not resolve the dispute, the data subject may file a statement of not more than two hundred [200] words setting forth his position;

(d) Whenever a statement of dispute is filed, the agency maintaining the data system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly mark that it is disputed and supply the statement of the data subject along with the information;

(e) The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request;

(f) Following any correction or deletion of personal information the agency shall, at the request of the data subject, furnish to past recipients notification delivered to their last known address that the item has been deleted or corrected and shall require said recipients to acknowledge receipt of such notification and furnish the data subject the names and last known addresses of all past recipients of the uncorrected or undeleted information. [IC 4-1-6-5, as added by Acts 1977, P. L. 21, § 1, p. —.]

**4-1-6-6. Rights, benefits or privileges preserved.** — The securing by any individual of any confidential information which such individuals may obtain through the exercise of any right secured under the provisions of this chapter [4-1-6-1 — 4-1-6-9] shall not condition the granting or withholding of any right, privilege, or benefit, or be made a condition of employment. [IC 4-1-6-6, as added by Acts 1977, P. L. 21, § 1, p. —.]

**4-1-6-7. Annual report of state agency [effective January 1, 1984].** — (a) Any state agency maintaining one or more personal information systems shall file an annual report on the existence and character of each system added or eliminated since the last report with the governor on or before December 31.

(b) The agency shall include in such report at least the following information:

(1) The name or descriptive title of the personal information system and its location.

(2) The nature and purpose of the system and the statutory or administrative authority for its establishment.

(3) The categories of individuals on whom personal information is maintained including the approximate number of all individuals on whom information is maintained and the categories of personal information generally maintained in the system including identification of those which are stored in computer accessible records and those which are maintained manually.

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(4) All confidentiality requirements, specifically:

(A) Those personal information systems or parts thereof which are maintained on a confidential basis pursuant to a statute, contractual obligation, or rule; and

(B) Those personal information systems maintained on an unrestricted basis.

(5) In the case of subdivision (4)(A) of this subsection, the agency shall include detailed justification of the need for statutory or regulatory authority to maintain such personal information systems or parts thereof on a confidential basis and, in making such justification, the agency shall make reference to section 8 [4-1-6-8] of this chapter.

(6) The categories of sources of such personal information.

(7) The agency's policies and practices regarding the implementation of section 2 [4-1-6-2] of this chapter relating to information storage, duration of retention of information, and elimination of information from the system.

(8) The uses made by the agency of personal information contained in the system.

(9) The identity of agency personnel, other agencies, and persons or categories of persons to whom disclosures of personal information are made or to whom access to the system may be granted, together with the purposes therefor and the restriction, if any, on such disclosures and access, including any restrictions on redisclosure.

(10) A listing identifying all forms used in the collection of personal information.

(11) The name, title, business address, and telephone number of the person immediately responsible for bringing and keeping the system in compliance with the provisions of this chapter. [IC 4-1-6-7, as added by Acts 1977, P.L. 21, § 1; 1978, P.L. 10, § 3; P.L. 19-1983, § 2.]

**4-1-6-8. Public access to information — Confidential files — Restrictions upon public access as condition of gift [effective January 1, 1984].** — (a) All state agencies subject to the provisions of this chapter shall adhere to the policy that all persons are entitled to access to information regarding the affairs of government and the official acts of those who represent them as public servants, such access being required to enable the people to freely and fully discuss all matters necessary for the making of political judgments. To that end, the provisions of this chapter shall be construed to provide access to public records to the extent consistent with the due protection of individual privacy.

(b) Where such assurance is needed to obtain valuable considerations or gifts (which may include information) for the state, any agency, with the prior written approval of the oversight committee on public records, may allow restrictions upon public access to be imposed upon it as a specific condition of a contract, with a time limit not to exceed fifty [50] years or the lifetime of the individual, whichever is less. In order to promote the preservation of historical, cultural, natural, and other irreplaceable resources, the department of natural resources or the Indiana state library may extend.

beyond the lifetime of the individual, restrictions upon disclosure of information received, providing that such restrictions do not exceed fifty [50] years from the date of the donation in the case of the Indiana state library. [IC 4-1-6-8, as added by Acts 1977, P.L. 21, § 1; 1978, P.L. 10, § 4; 1979, P.L. 40, § 4; P.L.19-1983, § 3.]

**4-1-6-8.5. Confidential classification to be designated on document — Interagency treatment of confidential information [effective January 1, 1984].** — In order to establish consistent handling of the same or similar personal information within and among agencies, each state agency collecting, maintaining, or transmitting such information shall apply the following principles and procedures:

(1) Information collected after December 31, 1978, which is classified as confidential must be clearly and uniformly designated as confidential in any form or other document in which it appears.

(2) When an agency which holds information classified as confidential disseminates that information to another agency, the receiving agency shall treat it in the same manner as the originating agency. [IC 4-1-6-8.5, as added by Acts 1978, P.L. 10, § 5; P.L.19-1983, § 4.]

**4-1-6-8.6. Conditions for access to certain confidential records — Improper disclosure prohibited.** — (a) In cases where access to confidential records containing personal information is desired for research purposes, the agency shall grant access if:

(1) The requestor states in writing to the agency the purpose, including any intent to publish findings, the nature of the data sought, what personal information will be required, and what safeguards will be taken to protect the identity of the data subjects;

(2) The proposed safeguards are adequate to prevent the identity of an individual data subject from being known;

(3) The researcher executes an agreement on a form, approved by the oversight committee on public records, with the agency, which incorporates such safeguards for protection of individual data subjects, defines the scope of the research project, and informs the researcher that failure to abide by conditions of the approved agreement constitutes a breach of contract and could result in civil litigation by the data subject or subjects;

(4) The researcher agrees to pay all direct or indirect costs of the research; and

(5) The agency maintains a copy of the agreement or contract for a period equivalent to the life of the record.

(b) Improper disclosure of confidential information by a state employee is cause for action to dismiss the employee. [IC 4-1-6-8.6, as added by Acts 1978, P.L. 10, § 6; 1979, P.L. 40, § 5; P.L.19-1983, § 5.]

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**4-1-6-9. Report of governor to general assembly.** — (a) Under the authority of the governor, a report shall be prepared, on or before December 1, 1977, and annually thereafter, advising the general assembly of the personal information systems, or parts thereof, of agencies subject to this chapter [4-1-6-1 — 4-1-6-9], which are recommended to be maintained on a confidential basis by specific statutory authorization because their disclosure would constitute an invasion of personal privacy and there is no compelling, demonstrable and overriding public interest in disclosure. Such recommendations may include, but not be limited to, specific personal information systems or parts thereof which can be categorized as follows:

(1) Personal information maintained with respect to students and clients, patients or other individuals receiving social, medical, vocational, supervisory or custodial care or services directly or indirectly from public bodies;

(2) Personal information, excepting salary information, maintained with respect to employees, appointees or elected officials of any public body or applicants for such positions;

(3) Information required of any taxpayer in connection with the assessment or collection of any income tax; and

(4) Information revealing the identity of persons who file complaints with administrative, investigative, law-enforcement or penology agencies.

(b) In addition, such report may list records or categories of records, which are recommended to be exempted from public disclosure by specific statutory authorization for reasons other than that their disclosure would constitute an unwarranted invasion of personal privacy, along with justification therefor. [IC 4-1-6-9, as added by Acts 1977, P. L. 21, § 1, p. —.]

### Chapter 5

#### Expungement of Arrest Records

Section  
35-38-5-1 Petition; grounds; verification; filing;  
contents; service; notice of opposi-  
tion; hearing

35-38-5-1 Petition; grounds; verification; filing; contents; service; notice of opposi-  
tion; hearing

Sec. 1. (a) Whenever:

(1) an individual is arrested but no criminal charges are filed against the individual; or

(2) all criminal charges filed against an individual are dropped because:

(A) of a mistaken identity;

(B) no offense was in fact committed; or

(C) there was an absence of probable cause;

the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest;
- (2) the charge;
- (3) the law enforcement agency employing the arresting officer;
- (4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
- (5) the date of the petitioner's birth; and
- (6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

- (1) summarily grant the petition;
- (2) set the matter for hearing; or
- (3) summarily deny the petition, if the court determines that:
  - (A) the petition is insufficient; or
  - (B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

(e) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(f) After a hearing is held under this section, the petition shall be granted unless the court finds:

- (1) the conditions in subsection (a) have not been met;
- (2) the individual has a record of arrests other than minor traffic offenses; or

(3) additional criminal charges are pending against the individual.

*As amended by P.L.295-1989, SEC.1; P.L.159-1994, SEC.1.*