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Overview - LOUISIANA ; TITLE 15 Revised Statutes Annotated

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privacy and security of criminal justice information.

LOUISIANA

Louisiana Revised Statutes Annotated

Title 15

Criminal Procedure

CHAPTER 6. LOUISIANA BUREAU OF CRIMINAL IDENTIFICATION AND INFORMATION.

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| <p>Sec.
575. Legislative findings and objectives.
576. Definitions.
577. Bureau of criminal identification and information; creation and organization.
578. Functions, powers, and duties of the bureau; crime laboratory.
579. Rules and regulations.
580. Forms; procedures; training; assistance.
581. Authorized audits and investigations.
582. Civil identification files.
583. Transmission of information.
584. Cooperation with federal and other state agencies.
585. Admissibility of bureau records in evidence.</p> | <p>Sec.
586. Authority to purge records of the central repository.
587. Duty to provide information.
588. Right of individual access.
589. Duty to maintain security.
590. Obtaining and filing fingerprint and identification data.
591. Submission of information; statistics; data.
592. Submission of fingerprints and identification data.
593. Prohibition against destruction of records.
594. Access to records.
595. Duty to abide by regulations.
596. Penalties.</p> |
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1972 through 1981 Reenactments

Acts 1972, No. 449, § 1 amended and reenacted Part I of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950. The subject matter of the former sections of the 1972 reenactment of Part I were found under the same section numbers in the reenactment of Part I by Acts 1976, No. 302, § 1. Acts 1979, No. 722 effective July 1, 1980, amended and reenacted Part I to consist of R.S. 15:575 to 15:581 and repealed Part II of this Chapter, R.S. 15:581.1 to 15:581.22. H.C.R. No. 111 of the 1980 Regular Session suspended the provisions of Acts 1979, No. 722, until September 1, 1981. Acts 1981, No. 449, § 1, eff. July 1, 1981, amended and reenacted Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950 to consist of R.S. 15:575 to 15:596.

TABLE I

Showing where the subject matter of the former sections of Part I of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950 could be found in the reenactment of Part I by Acts 1972, No. 449, § 1.

A table showing where the subject matter of the former sections contained in the 1972 reenactment of Part I and in Part II of Chapter 6 may be found in the 1981 reenactment of Chapter 6 follows as Table II.

Former Sections	1972 Reenactment	Former Sections	1972 Reenactment
R.S. 15:575	R.S. 15:578	R.S. 15:579	R.S. 15:579
R.S. 15:576	R.S. 15:578.1	R.S. 15:580	R.S. 15:578.1
R.S. 15:577	R.S. 15:577	R.S. 15:581	R.S. 15:581
R.S. 15:578	R.S. 15:577.1		

TABLE II

Showing where the subject matter of the former sections of the 1972 and 1976 reenactments of Part I, and of the former sections of Part II, of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950 can be found in the 1981 reenactment of that Chapter by Acts 1981, No. 449, § 1.

LOUISIANA

Part I		Part II	
Former Sections of 1972 and 1976 Reenactments		Former Sections	1981 Reenactment
	1981 Reenactment	R.S. 15:591.5	R.S. 15:591
R.S. 15:575	R.S. 15:575	R.S. 15:581.6	R.S. 15:580
R.S. 15:576	R.S. 15:576	R.S. 15:581.7	R.S. 15:581
R.S. 15:577	R.S. 15:577		R.S. 15:594
	R.S. 15:578	R.S. 15:581.8	R.S. 15:586
	R.S. 15:580		R.S. 15:593
R.S. 15:577.1	None	R.S. 15:581.9	R.S. 15:582
R.S. 15:578	R.S. 15:591	R.S. 15:581.10	R.S. 15:587
R.S. 15:578.1	R.S. 15:591	R.S. 15:581.11	R.S. 15:586
R.S. 15:578.2	R.S. 15:590	R.S. 15:581.12	R.S. 15:583
	R.S. 15:591	R.S. 15:581.13	R.S. 15:584
	R.S. 15:592	R.S. 15:581.14	R.S. 15:577
R.S. 15:579	R.S. 15:590	R.S. 15:581.15	R.S. 15:577
R.S. 15:580	None	R.S. 15:581.16	R.S. 15:585
R.S. 15:581	R.S. 15:596	R.S. 15:581.17	R.S. 15:594
		R.S. 15:581.18	None
		R.S. 15:581.19	R.S. 15:591
			R.S. 15:592
		R.S. 15:581.20	R.S. 15:596
		R.S. 15:581.21	R.S. 15:596
		R.S. 15:581.22	None
Part II			
Former Sections	1981 Reenactment		
R.S. 15:581.1	R.S. 15:577		
R.S. 15:581.2	R.S. 15:591		
R.S. 15:581.3	R.S. 15:591		
R.S. 15:581.4	R.S. 15:591		

Former R.S. 15:575 to 15:581.22, now under this Chapter heading, were, as the sections existed before 1966, under the heading of former Part XXXI of former Chapter 1. Former Part XXXI was redesignated as this Chapter 6 by Acts 1966, No. 311, § 3 and on Authority of R.S. 24:253, effective Jan. 1, 1967.

The section numbers and sections were not changed.

Effective January 1, 1967, R.S. 15:582 in Part XXXII, Application of Code, in Chapter 1 of Title 15, was repealed by Acts 1966, No. 310, § 5, and the designation of said Part was deleted on authority of Acts 1966, No. 311, § 3, and R.S. 24:253. The repealed section was derived from Acts 1928, No. 2, § 1, art. 582.

1979 Reenactment

Acts 1979, No. 722, effective July 1, 1980, amending and reenacting Part I of this Chapter to consist of R.S. 15:575 to 15:581, and repealing Part II of this Chapter, consisting of R.S. 15:581.1 to 15:581.22, was suspended by H.C.R. No. 111 of the 1980 Regular Session until September 1, 1981. Acts 1979, No. 722 did not become effective because Acts 1981, No. 449 amended and reenacted this Chapter effective July 1, 1981.

§ 575. Legislative findings and objectives

The legislature hereby finds and declares that:

- (1) The improvement of public safety and sound law enforcement and administration of criminal justice requires the complete and timely collection, processing, and dissemination of available information on crime, offenders, and the operations of the criminal justice system through a centralized system.

LOUISIANA

(2) It is in the public interest that to the greatest extent possible, government agencies at all levels concerned with the detection, apprehension, prosecution, sentencing, confinement, and rehabilitation of criminal offenders share among themselves available information relating to such offenders.

(3) Available computer and communications technology now enables the coordination, collection, storage, and dissemination of relevant information heretofore dispersed in separate files throughout the state.

(4) The reduction of crime, the protection of citizens and enforcement officers, and the need to improve the efficiency of the criminal justice system mandates the development and operation of a computer-based criminal justice information system in Louisiana. Acts 1981, No. 449, § 1, eff. July 1, 1981.

Section 5 of Acts 1981, No. 449 (§ 1 of which amended and reenacted this chapter) provided: "The effective date of this Act shall be July 1, 1981."

Title of Act:

An Act to amend and reenact Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950, to consist of R.S. 15:575 through R.S. 15:596, and Subsection B of Section 408 of Title 36 of said Statutes, relative to the field of criminal statistics and information, to provide with respect to the Louisiana Bureau of Criminal Identification and Information, and to provide with respect to related matters. Acts 1981, No. 449.

§ 576. Definitions

As used in this Chapter:

(1) The term "bureau" means the Louisiana Bureau of Criminal Identification and Information.

(2) The terms "criminal history record" or "criminal history record information" mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision, and release. The terms do not include intelligence or investigatory purposes, nor does it include any identification information which does not indicate involvement of the individual in the criminal justice system.

(3) The term "criminal justice agency" means any government agency or subunit thereof, or private agency which, through statutory authorization or a legal formal agreement with a governmental unit or agency has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation or release of persons suspected, charged, or convicted of a crime; or which collects, stores, processes, transmits, or disseminates criminal history record or crime information.

(4) The term "criminal justice system" means that body of agencies at the federal, state, or local level, which may legally arrest, detain, prosecute, adjudicate, treat, supervise, rehabilitate or release, or collect, store, process, transmit, or disseminate criminal history record or crime information.

(5) The term "criminal justice information system" means all agencies, procedures, mechanisms, media, and forms as well as the information itself which are or become involved in the origination, collection, transmittal, storage, retrieval, and dissemination of information related to offenses or offenders in Louisiana.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 577. Bureau of criminal identification and information; creation and organization

A. There is hereby created within the Department of Public Safety as a part of the office of state police, the Louisiana Bureau of Criminal Identification and Information. The bureau shall be administered by the deputy secretary who shall employ qualified commissioned officers of the state police to supervise the activities of the bureau under such terms and conditions as he may direct. The deputy secretary may appoint such other employees and employ such consultants as he deems necessary for the efficient operation of the bureau. The Louisiana Bureau of Criminal Identification and Information shall assume the functions, powers, and duties of the Bureau of Identification which prior to July 1, 1981 operated as a part of the office of state police.

B. Within the bureau, the following sections are hereby established:

- (1) Criminal Records and Identification Section.
- (2) Field Services and Quality Assurance Section.
- (3) Latent Fingerprint Section.

The bureau may establish such units within each section as are necessary to carry out the provisions of this Chapter.

C. All data processing and related communications needs of the bureau shall be provided by the Data Processing Center and other facilities of the Department of Public Safety unless otherwise agreed by the deputy secretary.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 578. Functions, powers, and duties of the bureau; crime laboratory

A. The bureau shall perform the following functions:

(1) To establish and maintain a central repository of criminal history record information and to adopt regulations and procedures to prescribe the terms and conditions under which the Department of Insurance, section on fraud, and the Department of Revenue and Taxation, office of alcoholic beverage control, shall have direct access to this information and adopt regulations and procedures to prescribe the terms and conditions under which other eligible individuals or agencies may gain access to such information.

[See main volume for (2) to (5)]

(6) Repealed by Acts 1993, No. 678, § 2, eff. June 21, 1993.

(7) To establish and maintain a central registry of sex offenders and to adopt regulations and procedures to prescribe the terms and conditions under which information shall be released in accordance with the provisions of R.S. 15:540 through 549.

(8) To automate the criminal histories of all persons treated in the forensic conditional release program as well as all persons committed as not guilty by reason of insanity or unrestorably incompetent to stand trial pursuant to Chapters 1 and 2 of Title XXI of the Code of Criminal Procedure, and to establish an "alert flag" on criminal information records of such persons which would appear on state police computer records, as follows:

"This subject is under the supervision of the Department of Public Safety and Corrections, division of probation and parole, pursuant to a conditional release order from the district court. If in your custody, contact the division of probation and parole immediately."

[See main volume for B to E]

F. Upon written request, the bureau shall provide mental health agencies providing treatment and supervision to patients pursuant to Chapters 1 and 2 of Title XXI of the Code of Criminal Procedure with access to criminal histories with all case disposition data. Treatment and supervision staff who have access to these criminal histories shall maintain the confidentiality of this information and shall sign a statement, to be developed by the Department of Public Safety and Corrections, which informs them of this obligation.

Amended by Acts 1992, No. 388, § 2, eff. June 18, 1992; Acts 1994, 3rd Ex.Sess., No. 50, § 1; Acts 1995, No. 800, § 2; Acts 1995, No. 1188, § 1, eff. June 29, 1995.

§ 579. Rules and regulations

The bureau shall issue rules and regulations, consistent with United States Department of Justice requirements, governing the maintenance of privacy and security of criminal history records; governing access to and use of records maintained by the central repository; governing restrictions to access and use by authorized agencies or individuals of any state owned or operated system of communications utilized for transmitting criminal history record information to or from the bureau; and governing the purging of any information maintained by the bureau as permitted by law.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 580. Forms; procedures; training; assistance

The bureau shall develop, print, and distribute forms and/or related procedures and regulations for the collection of any information or statistics which it is empowered to obtain to insure the correct reporting of data to the bureau. The bureau shall provide necessary technical assistance and training to all eligible reporting agencies in the appropriate procedures for completion of all forms and for submission of all information or statistics which the bureau may require. Upon request, the deputy secretary may direct employees or agents of the bureau to assist any criminal justice agency to establish a local system of identification and record management.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 581. Authorized audits and investigations

With the written authorization of the deputy secretary, any employee or agent of the bureau, for purpose of audit or investigation of violations of any provisions herein, or any official rule or regulation of the bureau, shall be granted access by any public or private criminal justice agency collecting, processing, storing, or maintaining any documents, or automated, microfilmed, or manual records containing, or which may reasonably be expected to be used to substantiate and verify, any information or statistics the bureau is empowered to require from such public or private criminal justice agency. Upon written authorization of the deputy secretary, any employee or agent of the bureau may enter any institution to which persons have been committed, who have been convicted of crime, or declared to be criminally insane or to be feeble-minded delinquents, to take or cause to be taken fingerprints or photographs or to make investigations relative to any person confined therein, for the purpose of obtaining information which will lead to the identification of criminals.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 582. Civil identification files

The bureau may accept and file the names, fingerprints, photographs, and other personal identification data submitted to local criminal justice agencies by the individuals or submitted by parents on behalf of their children for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or change in appearance. Upon the application of a person identified under the provisions of this Section to the local criminal justice agency, all data received under this Section with relation to him shall be surrendered to the requesting criminal justice agency.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

LOUISIANA

§ 583. Transmission of information.

The bureau may transmit any information in its possession which the deputy secretary shall designate, to any person or agency eligible to receive it under any provision of this Chapter. For this purpose the bureau shall operate and coordinate a modern system of communications which may be required in the normal conduct of its duties.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 584. Cooperation with federal and other state agencies

The bureau shall cooperate with the United States Department of Justice and other federal criminal justice agencies and with similar agencies in other states and cities toward developing a comprehensive state, interstate, national, and international system of criminal information, identification, investigation, records, and statistics.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 585. Admissibility of bureau records in evidence

Any original record including fingerprints, pictures, photographs, other documents or data, or any copy thereof, when certified by the deputy secretary or his authorized representative, shall be admissible as evidence in all criminal cases in courts of this state. Any certified record, or copy thereof, received by the court shall be received as prima facie proof of its contents and proper and accurate collection and custody; provided, when the record is presented for admission into evidence it is accompanied by a statement signed by the deputy secretary or his authorized representative which specifies:

- (1) The date on which the record was received by the bureau.
- (2) The agency of origin of each record.
- (3) The nature or type of record received and by what method or transfer.
- (4) The date the bureau compiles the record for the purpose of evidence.
- (5) The name of the bureau employee who prepares the record for admission as evidence.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 586. Authority to purge records of the central repository

Except for the provisions of R.S. 44:9, no records of the bureau may be permanently destroyed until five years after the person identified is known or reasonably believed to be dead. Upon the official issuance of appropriate rules and regulations, the bureau may retire or remove from active dissemination to eligible agencies records of any individual beyond the age of sixty, who has had no reported criminal arrest for a period of fifteen years from the last reported official release from the criminal justice system.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 587. Duty to provide information; processing fees; Louisiana Bureau of Criminal Identification and Information Fund

A. (1)(a) The bureau shall make available upon request, or at such other times as the deputy secretary shall designate, to any eligible criminal justice agency and the Department of Health and Hospitals, the Department of Social Services, the Department of Insurance, the Louisiana State Racing Commission, the Senate and Governmental Affairs Committee of the state of Louisiana, the office of employment security of the Department of Labor, the Board of River Port Pilot Commissioners, the office of financial institutions of the Department of Economic Development, and the legislative auditor any information contained in the criminal history record and identification files of the bureau.

(b) The Louisiana State Board of Private Security Examiners shall be entitled to the criminal history record and identification files of the bureau on those persons seeking to be licensed as private security guards as a means of performing background checks on those individuals. An appropriate fee not to exceed ten dollars shall be charged for furnishing said records.

[See main volume for (2)]

B. Pursuant to the Administrative Procedure Act¹ the bureau may charge a reasonable processing fee for information provided to any agency statutorily eligible to receive this information, except another state or local law enforcement agency, pursuant to a request to assist the agency in performing a screening function as part of any regulatory or licensing scheme. Payment of the processing fee shall accompany the request for such information and shall be deposited by the bureau immediately upon receipt into the state treasury.

C. The bureau shall, upon request and after receipt of fingerprint cards or other identifying information from the state police, make available to the state police gaming division, the Louisiana Riverboat Gaming Commission, and the Louisiana Economic Development and Gaming Corporation, information contained in the bureau's criminal history record and identification files, which pertains to an applicant or prospective employee of any of them.

In addition, in order to determine an applicant's suitability for a gaming or employee license under the provisions of the Louisiana Video Draw Poker Devices Control Law (R.S. 27:301 et seq.), the Louisiana Riverboat Economic Development and Gaming Control Act (R.S. 27:41 et seq.), the Louisiana Economic Development and Gaming Corporation Act (R.S. 27:201 et seq.), the Louisiana Regulation of Gaming Equipment Law (R.S. 47:7001 et seq.), and the Regulation of Charitable Gaming Law (R.S. 40:1485.1 et seq.), each applicant shall be fingerprinted and the fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

D. Any local law enforcement agency may conduct any screening function mentioned above and also charge a reasonable processing fee of not more than fifteen dollars per inquiry for information provided.

Amended by Acts 1992, No. 576, § 1; Acts 1993, No. 676, § 1, eff. June 21, 1993; Acts 1993, No. 678, § 1, eff. June 21, 1993; Acts 1993, No. 717, § 1; Acts 1995, No. 1171, § 1.

¹ R.S. 49:960 et seq.

§ 587.1. Provision of information to protect children

A. As provided in R.S. 15:825.3, R.S. 17:15, and R.S. 46:51.2, any employer or others responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children shall request in writing that the bureau supply information to ascertain whether that person or persons has been convicted of, or pled nolo contendere to, any one or more of the crimes listed in Subsection C. The request must be on a form prepared by the bureau and signed by a responsible officer or official of the organization making the request. It must include a statement signed by the person about whom the request is made which gives his permission for such information to be released.

B. Upon receiving a request meeting the requirements of Subsection A, the bureau shall survey its criminal history records and identification files and shall make a simultaneous request of the Federal Bureau of Investigation requesting like information from other jurisdictions. The bureau shall provide a report promptly and in writing, but provide only such information as is necessary to specify whether or not that person has been convicted of or pled nolo contendere to any such crime or crimes, the crime or crimes of which he has been convicted or to which he has pled nolo contendere, and the date or dates on which they occurred.

C. The crimes to be reported under this Section are those defined in:

(1) R.S. 14:30, R.S. 14:30.1, R.S. 14:31, R.S. 14:41 through R.S. 14:45, R.S. 14:74, R.S. 14:78, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S. 14:89.1, R.S. 14:93, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or convictions for attempt or conspiracy to commit any of those offenses;

(2) Those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and

(3) Those under the Federal Criminal Code having analogous elements of criminal and moral turpitude.

D. The costs of providing the information required under this Section shall be charged by the bureau to the private employer or to the department, office, or other agency of government which has given, or is considering giving, a person supervisory or disciplinary authority over children. The individual applicant shall not bear such costs.

E. This Section may be cited as the "Louisiana Child Protection Act."

§ 588. Right of individual access

The bureau shall adopt rules and regulations which provide a means for any individual, or his authorized representative if he is physically incapable of appearing at the bureau, to view, make notes, and administratively challenge the accuracy and contents of his personal criminal history information record and to seek corrections. The bureau may levy a reasonable fee of not less than ten dollars for this purpose, which fees shall be collected by the bureau, paid into the state treasury, and appropriated to the bureau all in accordance with the provisions of R.S. 15:584 and shall be used by the bureau to supplement normal operating expenses and to expand the services which the bureau is required to furnish under the provisions of this Chapter. Any increase in such fee shall be adopted pursuant to R.S. 49:951 et seq.

Amended by Acts 1992, No. 984, § 5.

LOUISIANA

§ 589. Duty to maintain security

The bureau shall adopt rules and regulations which shall establish necessary control over any data processing or telecommunication system, facilities and personnel recruitment and such processing or communication related assignment policies of the department as become necessary to ensure compliance with all applicable security standards at the state and national level for storage and transmission of criminal history record information. To the maximum extent feasible, the bureau shall regulate through the design, implementation, and operation of the criminal justice information system the privacy and security of information contained herein.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 590. Obtaining and filing fingerprint and identification data

The bureau shall obtain and file the name, fingerprints, description, photographs, and any other pertinent identifying data as the deputy secretary deems necessary, of any person who:

(1) Has been or is hereafter arrested, formally indicted, or taken into custody in this state;

(a) For any offense which is a felony and for certain misdemeanor offenses designated by the deputy secretary;

(b) For any violation of any ordinance which the bureau shall determine to be substantially related to or the equivalent of any offense described under state law as a felony offense; or

(c) For any other offense which the deputy secretary may designate.

(2) Is or becomes confined to any prison, penal institution, correctional facility, or institution for the criminally insane.

(3) After death, has become a human corpse which is unidentified or involved in any autopsy or inquest by a coroner.

(4) Is a fugitive from justice.

(5) Is or has been a habitual offender.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 591. Submission of information; statistics; data

It shall be the obligation of every criminal justice agency to collect and submit the name, fingerprints, description, photographs, and other identifying data on persons lawfully arrested, indicted, or taken into custody in this state as required by the bureau with respect to all offenses described in R.S. 15:590. Upon notification, every criminal justice agency, coroner, correctional facility, prison, penal institution, institution for the criminally insane, or private criminal justice agency lawfully empowered to perform any arrest, detention, treatment, supervision, or any official function on behalf of the criminal justice system shall collect and report to the bureau in such manner as prescribed, any statistics, reports, lists of stolen property or fugitives, criminal history records, or any other information the deputy secretary may require under authority of any provision of this Chapter, rule, or regulation issued pursuant thereto. In addition, each coroner shall transmit to the bureau all statistics and information as prescribed regarding autopsies performed, inquests held, and verdicts rendered.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 592. Submission of fingerprints and identification data

Each law enforcement agency empowered to arrest or take into custody any individual described in R.S. 15:590 shall obtain and forward to the bureau two sets of fingerprints and other identification data as required by the bureau within seventy-two hours after arrest and booking. However, this period may be extended to cover any intervening official holiday or weekend.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 593. Prohibition against destruction of records

Notwithstanding the provisions of Articles 893 and 894 of the Code of Criminal Procedure and R.S. 40:983 and except in accordance with the provisions set forth in R.S. 44:9, no judge or other official shall order the expungement, alteration, or destruction of any record of the bureau or of any agency subject to reporting requirements of the bureau.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 594. Access to records

Each criminal justice agency subject to reporting requirements of the bureau shall, upon request by any authorized agent of the bureau, provide reasonable access to any record of such agency for the purpose of audit or to substantiate the accuracy of any record or statistics which the bureau is empowered to collect.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 595. Duty to abide by regulations

Each agency subject to reporting requirements of the bureau shall abide by all rules and regulations adopted by the bureau pursuant to its authority.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 596. Penalties

A. Any head of an agency subject to the provisions of this Chapter who, after written notification by an authorized representative of the bureau, shall neglect or refuse to make any report or to do any act required by any provision of this Chapter shall be deemed guilty of nonfeasance in office and shall be subject to removal or a fine of not less than two thousand dollars nor more than five thousand dollars for each offense, or both.

B. Any individual who shall acquire or distribute any criminal history record, except as authorized by law and in accordance with applicable rules and regulations of the bureau, shall be fined not less than five hundred nor more than one thousand dollars, and may be imprisoned for not more than one year with or without hard labor for each offense, or both.

C. Any individual who transmits false information, withholds information, or prevents the transmission of information shall be fined not less than five hundred nor more than one thousand dollars, and may be imprisoned for not more than five years with or without hard labor for each offense, or both.

D. In addition to any criminal penalties, the deputy secretary is empowered to make reasonable administrative sanctions as he deems appropriate against those agencies who fail to comply with the provisions of this Chapter. Such sanctions may include, but are not limited to, loss of access to equipment and files maintained by the bureau.

Acts 1981, No. 449, § 1, eff. July 1, 1981.

§ 597. Disposition reporting

A disposition report of all arrests shall be submitted to the bureau within thirty days following the termination of a case by the entity responsible for the termination.

Added by Acts 1991, No. 131, § 1.

LOUISIANA

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TITLE 44

PUBLIC RECORDS AND RECORDERS

Chap.	Sec.
3. State Archives and Records Commission [New]	401

CHAPTER I. PUBLIC RECORDS

PART I. SCOPE

- Sec.
- 8. Louisiana office building corporation, special provisions [New].
 - 9. Records of violations of municipal ordinances and of state statutes classified as misdemeanors [New].
 - 10. Confidential nature of documents and proceedings of judiciary commission [New].

PART II. GENERAL PROVISIONS

- Sec.
- 40. Additional copies of records by microphotographic process; purchase of equipment; funds available for payment; copies of suit records [New].
 - 41. Receiving and filing map, plat, etc. for record [New].
 - 42. Microfilm records; sheriff's office [New].

§ 1. General definitions

A. (1) As used in this Chapter, the phrase "public body" means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function.

(2) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, prepared, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records" except as otherwise provided in this Chapter or as otherwise specifically provided by law.

(3) As used in this Chapter, the word "custodian" means the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records.

B. Electrical well surveys produced from wells drilled in search of oil and gas located in established units and which are filed with the assistant secretary of the office of conservation shall be placed in the open files of the office of conservation. Any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said survey, by photo-

LOUISIANA

raphy or other means not injurious to said records. All other electric logs and other electronic surveys, other than seismic data, produced from wells drilled in search of oil and gas which are filed with the assistant secretary of the office¹ of conservation shall remain confidential upon the request of the owner so filing for periods as follows:

For wells shallower than fifteen thousand feet a period of one year, plus one additional year when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has a leasehold interest in the general area in which the well was drilled and the log produced; for wells fifteen thousand feet deep or deeper, a period of two years, plus two additional years when evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced; and for wells drilled in the offshore area, subsequent to July 1, 1977, regardless of depth, a period of two years from the filing of the log with the office of conservation, plus two additional years where evidence is submitted to the assistant secretary of the office of conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced and has immediate plans to develop the said general area, unless a shorter period of confidentiality is specifically provided in the existing lease.

At the expiration of time in which any log or electronic surveys, other than seismic data, shall be held as confidential by the assistant secretary of the office of conservation as provided for above, said log or logs shall be placed in the open files of the office of conservation and any party or firm shall have the right to examine or reproduce, or both, at their own expense, copies of said log or electronic survey, other than seismic data, by photography or other means not injurious to said records.

Amended by Acts 1973, No. 135, § 1; Acts 1973, Ex.Sess., No. 4, § 1; Acts 1978, No. 686, § 1; Acts 1978, No. 691, § 1; Acts 1980, No. 248, § 1.

¹ In subseq. B. "office" was substituted for "department" on authority of R.S. 24:253.

20. Privacy of individuals

Neither the city nor its employees had reasonable expectation of privacy against disclosure of public record containing names and addresses of city employees to person entitled to invoke Louisiana public records law (R.S. 44:1 et seq.), such as newspaper reporter. *Aswell v. Lunt*, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

The fact that a municipality or its employee labels the name or address of an employee as having been furnished to become a part of a confidential personnel record does not elevate the name or address to status of being a constitutionally protected private thing; the Public Records Law is not limited to records affecting only the public fisc but covers all records unless specifically excepted by statute, or unless the disclosure of information contained in the public record is information to which the employee has reasonable expectation of privacy such as personnel evaluation reports, disclosure of which might affect the employee's future employment or cause him embarrassment or humiliation. *Webb v. City of Shreveport*, App.1979, 371 So.2d 316, writ denied 374 So.2d 687.

City could be compelled under Public Records Law to reveal names and addresses of city's employees, except employees of police and fire departments, to a person who declared he was also acting on behalf of a labor union seeking to organize municipal employees since neither city nor its employees, excluding fire and police personnel, had reasonable expectation of privacy against disclosure of the names and ad-

resses as contained on a computer tape. *Id.*

21. Actions, in general

In proceeding concerning whether either city or its employees had reasonable expectation of privacy against disclosure of public record containing names and addresses of city employees to person entitled to invoke Louisiana public records law (R.S. 44:1 et seq.), such as newspaper reporter, trial court did not abuse its discretion in refusing to stay proceedings below until judgment in controlling case became final and definitive, despite city's contention that judicial economy was not served by allowing litigation of same issues at different appellate levels. *Aswell v. Lunt*, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

22. Attorney fees

Where, in proceeding concerning whether city had reasonable expectation of privacy against disclosure of certain public record to newspaper reporter, city did not complain that error occurred in awarding attorney fees of \$500 to reporter, and reporter contended that award should be increased because of time and efforts of his attorneys below and on appeal, but reporter testified that he had not discussed question of fees with his counsel or his employer and that he did not know whether he was expected to pay attorney fees, only amount of award was before Court of Appeal and there was no need to increase award for services rendered below and on appeal. *Aswell v. Lunt*, App.1979, 375 So.2d 142, writ denied 378 So.2d 434.

§ 2. Records involved in legislative investigations

1. Inspection

Trial court properly denied defense counsel's request for log of parish sheriff's office, where counsel was not enti-

led to the log at time it was requested. *State v. Edgcombe*, Sup.1972, 275 So.2d 740, certiorari denied 94 S.Ct. 531, 414 U.S. 1075, 38 L.Ed.2d 482.

§ 3. Records of prosecutive, investigative, and law enforcement agencies

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, public health inspectors, or public health agencies, correctional agencies, or intelligence agencies of the state, which records are:

Amended by Acts 1983, No. 247, § 1; Acts 1984, No. 945, § 1; Acts 1986, No. 785, § 1; Acts 1988, No. 438, § 1.

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled; or

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, or internal security information; or

(4)(a) The records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. However, the initial report of the officer or officers investigating a complaint, but not to apply to any followup or subsequent report or investigation, records of the booking of a person as provided in Louisiana Code of Criminal Procedure Article 228, records of the issuance of a summons or citation, and records of the filing of a bill of information shall be a public record.

(b) The initial report shall set forth:

(i) A narrative description of the alleged offense.

(ii) The name and identification of each person charged with or arrested for the alleged offense.

(iii) The time and date of the alleged offense.

(iv) The location of the alleged offense.

(v) The property involved.

(vi) The vehicles involved.

(vii) The names of investigating officers.

(c) Nothing herein shall be construed to require the disclosure of information which would reveal undercover or intelligence operations.

Amended by Acts 1984, No. 945, § 1; Acts 1988, No. 438, § 1.

(5) Records containing the identity of an undercover police officer or records which would tend to reveal the identity of an undercover police officer; or

(6) Records concerning status offenders as defined in the Code of Juvenile Procedure; or

Amended by Acts 1983, No. 247, § 1.

(7) Records containing the identity of a subject of a public health disease investigation or study or records which would tend to reveal the identity of such a subject.

Added by Acts 1983, No. 247, § 1.

LOUISIANA

B. All records, files, documents, and communications, and information contained therein, pertaining to or tending to impart the identity of any confidential source of information of any of the state officers, agencies, or departments mentioned in Paragraph A above, shall be privileged, and no court shall order the disclosure of same except on grounds of due process or constitutional law. No officer or employee of any of the officers, agencies, or departments mentioned in Paragraph A above shall disclose said privileged information or produce said privileged records, files, documents, or communications, except on a court order as provided above or with the written consent of the chief officer of the agency or department where he is employed or in which he holds office, and to this end said officer or employee shall be immune from contempt of court and from any and all other criminal penalties for compliance with this paragraph.

C. Whenever the same is necessary, judicial determination pertaining to compliance with this section or with constitutional law shall be made after a contradictory hearing as provided by law. An appeal by the state or an officer, agency, or department thereof shall be suspensive.

D. Nothing in this section shall be construed to prevent any and all prosecutive, investigative, and law enforcement agencies from having among themselves a free flow of information for the purpose of achieving coordinated and effective criminal justice.

Amended by Acts 1972, No. 448, § 1; Acts 1978, No. 313, § 1; Acts 1978, No. 686, § 1; Acts 1979, No. 336, § 1.

§ 9. Records of violations of municipal ordinances and of state statutes classified as a misdemeanor or felony

[See main volume for A]

B. (1) Any person who has been arrested for the violation of a felony offense or who has been arrested for a violation of R.S. 14:34.2, R.S. 14:34.3, or R.S. 14:37 may make a written motion to the district court for the parish in which he was arrested for the expungement of the arrest record if:

(a) The district attorney declines to prosecute, or the prosecution has been instituted, and such proceedings have been finally disposed of by acquittal, dismissal, or sustaining a motion to quash; and

LOUISIANA

(b) The record of arrest and prosecution for the offense is without substantial probative value as a prior act for any subsequent prosecution.

(2) If, after a contradictory hearing with the district attorney and the arresting law enforcement agency, the court finds that the mover is entitled to the relief sought for the above reasons, it shall order all law enforcement agencies to expunge the record of the same in accordance herewith. However, nothing in this Paragraph shall limit or impede the authority under law to consider prior arrests or convictions in pursuing prosecution under multiple offender provisions or impede the investigation of any law enforcement official seeking to ascertain or confirm the qualifications of any person for any privilege or license authorized by law.

C. (1) Any person who has been arrested for the violation of a state statute which is classified as a felony may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record if the time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted.

(2) If, after a contradictory hearing with the arresting agency, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same¹ in accordance herewith. However, the arresting agency may preserve the name and address of the person arrested and the facts of the case for investigative purposes only.

[See main volume for D]

E. (1) No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of the Code of Criminal Procedure, except after a contradictory hearing with the district attorney and the arresting law enforcement agency.

(2) No court shall order the expungement or destruction of any record of the arrest and prosecution of any person convicted of a sex offense as defined by R.S. 15:542(E), involving a child under the age of seventeen years, except after a contradictory hearing with the district attorney and the arresting law enforcement agency. The provisions of this Paragraph shall apply to all records of any proceedings, order, judgment, or other action under Code of Criminal Procedure Article 893.

[See main volume for F]

Amended by Acts 1985, No. 852, § 1; Acts 1989, No. 606, § 1; Acts 1995, No. 295, § 1; Acts 1996, 1st Ex.Sess., No. 5, § 2, eff. April 23, 1996.

¹ In par. C(2) "same" is as it appears in the enrolled act.

Retroactive effect

Section 3 of Acts 1996, 1st Ex.Sess., No. 5, § 1 of which, inter alia, amended this section by enacting a new subsec. B, provides:

"This Act shall have retroactive effect and be operative back to August 15, 1995, when Act No. 1251 of the 1995 Regular Session of the Legislature was enacted and became effective."

**PART XLIV. CRIMINAL HISTORY CHECKS
ON NON-LICENSED PERSONS**

§1300.41. Definitions

A. For the purposes of this Part:

(1) "Department" means the Department of Health and Hospitals.

(2) "Employer" means any of the following facilities, agencies, or programs:

(a) A nursing home, as defined in R.S. 40:2009.2.

(b) An intermediate care facility for the mentally retarded.

(c) An adult residential care home, as defined in R.S. 40:2153.

(d) An adult day care center, as defined in R.S. 46:1972.

(e) A home health agency, as defined in R.S. 40:2009.31.

(f) A hospice, as defined in R.S. 40:2182.

(3) "Non-licensed person" means any person who provides for compensation nursing care or other health-related services to residents in a nursing facility, intermediate care facility for the mentally retarded, adult residential care facility, or adult day care center, and who is not a licensed health provider. "Non-licensed person" also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health agency or hospice.

(4) "Office" means the office of state police within the Department of Public Safety and Corrections.

§1300.42. Employment of non-licensed persons in certain locations; mandatory criminal history checks; temporary employment; notice to applicants

A.(1) Except as otherwise provided in Subsection C of this Section, prior to any employer making an offer to employ or to contract with a non-licensed person to provide nursing care, health-related services, or supportive assistance to any individual, the employer shall request a criminal history check be conducted on the non-licensed person pursuant to the provisions of this Section. If the employer is a facility, home, or institution which is part of a larger complex of buildings, the requirement of a criminal history check shall apply only to an offer of employment or contract made to a non-licensed person who will work primarily in the immediate boundaries of the facility, home, or institution.

(2) Except as otherwise specified in Subsection D(1) of this Section, an employer may obtain the criminal history record maintained by the office of state police of a non-licensed person offering to provide nursing care, health related services, or supportive services to any individual.

B.(1) The employer shall request the office conduct a criminal history check on the non-licensed person and shall provide the office any relevant information required by the office to conduct the check.

(2) An employer shall pay a fee of ten dollars to the office for a search of the office's criminal history files on an applicant for employment.

C. An employer may make an offer of temporary employment to a non-licensed person pending the results of the criminal history check on the person. In such instances, the employer shall provide to the office the name and relevant information relating to the person within seventy-two hours after the date the person accepts temporary employment.

D.(1) The office shall not provide to the employer the criminal history records of a person being investigated unless the records relate to:

(a) A felony or misdemeanor classified as an offense against the person.

(b) A felony or misdemeanor classified as an offense affecting the public morals.

(c) A felony or misdemeanor classified as an offense affecting the family.

(d) A felony violation of any state law intended to control the possession or distribution of a Schedule I through V drug pursuant to the Uniform Controlled Dangerous Substances Act.

(e) A felony or misdemeanor classified as an offense against property.

(2) Within thirty days of receiving notification by the employer to conduct a criminal history check, the office shall complete the criminal history check and report the results of the check to the requesting employer.

E. An employer shall inform each applicant for employment or each prospective contract provider that the employer is required to obtain a criminal history record before

such employer makes an offer of employment to, or contracts with, a non-licensed person.

§1300.43. Refusal to hire or contract; termination of employment; exemption; appeal procedure; waiver

A.(1) Except as otherwise provided in R.S. 40:1300.42(C), if the results of a criminal history check reveal that the non-licensed person has been convicted of any of the following offenses, the employer shall not hire or contract with such person:

(a) Homicide, as defined in R.S. 14:29 through 31.

(b) Assault and battery, as defined in R.S. 14:33 through 38.1 and 40 and 40.1.

(c) Rape and sexual battery, as defined in R.S. 14:41 through 43.4.

(d) Kidnapping and false imprisonment, as defined in R.S. 14:44 through 46.1.

(e) Arson, as defined in R.S. 14:51 through 54.4.

(f) Criminal damage to property, as defined in R.S. 14:55.

(g) Burglary, as defined in R.S. 14:60 through 62.3.

(h) Robbery, as defined in R.S. 14:64 through 66.

(i) Offenses affecting sexual morality, as defined in R.S. 14:80 through 86 and 89 and 89.1.

(j) Cruelty to the infirm, as defined in R.S. 14:93.3.

B.(1) If the results of a criminal history check reveal that a non-licensed person hired on a temporary basis or any other person who is an employee has been convicted of any of the offenses listed in Subsection A of this Section, the employer shall immediately terminate the person's employment.

(2) The provisions of this Subsection shall not apply to an employee or contract provider who has been employed for twenty-four months of the preceding thirty-six months, or a person who has received a pardon of the conviction.

LOUISIANA

C. The employer may waive the provisions of this Part.

(1) A waiver may be granted for mitigating circumstances, which shall include but not be limited to:

- (a) Age at which the crime was committed.
- (b) Circumstances surrounding the crime.
- (c) Length of time since the conviction.
- (d) Criminal history since the conviction.
- (e) Work history.
- (f) Current employment references.
- (g) Character references.
- (h) Nurse aide registry records.

(i) Other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of patients or clients.

(2) The granting of a waiver shall not be construed as creating an obligation upon an employer to offer permanent employment to such person.

§1300.44. Confidentiality of criminal history records

A. All criminal history records received by the employer shall be confidential and shall be restricted to the exclusive use of the department and the employer requesting the information.

B. Except on court order or with the written consent of the person being investigated, the records or information obtained from or regarding the records shall not be released or otherwise disclosed to any other person or agency.

C. The records shall be destroyed after one year from the termination of employment of the person to whom such records relate. However, upon receipt of written consent by an applicant for employment with a health provider, the employer in receipt of a criminal history check may send a copy to the employer seeking the referral.

§1300.45. Compliance

The department shall review the employment files of any facility or agency required to obtain criminal history records to ensure such facilities are in compliance with the provisions of this Part.

§1300.46. Ineligible for unemployment compensation

A non-licensed person hired on a temporary basis who is terminated pursuant to the provisions of this Part shall not be eligible for unemployment compensation.

Section 2. This Act shall become effective on August 15, 1994.

LOUISIANA
Regulations
Louisiana Privacy and Security
Regulations

Table of Contents and Subject Index

<u>Regulation</u>	<u>Title</u>	<u>Page</u>
	Preface	1
LAC 1-18:1	Purpose, Scope and Definitions	2
LAC 1-18:2	User's Agreement	8
LAC 1-18:3	Individual Rights of Access to Automated and Manual Criminal History Record Information	9
LAC 1-18:4	Individual Right to Administrative Review of the Content, Completeness or Accuracy of Individual Criminal History Record Information	13
LAC 1-18:5	Completeness and Accuracy	17
LAC 1-18:6	Dissemination and Corrections Records & the Maintenance of Logs	18
LAC 1-18:7	Audits and Quality Control	21
LAC 1-18:8	Security of Criminal History Information	23
LAC 1-18:9	Segregation of Computerized Files and their Linkage to Intelligence Files	25
LAC 1-18:10	Training of System Personnel	27

LOUISIANA

LOUISIANA COMMISSION ON LAW ENFORCEMENT

AND

ADMINISTRATION OF CRIMINAL JUSTICE

LOUISIANA PRIVACY AND SECURITY REGULATION

LAC 1-18:1

Purpose and Scope

IN KEEPING with Congressional findings that the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information:

RECOGNIZING that to the extent that the maintenance of personal information is necessary for the efficient functioning of the Government, it is the moral and legal obligation of the Government to assure that the personal information maintained is, to the maximum extent feasible, complete and accurate;

BEING CONVINCED that it is of utmost importance that the integrity of personal information records be zealously protected;

RECOGNIZING that the increasing use of computers and sophisticated information technology, while essential to the operations of Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

REALIZING that opportunities for an individual to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

ACKNOWLEDGING that the right to privacy is a personal and fundamental right protected by the Constitution of the United States;

RESPONDING to the authority granted in 42 United States Code 3701, et. seq.; 28 United States Code 534; 28 Code of Federal Regulations, Chapter I, Section 20; Louisiana Revised Statutes 15: 575 et. seq.; Louisiana Revised Statutes 49:951 et. seq.; and Executive Designation dated November 14, 1975; and

ACTING with the intent of protecting and furthering the interests of the citizens of the State of Louisiana, the Privacy and Security Committee of the Criminal Justice Information System Division of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice does hereby issue these **PRIVACY AND SECURITY REGULATIONS** for the following purposes, and with the following scope and limitations:

LOUISIANA

PURPOSE

It is the purpose of these regulations to provide safeguards for an individual against an invasion of his personal privacy, and to promote, to the maximum extent feasible, the adoption of procedures to ensure the completeness, accuracy, and integrity of criminal history record information collected, maintained and disseminated by criminal justice agencies. This will be accomplished by requiring those agencies affected to: permit an individual to determine what criminal history record information pertaining to him is collected, maintained, used, or disseminated by such agencies; permit an individual to gain access to criminal history record information pertaining to him in the records of affected agencies, to have a copy made of all or any portion thereof, and to correct or amend such records; and collect, maintain, use, or disseminate any record of criminal history information in a manner that assures that such action is for a lawful purpose, that the information is current and accurate for its intended use and that adequate safeguards are provided to prevent the misuse or unauthorized alteration or destruction of such information.

AGENCIES COVERED BY REGULATION

1. These regulations apply to all criminal justice agencies organized under the Constitution or laws of the State of Louisiana which were awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information. The regulations do not directly apply to agencies which have received LEAA funds for general purposes other than the collection, storage or dissemination of criminal history record information. For example: an agency receiving funds to implement and operate automated non-criminal history record information systems (e.g., personnel, resource allocation, performance evaluation) would not by such funding be included under these regulations.
2. All criminal justice agencies organized under the Constitution or laws of the State of Louisiana which are or become signatories to a user's agreement. In such instances, the user's agreement shall control the extent to which these regulations are applicable.
3. Nothing contained in any of these Privacy and Security Regulations shall be construed to reduce, eliminate, or otherwise adversely affect any rights which individuals may have under any existing Louisiana law, court decision, or administrative rule.

RECORDS COVERED BY THESE REGULATIONS

4. These regulations apply to criminal history record information, as defined in LCE-PS Regulation LAC 1-18:1.10. The following types of record information that might contain or otherwise be included within the definition of "criminal history record information" are specifically excluded:
 - A. Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

LOUISIANA

- B. 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 such records are accessed solely on a chronological basis.
- C. Court records of public judicial proceedings.
- D. Published court or administrative opinions.
- E. Public judicial, administrative or legislative proceedings.
- F. Records of traffic offenses maintained by state departments of transportation, motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operator's licenses.
- G. Announcements of executive clemency.
- H. Juvenile records.
- I. Any other specific exemptions as may from time to time be provided by Federal Regulations, State Statute or which may be particularly specified in any of these Regulations.

EFFECTIVE DATE OF REGULATIONS

- 5. These Regulations shall be effective after November 30, 1977.

PENALTIES FOR VIOLATING THESE REGULATIONS

- 6. Under Federal law, an affected agency which willfully and knowingly violates these Regulations may be subject to termination of funds made available by the Law Enforcement Assistance Administration, and a \$10,000 fine. Additionally, future eligibility for receipt of Law Enforcement Assistance Administration funds may be suspended until the violating agency furnishes proof of compliance with these Regulations.
- 7. Under Louisiana Law (L. R. S. 15:575[?] et. seq.), an officer or official of a criminal justice agency may be subject to a fine between \$50 and \$500 for violating any rules or regulations issued by the Louisiana Criminal Justice Information System.
- 8. A violating agency may be barred from receiving information from the Central State Repository until such agency furnishes proof of compliance with these Regulations.

DEFINITIONS

- 9. "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal

LOUISIANA

history record information.

10. "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. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.
11. "Criminal justice agency" means only those public agencies at all levels of government which perform as their primary function activities relating to:
 - A. The apprehension, prosecution, adjudication, or rehabilitation of criminal offenders;
 - B. The collection and analysis of crime statistics pursuant to statutory authority, or
 - C. The collection, storage, processing dissemination, or usage of information originating from agencies described in LAC 1-18:1 of this regulation.
12. The "administration of criminal justice" means performance of any of the following activities: detention, detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.
13. "Affected agency" means:
 - A. Any criminal justice agency which was awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information, or
 - B. Any criminal justice agency which is or becomes a signatory to a user's agreement, or
 - C. Any non-criminal justice agency which is or becomes a signatory to a user's agreement.
14. "Primarily affected agency" means any criminal justice agency organized under the Constitution or Laws of the State of Louisiana which was awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store or disseminate criminal history record information.

LOUISIANA

15. "Secondarily affected agency" means:
 - A. Any criminal justice agency organized under the Constitution or Laws of the State of Louisiana which is or becomes a signatory to a user's agreement, or
 - B. Any non-criminal justice agency which is or becomes a signatory to a user's agreement.
16. "User's agreement" means a written agreement entered into by a certified criminal justice agency and/or a requesting non-criminal justice agency and/or a criminal justice agency that has not received LEAA funds for system support since July 1, 1973. The agreement shall specify the basis of eligibility for receipt of criminal history records, and an acknowledgement by the recipient agency that it is subject to the terms and conditions of the Louisiana Commission on Law Enforcement Privacy and Security Regulations.
17. "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed. Dispositions shall include, but not be limited to: acquittal, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed - civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial - defendant discharged, placed on probation, paroled, or released from correctional supervision.
18. "Statute" means an Act of Congress or State Legislature or a provision of the Constitution of the United States or of a state.
19. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.
20. An "executive order" means an order of the President of the United States or the Chief Executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.
21. "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

LOUISIANA

22. "Dissemination" means the release or transmission of criminal history record information by an agency to another agency or individual by oral, written or electronic methods.
23. "Dissemination Log" means an automated or manual record of information relating to the individual or agency to which criminal history record information has been disseminated. This record should contain the following data elements: a tracking, serial, or identification number, the agency or individual to whom CHRI is released, the address of the agency or individual, the date of release or notification, the individual to whom the information relates, the items of information released and how furnished, the original entry or correction, and the name of the releasing official.
24. "Central State Repository" means that collection of criminal history record information within the Louisiana Department of Public Safety, which is jointly collected, stored, and managed pursuant to mutual agreement between the Division of State Police, Bureau of Criminal Identification and the Louisiana Commission on Law Enforcement, Criminal Justice Information System Division.
25. "Direct Access" means individual access to personal criminal history record information contained in the manual or automated files of an affected criminal justice agency, excepting the Central State Repository, when such access is sought under the provisions of LAC 1-18:3.3, and the individual requesting access or his personal representative is physically present at the place where the records are kept or at the office of the custodian of the record sought.
26. "Eligible Non-Criminal Justice Agency" means a non-criminal justice agency, individual, or individuals having:
 - A. Official authority, pursuant to a statute, executive order, administrative rule, or court order; or
 - B. Formal authority, pursuant to a written agreement with a criminal justice agency, to perform a service or function within the scope of the legitimate activities of a criminal justice agency.
27. "Personal Representative" means any person, including, but not limited to legal counsel, who possesses a sworn authorization empowering him to represent an individual in the viewing or challenging of the authorizing individual's criminal history record information.

LOUISIANA

LOUISIANA PRIVACY AND SECURITY REGULATION LAC 1-18:2

User's Agreement

1. It is the purpose of this regulation to insure state-wide compliance with Privacy and Security Regulations by requiring all recipients of Criminal History Record Information from primarily affected agencies to sign User's Agreements, and to provide for the minimum terms and conditions of such User's Agreements.

DUTY OF PRIMARILY AFFECTED AGENCIES TO REQUIRE USER'S AGREEMENT

2. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to any criminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a User's Agreement, provided that upon presentation of proof that it is already a signatory to a valid User's Agreement, the information requesting agency may not be required to sign an additional User's Agreement.
3. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to an eligible non-criminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a User's Agreement.
4. An eligible non-criminal justice agency, for purposes of this part, shall constitute every non-criminal justice agency receiving access to criminal history records on a regular and recurring basis or on any basis other than the established procedures under the Louisiana Public Records Law.
5. Whenever a primarily affected agency, excluding official custodians of court records, signs a User's Agreement with an otherwise non-affected agency, the primarily affected agency shall immediately forward a copy of the signed User's Agreement to the Privacy and Security Committee. Copies of all User's Agreements shall be kept on file by the signatory agencies, and shall be made available for public inspection upon demand.

MANDATORY FORM OF USER'S AGREEMENTS

6. Every primarily affected agency or secondarily affected agency, excluding courts, which enters into an agreement permitting an eligible agency access to criminal history record information shall employ LCLE - Privacy and Security Form No. 7 for the purpose of fulfilling the obligation imposed by this regulation.

LOUISIANA PRIVACY AND SECURITY REGULATIONS
LAC 1-18:3

Individual Rights of Access to
Automated and Manual Criminal
History Record Information

1. It is the purpose of this regulation to extend individual rights of access to personal criminal history records beyond the rights currently provided by the Louisiana Public Record Act, as required by Federal Regulations, and to provide a mechanism for the implementation of those rights.

INDIVIDUAL RIGHT OF ACCESS TO CRIMINAL HISTORY RECORD INFORMATION

GENERAL RIGHT OF ACCESS

2. Each individual shall have the right to view the automated or manual criminal history record information which specifically relates to him, provided that only individual criminal history record information contained in the records of affected criminal justice agencies organized under the Constitution or laws of the State of Louisiana shall be accessible under this regulation.

INDIVIDUAL RIGHT TO DIRECT ACCESS

3. Any individual electing to seek direct access to his automated or manual personal criminal history record under this sub-part shall be granted such access upon fulfillment of the following conditions:
 - A. The request for access must be in writing, and must be presented to an affected criminal justice agency.
 - B. The request for access must be presented to the official having custody or control of the record sought, or a designated representative of such an official.
 - C. The request for access must be presented during the regular office or working hours of the agency which has custody or control of the record.
 - D. The request for access must be specific enough to enable the person charged with the care or custody of the record to reasonably ascertain the identity of the precise record sought. Specificity requirements may include fingerprints and such personal identifiers as may be essential to the location and retrieval of the record sought.
4. Individuals or their personal representatives seeking access under this sub-part shall be allowed to view the desired individual criminal history record within a reasonable time, not to exceed three (3) days, provided that where fingerprint classification is an essential prerequisite to the location and retrieval of the record sought, the time period within which viewing must be made possible may be extended by an additional thirty (30) days.

RIGHT TO QUERY CENTRAL STATE REPOSITORY

5. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the records of the Central State Repository shall be granted the right to view such records upon:

LOUISIANA

- A. Submitting a written and signed request for viewing to an affected criminal justice agency, other than the Central State Repository, as outlined in LAC 1-18:3.8.
- B. Submitting to fingerprinting for the purpose of positively establishing the identity of the requesting individual; and
- C. Paying a ten (\$10) dollar fee.

RIGHT TO QUERY OTHER AFFECTED AGENCIES

6. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the file of any affected criminal justice agency, other than the Central State Repository or the agency to which the request is submitted, may gain access to such information by:
 - A. Presenting a written and signed request for viewing to any affected agency, other than the Central State Repository, as outlined in LAC 1-18:3.8. Such request shall describe with reasonable particularity the records of which viewing is sought, and shall at a minimum state the places where it is believed such records may be kept, and the approximate date of occurrence of the incidents which form the subject of the records requested. Individuals or personal representatives seeking to query criminal justice agencies which maintain criminal history files accessible solely by fingerprint classification numbers must provide the querying agency with a set of fingerprints of the individual seeking access. LCLE-Privacy and Security Form No. 1 shall be used for this purpose;
 - B. Submitting any required positive identifiers, including fingerprints, for the purposes of establishing both the identity of the requesting individual and correctly locating the records sought;
 - C. Paying a five (\$5) dollar fee for each affected criminal justice agency to be queried. An additional five (\$5) dollar fee may be levied by the querying agency for each query forwarded.

RIGHT EXERCISED BY PERSONAL REPRESENTATIVE

7. When criminal history record information is requested by a personal representative under LAC 1-18:3.3 through LAC 1-18:3.6, the representative must present positive proof of the identity of the individual actually involved as well as a sworn authorization from the involved individual. Positive proof of identity in this sub-section shall be understood to mean fingerprints. Upon presentation of the authorization and positive identifier, the representative shall be permitted to request, examine, and/or challenge the criminal history record information specifically relating to the involved individual.

WHERE TO INITIATE QUERY

8. Queries directed to any criminal justice agency shall be launched from any affected sheriff's office or police department. In the parish of Orleans, individuals shall initiate queries through the New Orleans Police Department.

CENTRAL STATE REPOSITORY-TIME FOR VIEWING, COPIES OF RECORD

9. If the information requested by the individual must be obtained from the Central State Repository, the CSR shall forward the information to the requesting agency within forty-five (45) days of receipt of the request, and the requesting agency shall permit the viewing of the information within a reasonable time after receipt. The viewing individual may make a written summary of the information viewed, and may take with him such a summary. A copy of the record obtained from the Central State Repository shall be furnished to the individual upon request. Such copy should be prominently marked or stamped to indicate that the copy is for review and challenge only and that any other use thereof would be a violation of 42 United States Code Section 3771.

DUTIES OF AFFECTED CRIMINAL JUSTICE AGENCIES

10. Every affected criminal justice agency shall post a public notice informing individuals of their right to access and to administratively challenge the completeness or accuracy of their individual criminal history records. Additionally, every individual seeking to avail himself of the querying procedures set forth in this regulation shall be provided with a list of all affected agencies, and informed of the significance of querying a non-affected agency.
11. Every affected criminal justice agency which has custody of, control over, or access to automated or manual individual criminal history record information shall make available facilities and personnel necessary for such viewing, and shall in all respects maintain a cooperative attitude toward individuals requesting viewing. Viewing shall occur only within the facilities of a criminal justice agency, and only under the supervision and in the presence of a designated employee or agent of a criminal justice agency.
12. Every affected criminal justice agency shall, in every instance, diligently seek to provide the information requested. Every out-of-parish criminal justice agency listed on the request for viewing shall be contacted by mail, communication device, or personally within seven (7) days of receipt of the request for viewing. Five dollars (\$5) shall be assessed for each agency queried by the agency to which the individual submits his request, and shall be forwarded to each queried agency along with the request for viewing. An additional five dollar (\$5) fee may be levied by the querying agency for every query forwarded. Querying agencies shall provide positive identifiers in accordance with LAC 1-18:3.6.
13. Every affected criminal justice agency which receives a request for information must make every effort to locate the information requested, and shall in any event forward a reply to the requesting agency within seven (7) normal working days of receipt of the request, except as provided for requests to the Central State Repository. In such instances where the responding agency maintains criminal history record files accessible solely by fingerprint classification numbers, the response time may be extended up to a maximum of thirty (30) days to allow for the classification of the fingerprints accompanying the query. Such classification may be performed by the responding agency or by the Central State Repository.

DUTY TO FINGERPRINT, CENTRAL STATE REPOSITORY FEE

14. Every affected sheriff's office or police department shall fingerprint individuals requesting that the Central State Repository be queried. In

LOUISIANA

such instances where an authorized representative is presenting a query to the Central State Repository on behalf of an individual, the representative shall supply at least two (2) sets of the represented individual's fingerprints on standard fingerprint cards. The fee charged for querying the Central State Repository and supplying a copy of the results of such query shall be ten (\$10) dollars. Five (\$5) dollars of this amount shall be forwarded to the Central State Repository along with the query, and the remaining five (\$5) dollars shall be placed in the treasury of the criminal justice agency to which the individual submits the request for viewing.

TIME OF VIEWING

15. Individual viewing may, at the discretion of each criminal justice agency, be limited to ordinary daylight business hours.

RECORDS, CERTIFICATION STATEMENT

16. A record of each individual viewing shall be maintained by each affected criminal justice agency by the completion and preservation of LCIE - Privacy and Security Form No. 2. Each such form shall be completed and signed by the supervisory employee or agent present at the review. The reviewing individual shall be required to certify by his signature that he has viewed the criminal history record information requested.

LOUISIANA PRIVACY AND SECURITY REGULATION

LAC 1-18:4

Individual Right to Administrative
Review of the Content, Completeness
or Accuracy of Individual Criminal
History Record Information

1. It is the purpose of this regulation to provide a means for administrative challenge, and ultimate correction of incomplete or inaccurate individual criminal history records.

INDIVIDUAL RIGHT TO ADMINISTRATIVE REVIEW

INDIVIDUAL RIGHT TO CHALLENGE

2. Each viewing individual shall have the right to challenge and request correction of the content, completeness, or accuracy of his individual criminal history record. Each individual shall be informed at the time of viewing of his rights of challenge under this regulation. Individuals shall have a right of administrative appeal under this regulation to seek redress for the denial of rights granted by any of these Regulations.

EXCLUSIVE MEANS OF CHALLENGE, COURT RECORDS EXCEPTED

3. This regulation provides the exclusive means for initial challenge of the content, completeness, or accuracy of individual criminal history record information, provided that where the individual criminal history record information under challenge originated from any file, automated or manual, maintained by the judiciary for the purpose of recording process and results of public court proceedings, this regulation shall not be applicable. In the instance last provided for, the sole formal means of challenge or correction shall be a civil suit filed in a state or federal district court.

INITIATING THE CHALLENGE

4. If after viewing his individual criminal history record, the individual wishes to challenge or request correction of such record, he may do so by submitting to the criminal justice agency which originated the challenged entries LCLE-Privacy and Security Form No. 3, a complaint which shall contain particularized written exceptions to the criminal history record's contents, completeness, or accuracy. The complaint shall include an affirmation, signed by the individual or his legal representative, that the exceptions are made in good faith and are true to the best of the affiant's knowledge, information and belief. A copy of the complaint shall be forwarded to the LCLE Privacy and Security Committee. If, subsequent to viewing, an individual who was not previously fingerprinted wishes to challenge or correct his record, he must submit to fingerprinting so that it can be absolutely assured that the challenging individual is the subject of the record which he seeks to challenge or correct.

LOCAL REVIEW OFFICERS, NOTICE OF AUDIT RESULTS

5. Within each affected criminal justice agency, a Review Officer shall be designated as the person responsible for receiving and processing complaints

LOUISIANA

received under LAC 1-18:4.4 above. Upon receipt of such complaints, each Review Officer shall, within 45 days, conduct an audit of the individual's criminal history record to determine the validity of the exceptions. The Privacy and Security Committee and the challenging individual or his legal representative shall be informed in writing of the results of the audit within 15 days after such results are final. LCLE-Privacy and Security Form No. 4 shall be used for this purpose.

NOTICE OF ALTERATIONS OR ADDITIONS TO RECORDS

6. Should the audit referred to in sub-section LAC 1-18:4.5 disclose inaccuracies or omissions in the information, the criminal justice agency shall cause appropriate alterations or additions to be made to the information and shall cause notice of such alterations or additions to be given to LCLE, the individual involved, and to other criminal justice agencies or private organizations to which that individual's criminal history record information has been disseminated within the previous 90 days, and in every instance the Central State Repository shall be notified of the substance of the alteration or addition.

RIGHT TO APPEAL FROM DECISION OF LOCAL REVIEW OFFICER

7. If the criminal justice agency declines to modify or supplement the individual's criminal history record in whole or in part, the individual or his legal representative may require review of the criminal justice agency's decision by perfecting, within 30 days of the mailing of the audit results, an appeal to the LCLE Privacy and Security Committee. The Privacy and Security Committee shall appoint Hearing Officers to hear such appeals. Failure to timely perfect an appeal shall bar subsequent challenges of that portion of the individual criminal history record in controversy.

PERFECTING THE APPEAL

8. Appeals shall be perfected upon actual delivery to the Privacy and Security Committee of a petition for review. The petition for review shall be signed and in writing and shall include a concise statement of the alleged deficiencies or inaccuracies of the individual's criminal history record, shall state the date and result of any review by the criminal justice agency, and shall be accompanied by a sworn verification of the facts alleged in the petition for review. LCLE-Privacy and Security Form No. 5 may be used for perfecting the appeal.

NOTICE OF THE APPEAL, CONDUCT OF HEARING

9. Upon receipt of the petition for review, the Hearing Officer shall docket the case and notify the criminal justice agency and the individual or his legal representative of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the particular statutes, rules, and regulations involved; the nature of the matters asserted in the petition for appeal. Both the individual and the criminal justice agency shall have adequate opportunity to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

RULES OF PROCEDURE

LOUISIANA

10. Rules of evidence, oaths and affirmations, subpoenas, depositions and discovery, confidential privileged information, examination of evidence by agency, decisions and order, re-hearings, ex parte consultations and recusations, judicial review and other such matters shall be governed by the provisions of the Louisiana Administrative Procedure Act, L. R. S. 49:951 et. seq.

RECORD OF THE PROCEEDINGS

11. A record of all proceedings shall be preserved and provided as required by L. R. S. 49:955(E) and (F).

NOTICE OF DECISIONS

12. Parties shall be entitled to notice of the final decision of the Hearing Officer. LCLL-Privacy and Security Form No. 6 may be used by the Hearing Officer to direct such notice to the parties.

PETITION FOR REVIEW OF DECISION OF HEARING OFFICER

13. If, after receiving notice of the decision or order of the Hearing Officer, the individual or the involved criminal justice agency is reasonably convinced that grounds exist in the record for reversal or modification of the Hearing Officer's decision or order, a petition for review accompanied by a bond (set by the Hearing Officer) sufficient to pay the cost of transcribing the record, may be submitted within 30 days to the Privacy and Security Committee. Failure to so petition shall bar subsequent challenges of that portion of the individual criminal history record contested.

REVIEW BY PRIVACY AND SECURITY COMMITTEE

14. If the petition for review, accompanied by adequate bond for transcription costs, is timely submitted to the Privacy and Security Committee, copies of the petition for review shall be sent to three members of the Privacy and Security Committee, such members being selected on a rotating basis. Within 14 days of submission of the petition for review, the same three members shall decide by personal or telephonic vote whether full review by the Privacy and Security Committee will be granted. If full review is denied, the petitioning party may pursue rights of judicial review granted under L. R. S. 49:964. If full review is granted, the record shall be transcribed and circulated among at least seven (7) members of the Privacy and Security Committee. A time and a date, within 30 days of transcription of the record, shall be set for the presentation of written or oral argument to a quorum of at least five (5) of the seven (7) Privacy and Security members who have read the transcribed record.

RULES OF PROCEDURE, NOTICE OF DECISIONS

15. Decisions, orders, rehearings, and appeals from decisions or orders of the Privacy and Security Committee shall be in accordance with subsections LAC 1-18:4.10 and LAC 1-18:4.12.

WRITS OF MANDAMUS AND INJUNCTION AUTHORIZED

16. The Privacy and Security Committee is hereby authorized to seek writs of mandamus or injunction to enforce final, non-appealable orders and decisions of the Committee and the Hearing Officers.

LOUISIANA

BURDEN OF PROOF

17. Individual criminal history records challenged under the provisions of this regulation shall be deemed to be accurate, complete, and valid until otherwise ordered.

DUTY TO INFORM INDIVIDUAL OF DISSEMINATION OF INCORRECT DATA

18. Upon final determination that the content of an individual criminal history record is inaccurate or incomplete, the affected agency which originated the inaccurate or incomplete entry shall provide the individual or his legal representative with a list of the non-criminal justice agencies to which the inaccurate or incomplete criminal history record information has been disseminated within a ninety (90) day period immediately preceding the final disposition of the challenge.

LOUISIANA

LOUISIANA PRIVACY AND SECURITY REGULATION LAC 1-18:5

Completeness and Accuracy

1. It is the purpose of this regulation to establish minimum standards for reporting criminal dispositions and updating criminal history records to include such dispositions. It is intended that this regulation supplement and reinforce the LCJIS Complete Disposition Reporting System. Because inaccurate or incomplete criminal history record information presents a serious danger to individual rights of privacy and due process, every criminal justice agency should strive to maintain accurate, up-to-date criminal history records.

REPORTING DISPOSITION DATA

2. Every affected agency shall report dispositions (as defined in LAC 1-18:1.17) which occur as a result of a transaction initiated by such agency within ninety (90) days of the occurrence of the disposition. Dispositions shall be reported as required by the Louisiana Criminal Justice Information System.

CRIMINAL HISTORY RECORD INFORMATION

3. Every affected agency shall establish procedures for updating criminal history records using disposition data which shall be distributed by the Louisiana Criminal Justice Information System.
4. Every affected agency shall establish procedures providing for a minimal external search for a disposition prior to disseminating criminal history record information relative to a specific arrest or charge when it appears from the nature of the arrest or charge that a disposition should have occurred, and none is noted in the record.

LOUISIANA

LOUISIANA PRIVACY AND SECURITY REGULATION

LAC 1-18:6

Dissemination and Corrections Records
and the Maintenance of Logs

1. It is the purpose of this regulation to provide direction and guidance concerning the control of dissemination and correction of criminal history record information (CHRI) to individuals or agencies as required by the Federal Regulations (Title 28), through the maintenance of certain logs, and to provide a vehicle for correcting erroneous information. Since dissemination records are viewed by the regulations as a key restraint on erroneous dissemination, a deterrent to the illegal use of information disseminated and a supporting document to quality assurance audit trails (LAC 1-18:7), the maintenance of logs is mandatory.

DISSEMINATION CONTROLS AND RESTRICTIONS

2. These regulations impose no restrictions on the dissemination of CHRI where the court transactions or dispositions have included a conviction or convictions. However, where CHRI contains non-conviction data, i.e. where records contain arrest data, citation, summons or bill(s) of information which have not resulted in a conviction or guilty plea, and acquittals; dismissals; information that a matter was not referred for prosecution, that the prosecutor has not commenced criminal proceedings, that proceedings have been indefinitely postponed; and records of arrest unaccompanied by disposition that are more than one year old and in which no prosecution is actively pending, these regulations now impose restrictions against dissemination of that portion of CHRI containing non-conviction data to non-criminal justice agencies not otherwise permitted access to such information by state statute (3B) and (5).
3. Non-conviction data may only be disseminated to:
 - A. Criminal justice agencies for criminal justice activity and employment.
 - B. Public and private agencies authorized by state and federal statute, executive order, local ordinance or court decision. (See paragraph 5)
 - C. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide criminal justice services. (e.g. Consultants)
 - D. Individuals and agencies engaged in research, evaluative or statistical activities.
4. Nothing in this Regulation abrogates the right of individuals (or their authorized representatives) to access, review, challenge or appeal criminal history information about themselves as provided for in LAC 1-18:3 and LAC 1-18:4.

LOUISIANA

5. Upon application, the Central State Repository (Bureau of Criminal Identification) may furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the Bureau has a record or any other necessary information to any federal, state, or local government regulatory, investigative, licensing or bonding agencies which may require fingerprinting, in connection with their authorized duties, functions and powers.

DISSEMINATION AND CORRECTIONS RECORDS REQUIREMENTS DISSEMINATION LOGS

6. In order to maintain accountability over the full scale of collection, storage and dissemination of CHRI, dissemination transactions records in the form of a log shall be kept by each criminal justice agency. The logging is required both to support the audit process and as a means of correcting erroneous dissemination. Logs may be kept as shown on LCIE Privacy and Security Form No. 8 but must, as a minimum, contain the following data elements:
 - A. A tracking, serial, or identification number in order to provide positive identification linkage between CHRI disseminated and the record from which extracted.
 - B. Agency or individual to which or whom CHRI released.
 - C. Address of agency or individual.
 - D. Date of release or notification.
 - E. Individual to whom information relates.
 - F. Items of information released and how furnished (i.e., copy provided, written out by hand, mailed, teletype or computer terminal printout).
 - G. Original entry or correction (indicate "O" or "C" as appropriate).
 - H. Releasing official.

CORRECTION RECORDS

7. Since identification of agencies or individuals receiving erroneous CHRI is possible from the dissemination log and since Federal Regulations require notification of each recipient of inaccurate or erroneous CHRI (unless it falls outside of the 90 day limit specified in LAC 1-18:4.6) a corrections record will also be kept using the dissemination log. The minimum data elements for a correction entry are essentially similar to those specified for a dissemination entry. The tracking or serial number will be identical to the identification number provided for the original information on the dissemination log. The log page number of the original entry will be placed next to the "C" in the "Original or Correction" column of the log in order to maintain audit trail continuity.

8. All logs are to be preserved for a period of not less than one year from the earliest date of release of information or notification of correction. Logs will be made available for audit and verification of compliance with the Regulations by the Commission, the Privacy and Security Committee or their designated staff members at such time as they may require.

NO RECORD RESPONSE

9. When a response to an inquiry is "No Record" or essentially negative, no logging of the response is required.

CORRECTIONS DATA TRANSMITTAL

10. Corrections to records shall be forwarded in hardcopy form such as letter, teletype, or computer terminal printout within 14 days after determining erroneous information has been disseminated. If the original dissemination is older than 90 days and the 90 day record maintenance notification has been imposed, and a correction is indicated, the correction should be made but need not be transmitted, except to the Central State Repository.

LOUISIANA

6. The annual audit will be performed on a random sample of all affected agencies in the State. All affected agencies must fully cooperate in the conduct of the annual audit.
7. LCJIS shall audit, on a periodic basis, a random sampling of agencies to provide statistically significant examinations of the accuracy and completeness of data maintained and to verify adherence to the Regulations. Sampling and detailed audit procedures will be as indicated in LCJIS furnished guidelines and implementing directives.

AGENCY RESPONSIBILITIES

8. The annual audit will be performed by members of the LCJIS staff who are familiar with the agencies and the requirements of the Regulations. Agencies to be audited will be given a minimum of 30 days written notice prior to an annual audit being conducted. On conclusion of the annual audit, the staff will give the agency an oral debriefing and subsequently, within 30 days, a written, formal critique highlighting deficiencies and recommending corrective action. Field agents making regular, subsequent visits will verify corrective action taken.
9. At the time of the audit, the audited agency will have ready to present to the audit team such documentation as may be required by LCJIS, including but not limited to:
 - A. Evidence of procedural compliance including security,
 - B. Copies of systematic audits performed,
 - C. Source records as may be requested,
 - D. Dissemination logs, and
 - E. Right of access, appeals, and certification forms.
10. Audited agencies with serious deficiencies as indicated in the formal critique must correct these deficiencies and will render written, corrective action reports to LCJIS monthly until the deficiency is eliminated.

LOUISIANA

Louisiana Privacy and Security Regulation

LAC 1-18:7

Audits and Quality Control

1. It is the purpose of this regulation to interpret the requirements of the Federal Regulations as they pertain to: (a) the quality of the information the criminal justice agencies collect, store and disseminate; and, (b) the systematic and annual audits to be performed in order to verify adherence to the Privacy and Security Regulations.

QUALITY CONTROL

PRIVACY CONSIDERATIONS

2. The quality of information which the criminal justice agencies collect and use is an important privacy consideration. Quality information issues usually fall into one or both of two categories; namely, completeness and/or accuracy. Achieving high quality record information is largely a matter of good procedures; it requires a rigorous, systematic approach to record-keeping and a high degree of cooperation among the participating agencies. Agencies shall therefore, institute procedures which implement these requirements.

COMPLETENESS AND ACCURACY

3. Agencies shall likewise develop written procedures which comply with the basic provisions of LAC 1-18:5.

AUDITS

4. There are basically two types of quality assurance audits required periodically. The systematic audit is required of an agency which collects, maintains and disseminates CHRI as a means of minimizing errors or omissions in the completeness and accuracy of the records. This audit is actually a quality control mechanism and will usually be performed on a periodic and regular basis by the agency itself. In contrast, the annual audit is an examination by an outside agency of the extent to which an agency is complying with the Regulations.
5. The systematic audit refers to a combination of systems and procedures employed both to ensure, to the extent possible, completeness and to verify accuracy. The systematic audit is also an internal procedure which basically provides for a comparison between CHRI and source documents or reporting forms, as appropriate, in order to check accuracy and completeness. In addition, this audit provides for an inspection of an agency's systematic audit procedure in accordance with the guidelines furnished by the Louisiana Criminal Justice Information System (LCJIS) staff and utilizing LCLE-Privacy and Security Form No. 9 (Agency Systematic Audit Checkoff List).

LOUISIANA

Louisiana Privacy and Security Regulation LAC 1-18:8

Security of Criminal History Information

1. It is the purpose of this regulation to establish minimum standards governing the achievement and maintenance of physical security, personnel security and programming security within agencies maintaining criminal history records.

PHYSICAL SECURITY

2. Affected agencies shall institute procedures for the protection of criminal history records from environmental hazards including fire, flood, and power failure. Appropriate measures may include: adequate fire detection and quenching systems, protection against water and smoke damage, fire resistant materials on walls and floors, air conditioning systems, emergency power sources and backup files.
3. Affected agencies shall adopt security procedures which limit access to criminal history files. These procedures may include use of guards, badges, keys, passwords, sign-in logs or similar controls. Facilities housing criminal history records shall be so designed and constructed as to reduce the possibility of physical damage to the records. Appropriate measures may include physical limitations on access, security storage for information media, adequate lighting, detection and warning devices, perimeter barriers, heavy-duty, non-exposed walls and closed circuit television.

PERSONNEL SECURITY

4. Applicants for employment and those presently employed in the maintenance of criminal history records shall consent to an investigation of their character, habits, previous employment, and other matters necessary to establish their good moral character, reputation and honesty. Giving false information shall disqualify an applicant from employment and subject a present employee to dismissal.
5. Investigations should be conducted in such a manner as to provide sufficient information to enable the appropriate officials to determine employability and fitness of persons entering sensitive positions. Investigations of applicants should be conducted on a pre-employment basis and the resulting reports used as a personnel selection device.
6. Systems personnel including terminal operators in remote locations, as well as programmers, computer operators, and others working at or near the central processor, shall be assigned appropriate security clearances and should have those clearances renewed periodically after investigation and review.

LOUISIANA

7. Each affected agency should prepare a security manual which delineates procedures for granting clearances for access to criminal history information as well as areas where criminal history data is maintained. Each person working with or having access to this information should know the contents of the manual.
8. The management of each affected agency should establish sanctions for accidental or intentional violation of system security standards. Supervisory personnel should be delegated adequate authority and responsibility to enforce these standards.
9. Any violation of the provisions of these standards by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, shall be punished by the imposition of appropriate disciplinary measures.
10. Where any affected agency is found by the Louisiana Privacy and Security Committee to have willfully or repeatedly violated the requirements of this standard, the Committee may prohibit the dissemination of criminal history record information to that agency, for such periods and such conditions as the Committee deems appropriate.

PROGRAMMING SECURITY

11. There shall be a terminal identification code number for each remote terminal as a pre-condition for entering the files. Within each agency, terminal use shall be assigned to a limited and identified group of individuals. Each individual terminal user shall identify himself by a personal identification number or authorization code. The computer shall be programmed to log the identity of all users, the files accessed, and the date of access. This information shall be maintained for twelve (12) months. (See LAC 1-18:6.) Each remote terminal user shall establish a computerized or written log of terminal use, which shall be audited periodically.
12. Where a computer file may be accessed by more than one agency, system software shall ensure that each agency shall obtain only the data to which it is entitled. System hardware and software shall contain controls to ensure that each user with on-line direct terminal access can obtain only reports authorized for its use. System software shall be implemented to erase and clear core, buffers, mass storage, and peripheral equipment of data unintentionally whenever purging is required by these regulations. Duplicate computer files shall be created as a counter-measure for destruction of original files and all computer tapes or discs shall be locked in a safe storage area under the control of senior personnel. Secondary storage should be used for back-up.
13. Where criminal justice data is transmitted to a data center on reporting forms, the center shall establish procedures for destroying those forms after the data is entered in the computer. System software shall contain controls to ensure that each terminal is limited to the information it can input, modify, or cancel.
14. A monitor program shall be developed to report attempts to violate the system security software or files. Edit program shall be created to periodically audit record alteration transactions.

Segregation of Computerized Files and
their Linkage to Intelligence Files

1. It is the purpose of this regulation to establish minimum standards governing the maintenance of the security and integrity of computerized criminal history record information.

SEGREGATION OF COMPUTERIZED FILES

2. Data files and programs used by the criminal justice system for the collection, maintenance, or dissemination of criminal history record information shall be under the management control of a criminal justice agency and shall be supervised and maintained in the following manner.
 - A. Files shall be stored on the computer in such a manner that they cannot be modified, destroyed, accessed, changed, or overlaid in any fashion by non-criminal justice terminals.
 - B. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a program that will prohibit inquiry, file updates or destruction from any terminal other than criminal justice system terminals which are so designated. The destruction of files shall be limited to specifically designated terminals under the management control of the criminal justice agency responsible for maintaining the files.
 - C. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a classified program to detect and store for classified output all accesses and all attempts to penetrate and all accesses of any criminal offender record information system, program or file. This program shall be available only to the agency control employee and his immediate assistant and the records of such program shall be kept continuously under maximum security conditions. No other persons, including staff and repair personnel, shall be permitted to know this program.
 - D. Non-terminal access to criminal offender record information such as requests for tapes, file dumps, printouts, etc., shall be permitted only with approval of the criminal justice agency having management control of the data. The employee in charge of computer operations shall forward all such requests to the criminal justice agency employee responsible for maintaining systems and data security.

LINKAGE TO INTELLIGENCE FILES

3. Criminal history record files may be linked to intelligence files in such a manner that an intelligence inquiry from a criminal justice terminal can trigger a printout of the subject's criminal offender record information.
4. A criminal history record inquiry response shall not include information which indicates that an intelligence file exists.

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Louisiana Privacy and Security Regulation LAC 1-18:10

Training of System Personnel

1. It is the purpose of this regulation to establish a training program whereby all personnel working with or having access to criminal history record information are made familiar with the substance and intent of the Louisiana Privacy and Security Regulations.

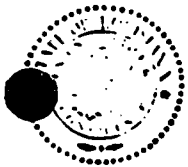
RESPONSIBILITY FOR STATE-WIDE IMPLEMENTATION

2. The Louisiana Commission on Law Enforcement shall be primarily responsible for planning, coordinating, presenting, and approving the Privacy and Security Training Programs. The objective of the training program shall be to instruct key employees of affected agencies as to the substance and intent of the Louisiana Privacy and Security Regulations. Every affected agency shall, to the maximum extent possible, avail itself of such training as may be provided by LCLE.

AGENCY RESPONSIBILITY FOR INTERNAL TRAINING PROGRAM

3. Every affected agency shall institute an internal training program to familiarize personnel with the proper use and control of criminal history record information. Each such program must contain provisions for specific instructional sessions on Louisiana Privacy and Security Regulation LAC 1-18:8 which establishes minimum security standards for criminal history record information. This training program would be primarily directed to employees who work with or have access to criminal history record information.
4. Each affected agency shall maintain a written record describing the training procedures employed by the agency and indicating the number of training meetings per year. This record shall be made available to LCLE staff audit personnel during scheduled annual audits.

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WILLIAM J GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
CRIMINAL DIVISION
Baton Rouge
70806

1885 WOODDALE BLVD.
SUITE 1010

OPINION NO. 87-736

PUBLIC RECORDS.....90-C

January 12, 1988

Released 1-19-88

Under R.S. 44:9 arrest records of misdemeanor violations should be removed from a person's record if the charges are dismissed, but arrest records of felony violations should not be removed from a person's record simply because the charges are dismissed.

Mr. Norman R. Diaz
Chief Criminal Deputy
Lafourche Parish
Post Office Box 5608
Thibodaux, Louisiana 70302

Dear Mr. Diaz:

Your request for an opinion from this office has been forwarded to the undersigned for research and reply. As I understand your question, it asks:

1. May the record of an arrest for a criminal offense (either felony or misdemeanor) be removed from a person's arrest record if the District Attorney declines to prosecute?

It is necessary to look at the statute dealing with records of violations of municipal ordinances and state statutes in answering this question.

R.S. 44:9

- A. Any person who has been arrested for the violation of a municipal or parish ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district, parish or city court in which the violation was prosecuted or to the district court located in the parish in which he was arrested, for expungement of the arrest record, if:

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- (1) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

* * *

- B. Any criminal court of record in which there was a nolle prosequi, an acquittal, or dismissal of a crime set forth above shall at the time of discharge of a person from its control enter an order annulling, cancelling, or rescinding the record of arrest, and disposition, and further ordering the destruction of the arrest record and order of disposition.

- C. (1) Any person who has been arrested for the violation of a state statute which is classified as a felony may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record if:

* * *

- (c) The district attorney declines to prosecute;
and

* * *

- (2) If, after a contradictory hearing with the arresting agency, the court finds that the mover is entitled to the relief sought for any of the above reasons, it shall order all law enforcement agencies to expunge same in accordance herewith.

- E. No court shall order the destruction of any record of the arrest and prosecution of any person convicted of a felony, including a conviction dismissed pursuant to Article 893 of Code of Criminal Procedure. (emphasis added)."

R.S. 44:9 grants a person the opportunity to motion the court in the parish where he was arrested to have an arrest expunged from his record, whether the arrest was for a misdemeanor or felony violation.

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R.S. 44:9 A(1) and (2) allows a person to make a written motion to the court in which he was prosecuted or arrested to have his arrest record expunged if the time limitation for institution of prosecution on the offense has expired without a prosecution having been instituted, or if a prosecution has been finally disposed of by dismissal, sustaining a motion to quash, or acquittal for misdemeanor violations or violations of municipal or parish ordinances.

Section B of R.S. 44:9 also requires that the court of record in which there was a nolle prosequi, an acquittal or a dismissal of a crime set forth in Section A (a misdemeanor or municipal or parish ordinance) expunge the person's record of arrest at the time of discharge of the person from the its control.

When a misdemeanor arrest or an arrest for a parish or municipal ordinance occurs, and the charges are dismissed, then R.S. 44:9 B requires the court to render an order annulling, cancelling, or rescinding the person's arrest record.

R.S. 44:9 does not have a provision requiring that a person's arrest record regarding felony violations be expunged automatically just because the charges have been dismissed. The statute allows a person arrested for a felony violation to motion the court to have his arrest record expunged if certain conditions are met; however, the statute does not provide for the automatic expungement of a felony arrest record simply because the charges are declined by the prosecutor.

Since a provision is made for allowing misdemeanor arrest records to be expunged by the court upon a dismissal of the charges, yet no similar provision exists for arrest records of felony violations, it can be concluded that records of misdemeanor arrests should be removed from a person's arrest record if the charges are dismissed, but records of felony arrests should not be removed simply because the charges are dismissed or declined by the prosecutor.

Accordingly, it is the opinion of this office that under R.S. 44.9, arrest records of misdemeanor violations or violations of municipal or parish ordinances should be removed from a person's record if the charge is dismissed, but arrest records of felony violations should not be removed from a person's record simply because the charges are dismissed or declined.

Norman R. Diaz
Page 4
January 12, 1988

LOUISIANA

I hope the foregoing has adequately answered your question. If you need further assistance on this or any other matter, please do not hesitate to contact this office again.

With kind regards, I am

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

By:


RENE' SALOMON
Assistant Attorney General

RS/ad/lm

16-A. Criminal Procedure
22-A. Education
94. Schools and School Districts -
Administration, Government and
Officers
La. R.S. 15:587.1
La. R.S. 15:825.3
La. R.S. 17:15
La. R.S. 46:51.2
La. R.S. 46:1403

LOUISIANA
State of Louisiana
DEPARTMENT OF JUSTICE

Baton Rouge
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WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

AUGUST 25 1988

OPINION NUMBER 88-374

Honorable Allen Bradley
Post Office Box 1055
DeRidder, Louisiana 70634

Dear Representative Bradley:

In your opinion request of August 11, 1988 you inquired as to the applicability and scope of La. R.S. 15:587.1. That statute deals with providing criminal history information on those who have supervisory or disciplinary authority over children. Your request asked whether volunteer groups would be covered by this statute and specifically referred to the Girl Scouts, Boy Scouts, and Parent/Teacher Organizations.

La. R.S. 15: 587.1, entitled provision of information to protect children reads in pertinent part as follows:

A. As provided in R.S. 15:825.3, R.S. 17:15, and R.S. 46:51.2 any employee or others responsible for the actions of one or more persons who have been given or have applied to be considered for positions of supervisory or disciplinary authority over children shall request in writing, through the Department of Health and Human Resources, that the Bureau supply information to ascertain whether that person or persons has been convicted of, or plead nolo contendere to, anyone or more of the crimes listed in Subsection C. ...it must include a statement signed by the person about whom the request is made which gives his permission for such information to be released.

This statute, though broadly worded, is in our opinion limited by the first sentence thereof. We believe that it's application is limited to the statutes cited in the first sentence with the addition of La. R.S. 46:1403 which is referred to in La. R.S. 46:51.2. Those statutes will be

La. R.S. 15:871.1 providing for criminal history information on those people employed in a supervisory or disciplinary capacity over children is limited to the referred to therein, namely, R.S. 17:15, R.S. 15:825.3, R.S. 46:51.2 and by reference, R.S. 46:1403 and therefore does not cover Scouting Organizations, Parent-Teacher Organizations and other groups not specifically listed therein, unless expanded by Rule of Department of Health and Human Resources.

REPRESENTATIVE BRADLEY
OPINION NUMBER: 88-374
Page -2-

reviewed below in an effort to set out those agencies and positions which we believe are covered by La. R.S. 15:587.3.

La. R.S. 15:825.3 is contained in that section of the revised statutes dealing with the State Department of Corrections. La. R.S. 825.3 states as follows,

§825.3 Criminal History Review

A. No operator, staff person, or employee of a juvenile detention, correction, or treatment facility shall be hired by the Department until it is determined whether or not such person has been convicted of or has plead nolo contendere to a crime listed in R.S. 15:587.1(C).

Therefore one of the areas covered by La. R.S. 15:587.1 is the State Department of Corrections in it's dealing with juveniles.

La. R.S. 17:15 is located in that section of the revised statutes dealing with education. R.S. 17:15 states as follows,

§17:15 Criminal History Review

A. No person who is convicted of or has plead nolo contendere to a crime listed in R.S. 15:587.1(C) shall be hired by public or private, elementary or secondary school system as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or a school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over children unless approved in writing by the District Judge of the parish and the District Attorney. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

REPRESENTATIVE BRADLEY
OPINION NUMBER: 88-374
Page -3-

B. The Board shall establish regulations consistent with the provisions of R.S. 15:587.1.

It is therefore clear that R.S. 15:587.1 applies to those individuals associated with the public and private school systems in this state who have supervisory or disciplinary authority over children.

The next statute listed in the statute in question is La. R.S. 46:51.2. This statute is located in that section of the revised statutes dealing with the State Department of Health and Human Resources. R.S. 46:51.2, also entitled Criminal History Information, sets forth in pertinent part as follows:

"A. No person shall be hired by the Department whose duties include the investigation of child abuse until it is determined whether or not or if is determined that, such person has been convicted of a crime listed in R.S. 15:587.1(C).

B. No operator, staff person, or employee of the juvenile detention, correction, or treatment facility shall be hired by the department until it is determined whether or not such person has been convicted of or plead nolo contendere to a crime listed in R.S. 15:587.1(C).

C. No child shall be newly placed in a foster home for temporary care, except for emergency placement, or for adoption, until it is determined whether or not any adult living in such home has been convicted of or plead nolo contendere to a crime listed in R.S. 15:587.1(C).

D. Omitted.

E. The department shall establish by regulation requirements and procedures consistent with the provisions of R.S. 15:587.1 under which the organizations

REPRESENTATIVE BRADLEY
OPINION NUMBER: 88-374
Page -4-

listed in Subsection F may request information concerning whether or not a person in one of the following categories has been convicted of or plead nolo contendere to a crime listed in R.S. 15:587.1(C).

- (1) Employees;
- (2) Candidates for employment; and
- (3) Volunteer workers

This information may be requested only by a person who has, or has applied or volunteered for a position in the organization which includes supervisory or disciplinary authority over children.

F. Any responsible officer or official as the department may determine, of the following organizations may request criminal history information:

- (1) a child caring institution, child placing agency, maternity home, group home, or day care center all as defined in R.S. 46:1403; and

- (2) any other organization that the department determines, upon request of the organization, to have supervisory or disciplinary authority over children outside of the home to such extent that the department determines that the well-being and safety of children justifies giving the organization access to the specified criminal history information of those who work or volunteer to work with the organization."

Therefore, R.S. 46:51.2 sets out another group of individuals about which this information may be received, including without limitation those investigating child abuse, those working for juvenile centers, those operating foster

REPRESENTATIVE BRADLEY
OPINION NUMBER: 88-374
Page -5-

homes, day care centers and other entities or persons set out in Part F(1) of R.S. 46:51.2.

La. R.S. 46:1403 also located in that section of the revised statutes dealing with the Department of Health and Human Resources contains the definitions for those terms set forth in F(1) of La. R.S. 46:51.2.

It is our opinion that R.S. 15:587.1 though broadly worded, is limited by the specific statutes incorporated therein, and the definitions provided in La. R.S. 46:1403 and therefore applies only to the organizations and endeavors set forth above. No scouting organizations, the Boy Scouts, the Girl Scouts, and no Parent/Teacher organizations are set out in the statutes. We believe that La. R.S. 15:587.1 is limited to the statutes and situations incorporated therein and therefore does not cover scouting organizations, Parent/Teacher organizations and other similar organizations unless specifically provided for by statute or by rule of the State Department of Health and Human Resources. The Department has, as of this date, no rule expanding the coverage of R.S. 46:51.2.

We hope the above has been helpful to your inquiry and if you have any additional questions or request additional explanation of the above, please do not hesitate to contact this office.

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

BY: *James M. Ross*
JAMES M. ROSS
Assistant Attorney General

JMR:rmh