

THIRTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

THIRD REGULAR SESSION, 2003

PUBLIC LAW NO. 13-53
H. B. NO. 13-251, SD1

AN ACT

To establish a comprehensive and coordinated information system to collect criminal justice information, maintain it securely and disseminate it and for other purposes.

**BE IT ENACTED BY THE THIRTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

Section 1. Short Title. This Act shall be known as and may be cited as the “Criminal Justice Information Act.”

Section 2. Legislative Findings and Purpose. The Legislature finds that as the CNMI continues to grow, there is an increasing need to collect, store and disseminate criminal justice records for use by law enforcement and public agencies. The events of September 11, 2001 have also underscored the need to have an integrated system shared by law enforcement agencies for purposes of homeland security. Identification of persons within the Commonwealth for law enforcement purposes through the use of current technology is also necessary. It is critical, for efficient criminal justice planning, to have the data and information readily available for access and use by law enforcement agencies. It is the purpose of this legislation to provide procedures to collect, store securely and disseminate appropriately criminal justice records while maintaining an individual’s constitutional right to privacy as to such information.

Section 3. Amendment. Title 6 of the Commonwealth Code is hereby amended to add a new Chapter 9 entitled “Criminal History and Records” as follows:

§ 101. Definitions.

(a) For purpose of this Act, “criminal justice information” is defined to include the following:

(1) “Correctional and release information” means reports on individuals compiled in connection with criminal proceedings including bail orders, pretrial or post-trial release orders, pre-sentence investigations, orders relating to mental condition, reports relating to participation by inmates in correctional or rehabilitative programs, and orders from probation or board of parole proceedings;

(2) “Criminal justice information” means information collected by a criminal justice agency consisting of traffic citations; vehicle registration or identification information; boat or marine registry information; records of traffic offenses maintained only for the purpose of regulating the issuance, suspension, revocation or renewal of driver’s licenses; court-issued bench or arrest warrants; identification record information; incident reports, arrest reports, detention reports, criminal information or other formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision and release;

(3) “Criminal index information” means information relating to an individual about whom criminal history record information is maintained by one or more state central repositories or federal agencies such as the Federal Bureau of Investigation (FBI), the National Criminal Information Center (NCIC) including an identification of the jurisdiction and agency maintaining the criminal history record information;

(4) “Disposition” means information that a decision has been made to decline criminal prosecution against an individual; that criminal proceedings have been concluded, abandoned, suspended, deferred or indefinitely postponed as to an individual; orders or other information relating to sentencing, correctional supervision, or release from correctional supervision; orders following appellate review of criminal proceedings or executive clemency. Such disposition may include judgment and conviction orders;

pretrial diversion orders; parole documents; probation reports and other such documents evidencing the resolution of a criminal or traffic matter;

(5) “Identification record information” means information which identifies a person or individual including photographs, fingerprint classification, descriptions of marks or tattoos, and other physical descriptive data concerning an individual.

(6) “Non-conviction information” means information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution has resulted from the arrest; information disclosing that a criminal justice agency has elected not to refer a matter to a prosecutor; information that a criminal justice agency has elected not to commence criminal proceedings; or information that criminal proceedings have been indefinitely postponed.

(7) “Wanted person information” means identification record information on an individual who is a fugitive from justice against whom there is an outstanding arrest warrant. Such information shall include the charge for which the warrant was issued; the jurisdiction or court issuing such a warrant; information relevant to the individual’s danger to the community; or any other information that would facilitate the identification and apprehension of the individual.

(b) “Criminal justice agency” means:

(1) All courts of the Commonwealth and the United States district court.

(2) A CNMI law enforcement agency which performs the administration of criminal justice pursuant to a statute or executive order which provides for criminal penalties or enforcement of CNMI laws including the Department of Labor and Immigration; the Department of Lands and Natural Resources; the Department of Public Safety; the Office of Adult

Probation; the Board of Parole; the Division of Customs; the Office of the Attorney General; the Bureau of Motor Vehicles; or their successor agencies.

(3) Any other government agency so designated by the Supervisory Council of the Criminal Justice Planning Agency, in its determination, as being involved in law enforcement and the gathering of criminal justice information.

(c) The “administration of criminal justice” means the performance of any of the following activities: identification, detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes the compilation, storage, and maintenance of criminal identification information, criminal history records information, and the use of such information to aid in law enforcement.

(d) “Commonwealth criminal justice information network” means the group of criminal justice agencies authorized to maintain criminal justice information for law enforcement purposes by collecting, maintaining and disseminating, on behalf of the Commonwealth, criminal justice information to qualified recipients, as prescribed by this Act.

(e) “Seal” means prohibiting access to criminal history record information except to: criminal justice agencies for record management purposes; government officials and criminal justice officials for criminal justice employment determinations; the record subject; a party for an authorized access to a record by statute or a court order.

(f) “Purge” means destroying, blotting out, striking out or effacing so that no trace as to the individual’s identification remains. Destruction of personal identifiers so that the record or entry can never be associated with an individual is a form of purging.

§ 102. Establishment of a Criminal Justice Information System Network.

Every criminal justice agency shall develop, maintain, and establish a criminal justice information system which contains criminal justice information, Each criminal justice agency as defined in this Act shall be part of the criminal justice information network. Each agency shall establish a local database and may include links to national databases and allow the sharing of such criminal justice information with other criminal justice agencies. The protocol and standards for the sharing and use of such information shall be coordinated through the Supervisory Council of the Criminal Justice Planning Agency which is hereby designated as the principal coordinating agency through which criminal justice information is audited, monitored, managed, and coordinated.

§ 103. Information Excluded from Coverage. This Act shall not apply to:

(a) Chronologically organized initial records of arrest maintained at police station, such as “police blotters” and “incident reports”, if such records are not indexed or accessed by name and if they are permitted by law or long-standing custom to be made public;

(b) Internal court record systems accessible only by data, docket or file number if comprised of records of proceedings that are not open to public access or court pleadings or opinions other than court orders.

(c) Statistical or analytical records or reports in which individuals are not identified or in which their identities cannot be ascertained;

(d) Criminal intelligence information which are defined as criminal profiles, data, reports, or notes relating to an identifiable individual compiled as part of a criminal investigation or an effort to anticipate, prevent or monitor possible criminal activity.

§ 104. Correctional and Release Information. Correctional and release information shall be available only to:

(a) Criminal justice agencies for criminal justice purposes and to the extent necessary for the performance of duty; or

(b) The record subject or his attorney if authorized by federal or Commonwealth statute or regulation or court order or rule.

§ 105. Segregation of Intelligence and Investigative Information. Criminal intelligence and investigative information shall be physically and electronically segregated from other types of criminal justice information. Personnel from a criminal justice agency shall access such criminal intelligence and investigative information by other means and through the appropriate procedures other than through the criminal justice information network.

§ 106. Direct Access to Criminal Justice Information.

(a) Direct access to criminal justice information systems shall be limited to authorized personnel of a Criminal Justice Agency as defined in this Act. Each agency shall establish standard operating procedures to establish security levels or restrict access to criminal justice information to those personnel who are authorized to have such information; who need such information for the performance of their duties; who shall use such information for authorized purposes only; and who may not disclose information to recipients who are not eligible under this Act to receive, review or obtain such information.

(b) Agencies of the federal government authorized by federal statute to conduct investigations determining the eligibility for security clearances allowing access to classified information or for appointment to or retention in national security duties may, at the discretion of a criminal justice agency, be permitted direct terminal access to a criminal history record information system for such national security checks.

(c) Terminal access shall be subject to an agreement between the criminal justice agency and federal agency which protects the interests of the criminal justice agency and record subject, and which includes provisions for positive identification

and audit. Criminal justice agencies which provide direct terminal access to such federal agencies are authorized to charge the federal agency for all costs associated with such direct access.

§ 107. Use of Criminal Justice Information By Criminal Justice Agencies. Criminal justice information shall be used by government agencies and criminal justice agencies for criminal justice employment purposes and by criminal justice agencies for other criminal justice purposes under agency rules and regulations specifically designed to limit such use to the following purposes:

(a) The commencement of prosecution, determination of pretrial or post-trial release or detention, the adjudication of criminal proceedings or the preparation of a pre-sentence report.

(b) Supervision by a criminal justice agency of an individual who has been committed to the custody of that agency prior to the time the arrest occurred or the charge was filed;

(c) The investigation of an individual when that individual has already been arrested or detained including determining the individual's identity and other biographical information;

(d) The development of investigative leads for particular criminal offense if access to the information is limited to criminal justice officials with both a need and a right to have access to such information.

(e) The alerting of an official or employee of a criminal justice agency that a particular individual presents a credible danger to his safety or for similar essential purposes; or

(f) Such other legitimate criminal justice purposes are set forth in agency rules or regulations.

§ 108. Access by Individual for Purpose of Challenge.

(a) Any individual who satisfactorily verifies his identity and complies with applicable criminal justice agency rules and regulations shall be permitted, in person

or through counsel, to review and obtain a copy of any criminal history record information or criminal index information concerning him/her maintained by the criminal justice agency receiving the individual's access request, for the purpose of challenging its accuracy or completeness or the legality of its maintenance.

(b) Each criminal justice agency shall adopt and publish rules and procedures to implement this section, including some method of administrative review of any challenge the individual may make and some method of ensuring that appropriate corrections are made and that appropriate notice of such corrections is given to the criminal justice agencies that have received inaccurate or incomplete information. The judicial branch may also adopt in accordance with court administrative procedures or statutory administrative procedures, such rules and procedures as deemed appropriate to implement this section.

(c) Each criminal justice agency, other than the judicial branch, shall provide procedures for appeal before the Criminal Justice Planning Agency, upon such request by the individual, in instances in which a criminal justice agency refuses to correct challenged information to the satisfaction of the individual. Such procedures shall be consistent with statutory administrative procedures established under CNMI law. Such appeal shall include a hearing at which the individual shall be permitted to appear, with or without counsel, to present evidence and to examine or cross-examine witnesses on the issue of whether such criminal justice information relates to him and whether such information shall continue to be maintained.

(d) An individual aggrieved by a decision shall have the right to appeal a final agency decision to the Superior Court on any final decision taken after administrative appeal pursuant to subsection (c) herein.

No individual who obtained any copy of any information regarding himself under this Act may be requested or required to transfer or show such copy to any other person or agency, and any request for such a transfer or disclosure shall be prohibited.

§ 109. Maintenance, Dissemination and Use of Criminal Intelligence and Investigative Information.

(a) Criminal justice information files shall be reviewed by each criminal justice agency at periodic intervals and, at a minimum, each agency shall determine if the grounds for retaining the information still exist. If not, such criminal justice information shall be destroyed and permanently purged.

(b) Within a criminal justice agency, access to and use of criminal intelligence and investigative information shall be strictly limited to officers and employees who are authorized to have such access and use and who have demonstrable need of particular information.

(c) Criminal intelligence and investigative information shall be disseminated outside of the collecting agency only for the following purposes:

(1) confirmation of information in the files of another criminal justice agency; or

(2) for criminal justice employment or other criminal justice purposes, such as an investigation of an individual by another criminal justice agency, if the requesting agency gives assurance that the information is relevant to the criminal justice purpose.

(d) Criminal intelligence and investigative information may be provided to a government official or to any other individual when necessary to avoid imminent danger to life or property.

§ 110. Positive Identification of Record Subject.

(a) Except as permitted in section 109, criminal justice information, except criminal intelligence and investigative information, shall be available only on the basis of positive identification of an individual by means of fingerprints or other equally reliable means.

(b) A criminal justice agency shall be permitted to respond to request for criminal justice information from criminal justice agencies, and from non-criminal

justice agencies, for national security purposes consistent with the Homeland Security Information Sharing Act, 6 USC § 481 et seq., databases upon name, date of birth, sex and/or other identifiers, other than fingerprints, where necessary for criminal justice or national security purposes, and provided that the records prominently indicate that it has not been furnished on the basis of positive identification.

§ 111. Security. Each criminal justice agency shall adopt operational procedures reasonably designed to:

(a) Ensure the physical security of criminal justice information in its custody and to prevent the unauthorized disclosure of such information.

(b) Ensure that when criminal justice information is stored in an automated system, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information;

(c) Ensure that communication lines, whether dedicated or shared, over which criminal justice information is transmitted, are operated so as to detect and prevent unauthorized inquiries, record updates, destruction of records or unauthorized access or tampering;

(d) Ensure that agency databases in physical locations and in electronic form are protected from unauthorized access, theft, sabotage, fire, flood; wind, or other natural or manmade disasters, and that adequate backup facilities are available so that, in the event that criminal justice information maintained in such repositories is destroyed or damaged, copies of such information are readily available at a backup site; and

(e) Ensure that personnel security procedures are employed, including appropriate background investigations and that the agency has authority to transfer or remove personnel who are judged to be security threats.

§ 112. Accuracy and Completeness. Each criminal justice agency shall maintain criminal history record information in such a manner as to ensure that the criminal history record information is accurate and complete, and shall adopt the

following policies and procedures, which are reasonably calculated to produce the highest quality of criminal history record information:

(a) Ensure that disposition and other additional or corrective information pertinent to original arrest records are promptly reported for inclusion on such records;

(b) Ensure that the following records are made and maintained for a period of at least three years.

(1) The source of arrest record information and criminal offender record information; and

(2) The identity of other agencies or person to whom criminal history record information is disseminated, together with the date of the dissemination, the authority of the requester, the purpose of the request, and the nature of any information provides;

(c) Ensure that information and formats are standardized for reporting and entering information into criminal history record system throughout the commonwealth;

(d) Ensure that procedures are in place to systematically and in detail review and verify entries in criminal history record;

(e) Ensure that a tracking and linking system is used to match disposition entries with charges entries and to match other types of subsequent entries with original entries;

(f) Ensure that disposition monitoring system has been implemented which flags aged arrest entries and provides for procedures to obtain dispositions for these entries;

(g) Ensure that the central repository is queried prior to making criminal history record information available, unless the information in question was originating from the disseminating agency or the agency knows that the central

repository does not maintain such information or the central repository is incapable of responding within the necessary time period.

(h) Whenever possible, implement automated systems which include data quality protocols of the type identified in this Act;

(i) Implement policies and procedures which promote and facilitate communication with the courts and other parts of the criminal justice system in order to maximize the sharing of disposition and other relevant information; and

(j) Ensure that a criminal history record information sheet (rap sheet) clearly indicates that linkage among arrest, charge and disposition information and bears a conspicuous legend which states the date on which the rap sheet is issued and a warning that the rap sheet information is current only as of the date of issuance.

(k) Information entered into information systems prior to the adoption of this Act shall be exempt from compliance with this section.

Such records are not the exclusive information to be maintained and each criminal justice agency may add or remove such records as it deems appropriate in its exercise of discretion.

§ 113. Dissemination of Criminal Justice Information to Noncriminal Justice Requesters.

(a) All criminal justice information in the possession or control of a criminal justice agency shall be disclosed pursuant to court order.

(b) All criminal justice information in the possession or control of a criminal justice agency, except criminal intelligence and investigative information should be made available to qualified persons and organizations for research, evaluative and statistical purposes under written agreements reasonably designed to ensure the security and confidentiality of the information and the protection of the privacy interest of individual subjects. Whenever such information is made available, the identification component of criminal justice records should be deleted unless the

purpose of the research clearly cannot be accomplished without such identification information.

(c) All criminal history record information and criminal index information in the possession or control of a criminal justice agency shall be made available to federal agencies pursuant to federal statute for background checks for security clearance determination or assignment to or retention in sensitive national security duties; and

(d) All criminal history record information in the possession or control of a criminal justice agency, except non-conviction information, shall be made available, upon request, to any person for any purpose, and non-conviction information and criminal index information shall be made available for governmental or private noncriminal justice purposes as authorized by Commonwealth statutes or court order or in circumstances involving responsibility for the life or safety of individuals. Non-conviction information and criminal index information may be made available under this section only pursuant to a written agreement with the requester reasonably designed to ensure that the information is used only for the purpose for which it was disseminated, and not re-disseminated, and is maintained in a manner to assure the security of the information and the protection of the privacy interest of record subjects.

§ 114. Sealing and Purging of Criminal History Record Information. The Legislature may provide for statutory exemptions to allow for the sealing and purging of criminal history record information. A criminal justice agency may only seal or purge criminal history record information authorized by statute.

§ 115. Fees. Criminal justice agencies are authorized to charge fees for searching for, the maintenance of and/or making available, criminal justice information for noncriminal justice purposes such as employment background checks, and such fees shall be in an amount which approximates, as nearly as practicable, the direct and indirect costs to the agency of conducting the search and/or making the

information available. The Department of Finance shall establish a criminal justice information system account into which all fees shall be deposited. Funds collected and appropriated to the criminal justice information account shall be specifically used for the administration and maintenance of the criminal justice information system. The fees shall not be used for another purpose. The Criminal Justice Planning Agency Supervisory Council shall have expenditure and reprogramming authority of such funds.

§ 116. Audits.

(a) Every criminal justice agency maintaining criminal justice record information shall periodically audit their own criminal justice information systems and shall also be subject to periodic audits by the Criminal Justice Planning Agency Supervisory Council to ensure compliance with these standards.

(b) The criminal justice information systems network shall also be audited on an annual basis to ensure compliance with this Act. This audit shall include attention to accuracy and completeness; limits on dissemination; security; and subject access and review. Commonwealth criminal justice agencies shall conduct annual audits of their own information systems to ensure compliance with the Act.

§ 117. Funding and Expenditure Authority. Funding for the criminal justice information systems network shall be appropriated by the Legislature as part of the budget for the Criminal Justice Planning Agency or its successor entity. Expenditure authority shall be the executive director of the Criminal Justice Planning Agency through consultation with the Supervisory Council.

§ 118. Rulemaking Authority. The Criminal Justice Planning Agency and each criminal justice agency as defined in this Act are authorized to promulgate regulations to carry out the administrative and legal mandate of this Act.

§ 119. Penalty violation of this Act for a person to:

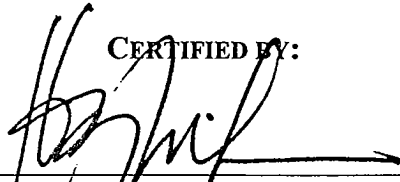
(a) knowingly access criminal justice information without authorization which is punishable by a fine of not more than \$1,000 or not more than one year imprisonment or both.

(b) knowingly disseminate criminal justice information contrary to this Act which is punishable by a fine of not more than \$10,000 or not more than five years imprisonment or both.

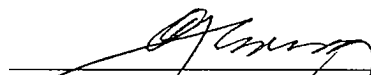
Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Effective Date. This Act shall take effect upon its approval by the Governor, or becoming law without such approval.

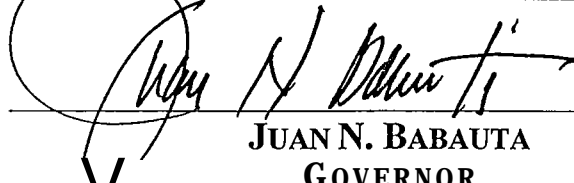
CERTIFIED BY:


HEINZ S. HOFSCHEIDER
SPEAKER OF THE HOUSE

ATTESTED TO BY:


EVELYN C. FLEMING
HOUSE CLERK

Approved this 20th day of May, 2003


JUAN N. BABAUTA
GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS