

An Act to Amend the Laws Relating to Criminal History Record Information and Intelligence and Investigative Information
 Proposed to be submitted by the Criminal Law Advisory Commission
 Part 1

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|--|--|
| <p>Sec. 1. 16 MRSA c. 3, sub-c 8 is repealed</p> <p>Sec. 2. 16 MRSA c. 3, sub-c 10 is enacted to read:</p> <p align="center"><u>SUBCHAPTER 10</u></p> <p align="center"><u>CRIMINAL HISTORY RECORD INFORMATION ACT</u></p> | <p align="center">SUBCHAPTER 8</p> <p align="center">CRIMINAL HISTORY RECORD INFORMATION ACT</p> | |
| <p><u>§651. Scope; application</u></p> <p><u>This subchapter governs the dissemination of criminal history record information. This subchapter establishes 2 distinct categories of criminal history record information and provides for the dissemination of each:</u></p> <p><u>1. Public criminal history record information.</u> <u>Public criminal history record information, defined in section 652, subsection 8, whose dissemination is governed by section 653; and</u></p> <p><u>2. Confidential criminal history record information.</u> <u>Confidential criminal history record information, defined in section 652, subsection 2, whose dissemination is governed by section 654.</u></p> | | <p><i>New "Scope and application" section to clearly state the two distinct categories of criminal history record information.</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|--|
| <p><u>§652. Definitions</u></p> <p><u>As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.</u></p> <p><u>1. Administration of criminal justice.</u> <u>"Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. It includes the collection, storage and dissemination of criminal history record information.</u></p> | <p>§611. Definitions</p> <p>As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.</p> <p>1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.</p> | |
| <p><u>2. Confidential criminal history record information.</u> <u>"Confidential criminal history record information" means criminal history record information of the following types:</u></p> <p><u>A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summoned or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is</u></p> | <p>2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.</p> <p>9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:</p> <p>A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;</p> | <p><i>Deleted. See new definition of "public criminal history record information"</i></p> <p><i>Changed from "nonconviction data" to "confidential criminal history record information"</i></p> <p><i>Consistent with current law: generally, arrest data is not public after one year has elapsed and no formal action. Exception for fugitives from justice.</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|---|
| <p><u>pending;</u></p> <p><u>B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;</u></p> <p><u>C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;</u></p> <p><u>D. Information disclosing that a grand jury has returned a no bill;</u></p> <p><u>E. Information disclosing that a criminal proceeding has been indefinitely postponed or dismissed because the person charged is found by the court to be mentally incompetent to stand trial;</u></p> <p><u>F. Information disclosing that a criminal charge has been filed, if the filing period is indefinite or for more than one year;</u></p> <p><u>G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;</u></p> <p><u>H. Information disclosing that a person has been acquitted of the charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the</u></p> | <p>B. Information disclosing that the police have elected not to refer a matter to a prosecutor;</p> <p>C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;</p> <p>D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;</p> <p>E. A dismissal;</p> <p>F. An acquittal, excepting an acquittal by reason of mental disease or defect; and</p> | <p><i>New</i></p> <p><i>Current ¶D is broken into new ¶E and new ¶F</i></p> <p><i>More details about when a dismissal is confidential</i></p> <p><i>Clarification of what is not an acquittal</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|--|--|
| <p><u>criminal charge;</u></p> <p><u>I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;</u></p> <p><u>J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;</u></p> <p><u>K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and</u></p> <p><u>L. Information disclosing that a person has been granted a full and free pardon or amnesty.</u></p> | <p>G. Information disclosing that a person has been granted a full and free pardon or amnesty.</p> | <p><i>New</i></p> <p><i>New</i></p> <p><i>New</i></p> |
| <p><u>3. Criminal history record information.</u> "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means while within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or</p> | <p>3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.</p> | <p><i>This definition has been expanded to cover all items of "criminal history record information"</i></p> <p><i>No distinction here as to whether confidential or public</i></p> <p><i>"Formal involvement in the criminal justice system either as an accused or as a convicted offender" defined here and used only in this definition</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|---|---|
| <p><u>final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. The term does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative information as defined in section 671; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding.</u></p> | | |
| <p>4. Criminal justice agency. "Criminal justice agency" means a government agency or</p> | <p>4. Criminal justice agency. "Criminal justice agency" means a federal, state, district,</p> | <p><i>There is a question (not for the RTK AC to decide) about whether the Courts should be included in</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|---|---|
| <p><u>any subunit of a government agency that performs the administration of criminal justice pursuant to a statute or executive order. [Maine courts, courts in any other jurisdiction,] the Maine Department of the Attorney General, district attorney offices and the equivalent departments or offices in any federal or state jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and any federally recognized Indian tribe.</u></p> | <p>county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.</p> | <p><i>the definition of criminal justice agency for the purposes of this Act.</i></p> |
| <p>5. Disposition. <u>"Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. It includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; filing of a charge by agreement of the parties or by a court; a defendant who is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution, correctional custody and supervision, and administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; death of defendant; any related pretrial and post-trial appeals, collateral</u></p> | <p>5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompetency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.</p> | <p><i>Definition is expanded to cover all dispositions</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|--|--|
| <p><u>attacks and petitions; a pardon, commutation, reprieve or amnesty; or extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings, or a grand jury has returned a no bill.</u></p> | | |
| <p><u>6. Dissemination.</u> <u>"Dissemination" means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.</u></p> | <p>6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.</p> | |
| <p><u>7. Executive order.</u> "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.</p> | <p>7. Executive order. "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.</p> | |
| <p><i><u>(moved to new Subchapter 11)</u></i></p> | <p>8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.</p> | <p><i>No definition needed here - it isn't criminal history record information</i></p> <p><i>See new Subchapter 11</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|---|---|
| | <p>10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.</p> | |
| <p><u>8. Public criminal history record information.</u> "Public criminal history record information" means criminal history record information that is not confidential criminal history record information.</p> | <p>2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.</p> | <p><i>Changed to "public criminal history record information" - which is all criminal history record information that is not confidential</i></p> |
| <p><u>9. State.</u> "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.</p> <p><u>10. Statute.</u> "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.</p> | <p>11. State. "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.</p> <p>12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.</p> | |
| <p><u>§653. Dissemination of public criminal history record information</u></p> <p><u>1. General rule.</u> Public criminal history record information is public for purposes of Title 1, chapter 13. It may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. The information is</p> | <p>§615. Dissemination of conviction data</p> <p>Conviction data may be disseminated to any person for any purpose.</p> | <p><i>Clarification No time limit</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|--|---|
| <p><u>public whether the public criminal history record information relates to a crime for which a person is currently within the jurisdiction of the criminal justice system or, instead, is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.</u></p> | | |
| <p><u>2. Required inquiry to State Bureau of Identification.</u> A Maine criminal justice agency, <i>other than a court</i>, shall query the State Bureau of Identification prior to dissemination of any public criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, “noncriminal justice purpose” means use of public criminal history record information other than for the administration of criminal justice or criminal justice agency employment.</p> | <p>§616. Inquiries required</p> <p>A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.</p> | <p><i>Question (not for RTK AC to answer) about whether this requirement should apply to courts.</i></p> <p><i>This requires checking with the SBI before information is released to ensure accurate and up-to-date</i></p> |
| <p><u>§654. Dissemination of confidential criminal history record information</u></p> <p><u>1. General rule.</u> Confidential criminal history record information may be disseminated by a Maine criminal justice agency, whether directly or through any intermediary, only to</p> | <p>§617. Dissemination to noncriminal justice agencies</p> <p>Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.</p> | |
| <p><u>1. General rule.</u> Confidential criminal history record information may be disseminated by a Maine criminal justice agency, whether directly or through any intermediary, only to</p> | <p>3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:</p> | <p><i>Clarification that confidential criminal history record information can be released only to those authorized to receive it. Subsection 2 lists who is authorized.</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|--|
| <p><u>authorized persons or entities.</u></p> <p><u>2. Authorized persons and entities.</u> <u>The following are authorized persons or entities:</u></p> <p><u>A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;</u></p> <p><u>B. Any person for any purpose when expressly authorized by statute, executive</u></p> | <p>§613. Limitations on dissemination of nonconviction data Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:</p> <p>613 1. Criminal justice agencies. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;</p> <p>A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;</p> <p>B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and</p> <p>613 2. Under express authorization. Any person for any purpose when expressly authorized</p> | <p><i>See new ¶E</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|---|--|
| <p><u>order, court rule, court decision or court order. Express authorization means language in the statute, executive order, court rule, court decision or court order that specifically speaks of confidential criminal history record information or specifically refers to one or more of the types of confidential criminal history record information;</u></p> <p><u>C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, ensure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations;</u></p> | <p>by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;</p> <p>613 3. Under specific agreements. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and</p> | |
| <p><u>D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, ensure the confidentiality and security of the information consistent with this subchapter, and provide sanctions for any violations;</u></p> | <p>613 4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.</p> | |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|--|
| <p><u>E. Any person upon specific inquiry made to the agency as to whether a named individual was summonsed or arrested, detained or had formal criminal charges initiated on a specific date. The disclosing criminal justice agency shall disclose all confidential criminal history record information in its possession that indicates the disposition of the summons or arrest, detention or formal charges;</u></p> <p><u>F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that contained in section 652, subsection 2, paragraph A, within 30 days of the date of occurrence of that disposition, or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and</u></p> <p><u>H. Public entity for purposes of international travel, such as issuing visas and granting of citizenship.</u></p> <p><u>3. Confirming existence or nonexistence of such information.</u> <u>A criminal justice agency may not confirm the existence or nonexistence of confidential criminal history</u></p> | <p>B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and</p> <p>C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.</p> <p>§618. Confirming existence or nonexistence of criminal history record information Except as provided in section 612, subsection 3, paragraph B, no criminal justice</p> | <p><i>New</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|--|
| <p><u>record information to any person or public or private entity that would not be eligible to receive the information itself; and</u></p> <p><u>4. Required inquiry to State Bureau of Identification.</u> <u>A criminal justice agency, other than a court, shall query the State Bureau of Identification prior to dissemination of any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, “noncriminal justice purpose” means use of confidential criminal history record information other than for the administration of criminal justice or criminal justice agency employment.</u></p> | <p>agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.</p> | <p><i>New</i></p> <p><i>Question (not for RTK AC to answer) about whether this requirement should apply to courts.</i></p> |
| <p>§ ____. Prohibition against further dissemination of confidential criminal history record information by a person or entity</p> <p>Confidential criminal history record information dissemination by a Maine criminal justice agency to a person or public or private entity addressed in section 654, subsection 1, paragraph B, C, D, or H must be used by that person or entity solely for the purpose for which it was disseminated and may not be disseminated further.</p> <p><i>Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. The section</i></p> | | |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|---|--|
| <p><i>would prohibit conduct by a person or entity other than a Maine criminal justice agency.</i></p> | | |
| <p><u>§655. Public information about persons detained following arrest</u></p> <p><u>1. Requirement of record.</u> Every criminal justice agency that maintains a holding facility, as defined in Title 34-A, section 1001, subsection 9, shall record the following information concerning each person delivered to it for pretrial detention for any period of time:</p> <p><u>A. Identity of the arrested person, including name, date of birth, and residence, [and occupation,] if any;</u></p> <p><u>B. Statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred;</u></p> <p><u>C. Date, time and place of the arrest; and</u></p> <p><u>D. Circumstances of the arrest including, when applicable, physical force used in making the arrest, resistance, weapons, refusal to submit by arrested person and pursuit.</u></p> <p><u>2. Time and method of recording.</u> The information required to be recorded by this section must be made immediately upon delivery of the person concerned to the agency for detention. It</p> | <p>§612-A. Record of persons detained</p> <p>1. Requirement of record. Every criminal justice agency that maintains a facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:</p> <p>A. Identity of the arrested person, including name, age, residence and occupation, if any;</p> <p>B. Offenses charged, including the time, place and nature of the offense;</p> <p>C. Time and place of arrest; and</p> <p>D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any.</p> <p>2. Time and method of recording. The record required by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be</p> | <p><i>This information is public now - clarified</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|--|
| <p><u>must be recorded and maintained in chronological order and must be kept in a suitable, permanent record of the agency making it. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.</u></p> <p>3. Information public. <u>The information required to be recorded and maintained by this section is public criminal history record information.</u></p> | <p>made upon serially numbered cards or sheets or on the pages of a permanently bound volume, made and maintained in chronological order, and must be part of the permanent records of the agency making it. The record required by this section may be combined with the record required by Title 30-A, section 1505.</p> <p>3. Records public. The record required by this section shall be a public record, except for records of the detention of juveniles, as defined in Title 15, section 3003, subsection 14.</p> | |
| <p><u>§656. Unlawful dissemination of confidential criminal history record information</u></p> <p>1. Offense. <u>A person is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates confidential criminal history record information knowing it to be in violation of any of the provisions of this subchapter.</u></p> <p>2. Classification. <u>Unlawful dissemination of confidential criminal history record information is a Class E crime.</u></p> | <p>§619. Unlawful dissemination</p> <p>1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.</p> <p>2. Classification. Unlawful dissemination is a Class E crime.</p> | |
| <p><u>§657. Inapplicability of this subchapter to criminal history record information contained in certain records</u></p> | <p>§612. Application</p> <p>1. Criminal justice agencies. This subchapter shall apply only to criminal justice</p> | |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|--|--|
| <p><u>This subchapter does not apply to criminal history record information contained in:</u></p> <p><u>1. Posters, announcements, lists.</u> Posters, announcements or lists for identifying or apprehending fugitives from justice or wanted persons;</p> <p><u>2. Records of entry.</u> Records of entry, such as calls for service, formerly known as “police blotters”, that are maintained by criminal justice agencies, that are compiled and organized chronologically and required by law or longstanding custom to be made public;</p> <p><u>3. Records of public judicial proceedings.</u> Records, retained at and by the District Court and the Superior Court of Maine, of public judicial proceedings, including, but not limited to, docket entries and original court files, and court records of public judicial proceedings from federal and state courts;</p> <p><u>4. Published opinions.</u> Published court or administrative opinions not impounded or otherwise declared confidential;</p> <p><u>5. Records of public proceedings.</u> Records of public administrative or legislative proceedings;</p> <p><u>6. Records of traffic crimes.</u> Records</p> | <p>agencies.</p> <p>2. Exceptions. This subchapter shall not apply to criminal history record information contained in:</p> <p>A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;</p> <p>B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;</p> <p>C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;</p> <p>D. Court or administrative opinions not impounded or otherwise declared confidential;</p> <p>E. Records of public administrative or legislative proceedings;</p> | <p><i>No limit on the sharing of this information, whether it would fall into either category of criminal history record information</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|--|
| <p><u>of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver’s, pilot’s or other operator’s license; and</u></p> <p><u>8. Pardons, commutations, reprieves and amnesties.</u> <u>Petitions for and warrants of pardons, commutations, reprieves and amnesties.</u></p> | <p>G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.</p> | |
| <p><u>§658. Right to access and review</u></p> <p><u>1. Inspection.</u> <u>Any person or the person’s attorney may inspect the criminal history record information concerning that person maintained by a criminal justice agency. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions are to ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or the person’s attorney with a copy of the criminal history record information pertaining to the person on request and payment of a reasonable fee.</u></p> | <p>§620. Right to access and review</p> <p>1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.</p> | <p><i>Note that highlighted language removed</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|---|--|---|
| <p><u>2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or in writing, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the amendment or correction.</u></p> <p><u>On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.</u></p> <p><u>Not later than 15 [30?] days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal must include the reasons for the refusal, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.</u></p> <p><u>3. Administrative appeal. If there is a request for review, the head of the agency shall,</u></p> | <p>2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.</p> <p>On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.</p> <p>Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.</p> <p>3. Administrative appeal. If there is a request for review, the head of the agency shall,</p> | <p><i>Question (not for RTK AC) about how fast an agency must respond</i></p> |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|---|--|
| <p><u>not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, the head of the agency shall permit the requesting person to file with the agency a concise statement setting forth the reasons for the disagreement with the refusal. The head of the agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.</u></p> <p><u>Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, must clearly reflect notice of the dispute. A copy of the statement must be included, along with, if the agency determines it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.</u></p> <p><u>4. Judicial review.</u> <u>If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.</u></p> | <p>not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.</p> <p>Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.</p> <p>4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.</p> | |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|--|---|--|
| <p><u>5. Notification.</u> When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.</p> <p><u>6. Right of release.</u> The provisions of this subchapter do not limit the right of a person to disseminate to any other person criminal history record information pertaining to that person.</p> <p><u>§659. Application to prior Maine Criminal History Record Information</u></p> <p><u>The provisions of this subchapter apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.</u></p> <p><i>(whole section moved to new Subchapter 11)</i></p> | <p>5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.</p> <p>6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.</p> <p>§622. Application</p> <p>The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.</p> <p>§614. Limitation on dissemination of intelligence and investigative information</p> | |

| PROPOSED | CURRENT LAW | Comments on confidentiality provisions |
|----------|--|--|
| | <p>§623. Attorney General fees</p> <p>The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.</p> | <p><i>deleted</i></p> |

G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\CHRIA sbs 10-4-11.doc (10/4/2011 5:13:00 PM)