

CHAPTER 169
FORMERLY
SENATE BILL NO. 104

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8601, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8601. Purpose.

The purpose of this chapter is to manage and maintain an accurate and efficient criminal justice information system in Delaware consistent with Chapter 85 of this title and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current ~~criminal history record information~~ criminal justice information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

Section 2. Amend § 8602, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8602. Definitions.

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: For the purposes of this chapter:~~

(1) “Access” means the physical or electronic privilege to view, modify, or make use of criminal justice information, whether direct or indirect. For purposes of this term:

a. “Direct” means access to CJIS whether via authorized and approved DELJIS credentials or an authorized agency portal.

b. “Indirect” means access to criminal justice information, in oral, online or printed form, by an individual without approved DELJIS credentials for direct access.

(2) “Administration of criminal justice” ~~shall mean~~ means performance of any of the following activities: ~~Detection~~ detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correction supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, ~~storage~~ storage, and dissemination of ~~criminal history record information~~ criminal justice information.

(3) “Authorized agency” means any entity, criminal justice agency, or governmental agency which the Board determines complies with §§ 8610 and 8611 of this title.

(4) “Authorized user” means any employee, intern, extern, contractor, volunteer, or other individual, acting on behalf of an authorized agency, who has been appropriately vetted by the Board and has been granted access to criminal justice information.

(5) “Biographic data” means information about individuals associated with a unique case, and not necessarily connected to identity data. Biographic data does not provide a history of an individual, only information related to a unique case.

(6) “Biometric data” means data derived from one or more intrinsic physical or behavioral traits of humans typically for the purpose of uniquely identifying individuals from within a population. The term includes fingerprints, palm prints, iris scans, and facial recognition data.

(7) “Board” means the Delaware Criminal Justice Information System Board of Managers.

(8) “Case or incident history” means all relevant information gathered about an individual, organization, incident, or combination thereof, arranged so as to serve as an organized record to provide analytic value for a criminal justice agency. In regard to criminal justice information, it is the information about the history of incidents.

(2) “Criminal history record information” shall mean 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.~~ "Criminal history record information" shall include the names and identification numbers of police, probation, and parole officers, and such information shall not be within the definition of a "public record" for purposes of the Freedom of Information Act, Chapter 100 of Title 29. Pursuant to the provisions of this subchapter, upon application the State Bureau of Investigation shall release to members of the news media, and to individuals and agencies as defined by this subchapter, a random number that is unique and permanent to each arresting officer as a surrogate for the officer's agency or department issued identification number. 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. Nor shall the term include information contained in:

- a. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;
- b. Original records of entry such as police blotters maintained by criminal justice agencies which are compiled chronologically and required by law with long standing custom to be made public, if such records are organized on a chronological basis;
- c. Court records of public judicial proceedings;
- d. Published court or administrative opinions or public judicial, administrative or legislative proceedings;
- e. Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation or renewal of driver's, pilot's or other operator's licenses;
- f. Announcements of executive clemency.

(9) "Criminal history record information" has the same meaning as set forth in § 8502 of this title.

(3) "Criminal justice agency" shall mean:

- a. Every court of this State and of every political subdivision thereof;
- b. A government agency or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

1. The Delaware State Police;
2. All law enforcement agencies and police departments of any political subdivision of this State;
3. The State Department of Justice;
4. The Office of the Solicitor of the City of Wilmington;
5. The Department of Correction;
6. The Division of Youth Rehabilitative Services;
7. The Delaware Criminal Justice Information System, Office of the Director;
8. The Division of Professional Regulation.

(10) "Criminal justice agency" has the same meaning as set forth in § 8502 of this title.

(11) "Criminal justice information" or "CJI" means all Criminal Justice Information System data. The term includes criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

(4) (12) "Criminal Justice Information System" shall mean or "CJIS" means the computer hardware, software, and communication network which is managed, operated, and maintained by the Delaware Criminal Justice Information System (DELJIS) for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

(5) (13) "Disposition" shall include, but not be limited to, includes trial verdicts of guilty or not guilty, guilty; nolle prosequi, prosequi; Attorney General probations, probations; pleas of guilty or nolo contendere, contendere; dismissals, dismissals; findings of incompetence to stand trial, findings of delinquency or nondelinquency, or responsible or not responsible; and the initiation and completion of appellate proceeding proceedings.

(6) (14) "Dissemination" shall mean means the transmission of ~~criminal history record information~~
~~criminal justice information~~, or the confirmation of the existence or nonexistence of such information. The term
shall not include any of the following:

a. Internal use of information by an officer or employee of the agency which maintains such
~~information; information~~.

b. Transmission of information to the State Bureau of ~~Identification; Identification~~.

c. Transmission of information to ~~another~~ a criminal justice agency in order to permit the initiation
of subsequent criminal justice ~~proceedings; proceedings~~.

d. Transmission of information in response to inquiries from criminal justice agencies ~~via~~
~~authorized system terminals, which agencies provide and/or maintain the information through those terminals~~.

(7) (15) A "governmental agency" shall mean "Governmental agency" means any agency of the
government of the United States or the State of Delaware or any political subdivision thereof. It does not include a
private individual, ~~corporation~~ corporation, or other nongovernmental entity.

(16) "Identity history" means textual data that corresponds with an individual's biometric data,
providing a history of criminal or civil events for the identified individual.

(17) "Property data" means information about vehicles and property associated with a crime.

(18) "Requesting party" means any entity, criminal justice agency, or governmental agency seeking
access to CJIS.

Section 3. Amend § 8603, Title 11 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 8603. Board of Managers — Established; purpose; composition; term of office; staff; powers.

(a) The Delaware Criminal Justice Information System Board of Managers, ~~hereinafter referred to as the~~
~~"Board,"~~ is hereby established.

(b) The Board shall establish policy for the development, ~~implementation~~ implementation, and operation of
comprehensive data systems in support of ~~the agencies and courts~~ of the criminal justice system of ~~the~~ this State.
~~Said data systems shall include, but not be limited to, criminal history record information with respect to individuals~~
~~who are arrested, or against whom formal criminal charges are preferred within this State, or against whom~~
~~proceedings relating to the adjudication of a juvenile as delinquent are instituted~~.

Section 4. Amend § 8604, Title 11 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 8604. Board of Managers — Duty to ~~insure~~ ensure compliance with statute.

The Board shall ~~insure~~ ensure that the State Bureau of ~~Identification~~ and all other criminal justice agencies
~~all authorized agencies~~ collecting, ~~storing~~ storing, or disseminating ~~criminal history record information~~ criminal
justice information and other information concerning crimes and offenders comply with ~~this chapter and this~~
~~chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, and the~~
~~rules and regulations promulgated by the Board under~~ § 8605 of this title.

Section 5. Amend § 8606, Title 11 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 8606. Office of the Director; function and duties.

(a) *Appointment and duties of Executive Director.* — The Executive Director shall be appointed by and
serve at the pleasure of the Board. The duties of the Executive Director shall include, ~~but not be limited to~~:

(1) The employment and supervision of required employees.

(2) The preparation and management of an annual budget, and such other funds as are designated for
the development and operation of the Criminal Justice Information System.

(3) Provide ~~Providing~~ such administrative support to the Board as may be necessary.

(4) The preparation of ~~policy, policy or procedure and directives as may be required~~ to implement this
chapter and Chapter 85 of this title, ~~or as the Board may require~~.

(5) ~~Be Being~~ the Chief Operational Officer of the Criminal Justice Information System, as per this title and established Board policy.

(6) The preparation of an annual report on the status of the Criminal Justice Information System.

(7) Making and entering into a cooperative agreement, contract, or memorandum of understanding, whenever deemed necessary or desirable to perform the functions of the Criminal Justice Information System and whenever funds are available for such purpose. All necessary legal services shall be provided under Chapter 25 of Title 29.

(b) *Primary functions.*— The primary function of the Office of the Director shall be the assurance of the efficient and reliable development and operation of the hardware, ~~software~~ software, and database which comprise the Criminal Justice Information System; thereby, effectively collecting, ~~storing~~ storing, and disseminating through the automated system, for all authorized users, criminal justice information, ~~including criminal history record information~~.

(c) *Duty to provide security.* — The Office of the Director shall provide for automated security as follows:

(1) Provide ~~for secure system access for all criminal justice information system users~~ ~~secure access for all authorized users~~ through the administration of the Delaware Criminal Justice Information System security programs; programs.

(2) Employ effective and technologically adequate software and hardware designs to prevent unauthorized access or modifications to any information contained within the Criminal Justice Information System; System.

(3) ~~Ensure~~ Ensure that access to computer facilities, systems operating environments, data file contents, and system documentation ~~whether, whether~~ in use or stored in a media library, shall be restricted to specifically authorized organizations and/or personnel; authorized agencies and authorized users.

(4) Procedures shall be instituted to assure that all Delaware Justice Information System facilities provide safe and secure record storage; storage.

(5) Procedures shall be instituted to assure that any ~~agency or individual authorized access to the information system~~ ~~authorized agency or authorized user~~ shall be responsible for the physical security of ~~criminal history record information~~ criminal justice information, or other such sensitive information, under its control or in its custody, and such information shall be protected from unauthorized access, disclosure disclosure, or dissemination; dissemination.

(6) Direct access to ~~criminal history record information~~ criminal justice information, or other such sensitive information, shall be available only to ~~other authorized personnel~~ ~~authorized users~~ essential to the proper operation of the Criminal Justice Information System; System.

(7) Each ~~employee, office or contracted employee, authorized user~~ working with, or having access to the Criminal Justice Information System shall be made familiar with the substance and intent of this chapter and chapter, Chapter 85 of this title, and any rules and regulations promulgated by the Board under § 8605 of this title.

(d) *Duty to maintain complete and accurate records; performance of an audit.* — The Office of the Director, or such contracted firms as may be employed, shall conduct an audit of the Criminal Justice Information System files and of the agencies accessing the system. The audit will be conducted according to established systems auditing procedures, and other such procedures as ~~the State Bureau of Identification~~ ~~the Board~~ may prescribe. An audit will be conducted upon concurrence of the Board.

(e) *Duty to provide training.* — The Office of the Director shall assure that training programs are established for all automated systems within the scope of the Criminal Justice Information System and provide for adequate documentation and manuals for the use of such systems. ~~No authorized user will be granted access to criminal justice information without attending minimum training as prescribed by the Board.~~

(h) *Duty to assure compliance with state criminal justice system; duty to provide effective management.* — The Office of the Director shall have the duty to assure that all Criminal Justice Information System developments shall meet the requirements of the state criminal justice system and its ~~member agencies and courts~~ ~~authorized agencies~~, and provide for the effective management of the development process.

(i) *Duties pursuant to cooperative agreement or express policy, contract, or memorandum of understanding.* — The Office of the Director shall perform such duties as the Board deems necessary within the bounds of the Criminal Justice Information System, its management and maintenance, as established through cooperative agreement or express Board policy, contract, or memorandum of understanding.

Section 6. Amend § 8607, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8607. Violations and investigations.

All suspected or reported violations of this chapter, Chapter 85 or of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be reported to the Director of the State Bureau of Investigation, with said agency having responsibility for the investigation of the reported violation the Office of the Director who shall investigate the reported violation.

Section 7. Amend § 8608, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8608. Personnel. Authorized users.

(a) ~~No person shall be appointed, promoted or transferred to any position with an agency which has or allows access to criminal history record information facilities, systems operating environments or data file contents, whether while in use or stored in a media library, without a criminal history record check by the employing agency. No person shall be appointed, promoted or transferred to such a position by an agency if promotion or transfer. No individual shall be an authorized user with an authorized agency which has or allows access to criminal justice information without meeting the minimum requirements prescribed by the Board to determine if the individual could endanger the security, privacy, or integrity of such information.~~

(b) The Board shall initiate or cause to be initiated administrative action leading to the transfer suspension or removal of personnel authorized to have access to such information, where such personnel violated an authorized user's access if that authorized user violates this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title.

(c) The Board shall provide for the establishment of a plan for resolving employee grievances, complaints and appeals establish rules and regulations for resolving appeals by authorized users to the Board.

(d) Nothing in this chapter or in any rule promulgated by the Board under § 8605 of this title shall limit the authority of an authorized agency to deny the appointment, promotion, or transfer of any individual to any position which requires access to criminal justice information.

(e) An authorized user who knowingly or recklessly violates the terms of this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(f) Any individual who is denied access to criminal justice information shall be given a written statement of the reason or reasons therefor by the agency responsible for such action.

Section 8. Amend § 8609, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 8609 Denial of appointment, etc., to position allowing access to criminal history record information.~~

(a) ~~Nothing in this chapter or in any rule promulgated hereunder shall limit the authority of a criminal justice agency or of the Board under § 8605 of this title to deny the appointment, promotion or transfer of any person to any position which has or allows access to criminal history record information.~~

(b) ~~The Board shall have authority under the rules to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel of a criminal justice agency who are authorized to have or allow access to criminal history record information where such personnel violate Chapter 85 of this title.~~

(c) ~~Any person who is otherwise qualified for a position under this chapter who is denied appointment, promotion or transfer to such position or who is transferred or removed from such position under § 8605 of this title~~

~~shall be given a written statement of the reason or reasons therefor by the agency responsible for such action, and the agency shall promptly give written notice of its action to the Board.~~

Section 9. Amend § 8610, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8610. Access to Criminal Justice Information System; conditions.

Access to the Criminal Justice Information System, including computerized ~~criminal history criminal justice information~~, shall be available to ~~governmental agencies (as defined by this statute)~~ a requesting party provided that the ~~requesting agency~~ requesting party meets all of the following conditions:

(1) ~~In order to be eligible to obtain information from CJIS, an agency must offer Offer~~ written evidence that the public interest in dissemination or access outweighs the security and privacy interests of the person or persons upon whom access is sought, and that access is germane to the mission of the ~~agency~~ requesting party.

(2) ~~The agency shall submit Submit~~ to an application procedure as established by the Board of Managers. Said ~~The application~~ procedure shall identify the specific information being sought.

(3) ~~Approval of the agency's application, which may be in whole, in part, or as modified by the Board, shall require a two-thirds majority of the entire Board of Managers. Have its application approved by the Board. The Board may approve an application in whole, in part, or as modified by the Board. The Board's decision on an application requires a majority vote of the Board.~~

(4) ~~Upon approval of the agency's application, the agency shall enter into a user's agreement Enter into an agency agreement as prescribed in § 8514 § 8611 of this title, upon approval of the requesting party's application by the Board.~~

(5) ~~The agency shall bear Bear~~ all costs associated with CJIS access, once granted.

~~This section does not pertain to access to police complaint information contained in CJIS collected as a result of the requirements as specified in § 8507(a)(4) of this title. Such access shall remain within the discretion of the Director of the State Bureau of Identification.~~

Section 10. Amend Chapter 85 of Title 11 and Chapter 86 of Title 11 of the Delaware Code by transferring § 8514 of Title 11 to Chapter 86 of Title 11 and redesignating it as § 8611 of Title 11, and then by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8611. ~~User agreements~~ Agency agreements.

(a) Use of ~~criminal history record information~~ criminal justice information disseminated to noncriminal justice agencies shall be restricted to the purpose for which it was given.

(b) ~~No criminal justice agency shall disseminate criminal history record information to any person or agency pursuant to § 8513(a)(3) and (b)(1), (2) and (3) of this title unless said person or agency enters into a user agreement with the Bureau, which agreement shall: An authorized agency shall not disseminate criminal justice information, except as otherwise provided in Chapter 85 of this title or as required by Delaware law.~~

(c) An agency agreement shall, at a minimum, do all of the following:

(1) Specifically authorize access to the data or ~~information; information~~.

(2) Limit the use of the data or information to purpose for which it was ~~given; given~~.

(3) Ensure the security and confidentiality of the data or information consistent with this chapter.

(d) ~~An individual or agency authorized agency which has entered into a user agreement an agency agreement as prescribed by subsection (b) of this section, and which knowingly or recklessly violates the terms of that agreement, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. Upon such violation, the user agreement agency agreement shall be terminable at the option of the Bureau the State Bureau of Identification or the Board.~~

Section 11. Amend Chapter 85, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8513. Dissemination of criminal history record information.

(b) Upon application, the Bureau shall, based on the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and criminal history of any

person or persons of whom the Bureau has a record, provided that the requesting agency or individual submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of criminal history record information to all of the following:

(1) Individuals and public bodies for any purpose authorized by Delaware state statute or executive order, court rule or decision or ~~order; order~~.

(2) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. Said agreement shall embody ~~a user agreement~~ an agency agreement as prescribed in § 8514 § 8611 of this title; title.

(3) Individuals and agencies for the express purpose of research, ~~evaluative evaluative~~, or statistical activities pursuant to a specific agreement with a criminal justice agency. Said ~~agency agreement~~ shall embody ~~a user agreement~~ an agency agreement as prescribed in § 8514 § 8611 of this title; title.

(4) Individuals and agencies for purposes of international ~~travel~~; travel.

(5) Individuals and agencies required to provide a security clearance for matters of national security.

§ 8513A. Governmental agency access to the Criminal Justice Information System (CJIS)

~~Access to the Criminal Justice Information System, including computerized criminal history, shall be available to governmental agencies (as defined by this statute); provided, that the requesting agency meets the following conditions:~~

~~(1) In order to be eligible to obtain information from CJIS, an agency must offer written evidence that the public interest in dissemination or access outweighs the security and privacy interests of the person or persons upon whom access is sought, and that access is germane to the mission of the agency.~~

~~(2) The agency shall submit to an application procedure as established by the Board of Managers. Said procedure shall identify the specific information being sought.~~

~~(3) Approval of the agency's application, which may be in whole, in part, or as modified by the Board, shall require a two thirds majority of the entire Board of Managers.~~

~~(4) Upon approval of the agency's application, the agency shall enter into a user's agreement as prescribed in § 8514 of this title.~~

~~(5) The agency shall bear all costs associated with CJIS access, once granted. This section does not pertain to access to police complaint information contained in CJIS collected as a result of the requirements as specified in § 8507(a)(4) of this title. Such access shall remain within the discretion of the Director of the State Bureau of Identification.~~

Approved August 17, 2015