CHRIA

CRIMINAL HISTORY RECORD INFORMATION ACT HANDBOOK



REGULATORY COMPLIANCE AND
INTELLIGENCE SECTION

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Chapter I - Introduction

1.1 Background

The Criminal History Record Information Act ("Act" or CHRIA) is set forth in Chapter 91 of the Crimes Code, 18 Pa.C.S. §§ 9101-9183. The Act was adopted in January 1980 and has been amended on several occasions. The Act applies to any person or agency of the Commonwealth, or its political subdivisions, that collects, maintains, disseminates, or receives criminal history record information. The Act sets forth requirements and procedures for reporting arrests, fingerprinting, final dispositions, and expungements. Also included in the Act are guidelines for the collection and dissemination of intelligence, investigative, and treatment information, collectively known as "protected information." The purpose of the Act is to provide for the orderly collection and dissemination of criminal history record information to further the larger goal of protecting the privacy of persons about whom such information is maintained.

The Regulatory Compliance Section of the Office of Attorney General has specific authority through the Criminal History Records Information Act Unit to perform the duties imposed by the Act and delegated to the Attorney General under the Act. These duties include audit and sanction functions to develop an accurate and complete criminal records system in the Commonwealth. It is important that each criminal justice agency recognize its role and its responsibilities under the Act, and that an efficient method of communication is established between agencies to ensure timely access to criminal history records data. The Regulatory Compliance Section is charged with the responsibility to advise, assist, and educate agencies to achieve these goals.

1.2 Definitions

Administration of Criminal Justice—The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, and/or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage, dissemination or usage of criminal history record information.

AFIS—Automated Fingerprint Identification System.

AOPC—Administrative Office of Pennsylvania Courts.

Audit—The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

Automated Systems—A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data and data storage devices.

C/C—Clerk of Courts.

CCH—Computerized Criminal History.

Central Repository—The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

CHR—Criminal History Record.

CHRI—Criminal History Record Information.

CHRIA—Criminal History Record Information Act.

CJA—Criminal Justice Agency.

CLEAN—Commonwealth Law Enforcement Assistance Network. A computer system maintained by the Pennsylvania State Police to store information on offenses throughout the Commonwealth.

Criminal History Record Information—Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, information or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in Section 9104 (relating to scope).

Criminal Justice Agency—Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, facilities of the Department of Human Services that provide care, guidance, and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal constitutions, or both.

Dissemination—The oral, written, or electronic transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency that maintains the information.

Expunge— (1) To remove information so that there is no trace or indication that such information existed;

(2) To eliminate all identifiers that may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes; or

(3) maintenance of certain information required or authorized under the provisions of Section 9122(c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or posttrial diversion or probation program.

Final Disposition—Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismiss, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

Intelligence Information—Information concerning the habits, practices, characteristics, possessions, associations, or financial status of any individual compiled in an effort to anticipate, prevent, monitor, investigate, or prosecute criminal activity. Notwithstanding the definition of "treatment information" contained in § 9102 of the Act, intelligence information may include information on prescribing, dispensing, selling, obtaining, or using a controlled substance as defined in the Act of April 14, 1972 (P.L. 233, No. 64), known as the Controlled Substance Drug Device and Cosmetic Act.

Investigative Information—Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information.

NCIC—National Crime Information Center. A computerized system run by the Federal Bureau of Investigation in order to track offenses throughout the United States.

OAG—Office of Attorney General.

OCA—Originating Agency Case Number.

ORI—Originating Agency Identifier. A number given to each agency by the Pennsylvania State Police in order to track those agencies submitting information to the central repository.

OTN—Offense Tracking Number. A number given by a court to each specific case.

Police Blotter—A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.

Protected Information—Protected Information includes three types of information: intelligence information, investigative information, and treatment information. Refer to these definitions.

Repository—Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

PSP—Pennsylvania State Police.

Rap Sheet—History of individual criminal record.

SID—State Identification Number.

Treatment Information—Information concerning medical, psychiatric, psychological, or other rehabilitative treatment provided, suggested, or prescribed for any individual charged with or convicted of a crime.

Note: Some terminology used in the Act is outdated. For instance, the Act refers to the "Bureau of Corrections" and the "Pennsylvania Board of Probation and Parole," which have been eliminated and replaced by the Department of Corrections and Pennsylvania Parole Board, respectively. Where appropriate, the statutory language is updated herein.

1.3 What are Criminal Justice Agencies (18 Pa.C.S. § 9102)

Criminal Justice agencies are defined by the Act in Section 9102. They are:

1. Any court including the minor judiciary.
   Note: The court must have criminal jurisdiction.

2. Governmental agency or subunit thereof created by statute or by state or federal constitution and authorized to perform as its primary function the administration of criminal justice. Also must allocate a substantial portion of its annual budget to this

function. A list of agencies that are deemed criminal justice agencies by law is set forth in § 9102 and includes:

Pennsylvania State Police
Municipal Police Departments
County and State Correctional Facilities
Probation Agencies
District Attorneys
Office of Attorney General
Parole Boards
Pardon Boards
Juvenile Detention Facilities

3. An agency determined to be a criminal justice agency by the Office of Attorney General after review of applicable statutes. Some agencies ordinarily certified by OAG include:

Sheriffs
County Detectives
Clerk of Courts
College and University Police if Act 120 certified
Housing Authority Police
Transit Police

1.4 What is Criminal History Record Information (18 Pa.C.S. § 9102)

Criminal History Record Information is information collected by criminal justice agencies concerning individuals at the initiation of a criminal proceeding. Chart 1, Criminal History Record Information, outlines what is and what is not criminal history record information. The chart reflects that original records chronologically entered contemporaneously with the incident are *classified separately*. The reason for this is that this information only needs to comply with *Subsection B* (relating to completeness and accuracy), *Subsection D* (relating to security) and *Subsection F* (relating to individual right of access and review) of the Act. Criminal History Record Information can be contained on a "rap sheet," photographic "mug shot," fingerprint cards, and reports. This is not a complete list but shows some of the more common places to find criminal history record information.

Chapter II - Protected Information

2.1 Protected Information (18 Pa.C.S. § 9106)

Section 9106 of the Act pertains to protected information and automated systems. While this information may be compiled in conjunction with the investigation and prosecution of individuals engaged in criminal activity, the method of collection and dissemination is distinct from the collection and dissemination of criminal history record information.

Protected information, however compiled, is the general description of specific categories of information, namely intelligence, investigative, and treatment information.

Intelligence information is information concerning the habits, practices, characteristics, possessions, associations, or financial status of any individual compiled in an effort to anticipate, prevent, monitor, investigate, or prosecute criminal activity. Intelligence information also may include information on prescribing, dispensing, selling, obtaining, or using a controlled substance as defined in the Controlled Substance, Drug Device and Cosmetic Act, 35 P.S. §780-102. As will be shown, intelligence information is treated somewhat differently than investigative and treatment information.

Investigative information is information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information.

Treatment information is information concerning medical, psychiatric, psychological, or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime.

Generally, intelligence, investigative, and treatment information should not be collected in the central repository because this type of information is considered protected. The prohibition does not preclude the collection in the central repository of names, words, numbers, phrases, or other similar index keys to serve as indices to investigative reports.

2.2 Collection (18 Pa.C.S. § 9106)

Collection of protected information can be manual or automated. A manual collection system is when the criminal justice agency opts for the manual (i.e. paper) collection of protected information. When the criminal justice agency utilizes an automated system (i.e. computer or database), for the collection, analysis, or dissemination of protected information, the following restriction and regulations need to be followed. (See Chart 3, Collection of Protected Information,

for a comparative breakdown in requirements for intelligence, investigative, and treatment information). To place intelligence information in an *automated* system, an agency must:

1. Have reasonable suspicion of criminal activity.

2. Restrict access to authorized employees of the criminal justice agency. The system must not allow access by anyone else, inside or outside the agency.

3. Make certain information is related to a possible misdemeanor or felony (or federal offense with a penalty in excess of one year in prison).

4. Categorize the information by subject matter.

5. Not be collected information in violation of state law.

6. Not collect information concerning participation in a political, religious, or social organization or in the support of any nonviolent form of public speech unless there is a reasonable suspicion that it is related to criminal activity or a prison rule violation.

Investigative and treatment information may be placed in an *automated* system if access is restricted to authorized employees of the criminal justice agency. The system must not allow access by anyone outside the agency.

2.3 Dissemination of Protected Information (18 P.S. § 9106)

Dissemination of protected information is permitted when:

1. An authorized intelligence officer determines that the information is reliable.

2. The requesting agency has policies and procedures reviewed or adopted by the Office of Attorney General in consultation with the Pennsylvania State Police. (See Attachment 1, Sample Policy and Procedures for Dissemination of Protected Information).

    a. The agency must appoint an intelligence officer.

    b. The agency must adopt technical and physical safeguards, including an audit trail for tracking the disseminated information.

c. The agency must label information to indicate level of sensitivity and confidence.

3. The information must be requested in connection with the agency's duties and based on an identifying characteristic. (See Chart 3, Dissemination of Protected Information).

If an intelligence officer is notified that previously disseminated intelligence information is misleading or unreliable, the information must be corrected and the recipient(s) must be notified of the change in either automated or manual systems.

Retention schedules regarding date of inclusion, receipt, or dissemination are needed for intelligence information in either an automated or manual system. Intelligence information shall be purged under the following conditions:

1. The data is no longer relevant or necessary to the goals and objectives of the criminal justice agency.

2. The data has become obsolete, making it unreliable for present purposes and the utility of updating the data would be worthless.

3. The data cannot be utilized for strategic or tactical intelligence studies.

If a police department or district attorney accesses automated information, procedures need to be filed with the following agencies:

1. Police departments shall file plans with the Pennsylvania State Police.

2. District attorneys shall file plans with the Office of Attorney General.

Investigative and treatment information shall not be disseminated to any department, agency, or individual unless (a) the department, agency, or individual requesting the information is a criminal justice agency that requests the information in connection with its duties, and (b) the request is based upon a name, fingerprints, *modus operandi*, genetic typing, voice print, or other identifying characteristic. A careful reading of Section 9106(c)(4) highlights the level of concern that should be given to accessing and disclosing information that may be considered relevant to an investigation. Careful thought should be given prior to disclosure of such information as well as the completion of appropriate disclosure (dissemination) logs.

Secondary dissemination of information received through a formal inquiry of all types of protected information by the receiving criminal justice agency is prohibited. A criminal justice agency possessing information protected by this section, but which is not the source of the information, *shall not disseminate or disclose the information to another criminal justice agency*

but shall refer the requesting agency to the agency that was the source of the information. This prohibition shall not apply if the agency receiving the information is investigating or prosecuting a criminal incident in conjunction with the agency possessing the information. Agencies receiving information protected by this section assume the same level of responsibility for the security of such information as the agency that was the source of the information.

Criminal justice agencies maintaining intelligence information, investigative information, or treatment information must enter, as a permanent part of an individual's information file, a listing of all persons and agencies to whom they have disseminated that particular information, the date of the dissemination, and the purpose for which the information was disseminated. This listing shall be maintained separate from the record itself.

Attachment 1 is a sample of policy and procedure for dissemination and receipt of protected information required by Section 9106(c)(5) and (6). Attachment 2 is a sample dissemination request/agency certification form. Attachment 3 is a sample dissemination log. Criminal justice agencies should adopt policies and procedures as well as dissemination certification and log reports to comply with the Act. Adoption of those sample forms for use by your agency is acceptable provided they are appropriately modified for use by your agency, which includes setting forth the specific department and officer(s), as required by the statute.

2.4 Security Requirements (18 Pa.C.S. § 9106)

A criminal justice agency collecting, storing, or disseminating intelligence information, investigative information, or treatment information shall ensure the confidentiality and security of such information by providing that, wherever such information is maintained, the criminal justice agency must:

1. Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind, or other natural or manmade disaster;

2. Select, supervise, and train all personnel authorized to have access to intelligence information, investigative information, or treatment information;

3. Ensure that, where computerized data processing is employed, the equipment used for maintaining intelligence information, investigative information, or treatment information is dedicated solely to purposes related to the administration of criminal justice or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency is accorded equal management participation in computer operations used to maintain the intelligence information, investigative information, or treatment information. (See Chart 4, Security of Protected Information).

Chapter III – Completeness and Accuracy

3.1 Fingerprinting and Criminal History Record Information (18 Pa.C.S. § 9112)

The single most important aspect of compiling criminal history record information is the fingerprinting process. When this process breaks down, criminal history record information is not accurately recorded in the central repository (CLEAN) or the federal (NCIC) system. Historically, disclosures related to the collection of fingerprint data confirm the statewide difficulty in compiling accurate fingerprint information. Problems include fingerprints not being taken or ordered when fingerprintable offenses occur. Lost fingerprint records and unreadable prints are just a few of the problems facing the development of a reliable criminal records system in the Commonwealth.

Most police departments currently use Live Scan for automated fingerprinting. However, for the remaining police departments that still use the manual system, the fingerprinting process is depicted in Chart 5. The arresting agency must complete a minimum of three fingerprint cards. One card is sent to the FBI (NCIC), and one is sent to the Pennsylvania State Police (central repository). The remaining fingerprint card is retained by the arresting agency and will include the final disposition of the conviction. The agency must have an offense tracking number (OTN) supplied by the court prior to the submission of the fingerprint cards. When private criminal complaints for a felony or misdemeanor result in a conviction, or when certain offenses under Section 3929 relating to retail theft are proceeded against by summons, the court must order the defendant to submit himself for fingerprinting by the municipal police department of jurisdiction or the Pennsylvania State Police. Failure of the court to order printing of the individual and for the arresting agency to follow through on this order is one of the reasons for poor criminal history recordkeeping in the Commonwealth. A publication, *Guidelines for Mandatory Fingerprinting and Preparation of Pennsylvania State Police Cards*, last updated January 1, 2018, was prepared by the Pennsylvania State Police and is available from the Pennsylvania State Police Records Division.

All fingerprint cards or Live Scan images taken by criminal justice agencies must be submitted to the central repository within forty-eight hours. Once the fingerprint cards or images arrive at the central repository, the prints are placed into the AFIS system. In this system, prints are classified and identification is made. Also at this stage, any latent prints that have been submitted to the central repository for possible comparison are compared to the newly obtained prints. An updated criminal history record information report is sent back to the arresting agency. Once classification has been made and positive identification has been obtained, the FBI card is sent to the FBI and the Pennsylvania State Police card is placed in the criminal jacket in the central repository.

The computerized information is now stored in the computerized criminal history database that is accessed by the statewide CLEAN terminals. This is where criminal justice agencies can obtain the most updated "rap sheet" on a particular individual.

3.2 Disposition and Criminal History Record Information (18 Pa.C.S. § 9113)

All criminal justice agencies must submit to the central repository reports of dispositions occurring within their agencies for criminal history record information. This must be done within ninety days of disposition as outlined in Section 9113 of the Act and as shown on Chart 6, Final Disposition. Various agencies have specific responsibilities regarding criminal history record information that they possess and consequently are required to pass along to the central repository. Set forth below is a synopsis of those agencies and their areas of responsibility.

Courts, including the minor judiciary, report their final dispositions to the Administrative Office of the Pennsylvania Courts, which will then submit final dispositions for this group to the central repository. This should be the primary mechanism for entering final criminal court case dispositions in the central repository. County and state correctional institutions collect and submit information regarding the admission, release, and length of sentence of individuals sentenced to local and county institutions to the Pennsylvania Department of Corrections, which submits this information to the central repository. County probation and parole officers shall collect and submit information relating to the length of time and charge for which an individual placed under and released from the jurisdiction of such agency to the Pennsylvania Parole Board, which will submit this information to the central repository. The Pennsylvania Board of Pardons shall collect and submit to the central repository information necessary to maintain complete and accurate criminal history record information that may be in their possession.

Police, county detectives, sheriffs, and other arresting law enforcement agencies must still submit final dispositions to the central repository. Green final disposition cards are no longer forwarded to the Federal Bureau of Investigation.

3.3 Correction of Inaccurate Information (18 Pa.C.S. § 9114)

Upon discovery of inaccurate criminal history record information, the information shall be corrected within fifteen days of the detection of the inaccurate data by the criminal justice agency which originally reported the information by:

1. Correcting its own records, and

2. Notifying all recipients, including the central repository, of the inaccurate data and required correction.

Chapter IV – Dissemination of Criminal History Record Information

4.1 General Regulations (18 Pa.C.S. § 9121)

Section 9121 of the Act regulates how criminal history record information is to be disseminated. These regulations are not to be confused with the dissemination of protected information discussed in Chapter II. The general rules of criminal history record information dissemination are listed here and shown on Chart 7, Dissemination of CHRI.

All criminal justice agencies shall disseminate criminal history record information to any other criminal justice agency or a noncriminal justice agency that is providing a service for which a criminal justice agency is responsible. This shall be done without a fee.

Only state or local police departments shall disseminate criminal history record information to non-criminal justice agencies and individuals. This shall be done only upon request. These agencies may charge a fee for each request. The fee will be waived for volunteers working with children. Before a state or local police department disseminates criminal history record information to noncriminal justice agencies and individuals, it shall extract from the record all notations of arrest, indictments, or other information relating to the initiation of criminal proceedings when three years have elapsed from the date of arrest, no conviction has occurred, and no proceedings are pending seeking a conviction.

The Act only obligates criminal justice agencies to disseminate criminal history record information contained in their own files, and this fact should be included in the Notice of Dissemination. (See Attachment 4, Sample Criminal History Record Information Notice of Dissemination).

All criminal justice agency repositories of criminal history record information must inform the public and post a notice in a public place of the existence, purpose, use, and accessibility of the criminal history record information they maintain. The notice shall also state the agency's identification requirements for individual access and review of criminal records which will be discussed in Chapter VII (see Attachment 5, Sample Public Notice).

4.2 Expungements (18 Pa.C.S. § 9122)

Expungement of criminal records is covered by Section 9122 of the Act (see Chart 8, Expungements). Confusion often arises from the variety of interpretations given to the meaning of an expungement order and the execution of that order by the appropriate agency(ies).

The Rules of Criminal Procedure outline those points to be covered in an expungement petition and order. (See Attachment 6). Even in this set of criteria, although not appearing in the text of the Rules, logic would dictate that, to be effective, an expungement order include a tacit obligation to notify all criminal justice agencies to whom criminal history record information has been disseminated of its obligation to expunge. An opinion of the Commonwealth Court of Pennsylvania, *John Doe v. Stephen A. Zappala, Jr.*, 987 A.2d 190, (see Attachment 8), shows that it is not necessary to err on the side of caution and suggests that the expunged name need not be blacked out of all investigative, intelligence, or treatment reports in the file. Only those documents that were prepared to initiate an arrest and those documents that contain information from the arrest and about the court proceedings need to be expunged.

Criminal history record information shall be expunged in a specific criminal proceeding when:

1. No disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within eighteen months after date of arrest. A court of proper jurisdiction must certify to the director of the repository that no disposition is available and no action is pending. Expungement must await the court certification and the director's authorization.

2. A court order requires non-conviction data be expunged.

3. An individual has been granted an unconditional pardon for an offense that is in accordance with the law. Expungement based on a pardon is automatic and requires notice by the Board of Pardons to the AOPC, and by the AOPC to the appropriate court of common pleas so that an expungement order may issue.

4. The information relates to a conviction for underage drinking under 18 Pa.C.S. § 6308 when the offense occurred after the age of 18 years, the individual has reached the age of 21 years, the individual has satisfied all terms and conditions of the sentence for the offense, and a court has granted a petition for expungement. An expungement under these conditions includes expungement of related administrative records of the Department of Transportation.

5. A judicial determination is made that an individual who is the subject of the criminal history record information is acquitted of an offense, but only if the individual has been acquitted of all offenses based on to the same conduct or arising from the same criminal episode. *Expungement based on a partial acquittal is not permitted.* The

court must give notice to the Commonwealth of its intent to order expungement after an acquittal so that the Commonwealth may have the opportunity to object to the expungement and prove in a hearing that the offense of acquittal is based on the same conduct or criminal episode as an offense of conviction.

In addition to the specific instances listed above, criminal history record information may be expunged when the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision. Also, if an individual has been dead for three years, criminal history record information may be expunged. Finally, an individual who has been convicted of a summary offense and has been free of arrest or prosecution for five years following conviction for the summary offense may petition a court for expungement.

The Act sets forth other requirements for dealing with expungements. A prosecuting attorney and the central repository shall, and a court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or court to be expunged where the individual has successfully completed the conditions of any pre-trial or posttrial diversion or probation program. This information shall be used solely for the purpose of determining subsequent eligibility for such programs.

Notices of expungements shall be submitted promptly to the central repository, which shall notify all criminal justice agencies that received the criminal history record information to be expunged.

The court shall give ten days prior notice to the district attorney of the county where the original charges were filed of any application for expungement where court order requires non-conviction data to be expunged.

It should be noted that some criminal history record information is generally exempt from expungement under the Act. These exemptions, found in Section 9104 and on Chart 1, include: police blotters; press releases; documents filed in court or maintained by a court; and all records compiled chronologically.

4.3 Limited Access and Clean Slate Limited Access to Criminal History Record Information (18 Pa.C.S. §§ 9122.1-9122.6)

In addition to expungement, individuals convicted of eligible offenses may be entitled to limited access and/or clean slate limited access. Under the relevant provisions, criminal history record information relating to such offenses may be disseminated only between criminal justice agencies or under limited circumstances described below. To be eligible for either limited access or clean slate limited access, the individual must have paid all restitution and any fee previously authorized to carry out the limited access and clean slate limited access provisions.

Under § 9122.1(a), an individual may petition the relevant court of common pleas for an order of limited access for a qualifying misdemeanor or ungraded offense with a maximum penalty of no more than five years. The individual must have been free from conviction of any offense with a maximum penalty of one or more years. If the court grants the petition, the relevant criminal history record information may be shared only among criminal justice agencies and as follows:

1. To a requesting county children and youth agency or the Department of Human Services in the performance of duties relating to children and youth;

2. Pursuant to a court order relating to child custody or protection from abuse;
3. To an employer defending a claim based on expunged, limited access, or clean slate access by an employee for which the employer is immune from suit under § 9122.6;

4. For purposes of verification of information provided by an applicant for employment if federal law requires consideration of the applicant's criminal history;

5. For purposes of verification of information provided to the Supreme Court of Pennsylvania or an entity of that Court in its capacity of supervising the courts and the practice of law;

6. For purposes of verification of information provided by a candidate for public office concerning eligibility for office; and

7. To the Department of Human Services for verification of information as required by law.

Under § 9122.1(a.1), an individual who has been free from conviction for an offense with a maximum penalty of one or more years for a period of ten years may petition for limited access to criminal history record information for a qualifying felony offense. These offenses include criminal mischief, criminal trespass, theft offenses, forgery and fraudulent practices, false statements relating to public assistance, or a "qualifying offense," which is a drug offense for which the sentence *actually imposed* was a minimum term of 30 or more months or a maximum term of 60 or more months. Limited access may not be granted if the offense is graded as a felony of the first or second degree.

There is a long list of offenses for which limited access will not be granted set forth in § 9122.1(b).

For purposes of limited access, two or more offenses joined under one docket number and sharing the same OTN are considered one conviction.

The court must provide notice to the District Attorney regarding the filing of a petition for limited access within 10 days of its filing. The District Attorney has 30 days to file objections to the petition. If limited access is granted, notice of the order must be sent to the central repository, which then must notify any criminal justice agency that has received the criminal history record information of the order.

Section 9122.2 governs clean slate limited access. Clean slate limited access applies to five types of criminal history records:

(1) misdemeanors of the second or third degree and to any other misdemeanor for which the maximum term of imprisonment is two years or less;

(2) a qualifying offense, if the person has been free of conviction for ten years of any offense for which the maximum term of imprisonment of one or more years;

(3) any charges that resulted in a final disposition other than a conviction;

(4) summary offenses for which the conviction is older than five years; and

(5) convictions for which a conditional pardon has been granted.

Payment of all court-ordered restitution and the applicable fee is required.

The Administrative Office of Pennsylvania Courts is required to provide on a monthly basis records of charges eligible for clean slate limited access to the central repository, with the time for notification depending on the type of record, i.e. the basis for eligibility. The State Police then are required to verify the eligibility of each record and, if the State Police determine that the record is not eligible or does not match data in the central repository, the State Police must notify the Administrative Office with 30 days of receiving the information. The Administrative Office then has 30 days to remove any ineligible or non-match data from its list of eligible records. Each judicial district is required to order limited access to any of its cases on the original eligible records for which it receives no notice of ineligibility from the Administrative Office.

Noncriminal justice agencies may have access to clean slate limited access records as permitted for limited access records.

Section 9122.3 governs exceptions to clean slate limited access. As with limited access records, there is a lengthy list of offenses for which clean slate limited access is not available.

For purposes of clean slate limited access, two or more offenses joined under one docket number and sharing the same OTN are considered one conviction unless there are more than two felony convictions.

Apart from a qualifying offense, clean slate limited access does not apply to an otherwise qualifying conviction if a conviction for an offense punishable by five or more years or a disqualifying offense arose out of the same case. However, this exception to clean slate limited access does not apply to a qualifying offense.

An individual may apply for limited access even if clean slate limited access is available.

Section 9122.4 allows a court, upon petition by the prosecutor and with notice and an opportunity to be heard for the defendant, to vacate an order for clean slate limited access if the court determines that the order was entered in error and not in accordance with Section 9122.2. Except for non-conviction records, the court, on petition of the prosecutor, also may vacate an order for clean slate limited access if the defendant is convicted of a subsequent felony or

misdemeanor offense. Any order vacating an order for clean slate limited access must be transmitted to the central repository.

Section 9122.5 governs the effects of records that are expunged or subject to limited access or clean slate limited access. The individual who is the subject of such records may not be required to disclose information about the records unless federal law requires disclosure for purposes of employment. Criminal history record information that has been expunged or subject to limited access or clean slate limited access may not be used by any individual or noncriminal justice agency for purposes of employment, housing, or school matriculation purposes. Convictions that have been expunged or subject to limited access and clean slate limited access are not to be considered convictions for purposes prohibiting employment under laws that prohibit employment based on state convictions, unless federal law otherwise requires. However, convictions subject to limited access and clean slate limited access remain a part of an individual's criminal history record and must be disclosed to a court when required, such as for purposes of sentencing. Also, such convictions must be self-disclosed for purposes of determining eligibility for public office. The Pennsylvania Commission on Sentencing is permitted to maintain criminal history record information that is otherwise subject to expungement, limited access, or clean slate limited access to be used for conducting research and statistical data and may disseminate such information only under limited circumstances.

Employers are immune from liability for the misconduct of employees whose criminal history record has been expunged or subject to limited access or clean slate limited access when the misconduct relates to the expunged or restricted record. The employer is immune from suit even if the employee has voluntarily disclosed the expunged or restricted information.

4.3 Juvenile Records (18 Pa.C.S. § 9123)

Juvenile records should be expunged wherever they are kept when:

1. A complaint that has been filed is not substantiated or a petition is dismissed by the court.

2. Six months have elapsed since the final discharge of the person from supervision under a consent decree and no proceeding seeking adjudication or conviction is pending.

3. Five years have elapsed since the final discharge of the person from commitment, placement, probation, or any other disposition and referral and, since such final discharge, the person has not been convicted of a felony or misdemeanor, or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication.

4. The individual is 18 years of age or older, the attorney for the Commonwealth consents to the expungement and a court orders the expungement after consideration of certain factors, including:

1. The type of offense;

2. The individual's age, history of employment, criminal activity and drug and alcohol problems;

3. Adverse consequences the individual may suffer if his records are not expunged; and

4. Whether the record should be retained due to public safety.

Part (b) of the law states, "The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney."

Part (c) states, "All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older."

See Attachment 9 for 1996 legislative changes to the Juvenile Act regarding juvenile criminal history record information.

4.4 Use by Licensing Agencies (18 Pa.C.S. § 9124)

Section 9124 directs state licensing agencies to consider convictions of an applicant of crimes, but the convictions alone shall not preclude the issuance of the license, certificate, registration, or permit. The following information *should not* be used in consideration of an application for a license, certificate, registration, or permit:

1. Records of arrest if there is no conviction of a crime based on the arrest.

2. Convictions that have been annulled or expunged.

3. Convictions of summary offenses.

4. Convictions for which the individual received a pardon from the Governor.

5. Convictions that do not relate to the applicant's suitability for the license, certificate, registration, or permit.

The applicant can be denied the license, certificate, registration or permit if:

1. The applicant has been convicted of a felony.

2. The applicant has been convicted of a misdemeanor that relates to the trade, occupation or profession for which the license, certificate, registration, or permit is sought. The applicant shall be notified in writing if the decision to not issue the license, certificate, registration or permit that prohibits the applicant from practicing is based in whole or part on convictions of any crime.

4.5 Use for Employment (18 Pa.C.S. § 9125)

Section 9125 allows potential employers to use criminal history record information in the hiring process. Felony and misdemeanor convictions may be considered only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied. As in the previous section, the applicant shall be notified in writing if the decision not to hire is based in whole or in part on criminal history record information. The State Police, as central repository, maintains the PATCH (Pennsylvania Access to Criminal Histories) system for this purpose. https://epatch.pa.gov/home

Chapter V - Security

5.1 Criminal History Records Information Act Mandates (18 Pa.C.S. § 9131)

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

1. Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind, or other natural or manmade disasters.

2. Select, supervise, and train all personnel authorized to have access to criminal history record information.

3. Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

The requirements for the protection of criminal history record information are not the same as the security of protected information. (See Chart 4, Security of Protected Information). A criminal justice agency should use caution not to confuse this concepts as these are separate requirements.

Chapter VI - Audit

6.1 Audits (18 Pa.C.S. § 9141)

The Criminal History Record Information Act requires the Office of Attorney General to conduct an annual audit of the central repository and a representative sample of all repositories. Included in these audits is a review of criminal justice agency automated systems.

The Act also calls for the Pennsylvania State Police to conduct annual audits of at least 5% of all municipal police departments' *plans, policies, or procedures* which are implemented under Section 9106(c) of the Act. These are not on-site audits but a review of the plans. A copy of the Pennsylvania State Police findings shall be submitted to the Office of Attorney General.

The Office of Attorney General conducts two types of CHRIA audits. The majority of such audits are done electronically by email, web-based survey, fax, and/or telephone by Agents of the Office of Attorney General, Regulatory Compliance Section. A small percentage of audits will be completed in person. The agents contact the appropriate supervisory personnel of an agency and complete a questionnaire with that official. The data gathered is analyzed for statistical comparison purposes. Agencies failing to respond to remote audit attempts will be audited in person. All criminal justice agencies will be audited at least once within a three year period.

Agents will need to talk with appropriate agency officials and records personnel. They will ask about and/or tour the areas of an agency where fingerprint files, criminal history files and computer terminals that can access the central repository and/or where protected information is located. They may desire to observe the agency's procedures for completing arrest and custodial fingerprint cards.

When an audit has been completed, the Office of Attorney General prepares a written and computerized audit report every three years setting out findings and any appropriate recommendations. The report is submitted to the agency for comments before it is prepared in final form. Interim reports may be generated as necessary to address any reported CHRIA violations.

6.2 Regulations (18 Pa.C.S. §9152)

It is the duty of the Office of Attorney General, in consultation with the Pennsylvania State Police, to adopt rules and regulations pertaining to the Criminal History Record Information Act.

The Office of Attorney General has the power and authority to promulgate, adopt, publish and use guidelines to implement the Act. The Attorney General shall also:

1. Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

2. Establish the maximum fees which may be charged for the costs of reproducing criminal history record information for the individual access and review for research or statistical purposes and for access by noncriminal justice agencies and individuals.

3. Make investigations concerning all matters touching the administration and enforcement of this chapter and the rules and regulations promulgated thereunder.

4. Institute civil proceedings for violations of this chapter and the rules and regulations adopted thereunder.

5. Conduct annual audits of the central repository and of a representative sample of all repositories within the Commonwealth, collecting, compiling, maintaining, and disseminating criminal history record information.

6. Appoint such employees and agents as it may deem necessary.

This section outlines the authority for the issuance of regulations, including a notation regarding the institution of civil proceedings (see Handbook Section 8.2). Potential criminal liability may attach for violations of various sections of the Act (see Handbook Section 8.3).

Chapter VII – Right of Access and Review

7.1 Right of Access and Review (18 Pa.C.S. § 9151)

Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his or her criminal history record information. Prisoners incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge, and appeal. As noted in Handbook Section 4.1, the agency must post a public notice regarding its identification requirements (see Attachment 5, Sample Public Notice). The following explains the procedure utilized in the review, challenge, and appeal process.

7.2 Rules and Regulations (18 Pa.C.S. § 9152)

The Attorney General, in cooperation with appropriate criminal justice agencies, shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

7.3 Requests for Information (18 Pa.C.S. § 9152)

Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists, the individual may review a copy of such information without undue delay for the purpose of review and challenge.

7.4 Challenge to Accuracy (18 Pa.C.S. § 9152)

The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is incorrect and what the correct version should be. Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy or any part subsequently challenged upon the individual. Information subsequently added to such record is also subject to review, challenge, correction or appeal.

7.5 Review of Challenge (18 P.S. § 9152)

All criminal justice agencies have sixty days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. If the challenge is valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected;

(2) A certified and corrected copy of the criminal history record information is provided to the individual;

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies is destroyed or returned, and replaced with correct information; and

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

7.6 Appeals (18 Pa.C.S. § 9152)

(1) If a challenge is ruled invalid, an individual has the right to appeal the decision to the Office of Attorney General within thirty days of notification of the decision by the criminal justice agency.

(2) The Attorney General has the authority to conduct administrative appeal hearings in accordance with the Administrative Agency Law.

(3) An adverse decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.

Chapter VIII – Crime Victim Right of Access

8.1 Latest Change to the Act

In November 2022, effective May 2, 2023, the Act was amended to allow crime victims to obtain investigative information that is relevant to pending or anticipated civil litigation. Similarly, a defendant in civil litigation brought by a crime victim may obtain relevant investigative information. Previously, the dissemination of investigative information, except to another criminal justice agency acting within its lawful authority, was unlawful. The amendment, Pub. L. 1979, No. 134 (November 3, 2022), created Subchapter F.1, Crime Victim Right of Access. This legislation also sets forth a procedure for making a request, gives reasons for denying a request, and provides for potential judicial review.

8.2 Definitions (18 Pa.C.S. § 9158)

Section 9158 sets forth terminology specific to Subchapter F.1. Most importantly, a "crime victim" is a "direct victim" as defined by the Crime Victims Act, 18 P.S. § 11.103. A direct victim is a person against whom a crime is committed or attempted and who suffers a physical or mental injury as a result. A Pennsylvania resident who is harmed outside the Commonwealth by an act that would be a crime if committed here is also a direct victim. An offender is not a direct victim.

Other relevant terms include:

Records information officer: The head of a criminal justice agency or a designee
Request for dissemination: A request under § 9158.2 (discussed below)
Requesting party: A crime victim or a defendant in a civil action (lawsuit) in which a crime victim is a party

Other terms will be discussed below as necessary.

8.3 Right to Access (18 Pa.C.S. § 9158.1)

Section 9158.1 provides that a requesting party or their legal representative may obtain investigative information for use in or investigation of an actual (pending) or anticipated civil action in the Commonwealth relating to the investigative information. The dissemination of police reports and other investigative information is a marked departure from prior practice. However, it should be noted that only investigative information meeting the requirements of Subchapter F.1 of the Act must be disclosed, and the general rule against dissemination still applies otherwise. Also, even investigative information required to be disseminated may be subject to redaction.

8.4 Access by Requesting Party (18 Pa.C.S. § 9158.2)

The procedure for making a request is set forth in § 9158.2. A distinction is drawn between a crime victim and any other requesting party in that a crime victim may make the request before initiating civil litigation if the investigative information is "material and necessary to the investigation or preparation of a civil action in this Commonwealth." By contrast, other requesting parties may request investigative information "that is directly related to a civil action pending in a court in this Commonwealth." A crime victim may make the request through a personal representative.

In other words, a crime victim may obtain investigative information before filing a civil complaint so that they may investigate the facts and evidence before preparing the civil complaint. Other requesting parties must wait for the civil action to begin.

The request must include: (1) an unsworn statement by the requesting party or representative pursuant to 18 Pa.C.S. § 4904 that the requested information is directly related to a pending civil action or, if the request is from a crime victim, is material and necessary to the investigation or preparation of a civil action; and (2) a specific description of the information sought so as to enable the criminal justice agency to ascertain the information being requested. Service must be made by personal service or by certified mail with receipt on the agency's records information officer, which is the agency head or a designee. A subpoena seeking investigative information may be treated by the agency as a request under Subchapter F.1, but that treatment does not relieve the agency from responding to the subpoena as otherwise required by law.

After service, the criminal justice agency has sixty days or until a date returnable provided on the request, whichever is later, to disseminate the investigative information. The agency may impose reasonable fees for costs incurred to comply with the request. Dissemination may be made to the requesting party, the requesting party's legal representative, or the attorney for the requesting party, as directed by the request. Investigative information provided by a criminal justice agency is discoverable in the civil action unless it is otherwise non-discoverable or subject to privilege.

8.5 Denial of Request for Dissemination (18 Pa.C.S. § 9158.3)

A criminal justice agency *must* deny a request for dissemination of investigative information if:

> (1) absent reasonable redaction, dissemination endangers a person or public safety, adversely affects an investigation or ongoing prosecution, relates to law enforcement's use of confidential informants, or discloses investigative techniques or procedures;
>
> (2) the information is not directly related to a civil action pending in a court nor material and necessary to the investigation or preparation of an anticipated civil action; or

(3) absent reasonable redaction, dissemination would identify a third-party victim of child abuse, domestic violence, or sexual abuse, as defined in § 9158.

A criminal justice agency has sixty days from receipt of the request for dissemination or by the date returnable to serve notice of a denial on the requesting party. The written notice must identify the grounds for the denial.

8.6 Judicial Review (18 Pa.C.S. § 9158.4)

If a request for investigative information is denied by a criminal justice agency, the requesting party has 45 days to file a petition for review. For a local agency, the petition for review is filed in the Court of Common Pleas for the county where the agency is located. For a statewide agency, such as the Office of Attorney General or the Pennsylvania State Police, the petition for review is filed in Commonwealth Court. The requesting party has the burden of proving the right to access and may obtain declaratory and injunctive relief only.

A determination by an agency that, absent reasonable redaction, dissemination endangers a person or public safety, adversely affects an investigation or ongoing prosecution, relates to law enforcement's use of confidential informants, or discloses investigative techniques or procedures, is *not* subject to judicial review. Other reasons for denial are subject to review.

8.7 Protection of Information (18 Pa.C.S. § 9158.5)

Section 9158.5 specifies that a criminal justice agency is not required to provide confidential, non-discoverable, and/or privileged information. This includes grand jury material, medical, mental health, and treatment information, attorney-client and work product materials, materials relating to juvenile proceedings, wiretap materials, and "[i]nformation that is otherwise prohibited or protected from disclosure or dissemination by Federal or State law."

When investigative information is disseminated, identifying information for persons other than the requesting party are exempt. These include Social Security numbers, driver's license numbers, personal financial information, telephone numbers, email addresses, employee numbers, and any other confidential personal identification numbers. This information should be redacted when investigative information is disseminated.

A criminal justice agency is protected by sovereign immunity, governmental immunity, and official immunity for disseminating investigative information under the Act.

Once investigative information is disseminated, it may be used only in connection with the civil litigation for which it was provided. Use of the information to harass, threaten, or intimidate another person is a misdemeanor of the second degree.

8.8 Current Dissemination Not Limited (18 Pa.C.S. § 9158.6)

In enacting new Subchapter F.1, the General Assembly clarified that dissemination is permitted under CHRIA in two other instances. First, a police department may provide certified copies of police reports to an insurance company for the purpose of processing a claim for coverage under an applicable policy. Second, notifications under the Crime Victims Act, 18 Pa. C.S.A. §§ 11.101-11.5104, do not violate the Act.

8.9 Rules and Regulations (18 Pa.C.S. § 9158.7)

The Attorney General is authorized to promulgate rules and regulations relating to requests for investigative information and the Supreme Court of Pennsylvania is authorized to promulgate rules necessary to implement Subchapter F.1.

Chapter IX - Sanctions

9.1 General Administrative Sanctions (18 Pa.C.S. § 9181)

Any person, including any agency or organization that violates the provisions of this chapter or any regulations or rules promulgated under it, may:

(1) be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate;

(2) be subject to civil penalties or other remedies as provided for in this chapter; and

(3) in the case of an agency employee who violates any provision of the Act, be administratively disciplined by discharge, suspension, reduction in grade, transfer, or other formal disciplinary action as the agency deems appropriate.

9.2 Civil Actions (18 Pa.C.S. § 9183)

The Attorney General or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency, or organization to enjoin any criminal justice agency, noncriminal justice agency, organization, or individual violating the provisions of the Act or to compel such agency, organization, or person to comply with the provisions of the Act.

Any person aggrieved by a violation of the provisions of the Act or of the rules and regulations promulgated under the Act has the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

A person found by the court to have been aggrieved by a violation of the Act or the rules or regulations promulgated under the Act shall be entitled to actual and real damages of not less than $100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than $1,000 nor more than $10,000 shall be imposed for any violation of the Act, or the rules or regulations adopted under the Act, found to be willful.

9.3 Criminal Actions

Certain criminal sanctions may also be sought if the Act is violated. Possible offenses include but are not limited to:

18 Pa. C.S.A. §3933 - Unlawful Use of Computer
18 Pa. C.S.A. §4911 - Tampering with Public Records or Information
18 Pa. C.S.A. § 5101 - Obstructing Administration or Law
or Other Governmental Functions
18 Pa. C.S.A. § 5301 - Official Oppression
18 Pa. C.S.A. §5741 - Unlawful Access to Stored Communications

Attachment 7, Criminal Sanctions, reproduces the above references in full.

Chart 1

CRIMINAL HISTORY RECORD INFORMATION

*** 18 Pa. C.S.A.§ 9102 CHRIA**

Section 9102: Information collected by Criminal Justice Agencies concerning individuals at the initiation of a criminal proceeding

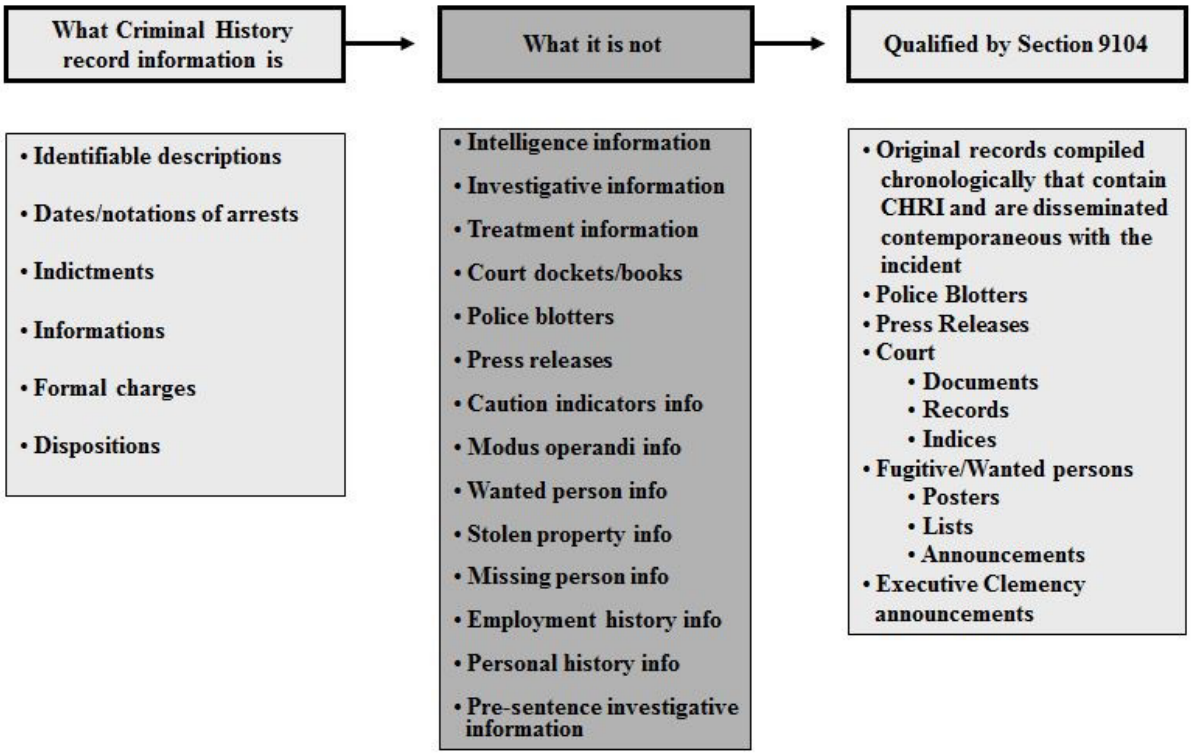


CHART 2

COLLECTION OF PROTECTED INFORMATION

*** 18 Pa. C.S.A.§ 9106 CHRIA**

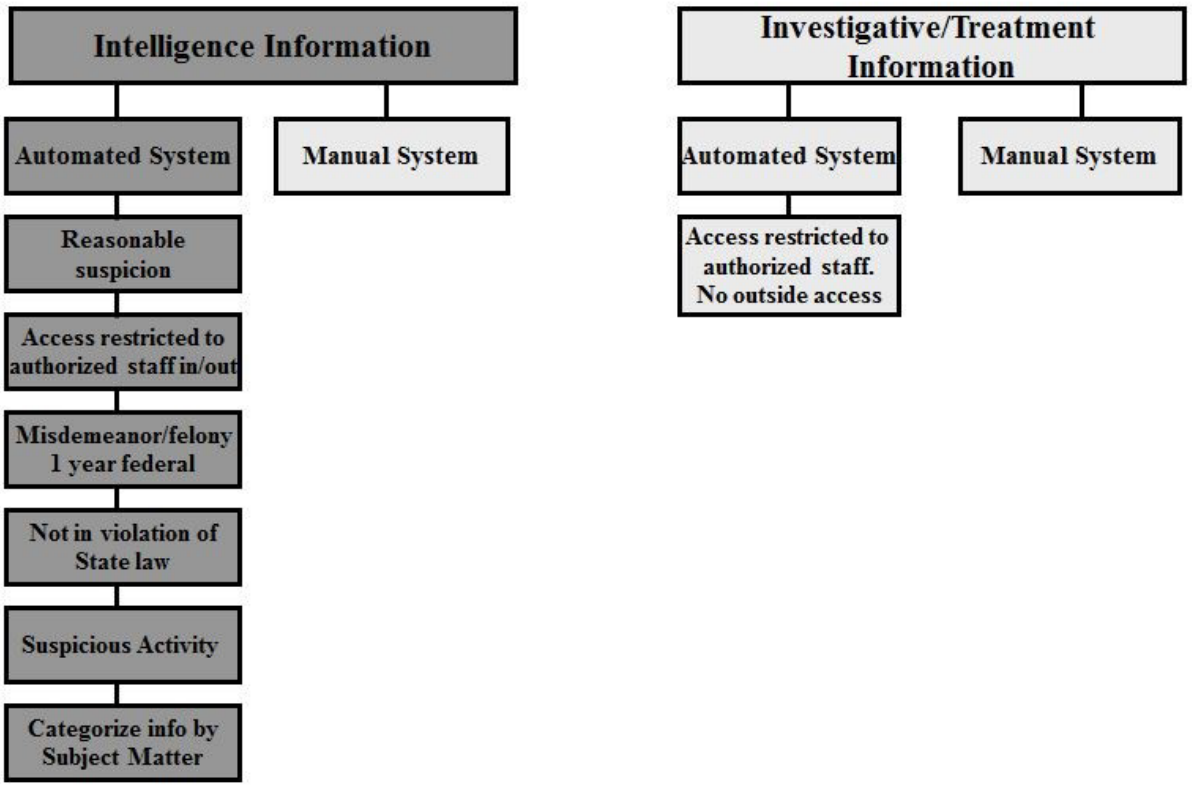


CHART 3

DISSEMINATION OF PROTECTED INFORMATION

*** 18 Pa. C.S.A.§ 9106 CHRIA**

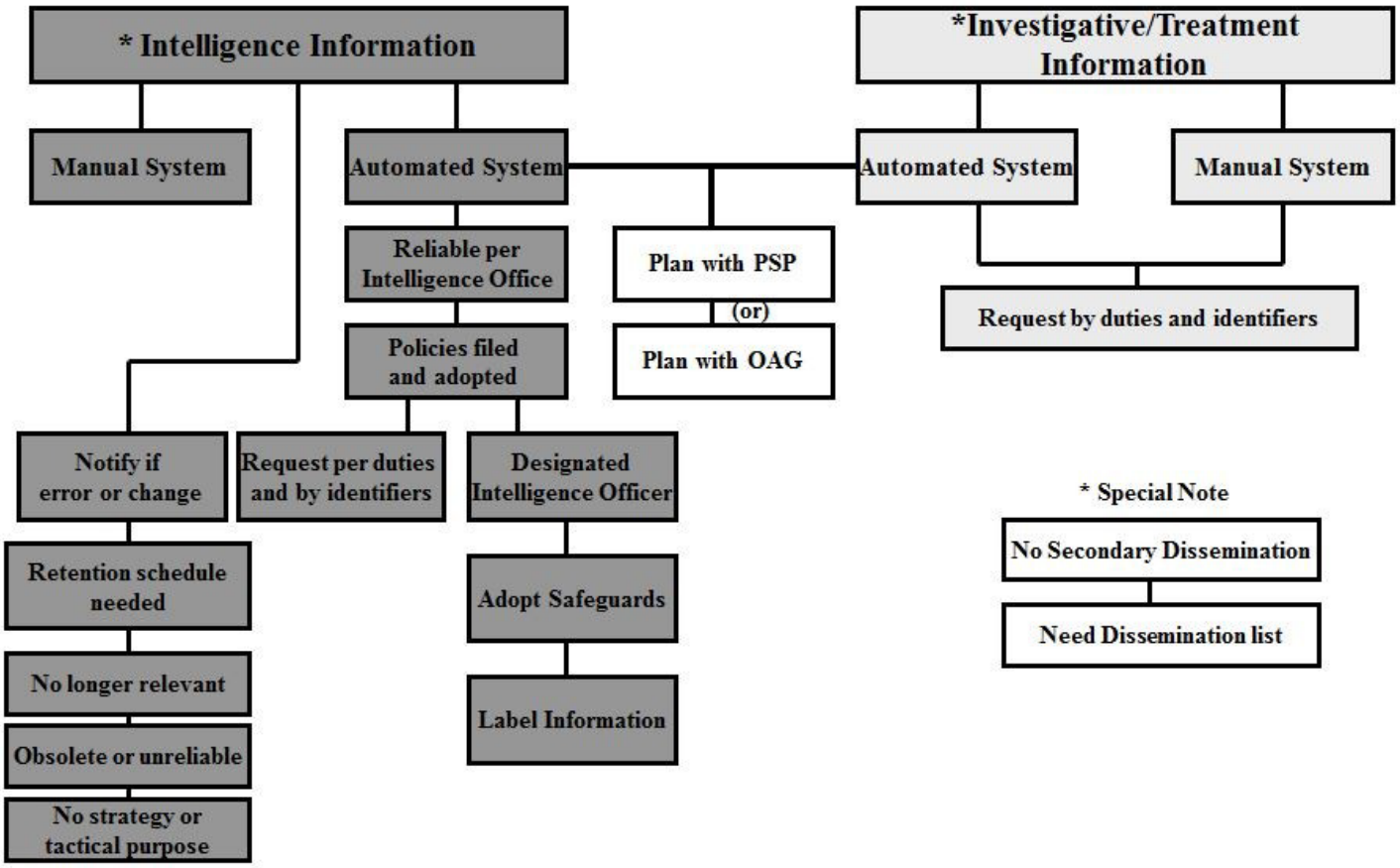


CHART 4

SECURITY OF PROTECTED INFORMATION

*** 18 Pa. C.S.A.§ 9106 & § 9131 CHRIA**

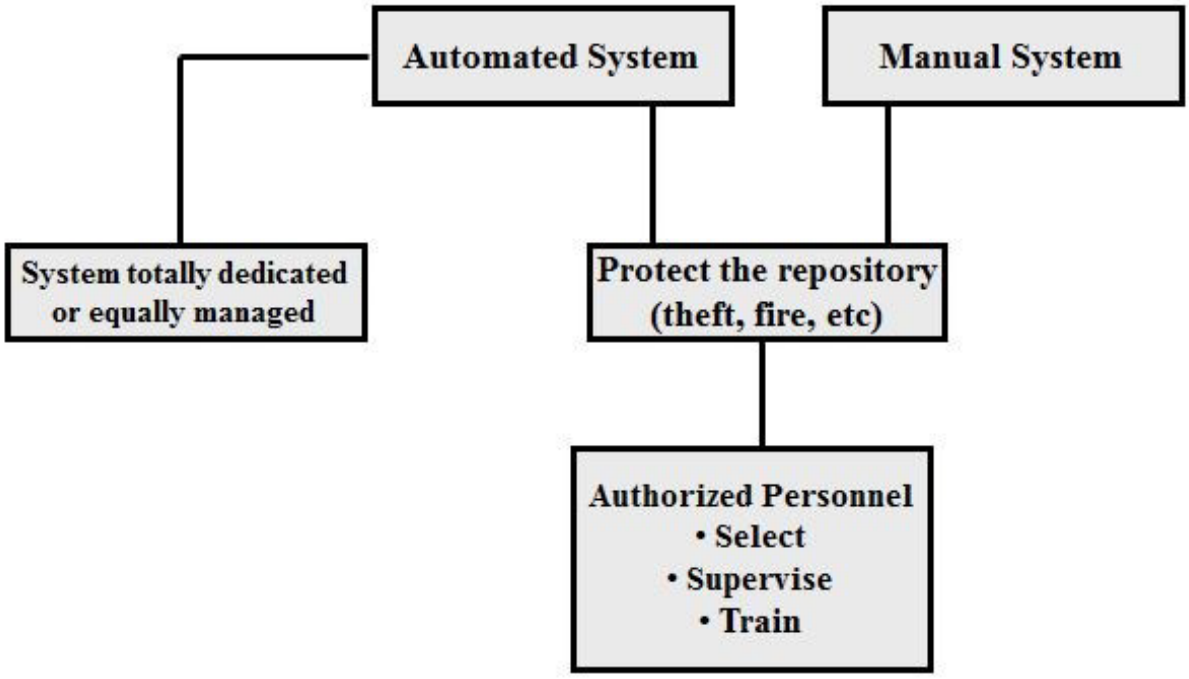


CHART 5

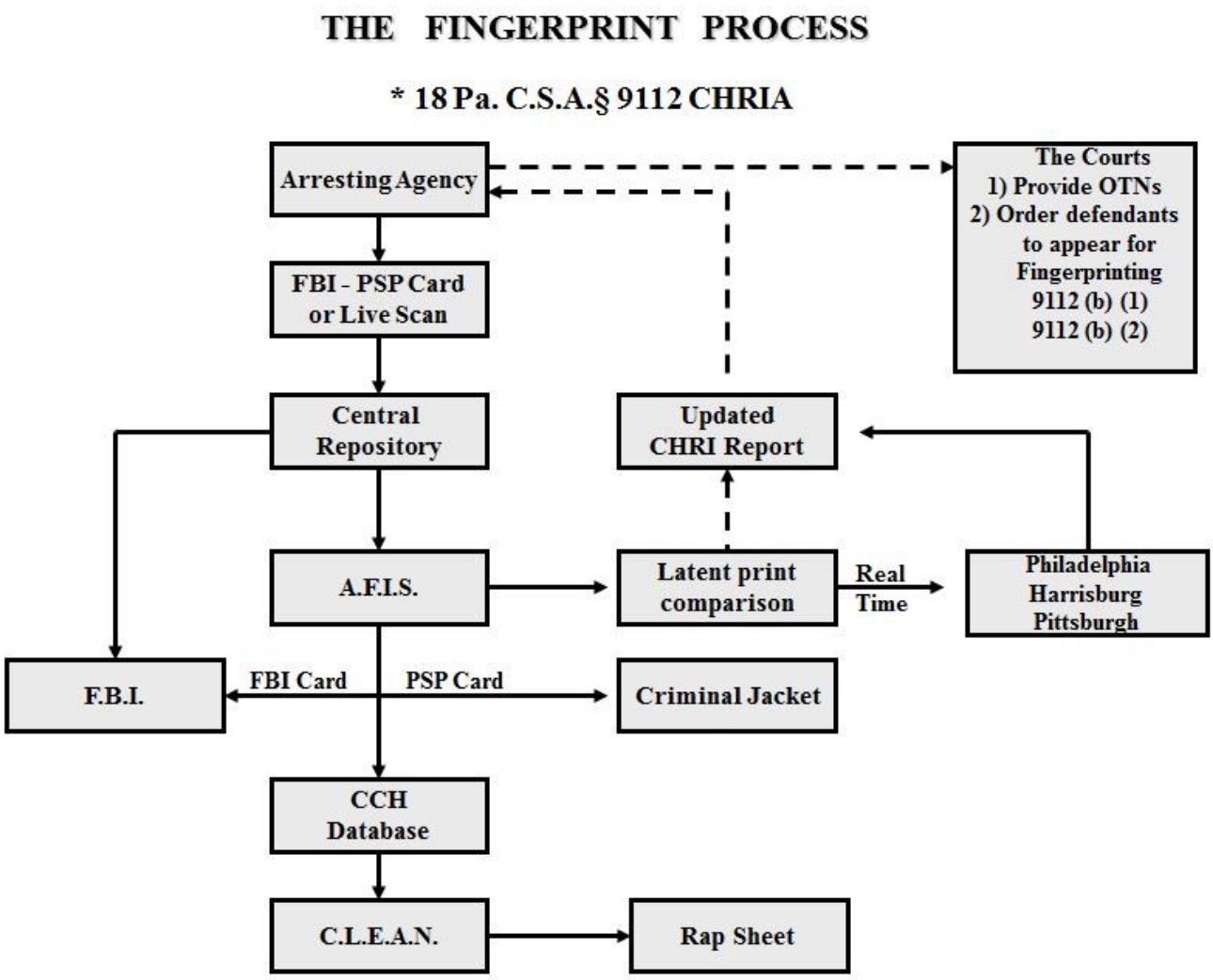

THE FINGERPRINT PROCESS
* 18 Pa. C.S.A.§ 9112 CHRIA
Arresting Agency
The Courts
1) Provide OTNs
2) Order defendants to appear for Fingerprinting
9112 (b) (1)
9112 (b) (2)
FBI - PSP Card or Live Scan
Central Repository
Updated CHRI Report
A.F.I.S.
Latent print comparison
Real Time
Philadelphia
Harrisburg
Pittsburgh
F.B.I.
FBI Card
PSP Card
Criminal Jacket
CCH Database
C.L.E.A.N.
Rap Sheet

CHART 6

FINAL DISPOSITION

*** 18 Pa. C.S.A.§ 9113 CHRIA**

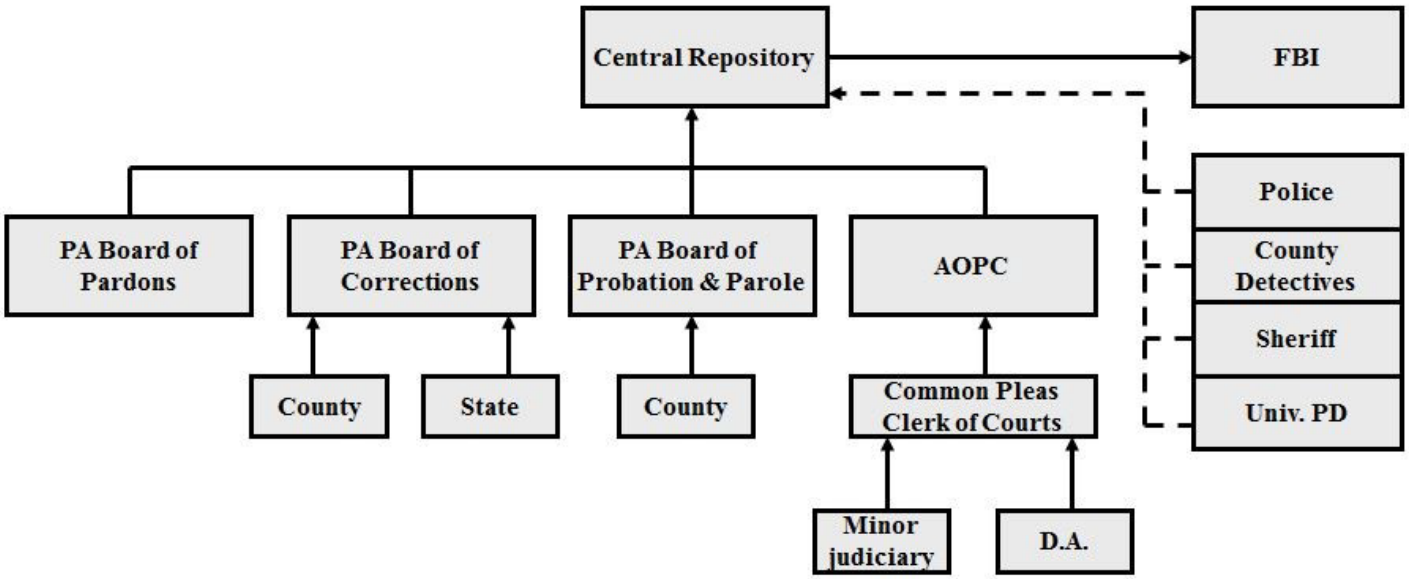


Chart 7

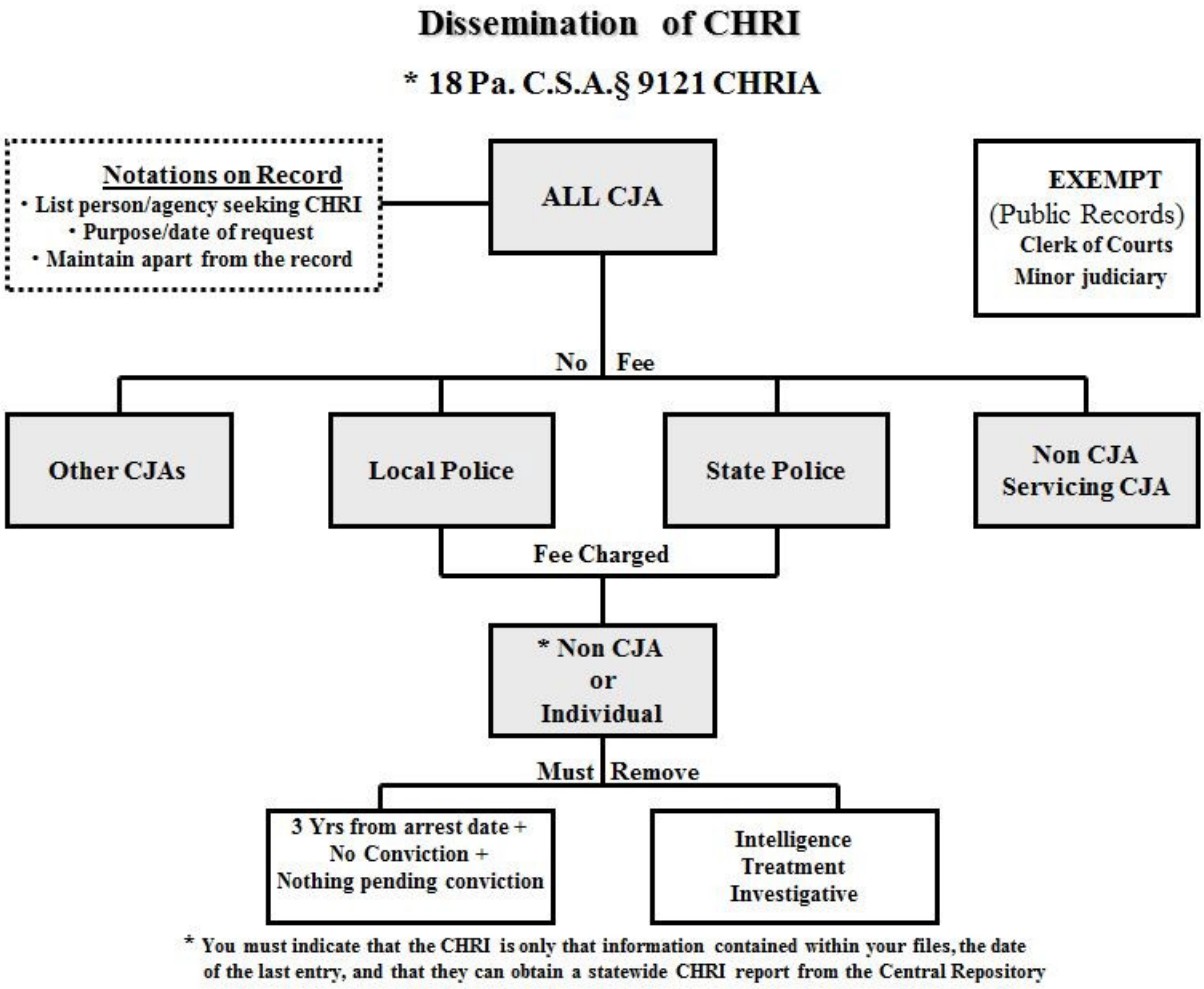
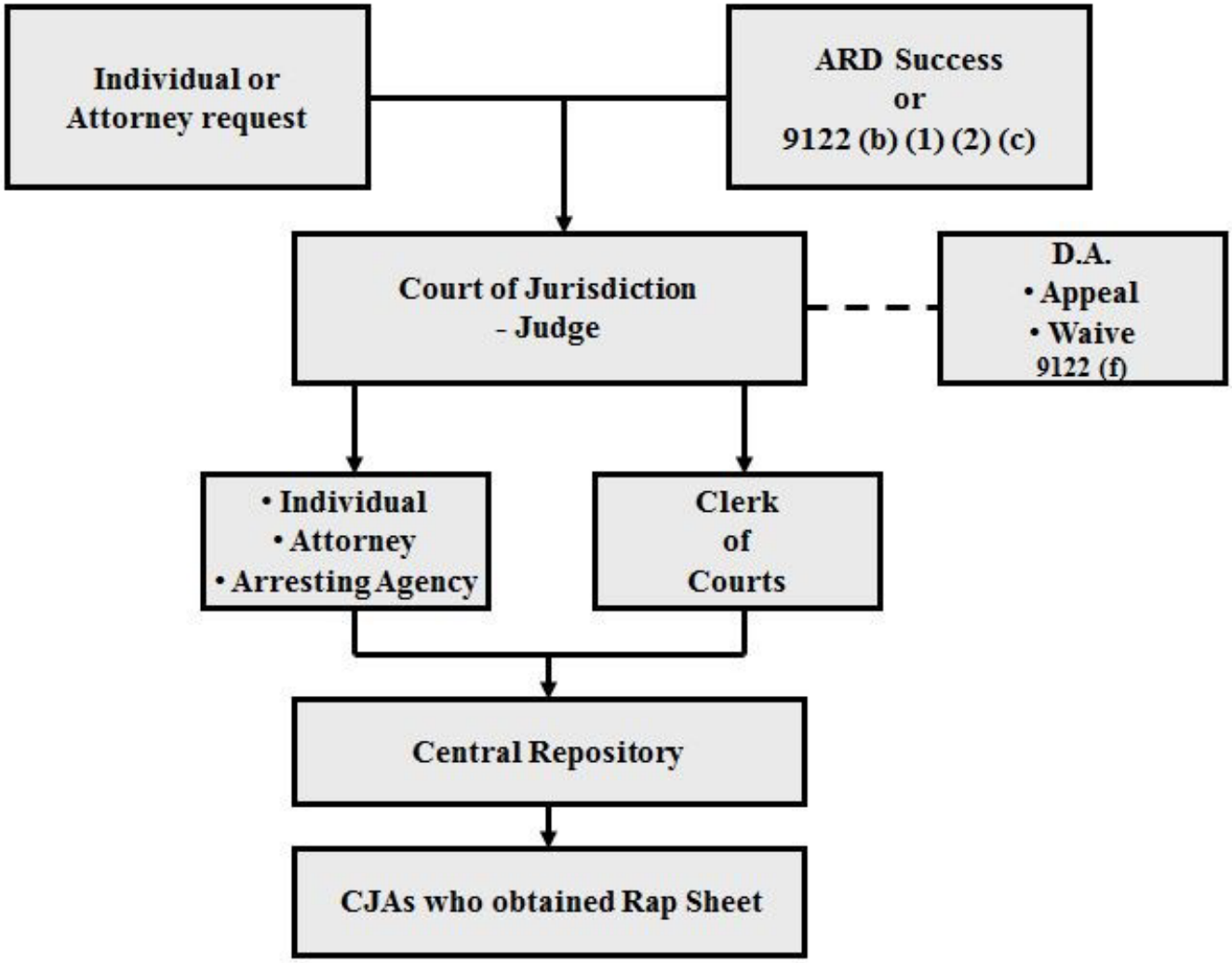

Dissemination of CHRI
* 18 Pa. C.S.A.§ 9121 CHRIA
Notations on Record
• List person/agency seeking CHRI
• Purpose/date of request
• Maintain apart from the record
ALL CJA
EXEMPT
(Public Records)
Clerk of Courts
Minor judiciary
No Fee
Other CJAs
Local Police
State Police
Non CJA
Servicing CJA
Fee Charged
* Non CJA
or
Individual
Must Remove
3 Yrs from arrest date +
No Conviction +
Nothing pending conviction
Intelligence
Treatment
Investigative
* You must indicate that the CHRI is only that information contained within your files, the date of the last entry, and that they can obtain a statewide CHRI report from the Central Repository

CHART 8

EXPUNGEMENTS

* 18 Pa. C.S.A.§ 9122 CHRIA



SAMPLE POLICY AND PROCEDURES FOR DISSEMINATION OF PROTECTED INFORMATION REQUIRED BY 18 PA.

C.S.A.§9106(C)(5)or(6)

I. PURPOSE:

The purpose of this directive is to establish policy guidelines of the *(name of agency)* which will enable this department to gather, disseminate, and receive intelligence, investigative and treatment data from other conforming criminal justice agencies. This data being classified as protected information by *18 Pa. C.S.A. §9106.*

II. POLICY

It is the policy of *(name of agency)* to conform to the mandates of the Criminal History Record Information Act *18 Pa. C.S.A. §9101 et seq*. (CHRIA).

III. DEFINITIONS:

5. **Automated Systems** - A computer or other internally programmed device capable of automatically accepting and processing data, including computer programs, data communication links, input and output data and data storage devices.

6. **Criminal Justice Agency** - A court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or sub-unit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal constitutions or both.

7. **Protected information** - Protected Information includes three types of information - - Intelligence Information, Investigative Information and Treatment Information. Refer to these definitions.

1. **Intelligence information** - Information concerning the habits, practices, characteristics, possessions, associations or financial status of any individual compiled in an effort to anticipate, prevent, monitor, investigate or prosecute criminal activity. Notwithstanding the definition of "treatment information" contained in this section, intelligence information may include information on prescribing, dispensing, selling, obtaining or using a controlled substance as defined in the Act of April 14, 1972 (P.L. 233, No. 64), known as the *Controlled Substance Drug Device and Cosmetic Act*.

2. **Investigative information** - Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information.

3. **Treatment information** - Information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime.

8. **Repository** - Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

9. **Central Repository** - The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

10. **Criminal History Record Information** - Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in ***Section 9104*** (relating to scope).

IV. PROCEDURES:

1. **Intelligence Officer** - The *(name of officer)* will be designated as the intelligence officer and will be responsible for the classification, computerization and dissemination of all protected information classified in CHRIA. He may designate other members of the department to perform this duty on an as needed basis upon approval of the Chief of Police.

2. **Collection of protected information** - The department will collect protective information in its automated system only when the following conditions are met:

1. The information concerns an individual or group which it reasonably suspects of criminal activity.

2. The information is related to criminal activity that would give rise to prosecution for a state offense graded a misdemeanor or felony or for a federal offense for which a penalty is imprisonment for more than one year.

3. The information is categorized based upon subject matter.

4. The information does not concern participation in a political, religious or social organization, or in the organization or support of a nonviolent demonstration, assembly, protest, rally or similar form of public speech, unless there is a reasonable suspicion that the participation by the subject of the information is related to criminal activity or prison rule violation.

3. Protected information will not be collected for, or transferred to the central repository maintained by the Pennsylvania State Police.

4. **Security of Protected Information** - The confidentiality of protected information will be provided for and securely maintained by:

   1. Following department physical plant/maintenance policy to reasonably protect repository from theft, sabotage and man-made or natural disasters.

   2. Properly selecting, supervising, and training personnel authorized to have access to protected information.

   3. Ensure that, where computerized data processing is employed, the equipment utilized for maintaining intelligence information, investigative information or treatment information is dedicated solely to purposes related to the administration of criminal justice. If the equipment is not used solely for the administration of criminal justice, the criminal justice agency is accorded equal management participation in computer operations used to maintain the intelligence information, investigative information or treatment information.

   4. Ensuring that only those authorized to access protected information are electronically coded or otherwise designated to enter the automated system. A copy of the authorization list will be maintained by the intelligence officer.

   5. Three different levels of storage of protected information will be established for reliability and sensitivity:

Level I - Will include all information that has been received from a reliable source and is substantiated.

Level II - Will include all information that has been received from a reliable source but is unsubstantiated.

Level III - Will include all information that has been received from an unreliable source and is not and cannot be substantiated.

5. **Dissemination of Protected Information** - This department's intelligence officer may only disseminate protected information if the following conditions are met:

1. The requesting criminal justice agency must certify that it has adopted polices and procedures consistent with this Act. This may be a verbal certification, if the agency is known to the intelligence officer. In the event the agency is unknown, then a signed statement of certification will be required before release of information (see Attachment 2).

2. The intelligence officer records on the designated form the pertinent information for a proper audit trail of disseminated protected information. This record is to be maintained separate from the individual's file (see Attachment 3).

3. The protected information has been determined to be reliable.

4. The requesting criminal justice agency justifies its request based on name, fingerprints, *modus operandi*, genetic typing, voice print or other identifying characteristic.

5. The intelligence officer lists on the Dissemination Log: the date, purpose and agency requesting the information.

6. In the event the intelligence officer becomes aware of, by any means, that previously disseminated information is misleading, obsolete, and/or unreliable, the information is to be corrected and the recipient agencies notified of the change within a reasonable time period.

7. Protected information in the department's possession but which was not obtained through our sources may not be disseminated to another agency except if requesting agency and our department are investigating or prosecuting a criminal matter jointly. The intelligence officer must, however, refer requesting agency to the agency which was the source of the information.

8. This department's intelligence officer, when requesting protected information from another agency, must certify in writing that this department complies with CHRIA (see Attachment 2).

6. **Retention of Records** – Department's protected information will be maintained and will be purged only with the written approval from the Chief of Police and only under the following conditions:

   1. The data is no longer relevant or necessary to meet the goals and objectives of this agency.

   2. The data is obsolete making it unreliable for present purposes and updating it would be worthless.

   3. The data cannot be used for strategic or tactical purposes associated with the duties of this agency.

SAMPLE DISSEMINATION REQUEST FOR PROTECTED INFORMATION

The _____*(name of agency)*_____ is hereby requesting protected information on:

_____
Name

_____
Additional Information/Purpose

_____

_____

We further state that the _____*(name of agency)*_____ is an approved agency under *Chapter 91 §9106(c)(i)(ii)*.

_____
Name Rank

_____
Date

SAMPLE RECORD

DISSEMINATION LOG

Information Disseminated To:

DATE	AGENCY/DEPARTMENT REQUESTING OFFICER	AGENCY CASE NUMBER	RELEASED BY:

Criminal History Record Information

NOTICE OF DISSEMINATION

DATE OF DISSEMINATION: _____ *CASE/FILE/INCIDENT NUMBER*:_____

PERSON DISSEMINATING CHRI: _____

SUBJECT: _____

CHRI RELEASED:_____

_____

DATE OF LAST ENTRY: _____

PERSON/AGENCY REQUESTING INFORMATION: _____

_____

_____

The above Criminal History Record Information is only that which is contained within the files of this Agency. A summary of statewide Criminal History Record Information may be obtained from:

The Pennsylvania State Police
Record & Identification Division
Bureau of Records and Information Services
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110

Sample Notice

THE *(NAME AND ADDRESS OF AGENCY)* MAINTAINS CRIMINAL HISTORY RECORD INFORMATION ON ALL INDIVIDUALS WHO HAVE BEEN ARRESTED FOR A CRIME AND SUBSEQUENTLY FINGERPRINTED AS A RESULT OF SUCH ARREST.

CRIMINAL HISTORY RECORD INFORMATION IS MAINTAINED TO PROVIDE CRIMINAL JUSTICE AGENCIES AND OTHER INTERESTED PERSONS WITH A CHRONOLOGICAL LISTING OF PAST CRIMINAL BEHAVIOR OF PERSONS FINGERPRINTED AS A RESULT OF AN ARREST.

CRIMINAL HISTORY RECORD INFORMATION IS USED BY CRIMINAL JUSTICE AGENCIES AS AN INVESTIGATIVE AID IN CRIMINAL INVESTIGATIONS.

CRIMINAL HISTORY RECORD INFORMATION MAY BE USED BY EMPLOYERS IN DETERMINING THE SUITABILITY OF APPLICANTS.

CRIMINAL HISTORY RECORD INFORMATION MAY BE USED BY BOARDS, COMMISSIONS OR DEPARTMENTS OF THE COMMONWEALTH AUTHORIZED TO LICENSE, CERTIFY, REGISTER OR PERMIT THE PRACTICE OF TRADES, OCCUPATIONS OR PROFESSIONS.

CRIMINAL HISTORY RECORD INFORMATION MAY ALSO BE REVIEWED BY THE SUBJECT OF SUCH INFORMATION TO DETERMINE COMPLETENESS AND ACCURACY.

TO OBTAIN A COPY OF CRIMINAL HISTORY RECORD INFORMATION MAINTAINED BY *(NAME OF AGENCY)* YOU MUST:

(1) COMPLETE THE REQUEST FOR CRIMINAL HISTORY RECORD INFORMATION, IN DUPLICATE.

(2) ATTACH A CHECK OR MONEY ORDER IN THE AMOUNT OF ____ PAYABLE TO THE *(AGENCY)* WHEN THE REQUEST IS MADE BY A NON-CRIMINAL JUSTICE AGENCY OR INDIVIDUAL.

(3) PROVIDE APPROPRIATE IDENTIFICATION.

Rules of Criminal Procedure 490, 490.1, 490.2, 790, 790.2, 791

CHAPTER 39
THEFT AND RELATED OFFENSE

§3933. Unlawful use of computer

(a) Offense defined. -A person commits an offense of unlawful use of a computer if he, whether in person, electronically or through the intentional distribution of a computer virus:

(1) accesses, exceeds authorization to access, alters, damages or destroys any computer, computer system, computer network, computer software, computer program or database or any part thereof, with the intent:

(i) to interrupt the normal functioning of an organization; or

(ii) to devise or execute any scheme or artifice to defraud, deceive or control property or services by means of false or fraudulent pretenses, representations or promises;

(2) intentionally and without authorization accesses, alters, interferes with the operation of, damages or destroys any computer, computer system, computer network, computer software, computer program or computer database or any part thereof;

(3) intentionally or knowingly and without authorization gives or publishes a password, identifying code, personal identification number or other confidential information about a computer, computer system, computer network or database; or

(4) intentionally or knowingly engages in a scheme or artifice, including, but not limited to, a denial of service attack, upon any computer, computer system, computer network, computer software, computer program, computer server or database or any part thereof that is designed to block, impede or deny the access of information or initiation or completion of any sale or transaction by users of that computer, computer system, computer network, computer software, computer program, computer server or database or any part thereof.

(b) Grading. -An offense under subsection (a)(1) is a felony of the third degree. An offense under subsection (a)(2), (3) or (4) is a misdemeanor of the first degree.

(c) Definitions. -As used in this section the following words and phrases shall have the meanings given to them in this subsection:

Access. To intercept, instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system, computer network or database.

Computer. An electronic, magnetic, optical, hydraulic, organic or other high speed data processing device or system which performs logic, arithmetic or memory functions and includes all input, output, processing, storage, software or communication facilities which are connected or related to the device in a system or network.

Computer network. The interconnection of two or more computers through the usage of satellite, microwave, line or other communication medium.

Computer program. An ordered set of instructions or statements and related data that, when automatically executed in actual or modified form in a computer system, causes it to perform specified functions.

Computer software. A set of computer programs, procedures and associated documentation concerned with the operation of a computer system.

Computer system. A set of related, connected or unconnected computer equipment, devices and software.

Computer virus. A computer program copied to or installed on a computer, computer network, computer program, computer software or computer system without the informed consent of the owner of the computer, computer network, computer program, computer software or computer system that may replicate itself and that causes unauthorized activities within or by the computer, computer network, computer program, computer software or computer system.

Database. A representation of information, knowledge, facts, concepts or instructions which are being prepared or processed in a formalized manner and are intended for use in a computer, computer system or computer network, including, but not limited to, computer printouts, magnetic storage media, punched cards or data stored internally in the memory of the computer.

Financial instrument. Includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computer system representation thereof.

Property. Includes, but is not limited to, financial instruments, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

Services. Includes, but is not limited to, computer time, data processing and storage functions.

(d) Restitution.- Upon conviction under this section for the intentional distribution of a computer virus, the sentence shall include an order for the defendant to reimburse the victim for:

(1) the cost of repairing or, if necessary, replacing the affected computer, computer system, computer network, computer software, computer program or database;

(2) lost profit for the period that the computer, computer system, computer network, computer software, computer program or database is not usable; or

(3) the cost of replacing or restoring the data lost or damaged as a result of a violation of this section.

1983, Dec. 2, P.L. 248, No. 67, §1, effective in 60 days. Amended 1986, Dec. 11, P.L. 1517, No. 164, §1, effective in 60 days; 2000, May 26, P.L. 127, No. 24, §1, effective in 60 days.

CHAPTER 49

FALSIFICATION AND INTIMIDATION

SUBCHAPTER A
PERJURY AND FALSIFICATION IN OFFICIAL MATTERS

*§*4911. Tampering with Public Records or Information.

(a) Offense defined. -A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (a) of this subsection; or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(b) Grading.- An offense under this section is a misdemeanor of the second degree unless the intent of the actor is to defraud or injure anyone, in which case the offense is a felony of the third degree.

1972, Dec. 6, P.L. 1482, No. 334, *§*1, effective June 6, 1973.

CHAPTER 51

OBSTRUCTING GOVERNMENTAL OPERATIONS

SUBCHAPTER A
DEFINITION OF OFFENSES GENERALLY

§5101. Obstructing Administration of Law or Other Governmental Functions.

A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

1972, Dec. 6, P.L. 1482, No. 334, §1, effective June 6, 1973.

CHAPTER 57

WIRETAPPING AND ELECTRONIC SURVEILLANCE

*§***5702. Definitions**.

Electronic communication. Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, except:

(1) Deleted.

(2) Any wire or oral communication.

(3) Any communication made through a tone-only paging device.

(4) Any communication from a tracking device (as defined in this section).

*§***5741. Unlawful Access to Stored Communications.**

(a) Offense.- Except as provided in subsection (c), it is an offense to obtain, alter or prevent authorized access to a wire or electronic communication while it is in electronic storage by intentionally:

(1) accessing without authorization a facility through which an electronic communication service

is provided; or

(2) exceeding the scope of one's authorization to access the facility.

(b) Penalty.-

(1) If the offense is committed for the purpose of commercial advantage, malicious destruction

or damage, or private commercial gain, the offender shall be subject to:

(i) a fine of not more than $250,000 or imprisonment for not more than one year, or both,

in the case of a first offense; or

(ii) a fine of not more than $250,000 or imprisonment for not more than two years, or

both, for any subsequent offense.

(2) In any other case, the offender shall be subject to a fine of not more than $5,000 or imprisonment for not more than six months, or both.

(c) Exceptions.- Subsection (a) of this section does no apply with respect to conduct authorized:

(1) by the person or entity providing a wire or electronic communication service;

(2) by a user of that service with respect to a communication of or intended for that user; or

(3) in Section 5743 (relating to requirements for governmental access) or 5744 (relating to backup preservation).

1988, Oct. 21, P.L. 1000, No. 115, §8, imd. effective.

H

Commonwealth Court of Pennsylvania.
John DOE, Appellant
v.
Stephen A. ZAPPALA, Jr. in his capacity as District Attorney of Allegheny County; Bruce Beemer in his capacity as a Deputy District Attorney of Allegheny County; Bureau of Police of the Department of Public Safety of the City of Pittsburgh.

Argued Oct. 13, 2009.
Decided Dec. 17, 2009.

Background: Petitioner brought action against district attorney, deputy district attorney, and city police department seeking a permanent injunction pursuant to the Criminal History Records Information Act (CHRIA). The Court of Common Pleas, Allegheny County, No. G.D. 08-21156, Durkin, J., denied petitioner's motion, and he appealed.

Holdings: The Commonwealth Court, No. 92 C.D. 2009,Simpson, J., held that:
(1) documents retained by Commonwealth were exempt from expungement under CHRIA, and
(2) standardized, pre-printed expungement order required expungement consistent with CHRIA.

Affirmed.

Friedman, Senior Judge, filed dissenting opinion.

West Headnotes

[1] Injunction 212 9

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k9 k. Nature and existence of right requiring protection. Most Cited Cases

In order to obtain permanent injunctive relief, a party must establish the following elements relative to their claims: (1) the right to relief is clear, (2) the injunction is necessary to avoid an injury that cannot be compensated by damages and, (3) that greater injury will result if the court does not grant the injunction than if it does.

[2] Appeal and Error 30 863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In general. Most Cited Cases

The Commonwealth Court's review of an order granting a permanent injunction is whether the trial court committed an error of law.

[3] Criminal Law 110 1226(3.1)

110 Criminal Law
110XXVIII Criminal Records
110k1226 In General
110k1226(3) Expungement or Correction; Effect of Acquittal or Dismissal
110k1226(3.1) k. In general. Most Cited Cases

The purpose of "expungement" is to protect an individual from the difficulties and hardships that may result from an arrest on record including the harm to one's reputation and opportunities for advancement in life. 18 Pa.C.S.A. § 9102.

[4] Criminal Law 110 1226(3.1)

110 Criminal Law
110XXVIII Criminal Records
110k1226 In General
110k1226(3) Expungement or Correction; Effect of Acquittal or Dismissal
110k1226(3.1) k. In general. Most Cited Cases

Although expungement affords an individual some protection from the difficulties and hardships that may result from an arrest on record, it cannot entirely protect him from the consequences of his prior actions. 18 Pa.C.S.A. § 9102.

[5] Criminal Law 110 1226(3.1)

110 Criminal Law

110XXVIII Criminal Records
110k1226 In General
110k1226(3) Expungement or Correction; Effect of Acquittal or Dismissal
110k1226(3.1) k. In general. Most Cited Cases

Documents retained by Commonwealth after court ordered it to "expunge and destroy" documents pertaining to petitioner's prior arrest and prosecution for murder were exempt from expungement under Criminal History Records Information Act (CHRIA) as investigative and intelligence information, rather than criminal history record information; documents, which included an investigation summary, witness list and statements, and petitioner's statement, did not contain identifiable descriptions, dates and notations of arrest, criminal charges, or dispositions. 18 Pa.C.S.A. §§ 9102, 9104, 9122, 9183.

[6] Criminal Law 110 ⚿1226(3.1)

110 Criminal Law
110XXVIII Criminal Records
110k1226 In General
110k1226(3) Expungement or Correction; Effect of Acquittal or Dismissal
110k1226(3.1) k. In general. Most Cited Cases

Standardized, pre-printed expungement order providing for the expungement and destruction of "the official and unofficial arrest, expungement and other documents pertaining to the arrest or prosecution" of defendant for homicide, even if facially broader in scope than expungement of criminal history record information under Criminal History Records Information Act (CHRIA), required expungement consistent with CHRIA; any broader interpretation would lead to absurd result that all expungement orders could disregard the statutory restrictions. 18 Pa.C.S.A. § 9122.

***191** Norma Chase, Pittsburgh, for appellant.

***192** Amy E. Constantine, Asst. District Attorney, Pittsburgh, for appellees, Stephen A. Zappala, Jr. and Bruce Beemer.

Michael E. Kennedy, Pittsburgh, for appellee, Bureau of Police.

BEFORE: SIMPSON, Judge, and FRIEDMAN, Senior Judge, and FLAHERTY, Senior Judge.

OPINION BY Judge SIMPSON.

In this appeal, John Doe (Appellant) asks whether the Court of Common Pleas of Allegheny County (trial court) erred in denying his request for permanent injunction, pursuant to the Criminal History Records Information Act (CHRIA), 18 Pa.C.S. §§ 9101-9183, against Stephen A. Zappala, Jr., District Attorney, Bruce Beemer, Deputy District Attorney, and, the Bureau of Police of the Department of Public Safety of the City of Pittsburgh (collectively, the Commonwealth). The trial court determined the records Appellant sought to enjoin from use include investigative information, intelligence information, and public transcripts; therefore, these records are exempt from expungement under the CHRIA. Discerning no error in the trial court's determinations, we affirm.

In 2001, the Commonwealth charged Appellant with criminal homicide and other related offenses in connection with the death of James Waite. The Commonwealth alleged Appellant conspired with Michael Morgan to commit these crimes.

Approximately five to six days after the death of Waite, Morgan was found dead by drowning. A coroner ruled Morgan's death a homicide, but the Commonwealth did not arrest anyone in connection with his death until 2006.

In 2002, a jury acquitted Appellant of all charges in the Waite case. Following trial, Appellant sought to expunge his criminal records arising from his arrest and prosecution. *See* 18 Pa.C.S. § 9122 (Expungement). In April, 2004, another judge of the trial court signed two standardized, pre-printed expungement orders requiring the "[Commonwealth] [to] expunge and destroy the official and unofficial arrest, expungement and other documents pertaining to the arrest or prosecution" of Appellant for homicide and other related charges (Expungement Orders). Original Record (O.R.) at Ex. A-1, A-3.

In August, 2007, the Commonwealth charged Appellant with criminal homicide in connection with the death of Morgan. A short time later, Appellant learned the Commonwealth retained certain records from the Waite case and intended to use the infor-

mation to prove Appellant's involvement in the homicide of Morgan.

In August, 2008, Appellant filed a Motion in Limine in the criminal proceedings requesting that the Commonwealth be prohibited from introducing certain evidence from the prior prosecution pursuant to the Expungement Orders. [FN1] In particular, Appellant argued the Commonwealth is prohibited from introducing evidence of his alleged involvement in the death of Waite that could lead a jury to infer it is more likely than not he killed Morgan.

> FN1. The Motion in Limine is currently pending and is not at issue here. Reproduced Record (R.R.) at 51a.

On October 3, 2008, Appellant filed the current complaint (Permanent Injunction) seeking "an injunction ... directing [the Commonwealth] to destroy all records of the charges of which [Appellant] was acquitted and prohibiting their use in [Appellant's] impending trial." 18 Pa.C.S. § 9183 ***193** (relating to injunctions); Reproduced Record (R.R.) at 7a. On October 8, 2008, Appellant filed a motion for a Preliminary Injunction seeking to "prevent the threatened misuse of the records." R.R. at 11a.

[1] In December, 2008, the trial court denied Appellant's request for a Permanent Injunction, concluding "the information and materials for which expungement is sought are investigative materials and public record materials, which do not serve the purpose or meet the intent of the [CHRIA]." [FN2] O.R. at 9; R.R. at 45a.

> FN2. "In order to obtain permanent injunctive relief, a party must establish the following elements relative to their claims: (1) the right to relief is clear, (2) the injunction is necessary to avoid an injury that cannot be compensated by damages and, (3) that greater injury will result if the court does not grant the injunction than if it does." *Mazin v. Bureau of Prof. & Occupational Affairs*, 950 A.2d 382, 389 (Pa.Cmwlth.), *appeal denied*, 599 Pa. 684, 960 A.2d 457 (2008). Here, the trial court determined Appellant's right to relief was not clear and, thus, it did not grant injunctive relief.

In its subsequent 1925(a) Opinion, the trial court explained that in cases of acquittal, a petitioner is automatically entitled to the expungement of an arrest record; nevertheless, there is information exempt from expungement, such as investigative and intelligence information. *See* *Commonwealth v. D.M.*, 548 Pa. 131, 695 A.2d 770 (1997). Trial Ct. Op., 3/2/09, at 2-3; R.R. at 51a-52a.

[2] The trial court concluded Appellant was attempting to prevent the Commonwealth from using investigative and intelligence information specifically exempt from expungement. Trial Ct. Op. at 3-4; R.R. at 52a-53a. The trial court further concluded the use of jury trial transcripts from the prior prosecution is permissible in the impending prosecution because those transcripts are public records filed with the court. *Id.; see* 18 Pa.C.S. § 9104 (relating to the scope of public records that shall not be expunged). This appeal followed.[FN3]

> FN3. "The Court's review of an order granting a permanent injunction is whether the trial court committed an error of law." *Greenfield Twp. Mun. Auth. v. Burket Trust*, 959 A.2d 522, 525 n. 2 (Pa.Cmwlth.2008).

Appellant contends the trial court erred when it declined to enjoin the Commonwealth from using the records retained from the Waite case in his prosecution for the murder of Morgan. Appellant argues his criminal records from the Waite case do not meet the investigative and intelligence information exemptions under the CHRIA and, thus, the Commonwealth should expunge these records. Alternatively, Appellant submits the scope of the trial court's Expungement Orders is broader than the CHRIA. As such, Appellant maintains the Commonwealth should expunge his criminal records in accordance with the Expungement Orders.

At the outset, we note that the CHRIA provides for the "collection, compilation, maintenance and dissemination of criminal history record information by the [Pennsylvania State Police]." *Dep't of the Auditor Gen. v. Pa. State Police*, 844 A.2d 78, 80 (Pa.Cmwlth.2004); 18 Pa.C.S. § 9103 (Applicability). Section 9102 defines "Criminal history record information" as:

Information collected by criminal justice agencies

concerning individuals, and arising from the initiation of a criminal proceeding, consisting of [1] identifiable descriptions, [2] dates and notations of arrests, [3] indictments, information or other formal criminal charges and [4] any dispositions arising therefrom. *The term does not include intelligence infor*194 mation,[FN4] investigative information [FN5] ... or information and records specified in Section 9104 (relating to scope).*

FN4. Intelligence information concerns the "habits, practices, characteristics, possessions, associations or financial status of any individual compiled in an effort to anticipate, prevent, monitor, investigate or prosecute criminal activity." 18 Pa.C.S. § 9102.

FN5. Investigative information is "assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." *Id.*

18 Pa.C.S. § 9102 (emphasis added).

Pursuant to the CHRIA, the Pennsylvania State Police store criminal history record information in the central repository. *See* 18 Pa.C.S. § 9106 (relating to information in the central repository). Following acquittal, a petitioner is entitled to expungement of the stored criminal history record information. 18 Pa.C.S. § 9122 (Expungement); *D.M.* The CHRIA defines "Expunge" as:

(1) To remove information so that there is no trace or indication that such information existed;

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes....

18 Pa.C.S. § 9102.

[3][4] The purpose of expungement is to protect an individual from the difficulties and hardships that may result from an arrest on record including the harm to one's reputation and opportunities for advancement in life. *Commonwealth v. Butler*, 448 Pa.Super. 582, 672 A.2d 806 (1996). However, although "expungement affords an individual some protection from the difficulties and hardships that may result from an arrest on record, [it] cannot entirely protect him from the consequences of his prior actions." *Id.*

Under the CHRIA, the lack of complete protection is due, in part, to the expungement exemptions. For example, Section 9105 in relevant part provides "[n]othing in [CHRIA] shall be construed to apply to ... intelligence information, investigative information ... [or] modus operandi information...." 18 Pa.C.S. § 9105 (Other criminal justice information).

In addition, Section 9104(a) provides the following public records are exempt from expungement:

(1) Original records of entry compiled chronologically, including, but not limited to, police blotters and press releases that contain criminal history record information and are disseminated contemporaneous with the incident.

(2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.

(3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(4) Announcements of executive clemency.

18 Pa.C.S. § 9104. Indeed, the CHRIA clearly identifies whether information is exempt from expungement.

[5] With these statutory provisions as background, we now turn to this appeal. Appellant argues that pursuant to *D.M.*, expungement following acquittal is an absolute right in Pennsylvania, and now the Commonwealth seeks to undermine that resolution. In particular, Appellant contends intelligence and investigative information, used in a prior prosecution, is not exempt from expungement because the Commonwealth is no longer using the information to investigate or prosecute criminal*195 activity. Thus, Appellant argues the Commonwealth's retention of records concerning the prior prosecution cannot be put to any constructive use. We disagree.

At hearing, Appellant's counsel described the

records the Commonwealth retained as follows:

> Now, I requested discovery from the Commonwealth [in the criminal proceedings] ... I was provided with hundreds of page[s], but three pages listing the whole investigation of James Waite and all the witnesses that were interviewed in the James Waite case.
>
> I have been provided with photographs of a car that my client allegedly was driving in the James Waite case, statements of all the witnesses who were called to testify against him in the James Waite case, [and] statements that were taken from him.

R.R. at 19a. In his Reply Brief, Appellant clarifies he is not seeking to suppress historical facts, court transcripts, or personal knowledge but only aiming to enjoin the Commonwealth from using the "documents [it] improperly retained." Appellant's Reply Br. at 5. However, beyond these descriptions, Appellant failed to specify which documents he seeks destroyed or enjoined from use.

In *Department of the Auditor General,* the Pennsylvania Auditor General sought the names, addresses, and release dates of Megan's Law [FN6] sex offenders. This Court held the Pennsylvania State Police were not required to provide such information to the Auditor General because, under the CHRIA, such information is investigative. Speaking through Judge (now Senior Judge) Friedman, we explained:

FN6. 42 Pa.C.S. §§ 9791-9799.9.

> [A]ll "criminal history record information" is assembled as a result of the performance of inquiries into criminal conduct. What distinguishes "criminal history record information" from "investigative information" is that the former arises from the initiation of a criminal proceeding, i.e., an arrest, whereas the latter is composed of information assembled as a result of the performance of an inquiry into a crime that is still under investigation.[FN8]
>
> FN8. Thus, once there has been an arrest and the criminal proceedings have begun, information about a case becomes "criminal history record information" to the extent that it falls within the statutory definition. *In other words, the initiation of criminal proceedings does not necessarily transform all "investigative information" into "criminal history record information." As indicated above, "criminal history record information" includes only: (1) identifiable descriptions; (2) dates and notations of arrests; (3) the criminal charges; and (4) dispositions.*

Id. at 82 (emphasis added).

Here, Appellant is correct that after the initiation of criminal proceedings certain investigative information transforms into criminal history record information. The statute, however, is clear: the transformation from investigative information to criminal history record information *only* applies to: (1) identifiable descriptions, (2) dates and notations of arrests, (3) the criminal charges, and (4) dispositions. *See* 1 Pa.C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."). As a corollary, after the initiation of criminal proceedings, investigative information that does not fall within one of the above four categories is *not* expungeable under the CHRIA.

Furthermore, the Commonwealth submits, and Appellant does not dispute, there are currently no arrest records for Appellant, and the criminal docket reveals no ***196** information regarding Appellant except for a notation of the filing of a transcript. Thus, without further clarification as to which records the Commonwealth is alleged to have improperly retained, it appears the Commonwealth expunged Appellant's records in accordance with the CHRIA.

In addition, the trial court determined the Commonwealth is currently using the records as investigative, intelligence, and *modus operandi* information in the Morgan case. Trial Ct. Op. at 2-4. Given all of the foregoing, we conclude the record supports the Commonwealth's retention of such information as consistent with the CHRIA.

The Supreme Court's decision in *D.M.* does not compel a different result, for factual and legal reasons. Factually, *D.M.* dealt with expungement of an arrest record, not with photographs and witness statements as in the present case. Legally, the Supreme Court distinguished between criminal cases terminated by acquittals and all other criminal cases terminated

without conviction, and it confirmed a balancing test for the latter group of cases. This issue has no relevance here.

[6] Next, Appellant argues the Commonwealth violated the standardized, pre-printed Expungement Orders. Specifically, Appellant argues the scope of the form Expungement Orders is broader than what the CHRIA mandates. Therefore, the Commonwealth should destroy all the records pertaining to Appellant's arrest or prosecution arising from the Waite case or the Court should enjoin the Commonwealth from using the documents in Appellant's impending prosecution. We disagree.

The standardized, pre-printed Expungement Orders provide for the expungement and destruction of "the official and unofficial arrest, expungement and other documents pertaining to the arrest or prosecution" of Appellant. O.R. at Ex. A-1, A-3. We interpret the form Expungement Orders as requiring expungement consistent with the CHRIA. Any broader interpretation leads to the absurd result that all expungement orders in Allegheny County disregard the statutory restrictions. We decline to attribute such intent to the trial court.

Furthermore, Appellant did not prove the Commonwealth failed to expunge in accordance with the CHRIA. Where Appellant's right to relief is not clear, the trial court did not err in denying his permanent injunction request.[FN7]

FN7. Appellant also argues the trial court provided the Commonwealth with notice of the Expungement Orders, and it had standing to object but did not. Appellant therefore contends the trial court fully and finally adjudicated his right to the destruction of the records from the prior prosecution and thus this Court should enforce the Expungement Orders. Essentially, Appellant argues the Commonwealth waived any objection to the scope of the Expungement Orders.

Because we interpret the form Expungement Orders as consistent with the CHRIA and not as enlarging the Commonwealth's duties beyond that statute, Appellant's waiver argument is irrelevant.

For all the reasons discussed, we affirm.

ORDER

AND NOW, this 17th day of December, 2009, the order of the Court of Common Pleas of Allegheny County is **AFFIRMED.**

DISSENTING OPINION BY Senior Judge FRIEDMAN.

I respectfully dissent. The majority holds that un-appealed expungement orders***197** issued by the Court of Common Pleas of Allegheny County (trial court) in April of 2004, directing keepers of records to "expunge and destroy ... documents pertaining to the arrest or prosecution" of John Doe (Appellant) for homicide and related charges,[FN1] required only that the Commonwealth expunge criminal history record information pursuant to the Criminal History Record Information Act (CHRIA), 18 Pa.C.S. §§ 9101-9183. I cannot agree.

FN1. One order pertained to the charge of criminal homicide, and the other order pertained to the charges of burglary, robbery, conspiracy and firearms violations.

The CHRIA provides that "[c]riminal history record information shall be expunged" when a court order requires it. 18 Pa.C.S. § 9122(a)(2). The word "expunge" means to "remove information so that there is no trace or indication that such information existed." 18 Pa.C.S. § 9102. The term "criminal history record information" is defined as:

Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

18 Pa.C.S. § 9102. Under section 9104 of the CHRIA, nothing in the act shall be construed to apply to public records, including court dockets, police blotters and press releases. 18 Pa.C.S. § 9104.

Far less limited in their reach, the trial court's April 2004 expungement orders require, in pertinent part, as follows: "[K]eepers of records shall expunge **and destroy** the official **and unofficial** arrest, expungement and **other documents** pertaining to the arrest or prosecution **or both** of the above named defendant in the above captioned criminal proceedings...." (O.R., 4/1/04 Orders) (emphasis added).

Whereas the CHRIA requires the expungement of **information,** the orders require the expungement of **documents,** whatever information they might contain. Moreover, the orders require not only the **expungement** of documents, but also the **destruction** of documents. Whereas the CHRIA excludes intelligence information, investigative information and public records from its scope, the orders exclude **nothing,** covering any and all official or unofficial documents pertaining to Appellant's arrest and/or prosecution. Indeed, the **unrestricted** catch-all phrase "other documents" necessarily includes documents containing intelligence, investigative or treatment information, or anything else that does not fall within the CHRIA's definition of criminal history record information, just as long as the documents pertain to Appellant's arrest and/or prosecution for homicide. For these reasons, I would not construe the un-appealed trial court orders as restricted by the CHRIA.

In my view, the majority's contrary construction amounts to a reversal of the trial court orders years after expiration of the appeal period. Indeed, although the CHRIA was enacted well before the trial court issued its order, the trial court does not mention the CHRIA or use its well-defined terms in the orders. Particularly absent is the term "criminal history record information."

The majority's only justification for its construction is that a "broader interpretation leads to the absurd result that all ***198** expungement orders in Allegheny County disregard the statutory restrictions." (Majority op. at 196.) However, I submit it is equally absurd to interpret the clear and unambiguous language of the trial court orders as being consistent with the CHRIA. Further, here, we are concerned with only two trial court orders, and, if the trial court intended its expungement orders to be consistent with the CHRIA, the trial court could have indicated as much. It did not do so.

This court has pointed out that an order is an order, not a suggestion. *Cleary v. Department of Transportation,* 919 A.2d 368 (Pa.Cmwlth.2007); *Moore v. Workmen's Compensation Appeal Board (Reading Paperboard Corporation),* 676 A.2d 690 (Pa.Cmwlth.), *appeal denied,* 546 Pa. 658, 684 A.2d 559 (1996). Because the language of the trial court orders is clear and unambiguous and because that language is broader in scope than that set forth in the CHRIA, I would reverse.

Pa.Cmwlth.,2009.
Doe v. Zappala
987 A.2d 190

END OF DOCUMENT

42 Pa. C.S.A.

Chapter 63. Juvenile Matters

§6307. Inspection of court files and records.

All files and records of the court in a proceeding under this chapter are open to inspection only by:

(1) The judges, officers and professional staff of the court.

(2) The parties to the proceeding and their counsel and representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court.

(4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to a proceeding under this chapter.

(5) A judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions and petitions relating thereto, orders resulting from disposition review hearings and histories of bench warrants and escapes.

(6) The Administrative Office of Pennsylvania Courts.

(7) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

§6308. Law enforcement records

(a) **General rule**. Law enforcement records and files concerning a child shall be kept

separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under Section 6355 (relating to transfer to criminal proceedings), the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection or their contents disclosed to the public except as provided in subsection (b); but inspection of the records and files is permitted by:

(1) The court having the child before it in any proceeding.

(2) Counsel for a party to the proceeding.

(3) The officers of institutions or agencies to whom the child is committed.

(4) Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties.

(5) A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him.

(b) Public availability.

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public except if the child is 14 or more years of age at the time of the alleged conduct and if any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts which include the elements of rape, kidnapping, murder, robbery, arson, burglary, violation of Section 13(a)(30) of the Act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or other act involving the use of or threat of serious bodily harm.

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act or acts which include the elements of rape, kidnapping, murder, robbery, arson, burglary, violation of Section 13(a)(30) of The Controlled Substance, Drug, Device and Cosmetic Act, or other act involving the use of or threat of serious bodily harm and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one or such crimes.

(2) If the conduct of the child meets the requirements for disclosure as set forth in paragraph (1), then the court or law enforcement agency, as the case may be, shall disclose the name, age and address of the child, the offenses charged and the disposition of the case. The master or judge who adjudicates a child delinquent shall specify the particular offenses and counts thereof which the child is found to have committed and such information shall be inserted on any law enforcement records or files disclosed to the public as provided for in this section.

(c) Fingerprints and photographs.

(1) Law enforcement officers shall have the authority to take or cause to be taken the fingerprints or photographs, or both, of any child who is alleged to have committed an act designated as a misdemeanor or felony under the laws of this Commonwealth or of another state if the act occurred in that state or under federal law.

(2) Fingerprint and photographic records may be disseminated to law enforcement officers of other jurisdictions, the Pennsylvania State Police and the Federal Bureau of Investigation and may be used for investigative purposes.

(3) Fingerprints and photographic records of children shall be kept separately from adults and shall be immediately destroyed upon notice of the court as provided under Section 6341(a) (relating to adjudication) by all persons and agencies having these records if the child is not adjudicated delinquent or not found guilty in a criminal proceeding for reason of the alleged acts.

(d) Pennsylvania State Policy Registry.

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of any offense enumerated in 18 Pa. C.S. §6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed any offense enumerated in 18 Pa. C.S. §6105 and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes.

§6309. Juvenile history record information

(a) **Applicability of Criminal History Record Information Act**. Except for 18 Pa. C.S. § 9105 (relating to other criminal justice information), 9112(a) and (b) (relating to mandatory fingerprinting), 9113 (relating to disposition reporting by criminal justice agencies), and 9121(b) (relating to general regulations), the remaining provisions of 18 Pa. C.S. Ch. 91 (relating to criminal history record information) shall apply to all alleged delinquents whose fingerprints and photographs are taken pursuant to Section 6308(c) (relating to law enforcement records) and to any juvenile justice agency which collects, maintains, disseminates or receives juvenile history record information. The disclosure to the public of the contents of law enforcement records and files concerning a child shall be governed by Section 6308(b).

(b) **Central repository.** The Pennsylvania State Police shall establish a statewide central repository of fingerprints, photographs and juvenile history record information of alleged delinquents whose fingerprints and photographs are taken pursuant to Section 6308(c).

(c) **Fingerprints and photographs.** The arresting authority shall ensure that the fingerprints and photographs of an alleged delinquent, whose fingerprints and photographs have been taken by an arresting authority, pursuant to Section 6308(c) are forwarded to the central repository as required by the Pennsylvania State Police.

(d) **Disposition reporting.** The division or judge of the court assigned to conduct juvenile hearings shall, within seven days after disposition of a case where the child has been alleged to be delinquent, notify the arresting authority of the disposition of the case.

In addition, it shall collect and submit the disposition of cases resulting in adjudication of delinquency for inclusion in the central repository within 90 days of an adjudication of delinquency as required by the Juvenile Court Judges' Commission.

(e) **Definitions.** As used in this section the following words and phrases shall have the meanings given to them in this subsection.

"**Criminal history record information**." In addition to the meaning in 18 Pa. C.S. §9102 (relating to definitions), the term includes the meaning of juvenile history record information as defined in this subsection.

"**Juvenile history record information**." Information collected pursuant to this section concerning alleged delinquents whose fingerprints and photographs are taken pursuant to Section 6308(c) and arising from the filing of a petition of delinquency, consisting of identifiable descriptions, dates and notations of arrests, indictments, information or other delinquency charges and any adjudication of delinquency, informal adjustment, consent decree or preadjudication disposition other than dismissal arising therefrom. Juvenile

history record information shall not include intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, *modus operandi* information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information or presentence investigation information.

REQUEST FOR INVESTIGATIVE INFORMATION FROM A CRIMINAL JUSTICE AGENCY

This form is to be used when requesting access to investigative information from a criminal justice agency under the Pennsylvania Criminal History Record Information Act (CHRIA). Only a direct victim of crime who intends to sue or has filed suit, or a defendant in a civil lawsuit in which a direct victim is a party, or the personal representative of such a victim or civil defendant, may obtain access to this information.

Criminal Justice Agency from which investigative information is requested:

Name: _____

Address: _____

_____

Name of Requester: _____ Telephone: _____

Address: _____ Email: _____

_____

Status of Requester:

- ☐ Direct victim of crime
- ☐ Personal representative of a direct victim of crime
- ☐ Defendant in a civil lawsuit in which direct victim of crime is a party
- ☐ Personal representative of a defendant in a civil lawsuit in which direct victim of crime is a party

Name of defendant in criminal case: _____

Name of law enforcement agency/ies involved in the investigation: _____

_____

_____

Caption and docket number, if known, of criminal case for which Requester is seeking investigative information: _____

Court, caption, and docket number for civil case for which investigative information is sought:

_____

_____

Please indicate why you are requesting the dissemination of investigative information:

☐ The requested information is directly related to a civil action pending in a court in this Commonwealth.

☐ The requested information is material and necessary to the investigation or preparation of a civil action in this Commonwealth.

Please identify or describe the information sought with sufficient specificity to enable the criminal justice agency possessing the information to ascertain what information is being requested. Please attach additional pages if more space is needed.

_____

_____

_____

Please explain how the information sought is directly related to a pending civil action or material and necessary to the investigation or preparation of a civil action. Please attach additional pages if more space is needed.

_____

_____

_____

The information provided and the facts recited in this Request for Investigative Information from a Criminal Justice Agency are true and correct to the best of my knowledge and belief. This statement is made with knowledge that a false statement is punishable by law under 18 Pa. C.S. § 4904(b) (unsworn falsification to authorities).

Signature: _____ Date: _____

I understand that:

1) Despite this request, dissemination of investigative information may be denied because it is otherwise nondiscoverable or privileged for reasons set forth in Subchapter F.1 of the Criminal History Record Information Act.

2) Investigative information obtained through this Request may be used only in connection with an actual or potential civil action directly relating to the investigative information.

3) The use of investigative information obtained under Subchapter F.1 of the Criminal History Record Information Act to harass, intimidate, or threaten another person constitutes a misdemeanor of the second degree.

This statement is made with knowledge that a false statement is punishable by law under 18 Pa. C.S. § 4904(b) (unsworn falsification to authorities).

Signature: _____ Date: _____

Printed name: _____

REQUEST FOR INVESTIGATIVE INFORMATION CHECKLIST

Name and Title of Responsible Person: _____

___ Did the requester properly serve the request personally or by mail to the OAG records information officer?
- ☐ Yes
- ☐ No

___ Did the requester serve a subpoena that is being treated as a request for dissemination of investigative information?
- ☐ Yes
- ☐ No

___ What was the date the request or subpoena was received by the records information officer? ___/___/20___

___ What date is 60 days from the date the request or subpoena was received? ___/___/20___

___ Who is the requester?

Name: _____ Telephone: _____

Address: _____ Email: _____

_____

___ What is the status of the requester?
- ☐ Direct victim of crime
- ☐ Personal representative of a direct victim of crime
- ☐ Defendant in a civil lawsuit in which direct victim of crime is a party
- ☐ Personal representative of a defendant in a civil lawsuit in which direct victim of crime is a party
- ☐ None of the above

___ What is the Criminal Justice Agency from which investigative information is requested?
- ☐ Office of Attorney General
- ☐ Other (specify) _____

___ Has the requester averred (subject to 18 Pa.C.S. § 4904) that the requested information is directly related to a civil action pending in a court in this Commonwealth?

___ Has the requester averred (subject to 18 Pa.C.S. § 4904) that the requested information is material and necessary to the investigation or preparation of a civil action in this Commonwealth?

___ What is the name of the defendant/subject of investigation in the criminal case?

Name: _____ Telephone: _____

Address: _____ Email: _____

_____

___ Did OAG investigate the case?
- ☐ Yes ☐ No

___ Is the investigation ongoing?
- ☐ Yes ☐ No

___ Did OAG prosecute the case?

□ Yes □ No

___ Is the prosecution ongoing?

□ Yes □ No

___ Has the requester specifically identified or described the information sought?

□ Yes □ No

___ Does OAG have custody or possession of the information sought?

□ Yes □ No

___ Will dissemination of the requested information, absent reasonable redaction, endanger a person or public safety?

□ Yes □ No

___ Will dissemination of the requested information, absent reasonable redaction, adversely affect an investigation or ongoing prosecution?

□ Yes □ No

___ Does the requested information, absent reasonable redaction, relate to law enforcement's use of confidential informants or disclose investigative techniques or procedures?

□ Yes □ No

___ Would dissemination of the requested information, absent reasonable redaction, identify a third-party victim of child abuse, domestic violence, or sexual abuse?

□ Yes □ No

___ Would dissemination of the requested material disclose any of the following?

___ Grand jury investigative materials

___ Medical, mental health, or treatment information

___ Materials protected by attorney-client privilege or the attorney work-product doctrine

___ Materials protected as related to juvenile matters (*see* 42 Pa.C.S. § 6308)

___ Materials protected as recordings by law enforcement officers (*see* 42 Pa.C.S. § 67A01)

___ Materials otherwise prohibited or protected from disclosure by federal or state law

___ If dissemination is approved, have you redacted the personal identification information of persons other than the requester, including Social Security numbers, driver's license numbers, personal finance information, telephone numbers, email addresses, employee numbers, and any other confidential personal identification number?