

IN THE SENATE

SENATE BILL NO. 1033

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CRIMINAL HISTORY RECORDS; AMENDING SECTION 67-3001, IDAHO CODE,
2 TO DEFINE A TERM; AND AMENDING SECTION 67-3008, IDAHO CODE, TO PROVIDE
3 FOR THE RETENTION AND EXPUNGEMENT OF FINGERPRINT RECORDS IN CERTAIN IN-
4 STANCES.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 67-3001, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 67-3001. DEFINITIONS. As used in this chapter:

10 (1) "Administration of criminal justice" means performance of any of
11 the following activities: detection, apprehension, detention, pretrial
12 release, posttrial release, prosecution, adjudication, correctional su-
13 pervision, or rehabilitation of accused persons or criminal offenders. The
14 administration of criminal justice includes criminal identification ac-
15 tivities and the collection, storage and dissemination of criminal history
16 record information.

17 (2) "Bureau" means the bureau of criminal identification in the Idaho
18 state police.

19 (3) "Court" means any court created by the constitution and laws of the
20 state of Idaho; and clerks of the district court.

21 (4) "Criminal history records" means physical and automated informa-
22 tion on individuals collected and maintained by the Idaho state police as a
23 result of arrest or the initiation of a criminal proceeding by felony sum-
24 mons or information. A criminal history record includes, as defined by de-
25 partment rule, any or all of the following information relating to each event
26 that is subject to fingerprinting under section 67-3004, Idaho Code:

27 (a) Information relating to offenders;

28 (b) Information relating to arrests;

29 (c) Information relating to prosecutions;

30 (d) Information relating to the disposition of cases by courts;

31 (e) Information relating to sentencing;

32 (f) Information relating to probation and parole status; and

33 (g) Information relating to offenders received by a correctional
34 agency, facility or other institution.

35 The term shall not include statistical or analytical records, reports in
36 which individuals are not identified and from which their identities are not
37 ascertainable, criminal intelligence information or criminal investigative
38 information, and source information or records maintained by and held at
39 another criminal justice agency or the court.

40 (5) "Criminal justice agency" means a governmental agency or subdi-
41 vision of a government entity that performs the administration of criminal

1 justice pursuant to a statute, and that allocates a substantial portion of
2 its budget to the administration of criminal justice.

3 (6) "Department" means the Idaho state police.

4 (7) "Director" means the director of the Idaho state police.

5 (8) "Disposition" means the formal or informal conclusion of a criminal
6 proceeding at whatever stage it occurs in the criminal justice system.

7 (9) "Fingerprints" means the fingerprint impressions submitted to and
8 compiled by the bureau, in a manual or automated form, pursuant to section
9 67-3004, Idaho Code.

10 (10) "Pecuniary benefit" means any benefit to a person or member of his
11 household in the form of money, property or commercial interests, the pri-
12 mary significance of which is economic gain.

13 (11) "Rap back service" means a program that allows authorized agencies
14 to submit applicant fingerprints for retention and enrollment to receive no-
15 tifications of subsequent criminal activity biometrically matching the fin-
16 gerprint record of an individual as defined by rule.

17 (12) "Retainable offense" means:

18 (a) A felony; or

19 (b) A serious misdemeanor as defined by rule adopted under section
20 67-3003(2), Idaho Code.

21 (123) "Subject of record" means the person who is or may be the primary
22 subject of a record of criminal justice information or any representative of
23 the person designated by power of attorney or notarized authorization.

24 (134) "Working day" means each day except Saturday, Sunday, or a legal
25 state holiday.

26 SECTION 2. That Section 67-3008, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 67-3008. RELEASE OF CRIMINAL HISTORY RECORD INFORMATION. (1) All
29 units of state, city and local governments, as well as any agency of the state
30 created by the legislature which require by statute, rule, or local or county
31 ordinance, fingerprinting of applicants or licensees, are authorized to
32 submit fingerprints to the bureau for examination and further submission,
33 if necessary, to the federal bureau of investigation. The bureau shall be
34 the state's sole source of fingerprint submissions for criminal justice and
35 applicant or licensing purposes to the federal bureau of investigation for
36 authorized purposes. The bureau shall retain such fingerprints for the pur-
37 pose of notification for use in the rap back program and for criminal justice
38 purposes. Requests for expungement of fingerprint records not related to
39 criminal justice shall be submitted in writing as provided by rule.

40 (2) The department shall provide copies of or communicate information
41 from criminal history records to the following:

42 (a) Criminal justice agencies and the court;

43 (b) A person or public or private agency, upon written application on a
44 form approved by the director and provided by the department, subject to
45 the following restrictions:

46 (i) A request for criminal history records must be submitted in
47 writing or as provided by rule. However, the department shall ac-
48 cept a request presented in person by the subject of the record;
49 and

1 (ii) The request must identify a specific person by name and date
2 of birth. Fingerprints of the person named may be required to es-
3 tablish positive identification; and

4 (iii) Responding to the request does not interfere with the secure
5 and orderly conduct of the department and would not substantially
6 prejudice or prevent the carrying out of the functions of the de-
7 partment; and

8 (iv) A record of an arrest that does not contain a disposition af-
9 ter twelve (12) months from the date of arrest may only be dissem-
10 inated by the department to criminal justice agencies, to the sub-
11 ject of the record, or to a person requesting the criminal history
12 information with a signed release from the subject of the record;
13 and

14 (v) Any release of criminal history data by the department shall
15 prominently display the statement: "AN ARREST WITHOUT DISPOSI-
16 TION IS NOT AN INDICATION OF GUILT."

17 (3) Judicial review of the department's denial of a request for records
18 shall be in accordance with the provisions of section 9-343, Idaho Code.

19 (4) A request for a criminal history record by a criminal justice agency
20 or a court shall take precedence over all other requests. The department
21 shall adopt rules to set forth the manner by which criminal justice agencies
22 and courts without direct access to the public safety and security informa-
23 tion system established by section 19-5202, Idaho Code, may request Idaho
24 criminal history record information.

25 (5) Unless otherwise provided by law, access authorized under this
26 section to criminal history records does not create a duty upon a person,
27 employer, private agency, or public agency to examine the criminal history
28 record of an applicant, employee or volunteer.

29 (6) A person or private agency, or public agency, other than the depart-
30 ment, shall not disseminate criminal history record information obtained
31 from the department to a person or agency that is not a criminal justice
32 agency or a court without a signed release of the subject of record or unless
33 otherwise provided by law.

34 (7) Direct access to criminal history record information is regulated
35 by chapter 52, title 19, Idaho Code, and the rules adopted pursuant to that
36 chapter.