

IN THE SENATE

SENATE BILL NO. 1033, As Amended

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
4 INSTANCES, TO PROVIDE NOTICE TO CERTAIN INDIVIDUALS WHO ARE FINGER-
5 PRINTED, TO PROVIDE THAT NO FEE SHALL BE CHARGED FOR EXPUNGEMENT OF
6 FINGERPRINTS AND TO DEFINE A TERM.
7

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

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

11 67-3001. DEFINITIONS. As used in this chapter:

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

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

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

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

29 (a) Information relating to offenders;

30 (b) Information relating to arrests;

31 (c) Information relating to prosecutions;

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

33 (e) Information relating to sentencing;

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

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

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

1 (5) "Criminal justice agency" means a governmental agency or subdi-
 2 vision of a government entity that performs the administration of criminal
 3 justice pursuant to a statute, and that allocates a substantial portion of
 4 its budget to the administration of criminal justice.

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

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

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

9 (9) "Fingerprints" means the fingerprint impressions submitted to and
 10 compiled by the bureau, in a manual or automated form, pursuant to section
 11 67-3004, Idaho Code.

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

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

19 (12) "Retainable offense" means:

20 (a) A felony; or

21 (b) A serious misdemeanor as defined by rule adopted under section
 22 67-3003(2), Idaho Code.

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

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

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

30 67-3008. RELEASE OF CRIMINAL HISTORY RECORD INFORMATION. (1) All
 31 units of state, city and local governments, as well as any agency of the state
 32 created by the legislature which require by statute, rule, or local or county
 33 ordinance, fingerprinting of applicants or licensees, are authorized to
 34 submit fingerprints to the bureau for examination and further submission,
 35 if necessary, to the federal bureau of investigation. The bureau shall be
 36 the state's sole source of fingerprint submissions for criminal justice and
 37 applicant or licensing purposes to the federal bureau of investigation for
 38 authorized purposes. The bureau shall submit such fingerprints to the fed-
 39 eral bureau of investigation central fingerprint database for completion of
 40 a criminal background check and report. Once complete, the federal bureau of
 41 investigation shall provide the criminal background check report to the bu-
 42 reau, and the bureau shall transmit the report to the appropriate authorized
 43 agency or entity.

44 (2) The bureau shall retain fingerprints submitted pursuant to subsec-
 45 tion (1) of this section in the state central fingerprint database following
 46 the initial criminal background check for purposes of notification to those
 47 agencies or entities authorized by law and choosing to participate in the rap
 48 back service and for criminal justice purposes.

1 (a) Each agency or entity receiving a notification under the rap back
 2 service shall provide a copy of any notification to the individual who
 3 is the subject of the notification prior to taking any adverse action
 4 against such individual.

5 (b) An individual fingerprinted for a noncriminal justice purpose
 6 shall have his fingerprints expunged by the bureau:

7 (i) When he is no longer in a position or no longer holds a license
 8 subject to criminal background checks and notifications in the rap
 9 back service; or

10 (ii) Upon any withdrawal of the agency or entity from participa-
 11 tion in the rap back service.

12 (c) The bureau shall provide notice to an individual fingerprinted for
 13 a noncriminal justice purpose of his right to expunge when he is ini-
 14 tially fingerprinted and when the rap back service is no longer applica-
 15 ble to him for any reason.

16 (d) No fee shall be charged to an individual for expungement of his fin-
 17 gerprints.

18 (23) The department shall provide copies of or communicate information
 19 from criminal history records to the following:

20 (a) Criminal justice agencies and the court;

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

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

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

31 (iii) Responding to the request does not interfere with the secure
 32 and orderly conduct of the department and would not substantially
 33 prejudice or prevent the carrying out of the functions of the de-
 34 partment; and

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

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

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

47 (45) A request for a criminal history record by a criminal justice
 48 agency or a court shall take precedence over all other requests. The de-
 49 partment shall adopt rules to set forth the manner by which criminal justice
 50 agencies and courts without direct access to the public safety and security

1 information system established by section 19-5202, Idaho Code, may request
2 Idaho criminal history record information.

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

7 (67) A person or private agency, or public agency, other than the
8 department, shall not disseminate criminal history record information
9 obtained from the department to a person or agency that is not a criminal
10 justice agency or a court without a signed release of the subject of record or
11 unless otherwise provided by law.

12 (78) Direct access to criminal history record information is regulated
13 by chapter 52, title 19, Idaho Code, and the rules adopted pursuant to that
14 chapter.

15 (9) For purposes of this section, "criminal justice purpose" means bio-
16 metric matching to arrest fingerprints, to unidentified or missing person
17 fingerprints or to latent or unknown fingerprints from criminal or suspected
18 events.