

IN THE SENATE

SENATE BILL NO. 1298

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CRIMINAL HISTORY RECORDS; AMENDING SECTION 67-3001, IDAHO CODE,
2 TO DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION
3 67-3002, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING
4 SECTION 67-3005, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND
5 AMENDING CHAPTER 30, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
6 TION 67-3008A, IDAHO CODE, TO PROVIDE FOR FINGERPRINT-BASED CRIMINAL
7 BACKGROUND CHECKS OF CERTAIN APPLICANTS AND LICENSEES, TO PROVIDE FOR
8 THE RETENTION AND DESTRUCTION OF CERTAIN FINGERPRINTS AND TO PROVIDE
9 RIGHTS FOR CERTAIN FINGERPRINTED INDIVIDUALS.
10

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

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

14 67-3001. DEFINITIONS. As used in this chapter:

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

22 (2) "Authorized entity" means any governmental or nongovernmental or-
23 ganization in this state required or authorized by law to:

24 (a) Obtain the fingerprints of licensees or individuals applying for or
25 holding employment or other positions with such organization; or

26 (b) Request fingerprint-based criminal background checks and receive
27 criminal history reports of such applicants and licensees.

28 (3) "Bureau" means the bureau of criminal identification in the Idaho
29 state police.

30 (34) "Court" means any court created by the constitution and laws of the
31 state of Idaho; and clerks of the district court.

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

38 (a) Information relating to offenders;

39 (b) Information relating to arrests;

40 (c) Information relating to prosecutions;

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

42 (e) Information relating to sentencing;

- 1 (f) Information relating to probation and parole status; and
 2 (g) Information relating to offenders received by a correctional
 3 agency, facility or other institution.

4 The term shall not include statistical or analytical records, reports in
 5 which individuals are not identified and from which their identities are not
 6 ascertainable, criminal intelligence information or criminal investigative
 7 information, and source information or records maintained by and held at
 8 another criminal justice agency or the court.

9 ~~(56)~~ "Criminal justice agency" means a governmental agency or subdi-
 10 vision of a government entity that performs the administration of criminal
 11 justice pursuant to a statute, and that allocates a substantial portion of
 12 its budget to the administration of criminal justice.

13 ~~(67)~~ "Department" means the Idaho state police.

14 ~~(78)~~ "Director" means the director of the Idaho state police.

15 ~~(89)~~ "Disposition" means the formal or informal conclusion of a crimi-
 16 nal proceeding at whatever stage it occurs in the criminal justice system.

17 (10) "FBI" means the federal bureau of investigation.

18 ~~(911)~~ "Fingerprints" means the fingerprint impressions submitted to
 19 and compiled by the bureau, in a manual or automated form, pursuant to sec-
 20 tion 67-3004, Idaho Code.

21 ~~(102)~~ "Law" means state statutes and rules, county ordinances, city or-
 22 dinances and federal statutes and rules.

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

26 ~~(144)~~ "Rap back services" means a program that allows an authorized en-
 27 tity to provide the bureau with a written designation that the fingerprints
 28 of all individuals the authorized entity submits to the bureau for criminal
 29 background checks are to be retained in state and FBI fingerprint databases
 30 following an initial criminal background check so that the authorized entity
 31 can be informed of subsequent criminal history pertaining to the individual.

32 (15) "Retainable offense" means:

33 (a) A felony; or

34 (b) A serious misdemeanor as defined by rule adopted under section
 35 67-3003(2), Idaho Code.

36 ~~(126)~~ "Subject of record" means the person who is or may be the primary
 37 subject of a record of criminal justice information or any representative of
 38 the person designated by power of attorney or notarized authorization.

39 ~~(137)~~ "Working day" means each day except Saturday, Sunday, or a legal
 40 state holiday.

41 (18) "Written" includes electronic communication.

42 SECTION 2. That Section 67-3002, Idaho Code, be, and the same is hereby
 43 amended to read as follows:

44 67-3002. POSITIVE IDENTIFICATION -- FINGERPRINTS REQUIRED. To ensure
 45 positive identification and system integrity, criminal history records
 46 shall be supported by fingerprints, which may be maintained manually, elec-
 47 tronically or on optical disk. The records shall be linked to an automated
 48 fingerprint identification system. For the purpose of including prescribed
 49 information categories, the system may be linked with databases maintained

1 by other state agencies. Whenever possible, the reporting of information by
2 criminal justice agencies relating to the categories identified in section
3 67-3001(45), Idaho Code, shall be conducted electronically or by magnetic
4 medium. Any technology used in this process will conform to the standards,
5 guidelines and conventions established by the Idaho technology authority.

6 SECTION 3. That Section 67-3005, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 67-3005. RECORDS AND REPORTING -- DUTIES OF OTHER CRIMINAL JUSTICE
9 AGENCIES AND THE COURT. (1) Each criminal justice agency shall:

10 (a) Transmit to the department, when and in the manner prescribed by
11 this chapter or any rules adopted pursuant thereto, all information re-
12 quired by section 67-3001(45), Idaho Code, for inclusion in the crimi-
13 nal history records;

14 (b) Provide the department and its accredited agents access to source
15 records and files for the purpose of assessing the accuracy, complete-
16 ness and timeliness of the criminal history records maintained by the
17 department; and

18 (c) Cooperate with the department so that it may properly perform the
19 duties that are mandated by this chapter.

20 (2) When a law enforcement agency or jail facility fingerprints a
21 person as required by section 67-3004, Idaho Code, the agency or facility
22 shall initiate the reporting process by transmitting to the department the
23 authorized and fully completed arrest fingerprint card and identification
24 information within ten (10) working days after the arrest, arraignment or
25 court-ordered fingerprinting. A law enforcement agency or jail facility
26 required to take fingerprints shall ensure that the process control number
27 on the arrest fingerprint card is transmitted to the appropriate court clerk
28 for recording in the court's automated information system. When appropri-
29 ate, the law enforcement agency or jail facility shall report, in a manner
30 and in a form prescribed by the department, the disposition relating to the
31 charge or arrest.

32 (3) The clerk of the court exercising jurisdiction over a case relating
33 to a retainable offense shall report the court disposition of the case to the
34 department, in a manner and format determined by the department after con-
35 sultation with and approval by the Idaho supreme court.

36 (4) The department of correction shall report, in a manner and on a form
37 prescribed by the department, information on an individual committed to and
38 released from a state correctional facility.

39 (5) The department of correction shall report, in a manner and on a form
40 prescribed by the department, information on an individual committed to and
41 released from its supervision as a result of probation, parole or other judi-
42 cial action.

43 (6) With the approval of the department, a criminal justice agency or
44 the court may report required information by electronic medium either di-
45 rectly to the department or indirectly through a sharing of information via
46 the linkage of automated systems or databases.

1 SECTION 4. That Chapter 30, Title 67, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 67-3008A, Idaho Code, and to read as follows:

4 67-3008A. FINGERPRINT-BASED CRIMINAL BACKGROUND CHECKS OF APPLI-
5 CANTS AND LICENSEES -- RETENTION AND DESTRUCTION OF FINGERPRINTS -- RIGHTS
6 OF FINGERPRINTED INDIVIDUALS. (1) To obtain a fingerprint-based criminal
7 background check of arrests on an applicant or licensee and to receive a
8 written report of such a background check, an authorized entity must submit
9 the applicant's or the licensee's fingerprints to the bureau. Such autho-
10 rized entity shall not retain, nor shall it provide or otherwise disclose to
11 any other individual, entity, agency or organization, the fingerprints of
12 the applicant or licensee. Upon receiving an applicant's or a licensee's
13 fingerprints from an authorized entity, the bureau shall cause a criminal
14 background check of arrests to be conducted on the applicant or licensee
15 based on the matching of the applicant's or the licensee's fingerprints
16 against state and FBI fingerprint databases. Upon completion of the crim-
17 inal background check, the bureau shall provide a written report of its
18 results to the authorized entity submitting the fingerprints. The autho-
19 rized entity and the bureau shall not transmit such criminal history report
20 to any other individual, entity, agency or organization, and fingerprints
21 submitted by an authorized entity shall not be used to complete a criminal
22 background check for another authorized entity, but the bureau is authorized
23 to notify relevant Idaho law enforcement agencies of fingerprint matches for
24 administration of criminal justice purposes.

25 (2) Every authorized entity shall provide the bureau with a written
26 designation that states whether the fingerprints it submits to the bureau
27 are, or are not, to be retained in the state and FBI fingerprint databases
28 for rap back services. If designated for rap back services, the bureau shall
29 cause such fingerprints to be retained in such databases.

30 (3) When fingerprints retained for rap back services reveal an indi-
31 vidual's subsequent criminal history of one (1) or more arrests, the bureau
32 shall transmit a report of such subsequent criminal history to the autho-
33 rized entity submitting the individual's fingerprints, but only if such au-
34 thorized entity provides the bureau with written confirmation that it re-
35 mains entitled to receive such a report. The authorized entity or bureau
36 shall not transmit such criminal history report to any other individual, en-
37 tity, agency or organization, and fingerprints submitted by an authorized
38 entity shall not be used to complete a criminal background check for another
39 authorized entity, but the bureau is authorized to notify relevant Idaho law
40 enforcement agencies of fingerprint matches for administration of criminal
41 justice purposes.

42 (4) An authorized entity that obtains an initial or subsequent crimi-
43 nal background check report that shows a criminal history of one (1) or more
44 arrests shall provide it to the individual who is the subject of the report
45 and give the individual an opportunity to comment on it prior to taking any
46 adverse action against the individual. The individual shall have the right
47 to formally challenge the accuracy of the reported criminal history infor-
48 mation as provided by law, but such a formal challenge shall not preclude an

1 authorized entity from taking adverse action against the individual once it
2 has given the individual an opportunity to comment on the report.

3 (5) The bureau shall cause the fingerprints of an individual that have
4 been retained pursuant to rap back services to be removed from state and FBI
5 fingerprint databases and destroyed when:

6 (a) Such individual is no longer in a position subject to mandatory
7 criminal background checks and is not scheduled to return to such posi-
8 tion within twelve (12) months;

9 (b) Such individual is no longer a licensee subject to mandatory crimi-
10 nal background checks; or

11 (c) The applicable authorized entity terminates its participation in
12 rap back services.

13 (6) The bureau shall give notice to all individuals whose fingerprints
14 have been retained for rap back services of his rights pursuant to the provi-
15 sions of subsections (4) and (5) of this section, and no fee shall be charged
16 to any individual for the removal and destruction of his fingerprints from
17 state and FBI fingerprint databases pursuant to subsection (5) of this sec-
18 tion.

19 (7) Judicial review of the department's or the bureau's denial of a
20 request for records shall be in accordance with the provisions of section
21 74-115, Idaho Code.

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

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