

FIRST REGULAR SESSION

HOUSE BILL NO. 167

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DUSENBERG.

0709L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 43.500, 43.503, 43.506, and 43.540, RSMo, and to enact in lieu thereof four new sections relating to criminal history records information, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 43.500, 43.503, 43.506, and 43.540, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 43.500, 43.503, 43.506, and 43.540, to read as follows:

43.500. As used in sections 43.500 to 43.543, the following terms mean:

(1) "Administration of criminal justice", performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history information, including fingerprint searches, photographs, and other indicia of identification;

(2) "Central repository", the **division within the** Missouri state highway patrol [criminal records and identification division] **responsible** for compiling and disseminating complete and accurate criminal history records and for compiling, maintaining, and disseminating criminal incident and arrest reports and statistics;

(3) "Committee", criminal records and justice information advisory committee;

(4) "**Comparable ordinance violation**", a violation of an ordinance having all the essential elements of a statutory felony or a class A misdemeanor;

(5) "Criminal history record information", information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 detentions, indictments, informations, or other formal criminal charges, and any disposition
18 arising therefrom, sentencing, correctional supervision, and release;

19 [(5)] (6) "Final disposition", the formal conclusion of a criminal proceeding at whatever
20 stage it occurs in the criminal justice system;

21 [(6)] (7) "Missouri charge code", a unique number assigned by the office of state courts
22 administrator to an offense for tracking and grouping offenses. Beginning January 1, 2005, the
23 complete charge code shall consist of digits assigned by the office of state courts administrator,
24 the two-digit national crime information center modifiers and a single digit designating attempt,
25 accessory, or conspiracy. The only exception to the January 1, 2005, date shall be the courts that
26 are not using the statewide court automation case management pursuant to section 476.055,
27 RSMo; the effective date will be as soon thereafter as economically feasible for all other courts;

28 [(7)] (8) "State offense cycle number", a unique number, supplied by or approved by the
29 Missouri state highway patrol, on the state criminal fingerprint card. The offense cycle number,
30 OCN, is used to link the identity of a person, through fingerprints, to one or many offenses for
31 which the person is arrested or charged. The OCN will be used to track an offense incident from
32 the date of arrest to the final disposition when the offender exits from the criminal justice system.

43.503. 1. For the purpose of maintaining complete and accurate criminal history record
2 information, all police officers of this state, the clerk of each court, the department of corrections,
3 the sheriff of each county, the chief law enforcement official of a city not within a county and
4 the prosecuting attorney of each county or the circuit attorney of a city not within a county shall
5 submit certain criminal arrest, charge, and disposition information to the central repository for
6 filing without undue delay in the form and manner required by sections 43.500 to 43.543.

7 2. All law enforcement agencies making misdemeanor and felony arrests as determined
8 by section 43.506 shall furnish without undue delay, to the central repository, fingerprints,
9 charges, appropriate charge codes, and descriptions of all persons who are arrested for such
10 offenses on standard fingerprint forms supplied or approved by the highway patrol or
11 electronically in a format and manner approved by the highway patrol. All such agencies shall
12 also notify the central repository of all decisions not to refer such arrests for prosecution. An
13 agency making such arrests may enter into arrangements with other law enforcement agencies
14 for the purpose of furnishing without undue delay such fingerprints, charges, appropriate charge
15 codes, and descriptions to the central repository upon its behalf.

16 3. In instances where an individual less than seventeen years of age and not currently
17 certified as an adult is taken into custody for an offense which would be a felony if committed
18 by an adult, the arresting officer shall take fingerprints for the central repository. These
19 fingerprints shall be taken on fingerprint cards supplied by or approved by the highway patrol
20 or transmitted electronically in a format and manner approved by the highway patrol. The

21 fingerprint cards shall be so constructed that the name of the juvenile should not be made
22 available to the central repository. The individual's name and the unique number associated with
23 the fingerprints and other pertinent information shall be provided to the court of jurisdiction by
24 the agency taking the juvenile into custody. The juvenile's fingerprints and other information
25 shall be forwarded to the central repository and the courts without undue delay. The fingerprint
26 information from the card shall be captured and stored in the automated fingerprint identification
27 system operated by the central repository. In the event the fingerprints are found to match other
28 fingerprints or unsolved latent prints, the central repository shall notify the submitting agency who
29 shall notify the court of jurisdiction as per local agreement. **Under section 211.031, RSMo, in**
30 **instances where a juvenile over fifteen and one-half years of age is alleged to have violated**
31 **a state or municipal traffic ordinance or regulation, which does not constitute a felony, and**
32 **the juvenile court does not have jurisdiction, the juvenile shall not be fingerprinted unless**
33 **certified as an adult.**

34 4. Upon certification of the individual as an adult, the certifying court shall order a law
35 enforcement agency to immediately fingerprint the individual **and certification papers will be**
36 **forwarded to the appropriate law enforcement agency with the order for fingerprinting.**
37 The law enforcement agency shall submit such fingerprints **and certification papers** to the
38 central repository within fifteen days and shall furnish the offense cycle number associated with
39 the fingerprints to the prosecuting attorney or the circuit attorney of a city not within a county
40 and to the clerk of the court ordering the subject fingerprinted. If the juvenile is acquitted of the
41 crime and is no longer certified as an adult, the prosecuting attorney shall notify within fifteen
42 days the central repository of the change of status of the juvenile. Records of a child who has
43 been fingerprinted and photographed after being taken into custody shall be closed records as
44 provided under section 610.100, RSMo, if a petition has not been filed within thirty days of the
45 date that the child was taken into custody; and if a petition for the child has not been filed within
46 one year of the date the child was taken into custody, any records relating to the child concerning
47 the alleged offense may be expunged under the procedures in sections 610.122 to 610.126,
48 RSMo.

49 5. The prosecuting attorney of each county or the circuit attorney of a city not within a
50 county **or the municipal prosecuting attorney** shall notify the central repository on standard
51 forms supplied by the highway patrol or in a manner approved by the highway patrol [of all
52 charges filed, including all those added subsequent to the filing of a criminal court case, and
53 whether charges were not filed in criminal cases for which the central repository has a record of
54 an arrest] **of his or her decision to not file a criminal charge on any charge referred to such**
55 **prosecuting attorney or circuit attorney for criminal charges.** All records forwarded to the
56 central repository **and the courts** by prosecutors or circuit attorneys as required by sections

57 43.500 to 43.530 shall include the state offense cycle number of the offense, the charge code for
58 the offense, and the originating agency identifier number of the reporting prosecutor, using such
59 numbers as assigned by the highway patrol.

60 6. The clerk of the courts of each county or city not within a county **or municipal court**
61 **clerk** shall furnish the central repository, on standard forms supplied by the highway patrol or
62 in a manner approved by the highway patrol, with **a record of all charges filed, including all**
63 **those added subsequent to the filing of a criminal court case, amended charges, and** all final
64 dispositions of cases for which the central repository has a record of an arrest or a record of
65 fingerprints reported pursuant to sections 43.500 to 43.506. Such information shall include, for
66 each charge:

67 (1) All judgments of not guilty, acquittals on the ground of mental disease or defect
68 excluding responsibility, judgments or pleas of guilty including the sentence, if any, or probation,
69 if any, pronounced by the court, nolle pros, discharges, releases and dismissals in the trial court;

70 (2) Court orders filed with the clerk of the courts which reverse a reported conviction
71 or vacate or modify a sentence;

72 (3) Judgments terminating or revoking a sentence to probation, supervision or
73 conditional release and any resentencing after such revocation; and

74 (4) The offense cycle number of the offense, and the originating agency identifier
75 number of the sentencing court, using such numbers as assigned by the highway patrol.

76 7. The clerk of the courts of each county or city not within a county shall furnish, to the
77 department of corrections or department of mental health, court judgment and sentence
78 documents and the state offense cycle number and the charge code of the offense which resulted
79 in the commitment or assignment of an offender to the jurisdiction of the department of
80 corrections or the department of mental health if the person is committed pursuant to chapter
81 552, RSMo. This information shall be reported to the department of corrections or the
82 department of mental health at the time of commitment or assignment. If the offender was
83 already in the custody of the department of corrections or the department of mental health at the
84 time of such subsequent conviction, the clerk shall furnish notice of such subsequent conviction
85 to the appropriate department by certified mail, return receipt requested, or in a manner and
86 format mutually agreed to, within fifteen days of such disposition.

87 8. Information and fingerprints, and other indicia forwarded to the central repository,
88 normally obtained from a person at the time of the arrest, may be obtained at any time the subject
89 is in the criminal justice system or committed to the department of mental health. A law
90 enforcement agency or the department of corrections may fingerprint the person and obtain the
91 necessary information at any time the subject is in custody. If at the time of [disposition] **any**
92 **court appearance**, the defendant has not been fingerprinted for an offense in which a fingerprint

93 is required by statute to be collected, maintained, or disseminated by the central repository, the
94 court shall order a law enforcement agency **or court marshal** to fingerprint immediately the
95 defendant. **The order for fingerprints shall contain the offense, charge code, date of offense,**
96 **and any other information necessary to complete the fingerprint card.** The law enforcement
97 agency **or court marshal** shall submit such fingerprints to the central repository without undue
98 delay and within thirty days and shall furnish the offense cycle number associated with the
99 fingerprints to the prosecuting attorney or the circuit attorney of a city not within a county and
100 to the court clerk of the court ordering the subject fingerprinted.

101 9. The department of corrections and the department of mental health shall furnish the
102 central repository with all information concerning the receipt, escape, execution, death, release,
103 pardon, parole, commutation of sentence, granting of executive clemency, legal name change,
104 or discharge of an individual who has been sentenced to that department's custody for any
105 offenses which are mandated by law to be collected, maintained or disseminated by the central
106 repository. All records forwarded to the central repository by the department as required by
107 sections 43.500 to 43.543 shall include the offense cycle number of the offense, and the
108 originating agency identifier number of the department using such numbers as assigned by the
109 highway patrol.

43.506. 1. Those offenses considered reportable for the purposes of sections 43.500 to
2 43.543 include all felonies [and serious or aggravated] ; **class A misdemeanors; all violations**
3 **for driving under the influence of drugs or alcohol; any offense that can be enhanced to a**
4 **class A misdemeanor or higher for subsequent violations; and comparable ordinance**
5 **violations** consistent with the reporting standards established by the National Crime Information
6 Center, Federal Bureau of Investigation, for the Federal Interstate Identification Index System[.
7 In addition,] ; **and** all cases arising [pursuant to sections 566.010 to 566.141, RSMo, where the
8 defendant pleads guilty to an offense involving a child under seventeen years of age and the court
9 imposes a suspended imposition of sentence shall be reported] **under chapter 566, RSMo.** The
10 following types of offenses shall not be considered reportable for the purposes of sections
11 57.403, RSMo, 43.500 to 43.543, and 595.200 to 595.218, RSMo: [disturbing the peace, curfew
12 violation, loitering, false fire alarm, disorderly conduct,] nonspecific charges of suspicion or
13 investigation, [and] general traffic violations and all misdemeanor violations of the state wildlife
14 code. [All violations for driving under the influence of drugs or alcohol are reportable.] All
15 offenses considered reportable shall be reviewed annually and noted in the Missouri charge code
16 manual established in section 43.512. All information collected pursuant to sections 43.500 to
17 43.543 shall be available only as set forth in section 610.120, RSMo.

18 2. Law enforcement agencies, court clerks, prosecutors and custody agencies may report
19 required information by electronic medium either directly to the central repository or indirectly

20 to the central repository via other criminal justice agency computer systems in the state with the
21 approval of the highway patrol, based upon standards established by the advisory committee.

22 3. In addition to the repository of fingerprint records for individual offenders and
23 applicants, the central repository of criminal history and identification records for the state shall
24 maintain a repository of latent prints, palm prints and other prints submitted to the repository.

43.540. 1. As used in this section, the following terms mean:

2 (1) "Authorized state agency", a division of state government or an office of state
3 government designated by the statutes of Missouri to issue or renew a license, permit,
4 certification, or registration of authority to a qualified entity;

5 (2) "Care", the provision of care, treatment, education, training, instruction, supervision,
6 or recreation;

7 (3) "Missouri criminal record review", a review of criminal history records and sex
8 offender registration records pursuant to sections 589.400 to 589.425, RSMo, maintained by the
9 Missouri state highway patrol in the Missouri criminal records repository;

10 (4) "National criminal record review", a review of the criminal history records
11 maintained by the Federal Bureau of Investigation;

12 (5) "Patient or resident", a person who by reason of age, illness, disease or physical or
13 mental infirmity receives or requires care or services furnished by a provider, as defined in this
14 section, or who resides or boards in, or is otherwise kept, cared for, treated or accommodated in
15 a facility as defined in section 198.006, RSMo, for a period exceeding twenty-four consecutive
16 hours;

17 (6) "Provider", a person who:

18 (a) Has or may have unsupervised access to children, the elderly, or persons with
19 disabilities; and

20 (b) a. Is employed by or seeks employment with a qualified entity; or

21 b. Volunteers or seeks to volunteer with a qualified entity; or

22 c. Owns or operates a qualified entity;

23 (7) "Qualified entity", a person, business, or organization, whether public or private, for
24 profit, not for profit, or voluntary, that provides care, placement, or educational services for
25 children, the elderly, or persons with disabilities as patients or residents, including a business or
26 organization that licenses or certifies others to provide care or placement services;

27 (8) "Youth services agency", any public or private agency, school, or association which
28 provides programs, care or treatment for or which exercises supervision over minors.

29 2. A qualified entity may obtain a Missouri criminal record review of a provider from
30 the highway patrol by furnishing information on forms and in the manner approved by the

31 highway patrol. **The qualified entity must register with the highway patrol before**
32 **submitting a request for screening under this section and:**

33 (1) **Each such request must be voluntary and conform to the requirements**
34 **established in the National Child Protection Act of 1993, as amended. As a part of the**
35 **registration, the qualified entity must agree to comply with state and federal law and must**
36 **so indicate by signing an agreement approved by the highway patrol. The highway patrol**
37 **may periodically audit qualified entities to ensure compliance with federal law and this**
38 **section;**

39 (2) **A qualified entity shall submit to the highway patrol a request for screening an**
40 **employee or volunteer or person applying to be an employee or volunteer on a completed**
41 **fingerprint card, with a signed waiver allowing the release of state and national criminal**
42 **history record information to the qualified entity;**

43 (3) **Each such request must be accompanied by a fee, which shall approximate the**
44 **actual cost of producing the record information, as provided in section 43.530, plus the**
45 **amount required by the Federal Bureau of Investigation for the national criminal history**
46 **check in compliance with the National Child Protection Act of 1993, as amended;**

47 (4) **Any current or prospective employee or volunteer who is subject to a request**
48 **for screening must indicate to the qualified entity submitting the request the name and**
49 **address of each qualified entity that has submitted a previous request for screening**
50 **regarding that employee or volunteer;**

51 (5) **The highway patrol shall provide directly to the qualified entity the state**
52 **criminal history records that are not exempt from disclosure under section 610.120, RSMo,**
53 **or otherwise confidential under law;**

54 (6) **The national criminal history data is available to qualified entities to use only**
55 **for the purpose of screening employees and volunteers or persons applying to be an**
56 **employee or volunteer with a qualified entity. The highway patrol shall provide this**
57 **national criminal history record information directly to the qualified entity as authorized**
58 **by the written waiver required for submission of a request to the highway patrol;**

59 (7) **The determination whether the criminal history record shows that the employee**
60 **or volunteer has been convicted of or is under pending indictment for any crime that bears**
61 **upon the fitness of the employee or volunteer to have responsibility for the safety and well-**
62 **being of children, the elderly, or disabled persons shall solely be made by the qualified**
63 **entity. This section does not require the highway patrol to make such a determination on**
64 **behalf of any qualified entity;**

65 (8) **The qualified entity must notify, in writing, the person of his or her right to**
66 **obtain a copy of any background screening report, including the criminal history records,**

67 if any, contained in the report, and of the person's right to challenge the accuracy and
68 completeness of any information contained in any such report and to obtain a
69 determination as to the validity of such challenge before a final determination regarding
70 the person is made by the qualified entity reviewing the criminal history information. A
71 qualified entity that is required by law to apply screening criteria, including any right to
72 contest or request an exemption from disqualification, shall apply such screening criteria
73 to the state and national criminal history record information received from the highway
74 patrol for those persons subject to the required screening;

75 (9) A qualified entity is not liable for damages solely for failing to obtain the
76 information under this section with respect to an employee or volunteer. The state, any
77 political subdivision of the state, or any agency, officer, or employee of the state or a
78 political subdivision is not liable for damages for providing the information requested
79 under this section.

80 3. [A qualified entity may request a Missouri criminal record review and a national
81 criminal record review of a provider through an authorized state agency. No authorized state
82 agency is required by this section to process Missouri or national criminal record reviews for a
83 qualified entity, however, if an authorized state agency agrees to process Missouri and national
84 criminal record reviews for a qualified entity, the qualified entity shall provide to the authorized
85 state agency on forms and in a manner approved by the highway patrol the following:

86 (1) Two sets of fingerprints of the provider if a national criminal record review is
87 requested;

88 (2) A statement signed by the provider which contains:

89 (a) The provider's name, address, and date of birth;

90 (b) Whether the provider has been convicted of or has pled guilty to a crime which
91 includes a suspended imposition of sentence;

92 (c) If the provider has been convicted of or has pled guilty to a crime, a description of
93 the crime, and the particulars of the conviction or plea;

94 (d) The authority of the qualified entity to check the provider's criminal history;

95 (e) The right of the provider to review the report received by the qualified entity; and

96 (f) The right of the provider to challenge the accuracy of the report. If the challenge is
97 to the accuracy of the criminal record review, the challenge shall be made to the highway patrol.

98 4. The authorized state agency shall forward the required forms and fees to the highway
99 patrol. The results of the record review shall be forwarded to the authorized state agency who
100 will notify the qualified entity. The authorized state agency may assess a fee to the qualified
101 entity to cover the cost of handling the criminal record review and may establish an account
102 solely for the collection and dissemination of fees associated with the criminal record reviews.

103 5. Any information received by an authorized state agency or a qualified entity pursuant
104 to the provisions of this section shall be used solely for internal purposes in determining the
105 suitability of a provider. The dissemination of criminal history information from the Federal
106 Bureau of Investigation beyond the authorized state agency or related governmental entity is
107 prohibited.] All criminal record check information shall be confidential and any person who
108 discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

109 [6.] 4. The highway patrol shall make available or approve the necessary forms,
110 procedures, and agreements necessary to implement the provisions of this section.

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