

170075

CLERKS OF COURTS

§ 14-17-325. Clerk shall report disposition of each case in court of general sessions.

Every clerk of court shall report the disposition of each case in the Court of General Sessions to the State Law Enforcement Division within thirty days of disposition. The disposition report must be in a format approved by representatives of the State Law Enforcement Division and the office of court administration. With the approval of the State Law Enforcement Division and the office of court administration, this reporting requirement may be satisfied by use of General Sessions docket information transmitted to the office of the court administration.

§ 17-1-40. After discharge, dismissal or finding of innocence, criminal records must be destroyed.

Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law-enforcement agency.

SOUTH CAROLINA

Act No. 105

Fingerprinting of children

SECTION 1. Section 20-7-780 of the 1976 Code is amended to read:

"Section 20-7-780. The court shall make and keep records of all cases brought before it and shall devise and cause to be printed forms for social and legal records and other papers as may be required. The official juvenile records of the courts and the Department of Youth Services are open to inspection only by consent of the judge to persons having a legitimate interest but must always be available to the legal counsel of the juvenile. All information obtained and social records prepared in the discharge of official duty by an employee of the court or Department of Youth Services must be confidential and must not be disclosed directly or indirectly to anyone, other than the judge or others entitled under this chapter to receive this information unless otherwise ordered by the judge. However, these records must be open to inspection without the consent of the judge where the records are necessary to defend against an action initiated by a juvenile. The name, identity, or picture of any child under the jurisdiction of the court, pursuant to this

chapter, must not be made public by any newspaper, radio, or television station except as authorized by order of the court. A juvenile charged with committing a violent offense as defined in Section 16-1-60, or charged with committing grand larceny of a motor vehicle, may be fingerprinted by the law enforcement agency who takes the juvenile into custody. A juvenile charged with committing a nonviolent or status offense shall not be fingerprinted by law enforcement except upon order of a family court judge. The fingerprint records of a juvenile shall be kept separate from the fingerprint records of adults. The fingerprint records of a juvenile shall not be transmitted to the files of the State Law Enforcement Division or to the Federal Bureau of Investigation or otherwise distributed or provided to any other law enforcement agency unless and until the juvenile is adjudicated delinquent for having committed a violent offense, as defined in Section 16-1-60, or for grand larceny of a motor vehicle. The fingerprint records of a juvenile who is not adjudicated delinquent for having committed a violent offense, as defined in Section 16-1-60, or for grand larceny of a motor vehicle shall, upon notification to law enforcement, be destroyed or otherwise expunged by the law enforcement agency who took the juvenile into custody. The Department of Youth Services may fingerprint and photograph a juvenile upon commitment to a juvenile correctional institution. Fingerprints and photographs taken by the Department of Youth Services shall remain confidential and shall not be transmitted to the State Law Enforcement Division, the Federal Bureau of Investigation, or to any other agency or person, except for the purpose of aiding the department in apprehending an escapee from the Department of Youth Services or to the Missing Persons Information Center to assist in the location or identification of a missing or runaway child."/

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

AN ACT

TO AMEND CHAPTER 5, TITLE 22, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MAGISTRATE'S POWERS AND DUTIES IN CRIMINAL MATTERS, BY ADDING ARTICLE 11 SO AS TO PROVIDE THAT A PERSON CONVICTED OF A FIRST OFFENSE IN MAGISTRATE'S COURT OR MUNICIPAL COURT MAY HAVE HIS CRIMINAL RECORD FOR THIS OFFENSE EXPUNGED UNDER CERTAIN CONDITIONS; TO PROVIDE EXCEPTIONS; TO PROVIDE PROCEDURES FOR KEEPING NONPUBLIC RECORDS AND TO PROVIDE THAT THESE RECORDS MAY NOT BE RELEASED UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Expungement and recordkeeping procedures; exemptions; and exception to Freedom of Information Act

SECTION 1. Title 22, Chapter 5 of the 1976 Code is amended by adding:

"Article 11

Expungement of Criminal Records

§ 22-5-910. Expungement of criminal records.

Following a first offense conviction in a magistrate's court or a municipal court, the defendant after one year from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the Circuit Court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, or to an offense contained in Chapter 25 of Title 16. If the defendant has had no other conviction during the one-year period following the first offense conviction in a magistrate's court or a municipal court, the Circuit Court shall issue an order expunging the records. No person may have his records expunged under this section more than once.

After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release under Section 34-11-95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

As-used in this section, "conviction" includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail.

SOUTH CAROLINA

Title 30

Chapter 1

Public Records

§ 30-1-10. Definitions.

For the purposes of §§ 30-1-10 to 30-1-140 "*public records*" means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics. Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of §§ 30-1-10 to 30-1-140, nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public; *provided, however*, if necessary, security copies of closed or restricted records may be kept in the South Carolina Department of Archives and History, with the approval of the agency or political subdivision of origin and the Director of the Department of Archives and History, and, *provided, further*, that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of §§ 30-1-10 to 30-1-140 for the disposal of public records.

"*Agency*" means any State department, agency or institution.

"*Subdivision*" means any political subdivision of the State.

"*Archives*" means the South Carolina Department of Archives and History.

"*Director*" means the Director of the Department of Archives and History.

SOUTH CAROLINA

§ 30-1-60. Inspection and examination of records.

Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person unless such records by law must be withheld, or the public interest is best served by not disclosing them, and he shall furnish, upon reasonable request and at a reasonable fee, certified copies of public records not restricted by law or withheld from use in the public interest.

§ 30-1-140. Penalties for refusal or neglect to perform duty respecting records.

Any public official or custodian of public records who refuses or neglects to perform any duty required of him by §§ 30-1-10 to 30-1-140 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars for each month of such refusal or neglect.

CHAPTER 4 [New]

Freedom of Information Act

Sec.

- 30-4-10. Short title.
- 30-4-20. Definitions.
- 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of record.
- 30-4-40. Matters exempt from disclosure.
- 30-4-50. Certain matters declared public information.
- 30-4-60. Meetings of public bodies shall be open.
- 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.
- 30-4-80. Notice of meetings of public bodies.
- 30-4-90. Minutes of meetings of public bodies.
- 30-4-100. Injunctive relief; costs and attorney's fees.
- 30-4-110. Penalties.

§ 30-4-10. Short title.

This chapter shall be known and cited as the "Freedom of Information Act".

§ 30-4-20. Definitions.

(a) "Public body" means any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts and special purpose districts, or any organization, corporation or agency supported in whole or in part by public funds or expending public funds and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, such bodies as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

(b) "Person" includes any individual, corporation, partnership, firm, organization or association.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter nor shall the definition of public records include those records concerning which the public body, by favorable public vote of three-fourths of the membership taken within fifteen working days after receipt of written request, concludes that the public interest is best served by not disclosing them. *Provided*, however, nothing herein shall authorize or require the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of such institutions required to be made by law.

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(e) "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

§ 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records.

(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Such records shall be furnished at the lowest possible cost to the person requesting the records. Records shall be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for such public body to provide the records in such form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees shall not be charged for examination and review to determine if such documents are subject to disclosure. Nothing in this chapter shall prevent the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of such costs prior to searching for or making copies of the records.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record.

SOUTH CAROLINA

§ 30-4-40. Matters exempt from disclosure.

(a) The following matters may be exempt from disclosure under the provisions of this chapter:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy, including, but not limited to, information as to gross receipts contained in applications for business licenses.

(3) Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(A) Disclosing identity of informants not otherwise known;

(B) The premature release of information to be used in a prospective law enforcement action;

(C) Disclosing investigatory techniques not otherwise known outside the government;

(D) By endangering the life, health or property of any person.

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents incidental to proposed contractual arrangements and proposed sale or purchase of property.

(6) Salaries of employees below the level of department head; *provided*, however, that complete salary schedules showing compensation ranges for each employee classification, including longevity steps, where applicable shall be made available.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(8) Memoranda, correspondence and working papers in the possession of individual members of the General Assembly or their immediate staffs, *provided*, however, nothing herein shall be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

(b) If any public record contains material which is not exempt under item (a) of this section, the public body shall separate the exempt and nonexempt material available for examination.

SOUTH CAROLINA

§ 30-4-50. Certain matters declared public information.

Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of §§ 30-4-20, 30-4-40 and 30-4-70 of this chapter:

(1) The names, sex, race, title and dates of employment of all employees and officers of public bodies;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the public body;

(5) Written planning policies and goals and final planning decisions;

(6) Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) The minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to § 30-4-70.

§ 30-4-60. Meetings of public bodies shall be open.

Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter.

SOUTH CAROLINA

§ 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or the appointment of a person to a public body, *provided*, however, that if an adversary hearing involving the employee, other than under a grievance procedure provided in Chapter 17 of Title 8 of the 1976 Code, is held such employee shall have the right to demand that the hearing be conducted publicly.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this item "formal action" means a recorded vote committing the body concerned to a specific course of action.

(b) Any public body may hold a closed meeting for the purpose of receiving an administrative briefing by an affirmative vote of three-fourths of its members present and voting when required by some exceptional reason so compelling as to override the general public policy in favor of public meetings; *provided*, that no budgetary matters shall be discussed in such closed session except as otherwise provided by law. Such reasons and the votes of the members shall be recorded and be matters of public record. No regular or general practice or pattern of holding closed meetings shall be permitted.

(c) No chance meeting, social meeting or electronic communica-

SOUTH CAROLINA

tion shall be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(d) This chapter shall not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

§ 30-4-80. Notice of meetings of public bodies.

(a) All public bodies shall give written public notice of their regular meetings at the beginning of each calendar year. The notice shall include the dates, times and places of such meetings. Agendas, if any, for regularly scheduled meetings shall be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies shall post on such bulletin board public notice for any called, special or re-scheduled meetings. Such notice shall be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice shall include the agenda, date, time and place of the meeting. This requirement shall not apply to emergency meetings of public bodies.

(b) Legislative committees shall post their meeting times during weeks of the regular session of the General Assembly and shall comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees shall give reasonable notice during weeks of the legislative session only if it is practicable to do so.

(c) Written public notice shall include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(d) All public bodies shall make an effort to notify local news media, or such other news media as may request notification of the times, dates, places and agenda of all public meetings, whether scheduled, rescheduled or called, and the efforts made to comply with this requirement shall be noted in the minutes of the meetings.

§ 30-4-90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30-4-70 of this chapter.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to § 30-4-70 of this chapter, provided that in so recording there is no active interference with the conduct of the meeting. *Provided*, further, that the public body shall not be required to furnish recording facilities or equipment.

§ 30-4-100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for injunctive relief to enforce the provisions of this chapter in appropriate cases provided such application is made no later than sixty days following the date which the alleged violation occurs or sixty days after ratification of such act in public session whichever comes later. The court may order equitable relief as it deems appropriate.

(b) If a person seeking such relief prevails, he may be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof.

§ 30-4-110. Penalties.

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

SOUTH CAROLINA

Code of Laws of South Carolina 1976

Title 23

Chapter 3

CRIMINAL INFORMATION AND COMMUNICATION SYSTEM

Sec.

- 23-3-110. Creation and functions of statewide criminal information and communication system.
- 23-3-120. Reports of criminal data by law-enforcement agencies and court officials.
- 23-3-130. Determination of information to be supplied and methods of evaluation and dissemination; promulgation of rules and regulations.
- 23-3-140. Disclosure of information in violation of law is not authorized.
- 23-3-150. Grants and appropriations; contracts with public agencies.

§ 23-3-110. Creation and functions of statewide criminal information and communication system.

There is hereby established as a department within the State Law Enforcement Division a statewide criminal information and communication system, hereinafter referred to in this article as "the system," with such functions as the Division may assign to it and with such authority, in addition to existing authority vested in the Division, as is prescribed in this article.

§ 23-3-120. Reports of criminal data by law-enforcement agencies and court officials.

All law-enforcement agencies and court officials shall report to the system all criminal data within their respective jurisdictions and such information related thereto at such times and in such form as the system through the State Law Enforcement Division may require.

§ 23-3-130. Determination of information to be supplied and methods of evaluation and dissemination; promulgation of rules and regulations.

The State Law Enforcement Division is authorized to determine the specific information to be supplied by the law-enforcement agencies and court officials pursuant to § 23-3-120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

§ 23-3-140. Disclosure of information in violation of law is not authorized.

The provisions of this article shall not be construed to require or permit the disclosure or reporting of any information in the manner prohibited by existing law.

§ 23-3-150. Grants and appropriations; contracts with public agencies.

The State Law Enforcement Division is authorized to accept, on behalf of the State, and use in the establishment, expansion and improvement of the system, funds in the nature of grants or appropriations from the State, the United States, or any agency thereof, and may contract with any public agency for use of the system in the furtherance of effective law enforcement.

* * *

§ 23-3-40. Certain fingerprints shall be made available to State Law-Enforcement Division.

All sheriff's and police departments in South Carolina shall make available to the Criminal Justice Records Division of the State Law-Enforcement Division for the purpose of recordation and classification all fingerprints taken in criminal investigations resulting in convictions. The State Law-Enforcement Division shall pay for the costs of such program and prepare the necessary regulations and instructions for the implementation of this section.

Section 56-5-750.

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(B) A person who violates the provisions of subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years. The person's drivers license may be suspended for a period not to exceed one year; or

(2) for a second or subsequent offense where no great bodily injury or death resulted from the violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. Notwithstanding any other provision of law, the person's driver's license must be suspended for a period of one year from the date of the conviction

(G) After a conviction pursuant to subsection (B) (1) for a first offense, the person may, after three years from the date of completion of all terms and conditions of his sentence for the first offense, apply, or cause someone acting on his behalf to apply, to the court for an order expunging the records of the arrest and conviction. This provision does not apply to any crime classified as a felony. If the person has had no other conviction during the three-year period following the completion of the terms and conditions of the sentence, the court shall issue an order expunging the records. No person has any rights under the section more than one time. After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of its expungement to ensure that no person takes advantage of the rights permitted by this subsection more than once. This nonpublic record is not subject to release under the Freedom of Information Act or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this subsection from being taken advantage of more than once.

SOUTH CAROLINA

PROPOSED REGULATIONS

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

CHAPTER 73

STATUTORY AUTHORITY: SECTION 23-3-130 OF THE 1976 CODE

ARTICLE 3 - CRIMINAL INFORMATION AND COMMUNICATION

These regulations replace all existing regulations in Article 3, Subarticle I

73-20 Definitions

These definitions shall have the following meaning when used in the discussion of criminal history record information (CHRI) and computerized criminal history (CCH) unless the context denotes otherwise:

- A. "Administration of Criminal Justice" means the performance of any activity directly involving the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused or convicted persons or criminal offenders, or the collection, storage, and dissemination of criminal history record information.
- B. "Criminal Justice Agency" means any governmental agency or subunit which as its principal function performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.
- C. "Criminal History Record Information" (CHRI) means records, fingerprint cards, dispositions, and data collected by criminal justice agencies on adult individuals who are at least seventeen years of age consisting of identifiable descriptors and notations of arrests, detentions, indictments, information, or other formal charges, and any dispositions arising therefrom. The term shall not include juvenile record information, as provided by law, except cases where an appropriate judicial authority rules otherwise.
- D. "Criminal Justice Information System" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.
- E. "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.

- F. "Conviction data" means information which shows that an individual has been convicted or found guilty of a crime. When less than one year has elapsed from the date of an arrest, and there is no judicial disposition of the case, the arrest information is treated as conviction data.
- G. "Nonconviction data" means arrest information without disposition when an interval of more than one year has elapsed from the date of arrest and no active prosecution of the charge is pending, or that proceedings have been indefinitely postponed.
- H. "Access" means the capability to add, delete, modify or otherwise manipulate information, or to cause such data to be transferred or stored either temporarily or permanently. This would apply to information maintained in either manual or automated form.
- I. "Screening" means the process wherein an individual's background is reviewed with special emphasis being placed on determining whether there exists any criminal history record information on that individual. Screening will include the securing of an individual's fingerprints on the standard FBI fingerprint card, and the submission of this fingerprint card to the South Carolina Law Enforcement Division's Criminal Records Department for further processing.
- J. "Direct Access" means the capability to obtain information available through the SLED/CJICS network by means of a computer terminal or similar device, and the dissemination of such information.
- K. "Indirect Access" means receiving information available through the SLED/CJICS network by either an individual or agency possessing no computer terminal or similar device through an agency having direct access.
- L. "User Agreement" means an agreement, entitled "Criminal History and Criminal Justice Information Agreement", between the South Carolina Law Enforcement Division and a SLED/CJICS user agency that will have direct access to various SLED/CJICS information. This agreement establishes responsibilities for the rules and regulations that govern the exchange of information between the parties, and the policies and procedures by which the system operates.

- M. "Non-terminal User Agreement" means an agreement, entitled "Criminal Justice Non-Terminal Originating Agency Identifier (ORI) User Authorization Agreement", between a SLED/CJICS user agency having direct access and a criminal justice agency desiring indirect access to SLED/CJICS information. This agreement authorizes the agency having direct access to the SLED/CJICS information to utilize the ORI of the agency that will indirectly access SLED/CJICS at times when that agency will request information.
- N. "Disposition" means information which states that a criminal charge contained in a criminal history record has been dealt with by proper judicial authority and that a final disposal of the charge has been made through a finding of guilt or innocence, or that the charge has been dismissed, or that adjudication has been indefinitely postponed. In findings of guilt, a disposition will include information showing the final action of any court of appropriate jurisdiction including, but not limited to fines, sentencing, probation, pardon and restitution information.

73-21 Organization, Purpose and Function of Departments

- A. The State Law Enforcement Division Criminal Justice Information and Communication System, known as SLED/CJICS, acting as the State's central criminal justice information repository, shall collect, process, and store criminal justice information and records necessary to the operation of the criminal justice information system of the State Law Enforcement Division. The SLED/CJICS is comprised of four departments:
- (1) The Computerized Criminal History (CCH) Department has the responsibility for converting manual criminal history record information to computerized data. The mission of the computerized criminal history unit is to serve criminal justice agencies and to assist non-criminal justice agencies throughout the State and nation by providing current criminal history record information. Conversion of existing computerized criminal history will be compatible with established concepts and operating policies of the Federal Bureau of Investigation's National Crime Information Center (NCIC) to enable an accurate exchange of criminal history data. The five segments comprising an offender's Criminal History Record Information are:

- (a) identification segment
- (b) identification add-on segment
- (c) arrest segment
- (d) judicial segment
- (e) custody/supervision segment

South Carolina offense codes are assigned to each specific charge. The offense codes must meet State and national requirements for the entering of criminal history data.

- (2) The Criminal Records Department has the responsibility of collecting, processing and storing all fingerprint cards and dispositions of persons arrested in the State. The Criminal Records Department supervisor will serve as the custodian of records. Fingerprints will be the basis for establishing computerized criminal history. The Criminal Records Department is responsible for the timely processing of all supporting documents for criminal history record information as provided to the SLED/CJICS by other criminal justice agencies. The department is also responsible for handling expungements as required by South Carolina statute. After the processing at SLED is completed, the department is responsible for forwarding the necessary documentation to the FBI Identification Division in Washington, D.C.

The Criminal Records Department will be responsible for entering, editing, and storing all criminal fingerprint card images on the automated fingerprint identification system.

- (3) The Data Processing Department has the responsibility of providing the necessary systems and programming support to develop, manage, and modify various computer applications and programs as deemed necessary by the Computerized Criminal History Department, the Criminal Records Department, the Uniform Crime Reporting Department and other criminal justice entities to facilitate the automated processing of various

information. This department is further charged with the responsibility of maintaining computer equipment and associated software to ensure effective and efficient information processing and message switching, and to ensure that adequate levels of security are provided throughout the electronic data processing system. The Data Processing Department is also responsible for the maintenance and operation of the statewide communications network, the computer interface with the Federal Bureau of Investigation's National Crime Information Center, the National Law Enforcement Telecommunication System, the South Carolina Department of Highways and Public Transportation, the South Carolina Automated Fingerprint Identification System, and other automated criminal justice systems.

- (4) The Uniform Crime Reporting (UCR) Department has the responsibility for processing, analyzing, coding and compiling incident, supplemental, and booking reports received from law enforcement agencies, whether such reports are submitted on paper or by automated means. The Uniform Crime Reporting Department will classify and count incident, supplemental, and booking reports submitted by other agencies according to procedures defined by the International Association of Chiefs of Police Committee on Uniform Crime Reports, the Uniform Crime Records Committee of the National Sheriffs Association, the Uniform Crime Reports Section of the Federal Bureau of Investigation and the State Law Enforcement Division. The Uniform Crime Reporting Department will assure through training and quality control measures that all automated incident, supplemental, and arrest data submitted to the State Uniform Crime Reporting program are classified and counted according to these procedures.

- B. When practicable, the SLED/CJICS will develop systems which will facilitate the exchange of criminal justice information between criminal justice agencies.

- C. The SLED/CJICS will collect, process, maintain, and disseminate information and records with due regard to the privacy of individuals, and will maintain and disseminate only accurate and complete records.

73-22 Completeness and Accuracy of Records

- A. The Criminal Records Department will maintain complete and accurate criminal history record information as submitted by criminal justice agencies.
- B. Dispositions will be forwarded to the Criminal Records Department by the appropriate criminal justice agencies as soon after final judicial action as practicable in accordance with procedures established by the South Carolina Office of Court Administration and the South Carolina Law Enforcement Division.
- C. The Criminal Records Department will process the dispositions as soon as practicable following their receipt.
- D. All criminal justice agencies will query the central criminal history records repository at SLED/CJICS prior to dissemination of any criminal history record information to assure that the most current disposition data are being used. Inquiries will be made prior to any dissemination except in those cases when the central repository at SLED/CJICS is technically incapable of responding within the necessary time period.
- E. Criminal history record information will not contain any information known to be in error. To accomplish this end, the South Carolina Law Enforcement Division will institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information.

73-23 Dissemination of Criminal History Record Information

- A. SLED/CJICS will operate and maintain a criminal justice information system which will support the collection, storage, retrieval, and dissemination of criminal history record information, both

intrastate and interstate. SLED/CJICS will make available to bona-fide criminal justice agencies, upon request, any information which will aid these agencies in the performance of their official duties, provided that the dissemination of such information will not be a violation of state or federal laws and regulations restricting its use. Dissemination will include conviction and nonconviction data.

- B. User agencies will agree to abide by all laws, rules, and regulations concerning collection, storage, retrieval, and dissemination of criminal justice information.
- C. All Criminal justice agencies which desire to exchange criminal history record information through the SLED/CJICS will execute a standard user agreement.
- D. User agencies agree to indemnify and save harmless SLED/CJICS and its officials and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liability to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment, or any cause of action whatsoever, or against any loss, cost, expense, and damage, resulting therefrom, arising out of or involving any action, inaction, slander or libel on the part of the user agencies in the exercise or enjoyment of this agreement.
- E. The SLED/CJICS may disseminate certain criminal history record information to private persons, authorized governmental entities, businesses, and commercial establishments for other than criminal justice purposes if South Carolina statutes specify that such persons or entities are entitled to criminal history record information. The dissemination of criminal history record information will include conviction data, as well as findings of not guilty, nolle prosequi, dismissals, and similar dispositions which show any final disposition of an arrest.
 - 1. Identification of an individual whose record is to be searched will be based upon name, race, sex, date of birth, and, if available, a social security number. Notation will be made on any disseminated records which are identified solely by these characteristics and not by fingerprint comparison.

(2) Costs

(a) Private persons, authorized governmental entities, businesses, and commercial establishments will be charged a reasonable fee for performing criminal history record searches. The fee will will be established by the State Law Enforcement Division with the advice and approval of the South Carolina Legislature. The South Carolina Law Enforcement Division may change the fee for this service without notice and without amending these rules. The fee will be adjusted to compensate for changes in the cost of processing criminal history record information searches.

(b) Method of Payment

Payment shall be made to the South Carolina Law Enforcement Division as specified by the Division.

(3) All requests for criminal history record information by noncriminal justice agencies shall be made in writing or by personal appearance at the Criminal Records Department.

(4) Persons wishing to determine whether criminal history records naming them are housed by SLED/CJICS may do so by inquiring in person at the Criminal Records Department between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday except legal State holidays. Proper identification will be required of persons making inquiries.

F. No criminal justice agency other than SLED/CJICS will disseminate to private persons, governmental entities, or any private or public entities, except criminal justice agencies, any criminal history record information other than that originated by that criminal justice agency, except where specifically provided for by State statute.

G. Criminal history logs will be maintained by those agencies which indirectly disseminate criminal history record information. The logs will contain the data necessary for contacting agencies or persons to which inaccurate information has been disseminated. Upon finding inaccurate information of a material nature, it is the duty of the criminal justice agency which discovers the inaccuracy to notify all criminal justice agencies or persons known to have received the inaccurate information. The following minimum information concerning the dissemination of criminal history record information will be maintained in the logs in order to provide an audit trail:

- (1) Manual log:
 - (a) date of dissemination
 - (b) agency requestor
 - (c) individual requestor
 - (d) name of criminal history record subject
 - (e) State identification number of criminal history record subject
 - (f) description of items released
 - (g) agency providing the information if this is indirect dissemination
- (2) Computer system log:

The same information needed for manual logging of indirectly disseminated information will be maintained in any automated or computer logging system used for direct dissemination. The log information must be maintained in a medium which allows the data to be reproduced as a printed list.
- (3) All log sheets will be made available to the SLED/CJICS upon request for purposes of quality control. The manual log and computer log will be maintained for a period of one year.

73-24 Limitations on Dissemination of Nonconviction Data

Nonconviction data may be disseminated to the persons or entities below as specified:

- A. Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment.
- B. Individuals and agencies for any purpose authorized by state statute, or circuit court rule, decision, or order.
- C. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice. The agreement shall specifically authorize access to data, limit the use of data to the purposes for which it is given, ensure the security and confidentiality of the data consistent with these and federal regulations.
- D. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, ensure the confidentiality and security of the data consistent with these and federal regulations.

73-25 Access and Review of Criminal Record Information**A. Individual right of access and review:**

- (1) Upon satisfactory verification of his or her identity, an individual will be entitled to review without undue burden to either the agency or the individual, specific portions of criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction. Individuals wishing to review their records must appear personally at the SLED Criminal Records Department.
- (2) Times for review will be 8:30 a.m. through 5:00 p.m. Monday through Friday, except legal State holidays.
- (3) The requesting individual will fill out a SLED/CJICS review form, "Individual Request for Criminal Record Review".
- (4) If the individual is accompanied by legal counsel, the attorney will produce evidence that he or she is a practicing attorney.
- (5) When an individual is accompanied by other persons, because the individual cannot interpret the record due to mental or language deficiencies, statement explaining the presence of such persons will be included in the review form. The accompanying individual will also sign the review form.
- (6) If the individual is accompanied by other persons, including potential employers, those persons will not be allowed to see the record. The accompanying person must follow the regular dissemination procedures given above.
- (7) Waivers are without authority. The record does not belong to the reviewing person, but to the agency which holds it.
- (8) A reasonable fee will be charged for processing this review at SLED/CJICS. The fee is not to exceed the actual cost of searching, processing, fingerprinting, and producing copies of the review.
- (9) Posters displayed at SLED will inform the public of an individual's right to inspect his or her criminal history record information.

B. Inspection method:

- (1) A person wishing to inspect his or her record at SLED/CJICS must submit his or her name, date of birth, and a complete set of fingerprints recorded on an approved non-criminal fingerprint card. SC-21

- (2) Inspection will be restricted to one time every six months, provided the record has not been challenged and new information has not been added.
- (3) The site for inspecting a record housed at SLED CJICS will be the office of the Criminal Records Department supervisor or a location designated by him or her to ensure the privacy of the individual during the review.
- (4) Inspection of records held by other agencies will be the responsibility of the requestor.

C. Challenge procedures:

- (1) In order to formally challenge a record, the individual will complete a SLED/CJICS challenge form, "Challenge of Criminal History Record".
- (2) After completion of the challenge form, the individual will be given a copy of the entries which are being challenged.
- (3) Each copy will be marked "For Review and Challenge Only".

D. Record verification and review procedures:

- (1) It is the responsibility of SLED/CJICS to accept or deny the challenge by performing an "Administrative Review", as defined below, to determine the validity of the challenge.
- (2) If SLED/CJICS finds errors or omissions or cannot verify the accuracy of a challenged record entry through other documentation by the appropriate criminal justice agencies, SLED/CJICS will accept the challenge and modify the record.

E. Administrative Review:

- (1) Any individual who challenges his or her record at SLED/CJICS is entitled to have the challenged portion of the record removed, modified or corrected if there is no factual controversy concerning the challenge.
- (2) If there is factual controversy and the finding of SLED/CJICS is against the individual, he or she is entitled to a review of the decision by the Agent in Charge of SLED/CJICS, within thirty days of notification of the finding.

F. Administrative Appeal:

- (1) If an individual's challenge or a portion of the challenge is denied by administrative review, the individual may, within thirty days of receipt of the denial, appeal the denial by petitioning the Criminal History Administrative Appeal Board.

- (2) The Criminal History Appeal Board will be composed of the Assistant Director of the South Carolina Law Enforcement Division, and one management level representative each from a local law enforcement agency, the South Carolina Department of Probation, Parole, and Pardon Services, The South Carolina Department of Corrections, and the South Carolina Department of Court Administration.
 - (3) The individual requesting an administrative appeal will, within sixty days, be given a hearing at which the individual may present evidence concerning the record. If the appeal is denied, the individual will be notified in writing of the reason for the denial.
- G. Agencies housing records which must be modified as a result of Challenge must:
- (1) Provide a corrected record to every criminal justice agency which received the criminal history record information during the twelve months before the challenge was decided.
 - (2) Instruct those agencies to provide a corrected record to every criminal justice agency which received the criminal history record information from them in the twelve month period prior to notification.
 - (3) The notification cycle will be maintained until all criminal justice agencies have been notified and the names of all noncriminal justice agencies and individuals have been obtained.
 - (4) Upon request, provide the record subject with the names of non-criminal justice agencies and individuals which received the information during the previous twelve month period.
 - (5) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be interpreted to include any information other than that defined under U.S. Title 28, Section 20.3(b) and Section 20.21G(6).

73-26 Security

All agencies will provide security for any information which is subject to these regulations. These security principles and standards apply to both manual and automated information system. The standards for both types of systems include access restraints, personnel control, disaster protection, and training.

- A. Access restraints to criminal history record information and the area in which it is located will ensure that access to criminal history record information, system facilities, system operating environments, file contents, whether in use or stored in a media library, and system documentation is restricted to authorized agencies and personnel.
- (1) Physical locations such as records rooms, computer facilities, computer terminal locations, and rooms where files are kept will have access restraints.
 - (2) Areas having criminal history records will be secured by physical barriers or attended by agency personnel who will restrict access.
 - (3) Criminal history record information, when in areas with no access restraints, will be kept in cabinets or desks which can be locked.
 - (4) All personnel who are allowed access to criminal history record information will be subjected to a criminal history background investigation.
 - (5) Each criminal justice agency will control access to its criminal history record information and will screen employees and other individuals who may have access to criminal history record information stored within the agency.
- B. Criminal justice agencies will have the authority to ensure that appropriate disciplinary action is taken whenever personnel violate security rules.
- (1) Personnel control measures apply to the agency's employees, other public employees who work in the computer center, and private employees, if those employees have access to criminal history record information, or use an automated system which can access criminal history record information.

- (2) Agencies will ensure that criminal justice agency employees and all personnel having access to criminal history record information are familiar with access and dissemination rules.
- C. Criminal justice agencies will develop means to protect both automated and manual systems from natural or man-made disasters. These measures must protect any repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or natural or man made disasters.
- D. Personnel whose duties require access to criminal history record information will be instructed in all access and security measures and procedures. SLED/CJICS will provide basic training in this area for all criminal justice agencies.

73-27 Expungement of Criminal History Record Information

SLED/CJICS will expunge criminal history record information in accordance with the South Carolina 1976 Code of Laws, as amended. SLED/CJICS will ensure that its manual and automated records are expunged as required, and that the Federal Bureau of Investigation Identification Bureau is notified whenever expungements affect criminal history record information housed at the Federal Bureau of Investigation.

73-28 Audit Procedures

SLED/CJICS will institute audit procedures to ensure that criminal history record information is accurate. SLED/CJICS has the right to suspend services to any user agency which knowingly and willfully violates any federal or state law or regulation pertaining to the use, collection, storage, or dissemination of criminal history record information.

- A. Field audits of user agencies will be performed by personnel designated by the Agent in Charge of SLED/CJICS. The Agent in Charge of SLED/CJICS will act as liaison between user agencies and auditors, and will review the findings of audits to determine what assistance, remedies, or other action may be required, or whether a user agency may be re-audited after a period sufficient to correct any deficiencies which may have been discovered. Auditors will perform audits in accordance with a schedule approved by the Agent in Charge of SLED/CJICS, and will regularly report their findings and recommendations. In addition to auditing user agencies for

compliance with the contents of this chapter and State statutes, the auditors will review the agencies' compliance with all Federal Bureau of Investigation/National Crime Information Center regulations, and federal regulations and statutes governing criminal justice information and communications.

B. Field audits will have two basic components:

- (1) A procedural audit will examine the procedures which are necessary for compliance with State and federal statutes and regulations. Auditors will inspect written procedures and manuals, and will interview personnel to evaluate methods of compliance as well as levels of understanding. Sites will be examined to determine levels of access restraint and security. The audit will include, but not be limited to, reviews of record and disposition reporting procedures, dissemination procedures, individuals' right of inspection, and security.
- (2) An audit of a user agency's activity logs will examine an agency's activity tracking mechanisms. Dissemination logs and record correction logs for criminal history record information will be examined, as well as site access logs and computer terminal records. The auditor will review logging procedures as well as interview personnel who handle or process records.

C. The regulations also require systematic internal auditing as a means of guaranteeing the completeness and accuracy of computerized criminal history information. The Criminal Records Department and the Computerized Criminal History Department will verify the completeness and accuracy of the data by comparing Criminal History Record Information with the source documents. These source documents include the original and subsequent fingerprint cards, arrest reports, disposition reports, court, corrections, probation, and parole records. SLED/CJICS will maintain computer edits that assure the entry of valid data. Records found to contain errors will be forwarded to the Criminal Records Department and, if necessary, to the originating agency for correction. Errors will be corrected as soon as practicable in both the manual and automated files.