

MARCH 23, 1991

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

MARCH 28, 1991

CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

APRIL 3, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 20, 1991

CONFERENCE COMMITTEE REPORTED.

APRIL 23, 1991

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1991

CONFERENCE COMMITTEE REPORT
ADOPTED.

IN THE SENATE

APRIL 24, 1991

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *249*
 2 INTRODUCED BY *Spink*
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
 6 CRIMINAL JUSTICE INFORMATION ACT BY EXPANDING THE DEFINITION
 7 OF CRIMINAL JUSTICE AGENCY TO INCLUDE FEDERAL LAW
 8 ENFORCEMENT AGENCIES; CLARIFYING THE DEFINITION OF PUBLIC
 9 CRIMINAL JUSTICE INFORMATION; CLARIFYING THE PROVISION
 10 CONCERNING DISSEMINATION OF CONFIDENTIAL CRIMINAL JUSTICE
 11 INFORMATION; LIMITING THE CIRCUMSTANCES UNDER WHICH THE
 12 STATE REPOSITORY SHALL RETURN ALL COPIES OF AN INDIVIDUAL'S
 13 PHOTOGRAPHS AND FINGERPRINTS; AND AMENDING SECTIONS
 14 44-5-103, 44-5-202, AND 44-5-303."
 15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 44-5-103, MCA, is amended to read:

18 **"44-5-103. Definitions.** As used in this chapter, the
 19 following definitions apply:

20 (1) "Access" means the ability to read, change, copy,
 21 use, transfer, or disseminate criminal justice information
 22 maintained by criminal justice agencies.

23 (2) "Administration of criminal justice" means the
 24 performance of any of the following activities: detection,
 25 apprehension, detention, pretrial release, posttrial

1 release, prosecution, adjudication, correctional
 2 supervision, or rehabilitation of accused persons or
 3 criminal offenders. It includes criminal identification
 4 activities and the collection, storage, and dissemination of
 5 criminal justice information.

6 (3) "Confidential criminal justice information" means:
 7 (a) criminal investigative information;
 8 (b) criminal intelligence information;
 9 (c) fingerprints and photographs;
 10 (d) criminal justice information or records made
 11 confidential by law; and
 12 (e) any other criminal justice information not clearly
 13 defined as public criminal justice information.

14 (4) (a) "Criminal history record information" means
 15 information about individuals collected by criminal justice
 16 agencies consisting of identifiable descriptions and
 17 notations of arrests; detentions; the filing of complaints,
 18 indictments, or informations and dispositions arising
 19 therefrom; sentences; correctional status; and release. It
 20 includes identification information, such as fingerprint
 21 records or photographs, unless such information is obtained
 22 for purposes other than the administration of criminal
 23 justice.

24 (b) Criminal history record information does not
 25 include:



1 (i) records of traffic offenses maintained by the
2 department of justice; or

3 (ii) court records.

4 (5) (a) "Criminal intelligence information" means
5 information associated with an identifiable individual,
6 group, organization, or event compiled by a criminal justice
7 agency:

8 (i) in the course of conducting an investigation
9 relating to a major criminal conspiracy, projecting
10 potential criminal operation, or producing an estimate of
11 future major criminal activities; or

12 (ii) in relation to the reliability of information
13 including information derived from reports of informants or
14 investigators or from any type of surveillance.

15 (b) Criminal intelligence information does not include
16 information relating to political surveillance or criminal
17 investigative information.

18 (6) "Criminal investigative information" means
19 information associated with an individual, group,
20 organization, or event compiled by a criminal justice agency
21 in the course of conducting an investigation of a crime or
22 crimes. It includes information about a crime or crimes
23 derived from reports of informants or investigators or from
24 any type of surveillance. It does not include criminal
25 intelligence information.

1 (7) "Criminal justice agency" means:

2 (a) any court with criminal jurisdiction;

3 (b) any federal, state, or local government agency
4 designated by statute or by a governor's executive order to
5 perform as its principal function the administration of
6 criminal justice; or

7 (c) any local government agency not included under
8 subsection (7)(b) that performs as its principal function
9 the administration of criminal justice pursuant to an
10 ordinance or local executive order.

11 (8) "Criminal justice information" means information
12 relating to criminal justice collected, processed, or
13 preserved by a criminal justice agency. It does not include
14 the administrative records of a criminal justice agency.

15 (9) "Criminal justice information system" means a
16 system, automated or manual, operated by federal, regional,
17 state, or local governments or governmental organizations
18 for collecting, processing, preserving, or disseminating
19 criminal justice information. It includes equipment,
20 facilities, procedures, and agreements.

21 (10) (a) "Disposition" means information disclosing that
22 criminal proceedings against an individual have terminated
23 and describing the nature of the termination or information
24 relating to sentencing, correctional supervision, release
25 from correctional supervision, the outcome of appellate or

1 collateral review of criminal proceedings, or executive
 2 clemency. Criminal proceedings have terminated if a decision
 3 has been made not to bring charges or criminal proceedings
 4 have been concluded, abandoned, or indefinitely postponed.

5 (b) Particular dispositions include but are not limited
 6 to:

7 (i) conviction at trial or on a plea of guilty;
 8 (ii) acquittal;
 9 (iii) acquittal by reason of mental disease or defect;
 10 (iv) acquittal by reason of mental incompetence;
 11 (v) the sentence imposed, including all conditions
 12 attached thereto by the sentencing judge;
 13 (vi) deferred imposition of sentence with any conditions
 14 of deferral;
 15 (vii) nolle prosequi;
 16 (viii) nolo contendere plea;
 17 (ix) deferred prosecution or diversion;
 18 (x) bond forfeiture;
 19 (xi) death;
 20 (xii) release as a result of a successful collateral
 21 attack;
 22 (xiii) dismissal of criminal proceedings by the court
 23 with or without the commencement of a civil action for
 24 determination of mental incompetence or mental illness;
 25 (xiv) a finding of civil incompetence or mental illness;

1 (xv) exercise of executive clemency;
 2 (xvi) correctional placement on probation or parole or
 3 release; or
 4 (xvii) revocation of probation or parole.

5 (c) A single arrest of an individual may result in more
 6 than one disposition.

7 (11) "Dissemination" means the communication or transfer
 8 of criminal justice information to individuals or agencies
 9 other than the criminal justice agency that maintains such
 10 information. It includes confirmation of the existence or
 11 nonexistence of criminal justice information.

12 (12) "Public criminal justice information" means
 13 information, ~~except confidential criminal justice~~
 14 ~~information:~~

15 (a) made public by law;
 16 (b) of court records and proceedings;
 17 (c) of convictions, deferred sentences, and deferred
 18 prosecutions;
 19 (d) of postconviction proceedings and status;
 20 (e) originated by a criminal justice agency, including:
 21 (i) initial offense reports;
 22 (ii) initial arrest records;
 23 (iii) bail records; and
 24 (iv) daily jail occupancy rosters;
 25 (f) considered necessary by a criminal justice agency

1 to secure public assistance in the apprehension of a
2 suspect; or

3 (g) statistical information.

4 (13) "State repository" means the recordkeeping systems
5 maintained by the department of justice pursuant to 44-2-201
6 in which criminal history record information is collected,
7 processed, preserved, and disseminated.

8 (14) "Statistical information" means data derived from
9 records in which individuals are not identified or
10 identification is deleted and from which neither individual
11 identity nor any other unique characteristic that could
12 identify an individual is ascertainable."

13 **Section 2.** Section 44-5-202, MCA, is amended to read:

14 "44-5-202. Photographs and fingerprints. (1) The
15 following agencies may, if authorized by subsections (2)
16 through (5), collect, process, and preserve photographs and
17 fingerprints:

18 (a) any criminal justice agency performing, under law,
19 the functions of a police department or a sheriff's office,
20 or both;

21 (b) the department of institutions; and

22 (c) the department of justice.

23 (2) The department of institutions may photograph and
24 fingerprint anyone under the jurisdiction of the division of
25 corrections or its successor.

1 (3) A criminal justice agency described in subsection
2 (1)(a) shall photograph and fingerprint a person who has
3 been arrested or noticed or summoned to appear to answer an
4 information or indictment if:

5 (a) the charge is the commission of a felony;

6 (b) the identification of an accused is in issue; or

7 (c) it is required to do so by court order.

8 (4) Whenever a person charged with the commission of a
9 felony is not arrested, he shall submit himself to the
10 sheriff, chief of police, or other concerned law enforcement
11 officer for fingerprinting at the time of his initial
12 appearance in court to answer the information or indictment
13 against him.

14 (5) A criminal justice agency described in subsection
15 (1)(a) may photograph and fingerprint an accused if he has
16 been arrested for the commission of a misdemeanor, except
17 that an individual arrested for a traffic, regulatory, or
18 fish and game offense may not be photographed or
19 fingerprinted unless he is incarcerated.

20 (6) Within 10 days the originating agency shall send
21 the state repository a copy of each fingerprint taken on a
22 completed form provided by the state repository.

23 (7) The state repository shall compare the fingerprints
24 received with those already on file in the state repository.
25 If it is determined that the individual is wanted or is a

1 fugitive from justice, the state repository shall at once
 2 inform the originating agency. If it is determined that the
 3 individual has a criminal record, the state repository shall
 4 send the originating agency a copy of the individual's
 5 complete criminal history record.

6 (8) Photographs and fingerprints taken shall be
 7 returned by the state repository to the originating agency,
 8 which shall return all copies to the individual from whom
 9 they were taken, in the following circumstances:

10 (a) ~~if--a--court--so--orders~~ upon order of the court that
 11 had jurisdiction when proceedings against the individual
 12 were dismissed prior to any conviction or when the
 13 individual was acquitted at trial; or

14 (b) upon the request of the individual when he was
 15 released without the filing of charges:

16 ~~{i}--if--no--charges--were--filed;~~

17 ~~{ii}--if--a--misdemeanor--charge--did--not--result--in--a~~
 18 ~~conviction;--or~~

19 ~~{iii}--if--the--individual--was--found--innocent--of--the~~
 20 ~~offense--charged."~~

21 **Section 3.** Section 44-5-303, MCA, is amended to read:

22 "44-5-303. Dissemination of confidential criminal
 23 justice information. Dissemination of confidential criminal
 24 justice information is restricted to criminal justice
 25 agencies, or to those authorized by law to receive it, and

1 to those authorized to receive it by a district court upon a
 2 written finding that the demands of individual privacy do
 3 not clearly exceed the merits of public disclosure. A
 4 criminal justice agency that accepts confidential criminal
 5 justice information assumes equal responsibility for the
 6 security of such information with the originating agency.
 7 Whenever confidential criminal justice information is
 8 disseminated, it must be designated as confidential."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 249

INTRODUCED BY SVRCEK

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
CRIMINAL JUSTICE INFORMATION ACT BY EXPANDING THE DEFINITION
OF CRIMINAL JUSTICE AGENCY TO INCLUDE FEDERAL LAW
ENFORCEMENT AGENCIES; CLARIFYING THE DEFINITION OF PUBLIC
CRIMINAL JUSTICE INFORMATION; CLARIFYING THE PROVISION
CONCERNING DISSEMINATION OF CONFIDENTIAL CRIMINAL JUSTICE
INFORMATION; LIMITING THE CIRCUMSTANCES UNDER WHICH THE
STATE REPOSITORY SHALL RETURN ALL COPIES OF AN INDIVIDUAL'S
PHOTOGRAPHS AND FINGERPRINTS; AND AMENDING SECTIONS
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following definitions apply:

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use, transfer, or disseminate criminal justice information
maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the
performance of any of the following activities: detection,
apprehension, detention, pretrial release, posttrial

release, prosecution, adjudication, correctional
supervision, or rehabilitation of accused persons or
criminal offenders. It includes criminal identification
activities and the collection, storage, and dissemination of
criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

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records or photographs, unless such information is obtained
for purposes other than the administration of criminal
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(b) Criminal history record information does not
include:

SECOND READING



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10 potential criminal operation, or producing an estimate of
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6 criminal justice; or

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3 has been made not to bring charges or criminal proceedings
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3 release; or

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6 than one disposition.

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13 information; ~~---except---confidential---criminal---justice~~
14 ~~information:~~

15 (a) made public by law;

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18 prosecutions;

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20 (e) originated by a criminal justice agency, including:

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1 to secure public assistance in the apprehension of a
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20 (6) Within 10 days the originating agency shall send
21 the state repository a copy of each fingerprint taken on a
22 completed form provided by the state repository.

23 (7) The state repository shall compare the fingerprints
24 received with those already on file in the state repository.
25 If it is determined that the individual is wanted or is a

1 fugitive from justice, the state repository shall at once
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 3 individual has a criminal record, the state repository shall
 4 send the originating agency a copy of the individual's
 5 complete criminal history record.

6 (8) Photographs and fingerprints taken shall be
 7 returned by the state repository to the originating agency,
 8 which shall return all copies to the individual from whom
 9 they were taken, in the following circumstances:

10 (a) ~~if a court so orders upon order of the court that~~
 11 ~~had jurisdiction when proceedings against the individual~~
 12 ~~were dismissed prior to any conviction or when the~~
 13 ~~individual was acquitted at trial; or~~

14 (b) upon the request of the individual when he was
 15 released without the filing of charges OR WHEN THE CHARGES
 16 DID NOT RESULT IN A CONVICTION;

17 ~~(i) if no charges were filed;~~

18 ~~(ii) if a misdemeanor charge did not result in a~~
 19 ~~conviction; or~~

20 ~~(iii) if the individual was found innocent of the~~
 21 ~~offense charged."~~

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23 "44-5-303. Dissemination of confidential criminal
 24 justice information. Dissemination of confidential criminal
 25 justice information is restricted to criminal justice

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 2 to those authorized to receive it by a district court upon a
 3 written finding that the demands of individual privacy do
 4 not clearly exceed the merits of public disclosure. A
 5 criminal justice agency that accepts confidential criminal
 6 justice information assumes equal responsibility for the
 7 security of such information with the originating agency.
 8 Whenever confidential criminal justice information is
 9 disseminated, it must be designated as confidential."

-End-

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THIRD READING

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9 records in which individuals are not identified or
10 identification is deleted and from which neither individual
11 identity nor any other unique characteristic that could
12 identify an individual is ascertainable."

13 **Section 2.** Section 44-5-202, MCA, is amended to read:

14 **"44-5-202. Photographs and fingerprints.** (1) The
15 following agencies may, if authorized by subsections (2)
16 through (5), collect, process, and preserve photographs and
17 fingerprints:

18 (a) any criminal justice agency performing, under law,
19 the functions of a police department or a sheriff's office,
20 or both;

21 (b) the department of institutions; and

22 (c) the department of justice.

23 (2) The department of institutions may photograph and
24 fingerprint anyone under the jurisdiction of the division of
25 corrections or its successor.

1 (3) A criminal justice agency described in subsection
2 (1)(a) shall photograph and fingerprint a person who has
3 been arrested or noticed or summoned to appear to answer an
4 information or indictment if:

5 (a) the charge is the commission of a felony;

6 (b) the identification of an accused is in issue; or

7 (c) it is required to do so by court order.

8 (4) Whenever a person charged with the commission of a
9 felony is not arrested, he shall submit himself to the
10 sheriff, chief of police, or other concerned law enforcement
11 officer for fingerprinting at the time of his initial
12 appearance in court to answer the information or indictment
13 against him.

14 (5) A criminal justice agency described in subsection
15 (1)(a) may photograph and fingerprint an accused if he has
16 been arrested for the commission of a misdemeanor, except
17 that an individual arrested for a traffic, regulatory, or
18 fish and game offense may not be photographed or
19 fingerprinted unless he is incarcerated.

20 (6) Within 10 days the originating agency shall send
21 the state repository a copy of each fingerprint taken on a
22 completed form provided by the state repository.

23 (7) The state repository shall compare the fingerprints
24 received with those already on file in the state repository.
25 If it is determined that the individual is wanted or is a

1 fugitive from justice, the state repository shall at once
 2 inform the originating agency. If it is determined that the
 3 individual has a criminal record, the state repository shall
 4 send the originating agency a copy of the individual's
 5 complete criminal history record.

6 (8) Photographs and fingerprints taken shall be
 7 returned by the state repository to the originating agency,
 8 which shall return all copies to the individual from whom
 9 they were taken, in the following circumstances:

10 (a) ~~if--a--court--so--orders~~ upon order of the court that
 11 had jurisdiction when--proceedings--against--the--individual
 12 were---dismissed---prior--to--any--conviction--or--when--the
 13 individual--was--acquitted--at--trial; or

14 (b) upon the request of the individual when he was
 15 released without the filing of charges OR WHEN THE CHARGES
 16 DID NOT RESULT IN A CONVICTION;

17 ~~{i}--if--no--charges--were--filed;~~

18 ~~{ii}--if--a--misdemeanor--charge--did--not--result--in--a~~
 19 ~~conviction;~~ or

20 ~~{iii}--if--the--individual--was--found--innocent--of--the~~
 21 ~~offense--charged."~~

22 **Section 3.** Section 44-5-303, MCA, is amended to read:

23 "44-5-303. Dissemination of confidential criminal
 24 justice information. Dissemination of confidential criminal
 25 justice information is restricted to criminal justice

1 agencies, or to those authorized by law to receive it, and
 2 to those authorized to receive it by a district court upon a
 3 written finding that the demands of individual privacy do
 4 not clearly exceed the merits of public disclosure. A
 5 criminal justice agency that accepts confidential criminal
 6 justice information assumes equal responsibility for the
 7 security of such information with the originating agency.
 8 Whenever confidential criminal justice information is
 9 disseminated, it must be designated as confidential."

-End-

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 249 (third reading copy -- blue) be concurred in as amended.

Signed: 

Bill Strizich, Chairman

Carried by: Rep. Boharski

And, that such amendments read:

1. Page 10, line 3.

Following: "that"

Insert: "the merits of public disclosure clearly exceed"

2. Page 10, lines 3 and 4.

Strike: "do not clearly exceed the merits of public disclosure"

HOUSE
SB 249

1 SENATE BILL NO. 249
 2 INTRODUCED BY SVRCEK
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
 6 CRIMINAL JUSTICE INFORMATION ACT BY EXPANDING THE DEFINITION
 7 OF CRIMINAL JUSTICE AGENCY TO INCLUDE FEDERAL LAW
 8 ENFORCEMENT AGENCIES; CLARIFYING THE DEFINITION OF PUBLIC
 9 CRIMINAL JUSTICE INFORMATION; CLARIFYING THE PROVISION
 10 CONCERNING DISSEMINATION OF CONFIDENTIAL CRIMINAL JUSTICE
 11 INFORMATION; LIMITING THE CIRCUMSTANCES UNDER WHICH THE
 12 STATE REPOSITORY SHALL RETURN ALL COPIES OF AN INDIVIDUAL'S
 13 PHOTOGRAPHS AND FINGERPRINTS; AND AMENDING SECTIONS
 14 44-5-103, 44-5-202, AND 44-5-303."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 44-5-103, MCA, is amended to read:

18 "44-5-103. Definitions. As used in this chapter, the
19 following definitions apply:

20 (1) "Access" means the ability to read, change, copy,
21 use, transfer, or disseminate criminal justice information
22 maintained by criminal justice agencies.

23 (2) "Administration of criminal justice" means the
24 performance of any of the following activities: detection,
25 apprehension, detention, pretrial release, posttrial

1 release, prosecution, adjudication, correctional
2 supervision, or rehabilitation of accused persons or
3 criminal offenders. It includes criminal identification
4 activities and the collection, storage, and dissemination of
5 criminal justice information.

6 (3) "Confidential criminal justice information" means:
7 (a) criminal investigative information;
8 (b) criminal intelligence information;
9 (c) fingerprints and photographs;
10 (d) criminal justice information or records made
11 confidential by law; and
12 (e) any other criminal justice information not clearly
13 defined as public criminal justice information.

14 (4) (a) "Criminal history record information" means
15 information about individuals collected by criminal justice
16 agencies consisting of identifiable descriptions and
17 notations of arrests; detentions; the filing of complaints,
18 indictments, or informations and dispositions arising
19 therefrom; sentences; correctional status; and release. It
20 includes identification information, such as fingerprint
21 records or photographs, unless such information is obtained
22 for purposes other than the administration of criminal
23 justice.

24 (b) Criminal history record information does not
25 include:



1 (i) records of traffic offenses maintained by the
2 department of justice; or

3 (ii) court records.

4 (5) (a) "Criminal intelligence information" means
5 information associated with an identifiable individual,
6 group, organization, or event compiled by a criminal justice
7 agency:

8 (i) in the course of conducting an investigation
9 relating to a major criminal conspiracy, projecting
10 potential criminal operation, or producing an estimate of
11 future major criminal activities; or

12 (ii) in relation to the reliability of information
13 including information derived from reports of informants or
14 investigators or from any type of surveillance.

15 (b) Criminal intelligence information does not include
16 information relating to political surveillance or criminal
17 investigative information.

18 (6) "Criminal investigative information" means
19 information associated with an individual, group,
20 organization, or event compiled by a criminal justice agency
21 in the course of conducting an investigation of a crime or
22 crimes. It includes information about a crime or crimes
23 derived from reports of informants or investigators or from
24 any type of surveillance. It does not include criminal
25 intelligence information.

1 (7) "Criminal justice agency" means:

2 (a) any court with criminal jurisdiction;

3 (b) any federal, state, or local government agency
4 designated by statute or by a governor's executive order to
5 perform as its principal function the administration of
6 criminal justice; or

7 (c) any local government agency not included under
8 subsection (7)(b) that performs as its principal function
9 the administration of criminal justice pursuant to an
10 ordinance or local executive order.

11 (8) "Criminal justice information" means information
12 relating to criminal justice collected, processed, or
13 preserved by a criminal justice agency. It does not include
14 the administrative records of a criminal justice agency.

15 (9) "Criminal justice information system" means a
16 system, automated or manual, operated by federal, regional,
17 state, or local governments or governmental organizations
18 for collecting, processing, preserving, or disseminating
19 criminal justice information. It includes equipment,
20 facilities, procedures, and agreements.

21 (10) (a) "Disposition" means information disclosing that
22 criminal proceedings against an individual have terminated
23 and describing the nature of the termination or information
24 relating to sentencing, correctional supervision, release
25 from correctional supervision, the outcome of appellate or

1 collateral review of criminal proceedings, or executive
2 clemency. Criminal proceedings have terminated if a decision
3 has been made not to bring charges or criminal proceedings
4 have been concluded, abandoned, or indefinitely postponed.

5 (b) Particular dispositions include but are not limited
6 to:

- 7 (i) conviction at trial or on a plea of guilty;
- 8 (ii) acquittal;
- 9 (iii) acquittal by reason of mental disease or defect;
- 10 (iv) acquittal by reason of mental incompetence;
- 11 (v) the sentence imposed, including all conditions
12 attached thereto by the sentencing judge;
- 13 (vi) deferred imposition of sentence with any conditions
14 of deferral;
- 15 (vii) nolle prosequi;
- 16 (viii) nolo contendere plea;
- 17 (ix) deferred prosecution or diversion;
- 18 (x) bond forfeiture;
- 19 (xi) death;
- 20 (xii) release as a result of a successful collateral
21 attack;
- 22 (xiii) dismissal of criminal proceedings by the court
23 with or without the commencement of a civil action for
24 determination of mental incompetence or mental illness;
- 25 (xiv) a finding of civil incompetence or mental illness;

1 (xv) exercise of executive clemency;

2 (xvi) correctional placement on probation or parole or
3 release; or

4 (xvii) revocation of probation or parole.

5 (c) A single arrest of an individual may result in more
6 than one disposition.

7 (11) "Dissemination" means the communication or transfer
8 of criminal justice information to individuals or agencies
9 other than the criminal justice agency that maintains such
10 information. It includes confirmation of the existence or
11 nonexistence of criminal justice information.

12 (12) "Public criminal justice information" means
13 information, ~~except confidential criminal justice~~
14 ~~information:~~

15 (a) made public by law;

16 (b) of court records and proceedings;

17 (c) of convictions, deferred sentences, and deferred
18 prosecutions;

19 (d) of postconviction proceedings and status;

20 (e) originated by a criminal justice agency, including:

21 (i) initial offense reports;

22 (ii) initial arrest records;

23 (iii) bail records; and

24 (iv) daily jail occupancy rosters;

25 (f) considered necessary by a criminal justice agency

1 to secure public assistance in the apprehension of a
2 suspect; or

3 (g) statistical information.

4 (13) "State repository" means the recordkeeping systems
5 maintained by the department of justice pursuant to 44-2-201
6 in which criminal history record information is collected,
7 processed, preserved, and disseminated.

8 (14) "Statistical information" means data derived from
9 records in which individuals are not identified or
10 identification is deleted and from which neither individual
11 identity nor any other unique characteristic that could
12 identify an individual is ascertainable."

13 **Section 2.** Section 44-5-202, MCA, is amended to read:

14 **"44-5-202. Photographs and fingerprints.** (1) The
15 following agencies may, if authorized by subsections (2)
16 through (5), collect, process, and preserve photographs and
17 fingerprints:

18 (a) any criminal justice agency performing, under law,
19 the functions of a police department or a sheriff's office,
20 or both;

21 (b) the department of institutions; and

22 (c) the department of justice.

23 (2) The department of institutions may photograph and
24 fingerprint anyone under the jurisdiction of the division of
25 corrections or its successor.

1 (3) A criminal justice agency described in subsection
2 (1)(a) shall photograph and fingerprint a person who has
3 been arrested or noticed or summoned to appear to answer an
4 information or indictment if:

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7 (c) it is required to do so by court order.

8 (4) Whenever a person charged with the commission of a
9 felony is not arrested, he shall submit himself to the
10 sheriff, chief of police, or other concerned law enforcement
11 officer for fingerprinting at the time of his initial
12 appearance in court to answer the information or indictment
13 against him.

14 (5) A criminal justice agency described in subsection
15 (1)(a) may photograph and fingerprint an accused if he has
16 been arrested for the commission of a misdemeanor, except
17 that an individual arrested for a traffic, regulatory, or
18 fish and game offense may not be photographed or
19 fingerprinted unless he is incarcerated.

20 (6) Within 10 days the originating agency shall send
21 the state repository a copy of each fingerprint taken on a
22 completed form provided by the state repository.

23 (7) The state repository shall compare the fingerprints
24 received with those already on file in the state repository.
25 If it is determined that the individual is wanted or is a

1 fugitive from justice, the state repository shall at once
 2 inform the originating agency. If it is determined that the
 3 individual has a criminal record, the state repository shall
 4 send the originating agency a copy of the individual's
 5 complete criminal history record.

6 (8) Photographs and fingerprints taken shall be
 7 returned by the state repository to the originating agency,
 8 which shall return all copies to the individual from whom
 9 they were taken, in the following circumstances:

10 (a) ~~if a court so orders upon order of the court that~~
 11 ~~had jurisdiction when proceedings against the individual~~
 12 ~~were dismissed prior to any conviction or when the~~
 13 ~~individual was acquitted at trial; or~~

14 (b) upon the request of the individual when he was
 15 released without the filing of charges OR WHEN THE CHARGES
 16 DID NOT RESULT IN A CONVICTION:

17 (i) ~~if no charges were filed;~~

18 (ii) ~~if a misdemeanor charge did not result in a~~
 19 ~~conviction; or~~

20 (iii) ~~if the individual was found innocent of the~~
 21 ~~offense charged."~~

22 **Section 3.** Section 44-5-303, MCA, is amended to read:

23 "44-5-303. Dissemination of confidential criminal
 24 justice information. Dissemination of confidential criminal
 25 justice information is restricted to criminal justice

1 agencies, or to those authorized by law to receive it, and
 2 to those authorized to receive it by a district court upon a
 3 written finding that THE MERITS OF PUBLIC DISCLOSURE CLEARLY
 4 EXCEED the demands of individual privacy do-not-clearly
 5 exceed-the-merits-of-public-disclosure. A criminal justice
 6 agency that accepts confidential criminal justice
 7 information assumes equal responsibility for the security of
 8 such information with the originating agency. Whenever
 9 confidential criminal justice information is disseminated,
 10 it must be designated as confidential."

-End-

Conference Committee
on Senate Bill No. 249
Report No. 1, April 20, 1991

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 249, met and considered the amendments of the House Judiciary Standing Committee Report dated March 11, 1991 and recommend that the report be rejected in its entirety and, therefore,:

We recommend that Senate Bill No. 249 (reference copy - salmon) be amended as follows:

1. Page 10, lines 3 and 4.
Following: "that" on line 3
Strike: "THE" on line 3 through "EXCEED" on line 4.

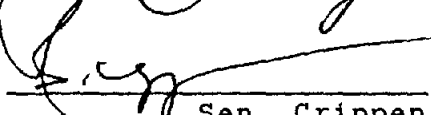
2. Page 10, line 5.
Following: "~~disclosure~~" on line 5
Insert: "do not clearly exceed the merits of public disclosure"

And that this Conference Committee report be adopted.


For the Senate:


Chair, Sen. Svrcek

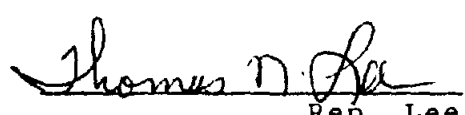

Sen. Halligan


Sen. Crippen

For the House:


Chair, Rep. Strizich


Rep. Toole


Rep. Lee


App. Coord.

SB 4-22-91 10:40
Sec. of Senate

ADOPT

REJECT

CCR #1
SB 249
851021CC.Sji

1 SENATE BILL NO. 249

2 INTRODUCED BY SVRCEK

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
6 CRIMINAL JUSTICE INFORMATION ACT BY EXPANDING THE DEFINITION
7 OF CRIMINAL JUSTICE AGENCY TO INCLUDE FEDERAL LAW
8 ENFORCEMENT AGENCIES; CLARIFYING THE DEFINITION OF PUBLIC
9 CRIMINAL JUSTICE INFORMATION; CLARIFYING THE PROVISION
10 CONCERNING DISSEMINATION OF CONFIDENTIAL CRIMINAL JUSTICE
11 INFORMATION; LIMITING THE CIRCUMSTANCES UNDER WHICH THE
12 STATE REPOSITORY SHALL RETURN ALL COPIES OF AN INDIVIDUAL'S
13 PHOTOGRAPHS AND FINGERPRINTS; AND AMENDING SECTIONS
14 44-5-103, 44-5-202, AND 44-5-303."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 44-5-103, MCA, is amended to read:

18 "44-5-103. Definitions. As used in this chapter, the
19 following definitions apply:

20 (1) "Access" means the ability to read, change, copy,
21 use, transfer, or disseminate criminal justice information
22 maintained by criminal justice agencies.

23 (2) "Administration of criminal justice" means the
24 performance of any of the following activities: detection,
25 apprehension, detention, pretrial release, posttrial

1 release, prosecution, adjudication, correctional
2 supervision, or rehabilitation of accused persons or
3 criminal offenders. It includes criminal identification
4 activities and the collection, storage, and dissemination of
5 criminal justice information.

6 (3) "Confidential criminal justice information" means:

7 (a) criminal investigative information;

8 (b) criminal intelligence information;

9 (c) fingerprints and photographs;

10 (d) criminal justice information or records made
11 confidential by law; and

12 (e) any other criminal justice information not clearly
13 defined as public criminal justice information.

14 (4) (a) "Criminal history record information" means
15 information about individuals collected by criminal justice
16 agencies consisting of identifiable descriptions and
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18 indictments, or informations and dispositions arising
19 therefrom; sentences; correctional status; and release. It
20 includes identification information, such as fingerprint
21 records or photographs, unless such information is obtained
22 for purposes other than the administration of criminal
23 justice.

24 (b) Criminal history record information does not
25 include:

1 (i) records of traffic offenses maintained by the
2 department of justice; or

3 (ii) court records.

4 (5) (a) "Criminal intelligence information" means
5 information associated with an identifiable individual,
6 group, organization, or event compiled by a criminal justice
7 agency:

8 (i) in the course of conducting an investigation
9 relating to a major criminal conspiracy, projecting
10 potential criminal operation, or producing an estimate of
11 future major criminal activities; or

12 (ii) in relation to the reliability of information
13 including information derived from reports of informants or
14 investigators or from any type of surveillance.

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16 information relating to political surveillance or criminal
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1 (7) "Criminal justice agency" means:

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5 perform as its principal function the administration of
6 criminal justice; or

7 (c) any local government agency not included under
8 subsection (7)(b) that performs as its principal function
9 the administration of criminal justice pursuant to an
10 ordinance or local executive order.

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12 relating to criminal justice collected, processed, or
13 preserved by a criminal justice agency. It does not include
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15 (9) "Criminal justice information system" means a
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17 state, or local governments or governmental organizations
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19 criminal justice information. It includes equipment,
20 facilities, procedures, and agreements.

21 (10) (a) "Disposition" means information disclosing that
22 criminal proceedings against an individual have terminated
23 and describing the nature of the termination or information
24 relating to sentencing, correctional supervision, release
25 from correctional supervision, the outcome of appellate or

1 collateral review of criminal proceedings, or executive
2 clemency. Criminal proceedings have terminated if a decision
3 has been made not to bring charges or criminal proceedings
4 have been concluded, abandoned, or indefinitely postponed.

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6 to:

- 7 (i) conviction at trial or on a plea of guilty;
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- 9 (iii) acquittal by reason of mental disease or defect;
- 10 (iv) acquittal by reason of mental incompetence;
- 11 (v) the sentence imposed, including all conditions
12 attached thereto by the sentencing judge;
- 13 (vi) deferred imposition of sentence with any conditions
14 of deferral;
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- 18 (x) bond forfeiture;
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- 20 (xii) release as a result of a successful collateral
21 attack;
- 22 (xiii) dismissal of criminal proceedings by the court
23 with or without the commencement of a civil action for
24 determination of mental incompetence or mental illness;
- 25 (xiv) a finding of civil incompetence or mental illness;

1 (xv) exercise of executive clemency;

2 (xvi) correctional placement on probation or parole or
3 release; or

4 (xvii) revocation of probation or parole.

5 (c) A single arrest of an individual may result in more
6 than one disposition.

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9 other than the criminal justice agency that maintains such
10 information. It includes confirmation of the existence or
11 nonexistence of criminal justice information.

12 (12) "Public criminal justice information" means
13 information, ~~except confidential criminal justice~~
14 information:

15 (a) made public by law;

16 (b) of court records and proceedings;

17 (c) of convictions, deferred sentences, and deferred
18 prosecutions;

19 (d) of postconviction proceedings and status;

20 (e) originated by a criminal justice agency, including:

21 (i) initial offense reports;

22 (ii) initial arrest records;

23 (iii) bail records; and

24 (iv) daily jail occupancy rosters;

25 (f) considered necessary by a criminal justice agency

1 to secure public assistance in the apprehension of a
2 suspect; or

3 (g) statistical information.

4 (13) "State repository" means the recordkeeping systems
5 maintained by the department of justice pursuant to 44-2-201
6 in which criminal history record information is collected,
7 processed, preserved, and disseminated.

8 (14) "Statistical information" means data derived from
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19 the functions of a police department or a sheriff's office,
20 or both;

21 (b) the department of institutions; and

22 (c) the department of justice.

23 (2) The department of institutions may photograph and
24 fingerprint anyone under the jurisdiction of the division of
25 corrections or its successor.

1 (3) A criminal justice agency described in subsection
2 (1)(a) shall photograph and fingerprint a person who has
3 been arrested or noticed or summoned to appear to answer an
4 information or indictment if:

5 (a) the charge is the commission of a felony;

6 (b) the identification of an accused is in issue; or

7 (c) it is required to do so by court order.

8 (4) Whenever a person charged with the commission of a
9 felony is not arrested, he shall submit himself to the
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14 (5) A criminal justice agency described in subsection
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16 been arrested for the commission of a misdemeanor, except
17 that an individual arrested for a traffic, regulatory, or
18 fish and game offense may not be photographed or
19 fingerprinted unless he is incarcerated.

20 (6) Within 10 days the originating agency shall send
21 the state repository a copy of each fingerprint taken on a
22 completed form provided by the state repository.

23 (7) The state repository shall compare the fingerprints
24 received with those already on file in the state repository.
25 If it is determined that the individual is wanted or is a

1 fugitive from justice, the state repository shall at once
2 inform the originating agency. If it is determined that the
3 individual has a criminal record, the state repository shall
4 send the originating agency a copy of the individual's
5 complete criminal history record.

6 (B) Photographs and fingerprints taken shall be
7 returned by the state repository to the originating agency,
8 which shall return all copies to the individual from whom
9 they were taken, in the following circumstances:

10 (a) if--a--court--so--orders upon order of the court that
11 had jurisdiction when--proceedings--against--the--individual
12 were---dismissed---prior--to--any--conviction--or--when--the
13 individual--was--acquitted--at--trial; or

14 (b) upon the request of the individual when he was
15 released without the filing of charges OR WHEN THE CHARGES
16 DID NOT RESULT IN A CONVICTION;

17 (i) if--no--charges--were--filed;

18 (ii) if--a--misdemeanor--charge--did--not--result--in--a
19 conviction; or

20 (iii) if--the--individual--was--found--innocent--of--the
21 offense--charged."

22 **Section 3.** Section 44-5-303, MCA, is amended to read:

23 "44-5-303. Dissemination of confidential criminal
24 justice information. Dissemination of confidential criminal
25 justice information is restricted to criminal justice

1 agencies, or to those authorized by law to receive it, and
2 to those authorized to receive it by a district court upon a
3 written finding that ~~THE MERITS OF PUBLIC DISCLOSURE CLEARLY~~
4 ~~EXCEED~~ the demands of individual privacy do not clearly
5 ~~exceed the merits of public disclosure~~ DO NOT CLEARLY EXCEED
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9 information with the originating agency. Whenever
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-End-