

CHAPTER NO. 525.

SENATE BILL NO. 271

INTRODUCED BY HAZELBAKER, TOWE

BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE SENATE

January 27, 1979	Introduced and referred to Committee on Judiciary.
February 8, 1979	Fiscal note requested.
February 13, 1979	Fiscal note returned.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted. Statement of Intent adopted.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed. On motion, rules suspended. Bill placed on calendar for third reading this day. Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in as amended.
March 26, 1979	Second reading, pass con- sideration until March 28, 1979.
March 28, 1979	Second reading, amendments adopted.
March 29, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 *Shapiro* BILL NO. 271
 2 INTRODUCED BY *Rayburn* *Davis*
 3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
 6 COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL JUSTICE
 7 INFORMATION; TO PROVIDE FOR PRIVACY OF THE INFORMATION IN
 8 CERTAIN CIRCUMSTANCES AND PROCEDURES FOR REQUESTING CERTAIN
 9 INFORMATION; TO REQUIRE PHOTOGRAPHING AND FINGERPRINTING OF
 10 PERSONS UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTIONS
 11 44-2-103, 44-2-203, AND 44-2-204, MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Short title. [This act] may be cited as the
 15 "Montana Criminal Justice Information Act of 1979".

16 Section 2. Purpose. The purpose of [this act] is to
 17 require the photographing and fingerprinting of persons
 18 under certain circumstances, to ensure the accuracy and
 19 completeness of criminal history information, and to
 20 establish effective protection of individual privacy in
 21 criminal justice information recordkeeping.

22 Section 3. Definitions. As used in [this act], the
 23 following definitions apply:

24 (1) "Access" means the ability to read, change, copy,
 25 use, transfer, or disseminate criminal justice information

1 maintained by criminal justice agencies.

2 (2) "Administration of criminal justice" means the
 3 performance of any of the following activities: detection,
 4 apprehension, detention, pretrial release, posttrial
 5 release, prosecution, adjudication, correctional
 6 supervision, or rehabilitation of accused persons or
 7 criminal offenders. It includes criminal identification
 8 activities and the collection, storage, and dissemination of
 9 criminal justice information.

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

- 11 (a) criminal investigative information;
- 12 (b) criminal intelligence information;
- 13 (c) fingerprints and photographs;
- 14 (d) criminal justice information or records made
- 15 confidential by law; and
- 16 (e) any other criminal justice information not clearly
- 17 defined as public criminal justice information.

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

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 INTRODUCED BILL

1 for purposes other than the administration of criminal
2 justice.

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

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

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

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

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

25 (7) "Criminal justice agency" means:

1 (a) any court with criminal jurisdiction;

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

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

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

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

20 (10) "Disposition" means information disclosing that
21 criminal proceedings against an individual to determine
22 guilt or innocence have terminated and describing the nature
23 of the termination. It includes information disclosing that
24 a charge or charges have been dismissed, that a law
25 enforcement agency or a prosecutor has elected not to

1 charge, or that proceedings have been indefinitely postponed
2 and the reason for the postponement. Particular dispositions
3 include but are not limited to:

- 4 (a) conviction at trial or on a plea of guilty;
5 (b) acquittal;
6 (c) acquittal by reason of mental disease or defect;
7 (d) acquittal by reason of mental incompetence;
8 (e) the sentence imposed, including all conditions
9 attached thereto by the sentencing judge;
10 (f) deferred imposition of sentence with any
11 conditions of deferral;
12 (g) nolle prosequi;
13 (h) nolo contendere plea;
14 (i) deferred prosecution or diversion;
15 (j) bond forfeiture;
16 (k) death;
17 (l) release as a result of a successful collateral
18 attack;
19 (m) dismissal of criminal proceedings by the court
20 with or without the commencement of a civil action for
21 determination of mental incompetence or mental illness;
22 (n) a finding of civil incompetence or mental illness;
23 (o) exercise of executive clemency;
24 (p) correctional placement on probation or parole or
25 release; or

1 (q) revocation of probation or parole.

2 (11) "Dissemination" means the communication or
3 transfer of criminal justice information to individuals or
4 agencies other than the criminal justice agency that
5 maintains such information. It includes confirmation of the
6 existence or nonexistence of criminal justice information.

7 (12) "Public criminal justice information" means
8 information, except confidential criminal justice
9 information:

10 (a) made public by law;

11 (b) of court records and proceedings;

12 (c) of convictions, deferred sentences, and deferred
13 prosecutions;

14 (d) of postconviction proceedings and status;

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

17 (i) initial offense reports;

18 (ii) initial arrest records;

19 (iii) bail records; and

20 (iv) daily jail occupancy rosters;

21 (f) considered necessary by a criminal justice agency
22 to secure public assistance in the apprehension of a
23 suspect; or

24 (g) statistical information.

25 (13) "State repository" means the recordkeeping

1 systems maintained by the department of justice pursuant to
2 44-2-201 in which criminal history record information is
3 collected, processed, preserved, and disseminated.

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

9 Section 4. Relationship to other statutes. Laws
10 requiring disclosure of public records, writings, or
11 information are not superseded by [this act] unless clearly
12 inconsistent with its specific language. Laws requiring
13 confidentiality of information contained in records or
14 writings are not superseded by [this act], which applies
15 only when information may be disclosed consistent with such
16 laws.

17 Section 5. Scope of authority to collect, process, and
18 preserve criminal justice information. A criminal justice
19 agency may collect, process, and preserve only that criminal
20 justice information which is necessary for the performance
21 of its authorized functions.

22 Section 6. Photographs and fingerprints. (1) The
23 following agencies may, if authorized by subsections (2)
24 through (5), collect, process, and preserve photographs and
25 fingerprints:

1 (a) any criminal justice agency performing, under law,
2 the functions of a police department or a sheriff's office,
3 or both;

4 (b) the department of institutions; and
5 (c) the department of justice.

6 (2) The department of institutions may photograph and
7 fingerprint anyone under the jurisdiction of the division of
8 corrections or its successor.

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

13 (a) the charge is the commission of a felony;
14 (b) the identification of an accused is in issue; or
15 (c) it is required to do so by court order.

16 (4) Whenever a person charged with the commission of a
17 felony is not arrested, he shall submit himself to the
18 sheriff, chief of police, or other concerned law enforcement
19 officer for fingerprinting at the time of his initial
20 appearance in court to answer the information or indictment
21 against him.

22 (5) A criminal justice agency described in subsection
23 (1)(a) may photograph and fingerprint an accused if he has
24 been arrested for the commission of a misdemeanor, except
25 that an individual arrested for traffic, regulatory, or fish

1 and game offenses may not be photographed or fingerprinted
2 unless he is incarcerated.

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

6 (7) The state repository shall compare the
7 fingerprints received with those already on file in the
8 state repository. If it is determined that the individual is
9 wanted or is a fugitive from justice, the state repository
10 shall at once inform the official having custody of the
11 person arrested. The criminal history record, if any, may
12 be sent to the originating agency.

13 (8) Photographs and fingerprints taken shall be
14 returned by the state repository to the originating agency,
15 which shall return all copies to the individual from whom
16 they were taken:

17 (a) if a court so orders; or

18 (b) upon the request of the individual:

19 (i) if no charges were filed;

20 (ii) if a misdemeanor charge did not result in a
21 conviction; or

22 (iii) if the individual was found innocent of the
23 offense charged.

24 Section 7. Records -- form, contents, limits on use.
25 A criminal justice agency originating initial offense

1 reports, initial arrest records, bail records, or daily jail
2 occupancy rosters shall maintain a chronological or
3 numerical record of these items in addition to any other
4 records. These records may not contain any prior criminal
5 history record information and may not be used to gain
6 access to any other public criminal justice information.

7 Section 8. Record preservation. Unless required by
8 federal law, expunging, purging, or destroying of criminal
9 justice information is not required based on the length of
10 time such records are held.

11 Section 9. Procedures to ensure accuracy of criminal
12 history records. In order to ensure complete and accurate
13 criminal history record information:

14 (1) the department of justice shall maintain a
15 centralized state repository of criminal history record
16 information to serve all criminal justice agencies in the
17 state;

18 (2) a court having jurisdiction in a criminal case
19 shall advise the appropriate criminal justice agency
20 authorized in [section 6] and the state repository of the
21 results of each formal proceeding in a criminal action prior
22 to and including adjudication within 15 days of any final
23 disposition of the case;

24 (3) criminal justice agencies authorized under
25 [section 6] shall advise the state repository of all

1 arrests, proceedings, and dispositions prior to and
2 including results of adjudication within 30 days after final
3 disposition of each criminal case;

4 (4) the department of institutions shall advise the
5 state repository of all changes in custodial status
6 subsequent to conviction within 30 days of such changes;

7 (5) each criminal justice agency shall query the state
8 repository prior to dissemination of any criminal history
9 record information to ensure the timeliness of the
10 information. When no final disposition is shown by the state
11 repository records, the state repository shall query the
12 source of the document or other appropriate source for
13 current status. Inquiries shall be made prior to any
14 dissemination except in those cases in which time is of the
15 essence and the repository is technically incapable of
16 responding within the necessary time period. If time is of
17 the essence, the inquiry shall still be made and the
18 response shall be forwarded as soon as it is received.

19 (6) each criminal justice agency shall ensure that all
20 its criminal justice information is complete, accurate, and
21 current; and

22 (7) the department of justice shall promulgate rules
23 to implement this section.

24 Section 10. Dissemination of public criminal justice
25 information. (1) There are no restrictions on the

1 dissemination of public criminal justice information except
2 for the following:

3 (a) Whenever a record or index is compiled by name or
4 universal identifier from a manual or automated system, only
5 information about convictions, deferred prosecutions, or
6 deferred sentences is available to the public.

7 (b) Whenever the conviction record reflects only
8 misdemeanors or deferred prosecutions and whenever there are
9 no convictions except for traffic, regulatory, or fish and
10 game offenses for a period of 5 years from the date of the
11 last conviction, no record or index may be disseminated
12 pursuant to subsection (1)(a). However, the original
13 documents are available to the public from the originating
14 criminal justice agency.

15 (2) All public criminal justice information is
16 available from the agency that is the source of the original
17 documents and that is required to maintain the document
18 according to applicable law. These documents shall be open,
19 subject to the restrictions in this section, during the
20 normal business hours of the agency. A reasonable charge may
21 be made by a criminal justice agency for providing a copy of
22 public criminal justice information.

23 Section 11. Dissemination of criminal history record
24 information. Criminal history record information may not be
25 disseminated to agencies other than criminal justice

1 agencies except with the consent or at the request of the
2 individual about whom it relates according to procedures
3 specified in [sections 19 and 20] or if considered necessary
4 by a district court.

5 Section 12. Dissemination of confidential criminal
6 justice information. Dissemination of confidential criminal
7 justice information is restricted to criminal justice
8 agencies or to those authorized by law to receive it. A
9 criminal justice agency that accepts confidential criminal
10 justice information assumes equal responsibility for the
11 security of such information with the originating agency.
12 Whenever confidential criminal justice information is
13 disseminated, it must be designated as confidential.

14 Section 13. Development of statistical information --
15 agreements as to access. (1) An individual or agency with
16 the express purpose of developing statistical information
17 may have access to criminal history record information
18 pursuant to an agreement with a criminal justice agency. The
19 agreement shall contain, but need not be limited to, the
20 following provisions:

21 (a) specific authorization for access to specific
22 information;

23 (b) a limitation on the use of the information to
24 research, evaluative, or statistical purposes;

25 (c) assurance of the confidentiality and security of

1 the information; and

2 (d) sanctions for violations of the agreement or this
3 section.

4 (2) Proposed agreements and any completed research,
5 statistical, or evaluative study or product developed from
6 the use of statistical information is subject to review and
7 approval by the department of justice to ensure compliance
8 with [this act].

9 Section 14. Criminal justice information system
10 security. Provisions for the recording, preservation,
11 dissemination, and management of court records are made by
12 statute and may be supplemented by supreme court rule. Any
13 other criminal justice agency shall protect the security of
14 any criminal justice information system, automated or
15 manual, under its control by taking reasonable precautions
16 and establishing procedures to protect the system and data
17 stored in the system from damage and for the prevention of
18 and recovery from hazards such as fire, flood, power
19 failure, and entry into secure areas by unauthorized
20 persons.

21 Section 15. Automated equipment security. In an
22 automated criminal justice information system, information
23 shall be collected, processed, and preserved on a computer
24 dedicated solely to criminal justice information, except
25 that, if this is impractical, a central computer may be used

1 if adequate safeguards are built into the criminal justice
 2 information system to prevent unauthorized inquiry,
 3 modification, or destruction of criminal justice information
 4 in conformity with the current federal regulations in 28
 5 C.F.R. section 20.21(f) or any amendment thereto.

6 Section 16. Computer programming security. Procedures
 7 for each automated criminal justice information system shall
 8 assure that the information is secured by the following
 9 programming techniques and security procedures:

10 (1) the assignment of a terminal identification code
 11 to each terminal authorized to access the criminal justice
 12 information system;

13 (2) the assignment of a unique identification number
 14 to each authorized terminal operator, which number must be
 15 used to gain access to the files;

16 (3) the maintenance of a record of each inquiry to
 17 identify the inquiring agency, the program used to make the
 18 inquiry, the date of the inquiry, and the name of the file
 19 being queried;

20 (4) computer programming controls to ensure that each
 21 terminal user can obtain only that information which the
 22 user is authorized to use;

23 (5) creation and use of a safe place for storage of
 24 duplicate computer files;

25 (6) built-in program controls to ensure that each

1 terminal is limited to the appropriate or authorized
 2 information that can be input, modified, or canceled from
 3 it;

4 (7) destruction or safeguarding of system
 5 documentation and data input forms; and

6 (8) creation of reports to provide for an audit trail
 7 and periodic review of file accessed, modifications, and
 8 deletions. All criminal justice intelligence information
 9 shall be identified as such.

10 Section 17. Manual equipment security. In a manual
 11 criminal justice information system, information shall be
 12 protected as follows:

13 (1) provision of adequate physical security;

14 (2) marking of all criminal justice intelligence
 15 information and precautions against unauthorized copying;
 16 and

17 (3) establishment of a log of each external inquiry to
 18 reflect the identity of the inquirer, the date of inquiry,
 19 and the name of the files being queried.

20 Section 18. Personnel security. Each automated or
 21 manual criminal justice information system, except those
 22 that are or may be maintained by courts of criminal
 23 jurisdiction, shall establish the following procedures to
 24 ensure that personnel security is achieved and maintained:

25 (1) Applicants for employment and persons presently

1 employed to work with or in a computer center or manual
2 system that processes criminal justice information are
3 subject to investigation by the employing agency to
4 establish their honesty and fitness to handle sensitive
5 information. Consent to such an investigation may be a
6 prerequisite to the processing of an employment application.

7 (2) The character and fitness of criminal justice
8 information system personnel to handle sensitive
9 information, including personnel working with manual
10 criminal justice file systems and terminal operators as well
11 as personnel working with the system at a central computer,
12 shall be reviewed by the employing agency periodically.
13 Serious violations or deficiencies under this section are
14 grounds for dismissal.

15 (3) Each criminal justice agency shall develop and
16 maintain an in-service training program and security manual
17 to ensure that each employee who works with or has access to
18 the criminal justice information system annually reviews and
19 understands the nature and importance of the system's
20 security provisions.

21 (4) With regard to automated systems, the criminal
22 justice agency shall screen and may reject for employment
23 and initiate or cause to be initiated administrative action
24 relating to employees having direct access to criminal
25 history record information as required by federal

1 regulations in 28 C.F.R. section 20.21(f) or any amendment
2 thereto.

3 Section 19. Inspection or transfer of criminal history
4 records. (1) An individual or his agent may inspect or
5 transfer to any other person any criminal history record
6 information maintained about the individual upon the
7 presentation of satisfactory identification to the criminal
8 justice agency maintaining the criminal history record
9 information. Fingerprints may be required for
10 identification. An agent must also submit a notarized
11 authorization from his principal or an authorization order
12 from a district court.

13 (2) If an individual's criminal history record
14 information is maintained in the state repository, copies of
15 the records shall be transferred to the local agency for
16 inspection upon proper request of the individual or his
17 agent. A local agency shall honor a verified affidavit
18 accompanying a request by an individual for a transfer of
19 criminal history record information concerning that
20 individual to a criminal justice agency of another state for
21 the purpose of complying with [this act].

22 (3) (a) An individual may request inspection or
23 transfer, or both, of criminal history record information
24 only during normal working hours.

25 (b) Copies of records may be made by or at the request

1 of a properly identified individual or his authorized agent.
 2 If a machine for making copies is not reasonably available,
 3 the individual or his agent may make handwritten copies. A
 4 charge, not to exceed the cost of labor and materials, may
 5 be made by the agency for machine-produced copies. Each copy
 6 must be clearly marked to indicate that it is for inspection
 7 only.

8 (c) An agency employee should be available to answer
 9 questions concerning record content. A record of each
 10 request to inspect records under this section must be
 11 maintained.

12 Section 20. Challenge and correction. (1) After
 13 inspection of criminal history record information, an
 14 individual may contest the accuracy or completeness, or
 15 both, of the information about himself.

16 (2) If the agency maintaining the criminal history
 17 record information does not correct it to the individual's
 18 satisfaction, the individual may request review and
 19 correction by the executive head of the agency.

20 (3) If the requested correction is denied by the head
 21 of the agency, the individual may present a challenge to the
 22 department of justice.

23 (4) If the agency in charge of the record in question
 24 can verify the accuracy of its record by communication with
 25 the originating criminal justice agency, it shall do so. If

1 accuracy or completeness cannot be verified and the agency
 2 primarily originating the information containing the alleged
 3 error or omission is in the state, the individual shall
 4 address his challenge to that agency. If information
 5 necessary to verify the accuracy or completeness of the
 6 record cannot be obtained by the originating agency, it may
 7 rely on verified written documents or include the
 8 individual's allegation in its records in dissemination
 9 until there is a final disposition of the challenge.

10 (5) If the challenge is successful, the agency shall:

11 (a) supply to the individual, if requested, a list of
 12 those noncriminal justice agencies which have received
 13 copies of the criminal history record information about the
 14 individual; and

15 (b) immediately correct its records and notify all
 16 criminal justice agencies to which it has given erroneous or
 17 incomplete information of these changes.

18 Section 21. Dissemination of copied or inspected
 19 records. (1) Criminal justice agencies shall maintain a
 20 record of all agencies and individuals to which or whom
 21 copies of criminal history record information have been
 22 disseminated.

23 (2) A criminal justice agency supplying criminal
 24 history record information to an individual upon request is
 25 not responsible for the use or secondary dissemination of

1 copied or inspected information and is not required to
2 furnish updated information except upon a subsequent request
3 by the individual.

4 Section 22. Sanctions. The sanctions provided in
5 44-2-205, apply to any knowing or purposeful violation of
6 [this act].

7 Section 23. Department of justice -- powers. The
8 department of justice may:

9 (1) adopt rules necessary to carry out the purposes of
10 [this act];

11 (2) hear and decide contested cases or challenges that
12 may arise under the provisions of the Montana Administrative
13 Procedure Act;

14 (3) inspect all criminal justice information, files,
15 records, and systems of all criminal justice agencies to
16 determine whether they are in compliance with the provisions
17 of [this act]. The function authorized in this subsection
18 may not be assigned to any subagency that has supervisory
19 authority over any criminal justice information system.

20 Section 24. Court order to enforce compliance. Any
21 person may apply for an order from a district court to
22 enforce compliance with any provision of [this act].

23 Section 25. Saving clause. This act does not affect
24 rights and duties that matured, penalties that were
25 incurred, or proceedings that were begun before the

1 effective date of this act.

2 Section 26. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

8 Section 27. Repealer. Sections 44-2-103, 44-2-203, and
9 44-2-204, MCA, are repealed.

-End-

STATE OF MONTANA

Request No. 275-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 6, 1979, there is hereby submitted a Fiscal Note for Senate Bill 271 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 271 is an act to regulate the collection, storage, and dissemination of criminal justice information; to provide for privacy of the information in certain circumstances and procedures for requesting certain information; to require photographing and fingerprinting of persons under certain circumstances; and to repeal section 44-2-103, and 44-2-203, and 44-2-2-4, MCA.

ASSUMPTIONS:

This fiscal note is based on the assumption that it will require one additional FTE within the Department of Justice to carry out the requirements of this act on a manual system. No provisions have been made for the automation of this system, the cost for which would be significant.

FISCAL IMPACT:

	<u>FY 1980</u>	<u>FY 1981</u>
Personal Services:		
Salaries	\$15,814	\$16,447
Employee Benefits	<u>2,467</u>	<u>2,566</u>
Total Personal Services	<u>18,281</u>	<u>19,013</u>
Operating Expenses		
Contracted Services	612	312
Supplies	360	360
Communications	1,080	780
Travel	<u>6,768</u>	<u>6,768</u>
Total Operating Expenses	<u>8,820</u>	<u>8,220</u>
Total Program Costs*	<u>\$27,101</u>	<u>\$27,233</u>

*Excludes any cost for the automation of the system which, if desired, would be significant.

The additional cost must be funded from the State General Fund.

LOCAL IMPACT:

The cost to local governments resulting from enactment of the proposed legislation was not determined. Depending on current system capabilities at each unit of local government, the cost will vary.

Carolyn Dearing for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-13-79

1 STATEMENT OF INTENT RE: SB 271

2
3
4 This bill delegates authority to the department of
5 justice to adopt rules in sections 9 and 23.

6 Section 9(7) requires the department of justice to
7 adopt rules to implement that section, entitled "Procedures
8 To Ensure Accuracy Of Criminal History Records." The section
9 provides that the department of justice is required to
10 maintain a centralized state repository of criminal history
11 record information; that criminal justice agencies are
12 required to report dispositions of criminal cases to that
13 state repository; that, where time allows, criminal justice
14 agencies are required to check their records against the
15 state repository's to assure their completeness before
16 disseminating them; and that criminal justice agencies are
17 responsible for the completeness and accuracy of their own
18 files. The intent of the legislature in granting rulemaking
19 authority with respect to this provision is to require the
20 state repository to establish uniform procedures for the
21 reporting of dispositions to it. These rules should include
22 clear-cut directives regarding the format and nature of the
23 information to be reported. For example, the rules could
24 require the uses of standard forms for reporting. Or, these
25 rules could provide for a unique tracking number to

1 facilitate the linking of dispositions to specific arrests.

2 Section 23(1) allows, but does not require, the
3 department of justice to adopt rules necessary to carry out
4 the purposes of the act. With the exception of section 9,
5 discussed above, the legislature intends that this act be
6 self-implementing. This grant of discretionary rulemaking
7 authority is limited, therefore, to the adoption of:
8 (1) rules establishing procedures and forms necessary for
9 the efficient operation of a state repository of criminal
10 history record information, (2) interpretive rules
11 necessary to avoid constructions that would defeat the
12 purposes of the act, listed in section 2, or (3) model
13 procedural guidelines which other criminal justice agencies
14 may or may not adopt for their own use.

15 First adopted by SENATE JUDICIARY COMMITTEE on February
16 19, 1979.

1 SENATE BILL NO. 271

2 INTRODUCED BY HAZELBAKER, TOWE

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

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11 44-2-103, 44-2-203, AND 44-2-204, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 Section 1. Short title. [This act] may be cited as the
15 "Montana Criminal Justice Information Act of 1979".16 Section 2. Purpose. The purpose of [this act] is to
17 require the photographing and fingerprinting of persons
18 under certain circumstances, to ensure the accuracy and
19 completeness of criminal history information, and to
20 establish effective protection of individual privacy in
21 criminal justice information recordkeeping.22 Section 3. Definitions. As used in [this act], the
23 following definitions apply:24 (1) "Access" means the ability to read, change, copy,
25 use, transfer, or disseminate criminal justice information

1 maintained by criminal justice agencies.

2 (2) "Administration of criminal justice" means the
3 performance of any of the following activities: detection,
4 apprehension, detention, pretrial release, posttrial
5 release, prosecution, adjudication, correctional
6 supervision, or rehabilitation of accused persons or
7 criminal offenders. It includes criminal identification
8 activities and the collection, storage, and dissemination of
9 criminal justice information.

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

11 (a) criminal investigative information;

12 (b) criminal intelligence information;

13 (c) fingerprints and photographs;

14 (d) criminal justice information or records made
15 confidential by law; and16 (e) any other criminal justice information not clearly
17 defined as public criminal justice information.

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

1 for purposes other than the administration of criminal
2 justice.

3 (B) CRIMINAL HISTORY RECORD INFORMATION DOES NOT
4 INCLUDE:

5 (I) RECORDS OF TRAFFIC OFFENSES MAINTAINED BY THE
6 DIVISION OF MOTOR VEHICLES, DEPARTMENT OF JUSTICE; OR

7 (II) COURT RECORDS.

8 (5) (a) "Criminal intelligence information" means
9 information associated with an identifiable individual,
10 group, organization, or event compiled by a criminal justice
11 agency:

12 (i) in the course of conducting an investigation
13 relating to a major criminal conspiracy, projecting
14 potential criminal operation, or producing an estimate of
15 future major criminal activities; or

16 (ii) in relation to the reliability of information
17 including information derived from reports of informants or
18 investigators or from any type of surveillance.

19 (b) Criminal intelligence information does not include
20 information relating to political surveillance or criminal
21 investigative information.

22 (6) "Criminal investigative information" means
23 information associated with an individual, group,
24 organization, or event compiled by a criminal justice agency
25 in the course of conducting an investigation of a crime or

1 crimes. It includes information about a crime or crimes
2 derived from reports of informants or investigators or from
3 any type of surveillance. It does not include criminal
4 intelligence information.

5 (7) "Criminal justice agency" means:

6 (a) any court with criminal jurisdiction;

7 (b) any state or local government agency designated by
8 statute or by a governor's executive order to perform as its
9 principal function the administration of criminal justice;
10 or

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

15 (8) "Criminal justice information" means information
16 relating to criminal justice collected, processed, or
17 preserved by a criminal justice agency. It does not include
18 the administrative records of a criminal justice agency.

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

25 (10) ~~(A)~~ "Disposition" means information disclosing

1 that criminal proceedings against an individual to determine
 2 guilt or innocence have terminated and describing the nature
 3 of the termination. It includes information disclosing that
 4 a charge or charges have been dismissed that a law
 5 enforcement agency or a prosecutor has elected not to
 6 charge or that proceedings have been indefinitely postponed
 7 and the reason for the postponement. OR INFORMATION RELATING
 8 TO SENTENCING, CORRECTIONAL SUPERVISION, RELEASE FROM
 9 CORRECTIONAL SUPERVISION, THE OUTCOME OF APPELLATE OR
 10 COLLATERAL REVIEW OF CRIMINAL PROCEEDINGS, OR EXECUTIVE
 11 CLEMENCY, CRIMINAL PROCEEDINGS HAVE TERMINATED IF A DECISION
 12 HAS BEEN MADE NOT TO BRING CHARGES OR CRIMINAL PROCEEDINGS
 13 HAVE BEEN CONCLUDED, ABANDONED, OR INDEFINITELY POSTPONED.

14 (B) Particular dispositions include but are not
 15 limited to:

- 16 (i) conviction at trial or on a plea of guilty;
 17 (ii) acquittal;
 18 (iii) acquittal by reason of mental disease or
 19 defect;
 20 (iv) acquittal by reason of mental incompetence;
 21 (v) the sentence imposed, including all conditions
 22 attached thereto by the sentencing judge;
 23 (vi) deferred imposition of sentence with any
 24 conditions of deferral;
 25 (vii) nolle prosequi;

- 1 (viii) nolo contendere plea;
 2 (ix) deferred prosecution or diversion;
 3 (x) bond forfeiture;
 4 (xi) death;
 5 (xii) release as a result of a successful collateral
 6 attack;
 7 (xiii) dismissal of criminal proceedings by the
 8 court with or without the commencement of a civil action for
 9 determination of mental incompetence or mental illness;
 10 (xiv) a finding of civil incompetence or mental
 11 illness;
 12 (xv) exercise of executive clemency;
 13 (xvi) correctional placement on probation or parole
 14 or release; or
 15 (xvii) revocation of probation or parole.
 16 (C) A SINGLE ARREST OF AN INDIVIDUAL MAY RESULT IN
 17 MORE THAN ONE DISPOSITION.
 18 (11) "Dissemination" means the communication or
 19 transfer of criminal justice information to individuals or
 20 agencies other than the criminal justice agency that
 21 maintains such information. It includes confirmation of the
 22 existence or nonexistence of criminal justice information.
 23 (12) "Public criminal justice information" means
 24 information, except confidential criminal justice
 25 information:

1 (a) made public by law;

2 (b) of court records and proceedings;

3 (c) of convictions, deferred sentences, and deferred

4 prosecutions;

5 (d) of postconviction proceedings and status;

6 (e) originated by a criminal justice agency,

7 including:

8 (i) initial offense reports;

9 (ii) initial arrest records;

10 (iii) bail records; and

11 (iv) daily jail occupancy rosters;

12 (f) considered necessary by a criminal justice agency

13 to secure public assistance in the apprehension of a

14 suspect; or

15 (g) statistical information.

16 (13) "State repository" means the recordkeeping

17 systems maintained by the department of justice pursuant to

18 44-2-201 in which criminal history record information is

19 collected, processed, preserved, and disseminated.

20 (14) "Statistical information" means data derived from

21 records in which individuals are not identified or

22 identification is deleted and from which neither individual

23 identity nor any other unique characteristic that could

24 identify an individual is ascertainable.

25 Section 4. Relationship to other statutes. Laws

1 requiring disclosure of public records, writings, or

2 information are not superseded by [this act] unless clearly

3 inconsistent with its specific language. Laws requiring

4 confidentiality of information contained in records or

5 writings are not superseded by [this act], which applies

6 only when information may be disclosed consistent with such

7 laws.

8 Section 5. Scope of authority to collect, process, and

9 preserve criminal justice information. A criminal justice

10 agency may collect, process, and preserve only that criminal

11 justice information which is necessary for the performance

12 of its authorized functions.

13 Section 6. Photographs and fingerprints. (1) The

14 following agencies may, if authorized by subsections (2)

15 through (5), collect, process, and preserve photographs and

16 fingerprints:

17 (a) any criminal justice agency performing, under law,

18 the functions of a police department or a sheriff's office,

19 or both;

20 (b) the department of institutions; and

21 (c) the department of justice.

22 (2) The department of institutions may photograph and

23 fingerprint anyone under the jurisdiction of the division of

24 corrections or its successor.

25 (3) A criminal justice agency described in subsection

1 (1)(a) shall photograph and fingerprint a person who has
2 been arrested or noticed or summoned to appear to answer an
3 information or indictment if:

- 4 (a) the charge is the commission of a felony;
5 (b) the identification of an accused is in issue; or
6 (c) it is required to do so by court order.
7 (4) Whenever a person charged with the commission of a
8 felony is not arrested, he shall submit himself to the
9 sheriff, chief of police, or other concerned law enforcement
10 officer for fingerprinting at the time of his initial
11 appearance in court to answer the information or indictment
12 against him.

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

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

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

1 shall at once inform the ~~official having custody of the~~
2 ~~person arrested. The criminal history records, if any, may~~
3 ~~be sent to the originating agency.~~ ORIGINATING AGENCY. IF IT
4 IS DETERMINED THAT THE INDIVIDUAL HAS A CRIMINAL RECORD, THE
5 STATE REPOSITORY SHALL SEND THE ORIGINATING AGENCY A COPY OF
6 THE INDIVIDUAL'S COMPLETE CRIMINAL HISTORY RECORD.

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

- 11 (a) if a court so orders; or
12 (b) upon the request of the individual:
13 (i) if no charges were filed;
14 (ii) if a misdemeanor charge did not result in a
15 conviction; or
16 (iii) if the individual was found innocent of the
17 offense charged.

18 Section 7. Records -- form, contents, limits on use.
19 A criminal justice agency originating initial offense
20 reports, initial arrest records, bail records, or daily jail
21 occupancy rosters shall ~~shall~~ MAY maintain a chronological or
22 numerical record of these items in addition to any other
23 records. These records may not contain any prior criminal
24 history record information and may not be used to gain
25 access to any other public criminal justice information.

1 Section 8. Record preservation. Unless required by
2 federal law, expunging, purging, or destroying of criminal
3 justice information is not required based on the length of
4 time such records are held.

5 Section 9. Procedures to ensure accuracy of criminal
6 history records. In order to ensure complete and accurate
7 criminal history record information:

8 (1) the department of justice shall maintain a
9 centralized state repository of criminal history record
10 information to serve all criminal justice agencies in the
11 state;

12 ~~(2) a court having jurisdiction in a criminal case~~
13 ~~shall advise the appropriate criminal justice agency~~
14 ~~authorized in [section 6] and the state repository of the~~
15 ~~results of each formal proceeding in a criminal action prior~~
16 ~~to and including adjudication within 15 days of any final~~
17 ~~disposition of the case;~~

18 (2) DISPOSITIONS RESULTING FROM FORMAL PROCEEDINGS IN
19 A COURT HAVING JURISDICTION IN A CRIMINAL ACTION AGAINST AN
20 INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED AND FINGERPRINTED UNDER
21 [SECTION 6] SHALL BE REPORTED TO THE ORIGINATING AGENCY AND
22 THE STATE REPOSITORY WITHIN 15 DAYS. IF THE DISPOSITIONS CAN
23 READILY BE COLLECTED AND REPORTED THROUGH THE COURT SYSTEM,
24 THE DISPOSITIONS MAY BE SUBMITTED TO THE STATE REPOSITORY BY
25 THE ADMINISTRATIVE OFFICE OF THE COURTS;

1 (3) ~~criminal justice agencies authorized under~~
2 ~~[section 6] AN ORIGINATING AGENCY~~ shall advise the state
3 repository WITHIN 30 DAYS of all arrests, proceedings, and
4 dispositions prior to and including results of adjudication
5 within 30 days after final disposition of each criminal
6 case CONCERNING THE TERMINATION OF CRIMINAL PROCEEDINGS
7 AGAINST AN INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED AND
8 FINGERPRINTED UNDER [SECTION 6];

9 (4) the department of institutions shall advise the
10 state repository WITHIN 30 DAYS of all changes in custody
11 status DISPOSITIONS subsequent to conviction within 30 days
12 of such changes OF AN INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED
13 AND FINGERPRINTED UNDER [SECTION 6];

14 (5) each criminal justice agency shall query the state
15 repository prior to dissemination of any criminal history
16 record information to ensure the timeliness of the
17 information. When no final disposition is shown by the state
18 repository records, the state repository shall query the
19 source of the document or other appropriate source for
20 current status. Inquiries shall be made prior to any
21 dissemination except in those cases in which time is of the
22 essence and the repository is technically incapable of
23 responding within the necessary time period. If time is of
24 the essence, the inquiry shall still be made and the
25 response shall be forwarded as soon as it is received.

1 (6) each criminal justice agency shall ensure that all
2 its criminal justice information is complete, accurate, and
3 current; and

4 (7) the department of justice shall promulgate ADOPT
5 RULES FOR CRIMINAL JUSTICE AGENCIES OTHER THAN THOSE THAT
6 ARE PART OF THE JUDICIAL BRANCH OF GOVERNMENT to implement
7 this section. THE DEPARTMENT OF JUSTICE MAY ADOPT RULES FOR
8 THE SAME PURPOSE FOR THE JUDICIAL BRANCH OF GOVERNMENT IF
9 THE SUPREME COURT CONSENTS TO THE RULES.

10 Section 10. Dissemination of public criminal justice
11 information. (1) There are no restrictions on the
12 dissemination of public criminal justice information except
13 for the following:

14 (a) Whenever a record or index is compiled by name or
15 universal identifier from a manual or automated system, only
16 information about convictions, deferred prosecutions, or
17 deferred sentences is available to the public.

18 (b) Whenever the conviction record reflects only
19 misdemeanors or deferred prosecutions and whenever there are
20 no convictions except for traffic, regulatory, or fish and
21 game offenses for a period of 5 years from the date of the
22 last conviction, no record or index may be disseminated
23 pursuant to subsection (1)(a). However, the original
24 documents are available to the public from the originating
25 criminal justice agency.

1 (2) All public criminal justice information is
2 available from the agency that is the source of the original
3 documents and that is required AUTHORIZED to maintain the
4 documents according to applicable law. These documents shall
5 be open, subject to the restrictions in this section, during
6 the normal business hours of the agency. A reasonable charge
7 may be made by a criminal justice agency for providing a
8 copy of public criminal justice information.

9 Section 11. Dissemination of criminal history record
10 information THAT IS NOT PUBLIC CRIMINAL JUSTICE INFORMATION.
11 Criminal history record information may not be disseminated
12 to agencies other than criminal justice agencies except
13 UNLESS:

14 (A) THE INFORMATION IS DISSEMINATED with the consent
15 or at the request of the individual about whom it relates
16 according to procedures specified in [sections 19 and 20] or
17 if-considered-necessary-by-a-district-court;

18 (B) A DISTRICT COURT CONSIDERS DISSEMINATION
19 NECESSARY;

20 (C) THE INFORMATION IS DISSEMINATED IN COMPLIANCE WITH
21 [SECTION 13]; OR

22 (D) THE AGENCY RECEIVING THE INFORMATION IS AUTHORIZED
23 BY LAW TO RECEIVE IT.

24 Section 12. Dissemination of confidential criminal
25 justice information. Dissemination of confidential criminal

1 justice information is restricted to criminal justice
 2 agencies or to those authorized by law to receive it. A
 3 criminal justice agency that accepts confidential criminal
 4 justice information assumes equal responsibility for the
 5 security of such information with the originating agency.
 6 Whenever confidential criminal justice information is
 7 disseminated, it must be designated as confidential.

8 Section 13. Development of statistical information --
 9 agreements as to access. (1) An individual or agency with
 10 the express purpose of developing statistical information
 11 may have access to criminal history record information
 12 pursuant to an agreement with a criminal justice agency. The
 13 agreement shall contain, but need not be limited to, the
 14 following provisions:

15 (a) specific authorization for access to specific
 16 information;

17 (b) a limitation on the use of the information to
 18 research, evaluative, or statistical purposes;

19 (c) assurance of the confidentiality and security of
 20 the information; and

21 (d) sanctions for violations of the agreement or this
 22 section.

23 (2) Proposed agreements and any completed research,
 24 statistical, or evaluative study or product developed from
 25 the use of statistical information is subject to review and

1 approval by the department of justice to ensure compliance
 2 with [this act].

3 Section 14. Criminal justice information system
 4 security. Provisions for the recording, preservation,
 5 dissemination, and management of court records are made by
 6 statute and may be supplemented by supreme court rule. Any
 7 other criminal justice agency shall protect the security of
 8 any criminal justice information system, automated or
 9 manual, under its control by taking reasonable precautions
 10 and establishing procedures to protect the system and data
 11 stored in the system from damage and for the prevention of
 12 and recovery from hazards such as fire, flood, power
 13 failure, and entry into secure areas by unauthorized
 14 persons.

15 Section 15. Automated equipment security. In an
 16 automated criminal justice information system, information
 17 shall be collected, processed, and preserved on a computer
 18 dedicated solely to criminal justice information, except
 19 that, if this is impractical, a central computer may be used
 20 if adequate safeguards are built into the criminal justice
 21 information system to prevent unauthorized inquiry,
 22 modification, or destruction of criminal justice information
 23 in conformity with the current federal regulations in 28
 24 C.F.R. section 20.21(f) or any amendment thereto.

25 Section 16. Computer programming security. Procedures

1 for each automated criminal justice information system shall
 2 assure that the information is secured by the following
 3 programming techniques and security procedures:

4 (1) the assignment of a terminal identification code
 5 to each terminal authorized to access the criminal justice
 6 information system;

7 (2) the assignment of a unique identification number
 8 to each authorized terminal operator, which number must be
 9 used to gain access to the files;

10 (3) the maintenance of a record of each inquiry to
 11 identify the inquiring agency, the program used to make the
 12 inquiry, the date of the inquiry, and the name of the file
 13 being queried;

14 (4) computer programming controls to ensure that each
 15 terminal user can obtain only that information which the
 16 user is authorized to use;

17 (5) creation and use of a safe place for storage of
 18 duplicate computer files;

19 (6) built-in program controls to ensure that each
 20 terminal is limited to the appropriate or authorized
 21 information that can be input, modified, or canceled from
 22 it;

23 (7) destruction or safeguarding of system
 24 documentation and data input INQUI forms; and

25 (8) creation of reports to provide for an audit trail

1 and periodic review of file accessed, modifications, and
 2 deletions. All criminal justice intelligence information
 3 shall be identified as such.

4 Section 17. Manual equipment security. In a manual
 5 criminal justice information system, information shall be
 6 protected as follows:

7 (1) provision of adequate physical security;

8 (2) marking of all criminal justice intelligence
 9 information and precautions against unauthorized copying;
 10 and

11 (3) establishment of a log of each external inquiry to
 12 reflect the identity of the inquirer, the date of inquiry,
 13 and the name of the files being queried.

14 Section 18. Personnel security. Each automated or
 15 manual criminal justice information system, except those
 16 that are or may be maintained by courts of criminal
 17 jurisdiction, shall establish the following procedures to
 18 ensure that personnel security is achieved and maintained:

19 (1) Applicants for employment and persons presently
 20 employed to work with or in a computer center or manual
 21 system that processes criminal justice information are
 22 subject to investigation by the employing agency to
 23 establish their honesty and fitness to handle sensitive
 24 information. Consent to such an investigation may be a
 25 prerequisite to the processing of an employment application.

1 (2) The character and fitness of criminal justice
 2 information system personnel to handle sensitive
 3 information, including personnel working with manual
 4 criminal justice file systems and terminal operators as well
 5 as personnel working with the system at a central computer,
 6 shall be reviewed by the employing agency periodically.
 7 Serious violations or deficiencies under this section are
 8 grounds for dismissal.

9 (3) Each criminal justice agency shall develop and
 10 maintain an in-service training program and security manual
 11 to ensure that each employee who works with or has access to
 12 the criminal justice information system annually reviews and
 13 understands the nature and importance of the system's
 14 security provisions.

15 (4) With regard to automated systems, the criminal
 16 justice agency shall screen and may reject for employment
 17 and initiate or cause to be initiated administrative action
 18 relating to employees having direct access to criminal
 19 history record information as required by federal
 20 regulations in 28 C.F.R. section 20.21(f) or any amendment
 21 thereto.

22 Section 19. Inspection or transfer of criminal history
 23 records. (1) An individual or his agent may inspect or
 24 transfer-to-any-other-person any criminal history record
 25 information maintained about the individual OR TRANSFER

1 COPIES OF THAT INFORMATION TO ANY OTHER PERSON upon the
 2 presentation of satisfactory identification to the criminal
 3 justice agency maintaining the criminal history record
 4 information. Fingerprints may be required for
 5 identification. An agent must also submit a notarized
 6 authorization from his principal or an authorization order
 7 from a district court.

8 (2) If an individual's criminal history record
 9 information is maintained in the state repository, copies of
 10 the records shall be transferred to the local agency for
 11 inspection upon proper request of the individual or his
 12 agent. A local agency shall honor a verified affidavit
 13 accompanying a request by an individual for a transfer of
 14 COPIES OF criminal history record information concerning
 15 that individual to a criminal justice agency of another
 16 state for the purpose of complying with [this act].

17 (3) (a) An individual may request inspection or
 18 transfer OF COPIES, or both, of criminal history record
 19 information only during normal working hours.

20 (b) Copies of records may be made by or at the request
 21 of a properly identified individual or his authorized agent.
 22 If a machine for making copies is not reasonably available,
 23 the individual or his agent may make handwritten copies. A
 24 charge, not to exceed the cost of labor and materials, may
 25 be made by the agency for machine-produced copies. Each copy

1 must be clearly marked to indicate that it is for inspection
2 only.

3 (c) An agency employee should be available to answer
4 questions concerning record content. A record of each
5 request to inspect records under this section must be
6 maintained.

7 Section 20. Challenge and correction. (1) After
8 inspection of criminal history record information, an
9 individual may contest the accuracy or completeness, or
10 both, of the information about himself.

11 (2) If the agency maintaining the criminal history
12 record information does not correct it to the individual's
13 satisfaction, the individual may request review and
14 correction by the executive head of the agency.

15 (3) If the requested correction is denied by the head
16 of the agency, the individual may present a challenge to the
17 department of justice.

18 (4) If the agency in charge of the record in question
19 can verify the accuracy of its record by communication with
20 the originating criminal justice agency, it shall do so. If
21 accuracy or completeness cannot be verified and the agency
22 primarily originating the information containing the alleged
23 error or omission is in the state, the individual shall
24 address his challenge to that agency. If information
25 necessary to verify the accuracy or completeness of the

1 record cannot be obtained by the originating agency, it may
2 rely on verified written documents or include the
3 individual's allegation in its records in dissemination
4 until there is a final disposition of the challenge.

5 (5) If the challenge is successful, the agency shall:

6 (a) supply to the individual, if requested, a list of
7 those noncriminal justice agencies which have received
8 copies of the criminal history record information about the
9 individual; and

10 (b) immediately correct its records and notify all
11 criminal justice agencies to which it has given erroneous or
12 incomplete information of these changes.

13 Section 21. Dissemination of copied or inspected
14 records. (1) Criminal justice agencies shall maintain a
15 record of all agencies and individuals to which or whom
16 copies of criminal history record information have been
17 disseminated.

18 (2) A criminal justice agency supplying criminal
19 history record information to an individual upon request is
20 not responsible for the use or secondary dissemination of
21 copied or inspected information and is not required to
22 furnish updated information except upon a subsequent request
23 by the individual.

24 Section 22. Sanctions. The sanctions provided in
25 44-2-205, apply to any knowing or purposeful violation of

1 [this act].

2 Section 23. Department of justice -- powers. The
3 department of justice may:

4 (1) adopt rules necessary to carry out the purposes of
5 [this act];

6 (2) hear and decide contested cases or challenges that
7 may arise under the provisions of the Montana Administrative
8 Procedure Act;

9 (3) ~~inspect--all--criminal--justice--information--files--~~
10 ~~records--and--systems--of--all--criminal--justice--agencies~~

11 CONDUCT AUDITS OF THE CRIMINAL HISTORY RECORD INFORMATION
12 SYSTEMS OF A REPRESENTATIVE SAMPLE OF STATE AND LOCAL
13 CRIMINAL JUSTICE AGENCIES CHOSEN ANNUALLY ON A RANDOM BASIS

14 to determine whether they are in compliance with the
15 provisions of [this act]. The function authorized in this
16 subsection may not be assigned to any subagency that has
17 supervisory authority over any criminal justice information
18 system.

19 Section 24. Court order to enforce compliance. Any
20 person may apply for an order from a district court to
21 enforce compliance with any provision of [this act].

22 Section 25. Saving clause. This act does not affect
23 rights and duties that matured, penalties that were
24 incurred, or proceedings that were begun before the
25 effective date of this act.

1 Section 26. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 27. Repealer. Sections 44-2-103, 44-2-203, and
8 44-2-204, MCA, are repealed.

-End-

STATEMENT OF INTENT RE: SB 271

This bill delegates authority to the department of justice to adopt rules in sections 9 and 23.

Section 9(7) requires the department of justice to adopt rules to implement that section, entitled "Procedures To Ensure Accuracy Of Criminal History Records." The section provides that the department of justice is required to maintain a centralized state repository of criminal history record information; that criminal justice agencies are required to report dispositions of criminal cases to that state repository; that, where time allows, criminal justice agencies are required to check their records against the state repository's to assure their completeness before disseminating them; and that criminal justice agencies are responsible for the completeness and accuracy of their own files. The intent of the legislature in granting rulemaking authority with respect to this provision is to require the state repository to establish uniform procedures for the reporting of dispositions to it. These rules should include clear-cut directives regarding the format and nature of the information to be reported. For example, the rules could require the uses of standard forms for reporting. Or, these rules could provide for a unique tracking number to

facilitate the linking of dispositions to specific arrests.

Section 23(1) allows, but does not require, the department of justice to adopt rules necessary to carry out the purposes of the act. With the exception of section 9, discussed above, the legislature intends that this act be self-implementing. This grant of discretionary rulemaking authority is limited, therefore, to the adoption of: (1) rules establishing procedures and forms necessary for the efficient operation of a state repository of criminal history record information, (2) interpretive rules necessary to avoid constructions that would defeat the purposes of the act, listed in section 2, or (3) model procedural guidelines which other criminal justice agencies may or may not adopt for their own use.

First adopted by SENATE JUDICIARY COMMITTEE on February 19, 1979.

SB 271

1 SENATE BILL NO. 271

2 INTRODUCED BY HAZELBAKER, TOME

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
6 COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL JUSTICE
7 INFORMATION; TO PROVIDE FOR PRIVACY OF THE INFORMATION IN
8 CERTAIN CIRCUMSTANCES AND PROCEDURES FOR REQUESTING CERTAIN
9 INFORMATION; TO REQUIRE PHOTOGRAPHING AND FINGERPRINTING OF
10 PERSONS UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTIONS
11 44-2-103, 44-2-203, AND 44-2-204, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 Section 1. Short title. [This act] may be cited as the
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25 use, transfer, or disseminate criminal justice information

1 maintained by criminal justice agencies.

2 (2) "Administration of criminal justice" means the
3 performance of any of the following activities: detection,
4 apprehension, detention, pretrial release, posttrial
5 release, prosecution, adjudication, correctional
6 supervision, or rehabilitation of accused persons or
7 criminal offenders. It includes criminal identification
8 activities and the collection, storage, and dissemination of
9 criminal justice information.

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

11 (a) criminal investigative information;

12 (b) criminal intelligence information;

13 (c) fingerprints and photographs;

14 (d) criminal justice information or records made
15 confidential by law; and16 (e) any other criminal justice information not clearly
17 defined as public criminal justice information.

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

1 for purposes other than the administration of criminal
2 justice.

3 ~~(B) CRIMINAL HISTORY RECORD INFORMATION DOES NOT~~
4 ~~INCLUDE:~~

5 ~~(I) RECORDS OF TRAFFIC OFFENSES MAINTAINED BY THE~~
6 ~~DIVISION DE MOYEN VEHICLES, DEPARTMENT DE JUSTICE; OR~~

7 ~~(II) COURT RECORDS.~~

8 (5) (a) "Criminal intelligence information" means
9 information associated with an identifiable individual,
10 group, organization, or event compiled by a criminal justice
11 agency:

12 (i) in the course of conducting an investigation
13 relating to a major criminal conspiracy, projecting
14 potential criminal operation, or producing an estimate of
15 future major criminal activities; or

16 (ii) in relation to the reliability of information
17 including information derived from reports of informants or
18 investigators or from any type of surveillance.

19 (b). Criminal intelligence information does not include
20 information relating to political surveillance or criminal
21 investigative information.

22 (c) "Criminal investigative information" means
23 information associated with an individual, group,
24 organization, or event compiled by a criminal justice agency
25 in the course of conducting an investigation of a crime or

1 crimes. It includes information about a crime or crimes
2 derived from reports of informants or investigators or from
3 any type of surveillance. It does not include criminal
4 intelligence information.

5 (7) "Criminal justice agency" means:

6 (a) any court with criminal jurisdiction;

7 (b) any state or local government agency designated by
8 statute or by a governor's executive order to perform as its
9 principal function the administration of criminal justice;
10 or

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

15 (8) "Criminal justice information" means information
16 relating to criminal justice collected, processed, or
17 preserved by a criminal justice agency. It does not include
18 the administrative records of a criminal justice agency.

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

25 (10) (A) "Disposition" means information disclosing

1 that criminal proceedings against an individual to determine
 2 guilt or innocence have terminated and describing the nature
 3 of the termination. ~~It includes information disclosing that~~
 4 ~~a charge or charges have been dismissed that a law~~
 5 ~~enforcement agency or a prosecutor has elected not to~~
 6 ~~charge or that proceedings have been indefinitely postponed~~
 7 ~~and the reason for the postponement.~~ OR INFORMATION RELATING
 8 TO SENTENCING, CORRECTIONAL SUPERVISION, RELEASE FROM
 9 CORRECTIONAL SUPERVISION, THE OUTCOME OF APPELLATE OR
 10 COLLATERAL REVIEW OF CRIMINAL PROCEEDINGS, OR EXECUTIVE
 11 CLEMENCY. CRIMINAL PROCEEDINGS HAVE TERMINATED IF A DECISION
 12 HAS BEEN MADE NOT TO BRING CHARGES OR CRIMINAL PROCEEDINGS
 13 HAVE BEEN CONCLUDED, ABANDONED, OR INDEFINITELY POSTPONED.

14 (B) Particular dispositions include but are not
 15 limited to:

- 16 (a) conviction at trial or on a plea of guilty;
 17 (b) acquittal;
 18 (c) acquittal by reason of mental disease or
 19 defect;
 20 (d) acquittal by reason of mental incompetence;
 21 (e) the sentence imposed, including all conditions
 22 attached thereto by the sentencing judge;
 23 (f) deferred imposition of sentence with any
 24 conditions of deferral;
 25 (g) nolle prosequi;

- 1 (h) nolo contendere plea;
 2 (i) deferred prosecution or diversion;
 3 (j) bond forfeiture;
 4 (k) death;
 5 (l) release as a result of a successful collateral
 6 attack;
 7 (m) dismissal of criminal proceedings by the
 8 court with or without the commencement of a civil action for
 9 determination of mental incompetence or mental illness;
 10 (n) a finding of civil incompetence or mental
 11 illness;
 12 (o) exercise of executive clemency;
 13 (p) correctional placement on probation or parole
 14 or release; or
 15 (q) revocation of probation or parole.
 16 (C) A SINGLE ARREST OF AN INDIVIDUAL MAY RESULT IN
 17 MORE THAN ONE DISPOSITION.

18 (11) "Dissemination" means the communication or
 19 transfer of criminal justice information to individuals or
 20 agencies other than the criminal justice agency that
 21 maintains such information. It includes confirmation of the
 22 existence or nonexistence of criminal justice information.

23 (12) "Public criminal justice information" means
 24 information, except confidential criminal justice
 25 information:

1 (a) made public by law;

2 (b) of court records and proceedings;

3 (c) of convictions, deferred sentences, and deferred

4 prosecutions;

5 (d) of postconviction proceedings and status;

6 (e) originated by a criminal justice agency,

7 including:

8 (i) initial offense reports;

9 (ii) initial arrest records;

10 (iii) bail records; and

11 (iv) daily jail occupancy rosters;

12 (f) considered necessary by a criminal justice agency

13 to secure public assistance in the apprehension of a

14 suspect; or

15 (g) statistical information.

16 (13) "State repository" means the recordkeeping

17 systems maintained by the department of justice pursuant to

18 44-2-201 in which criminal history record information is

19 collected, processed, preserved, and disseminated.

20 (14) "Statistical information" means data derived from

21 records in which individuals are not identified or

22 identification is deleted and from which neither individual

23 identity nor any other unique characteristic that could

24 identify an individual is ascertainable.

25 Section 4. Relationship to other statutes. Laws

1 requiring disclosure of public records, writings, or

2 information are not superseded by [this act] unless clearly

3 inconsistent with its specific language. Laws requiring

4 confidentiality of information contained in records or

5 writings are not superseded by [this act], which applies

6 only when information may be disclosed consistent with such

7 laws.

8 Section 5. Scope of authority to collect, process, and

9 preserve criminal justice information. A criminal justice

10 agency may collect, process, and preserve only that criminal

11 justice information which is necessary for the performance

12 of its authorized functions.

13 Section 6. Photographs and fingerprints. (1) The

14 following agencies may, if authorized by subsections (2)

15 through (5), collect, process, and preserve photographs and

16 fingerprints:

17 (a) any criminal justice agency performing, under law,

18 the functions of a police department or a sheriff's office,

19 or both;

20 (b) the department of institutions; and

21 (c) the department of justice.

22 (2) The department of institutions may photograph and

23 fingerprint anyone under the jurisdiction of the division of

24 corrections or its successor.

25 (3) A criminal justice agency described in subsection

1 (1)(a) shall photograph and fingerprint a person who has
 2 been arrested or noticed or summoned to appear to answer an
 3 information or indictment if:

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

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

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

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

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

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

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

1 shall at once inform the ~~official having custody of the~~
 2 ~~person arrested. The criminal history record, if any, may~~
 3 ~~be sent to the originating agency.~~ ORIGINATING AGENCY. IF IT
 4 IS DETERMINED THAT THE INDIVIDUAL HAS A CRIMINAL RECORD, THE
 5 STATE REPOSITORY SHALL SEND THE ORIGINATING AGENCY A COPY OF
 6 THE INDIVIDUAL'S COMPLETE CRIMINAL HISTORY RECORD.

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

11 (a) if a court so orders; or

12 (b) upon the request of the individual:

13 (i) if no charges were filed;

14 (ii) if a misdemeanor charge did not result in a
 15 conviction; or

16 (iii) if the individual was found innocent of the
 17 offense charged.

18 Section 7. Records -- form, contents, limits on use.
 19 A criminal justice agency originating initial offense
 20 reports, initial arrest records, bail records, or daily jail
 21 occupancy rosters shall MAY maintain a chronological or
 22 numerical record of these items ~~in addition to any other~~
 23 ~~records.~~ These records may not contain any prior criminal
 24 history record information and may not be used to gain
 25 access to any other public criminal justice information.

1 Section 8. Record preservation. Unless required by
2 federal law, expunging, purging, or destroying of criminal
3 justice information is not required based on the length of
4 time such records are held.

5 Section 9. Procedures to ensure accuracy of criminal
6 history records. In order to ensure complete and accurate
7 criminal history record information:

8 (1) the department of justice shall maintain a
9 centralized state repository of criminal history record
10 information to serve all criminal justice agencies in the
11 state;

12 (2) a court having jurisdiction in a criminal case
13 shall advise the appropriate criminal justice agency
14 authorized in section 6j and the state repository of the
15 results of each formal proceeding in a criminal action prior
16 to and including adjudication within 15 days of any final
17 disposition of the case;

18 (3) DISPOSITIONS RESULTING FROM FORMAL PROCEEDINGS IN
19 A COURT HAVING JURISDICTION IN A CRIMINAL ACTION AGAINST AN
20 INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED AND FINGERPRINTED UNDER
21 [SECTION 6] SHALL BE REPORTED TO THE ORIGINATING AGENCY AND
22 THE STATE REPOSITORY WITHIN 15 DAYS, IF THE DISPOSITIONS CAN
23 READILY BE COLLECTED AND REPORTED THROUGH THE COURT SYSTEM,
24 THE DISPOSITIONS MAY BE SUBMITTED TO THE STATE REPOSITORY BY
25 THE ADMINISTRATIVE OFFICE OF THE COURTS;

1 (3) ~~criminal justice agencies authorized under~~
2 ~~[section 6] AN ORIGINATING AGENCY~~ shall advise the state
3 repository WITHIN 30 DAYS of all arrests, proceedings, and
4 dispositions ~~prior to and including results of adjudication~~
5 ~~within 30 days after final disposition of each criminal~~
6 ~~case~~ CONCERNING THE TERMINATION OF CRIMINAL PROCEEDINGS
7 AGAINST AN INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED AND
8 FINGERPRINTED UNDER [SECTION 6];

9 (4) the department of institutions shall advise the
10 state repository WITHIN 30 DAYS of all changes in custodial
11 status DISPOSITIONS subsequent to conviction within 30 days
12 of such changes OF AN INDIVIDUAL WHO HAS BEEN PHOTOGRAPHED
13 AND FINGERPRINTED UNDER [SECTION 6];

14 (5) each criminal justice agency shall query the state
15 repository prior to dissemination of any criminal history
16 record information to ensure the timeliness of the
17 information. When no final disposition is shown by the state
18 repository records, the state repository shall query the
19 source of the document or other appropriate source for
20 current status. Inquiries shall be made prior to any
21 dissemination except in those cases in which time is of the
22 essence and the repository is technically incapable of
23 responding within the necessary time period. If time is of
24 the essence, the inquiry shall still be made and the
25 response shall be forwarded as soon as it is received.

1 (6) each criminal justice agency shall ensure that all
2 its criminal justice information is complete, accurate, and
3 current; and

4 (7) the department of justice shall promulgate ~~ADOPT~~
5 rules ~~FOR CRIMINAL JUSTICE AGENCIES OTHER THAN THOSE THAT~~
6 ~~ARE PART OF THE JUDICIAL BRANCH OF GOVERNMENT~~ to implement
7 this section. ~~THE DEPARTMENT OF JUSTICE MAY ADOPT RULES FOR~~
8 ~~THE SAME PURPOSE FOR THE JUDICIAL BRANCH OF GOVERNMENT IF~~
9 ~~THE SUPREME COURT CONSENTS TO THE RULES.~~

10 Section 10. Dissemination of public criminal justice
11 information. (1) There are no restrictions on the
12 dissemination of public criminal justice information except
13 for the following:

14 (a) whenever a record or index is compiled by name or
15 universal identifier from a manual or automated system, only
16 information about convictions, deferred prosecutions, or
17 deferred sentences is available to the public.

18 (b) whenever the conviction record reflects only
19 misdemeanors or deferred prosecutions and whenever there are
20 no convictions except for traffic, regulatory, or fish and
21 game offenses for a period of 5 years from the date of the
22 last conviction, no record or index may be disseminated
23 pursuant to subsection (1)(a). However, the original
24 documents are available to the public from the originating
25 criminal justice agency.

1 (2) All public criminal justice information is
2 available from the agency that is the source of the original
3 documents and that is required ~~AUTHORIZED~~ to maintain the
4 documents according to applicable law. These documents shall
5 be open, subject to the restrictions in this section, during
6 the normal business hours of the agency. A reasonable charge
7 may be made by a criminal justice agency for providing a
8 copy of public criminal justice information.

9 Section 11. Dissemination of criminal history record
10 information ~~THAT IS NOT PUBLIC CRIMINAL JUSTICE INFORMATION.~~
11 Criminal history record information may not be disseminated
12 to agencies other than criminal justice agencies except
13 ~~UNLESS:~~

14 ~~(1) THE INFORMATION IS DISSEMINATED~~ with the consent
15 or at the request of the individual about whom it relates
16 according to procedures specified in [sections 19 and 20] or
17 ~~if considered necessary by a district court;~~

18 ~~(2) A DISTRICT COURT CONSIDERS DISSEMINATION~~
19 ~~NECESSARY;~~

20 ~~(3) THE INFORMATION IS DISSEMINATED IN COMPLIANCE WITH~~
21 ~~(SECTION 13); OR~~

22 ~~(4) THE AGENCY RECEIVING THE INFORMATION IS AUTHORIZED~~
23 ~~BY LAW TO RECEIVE IT.~~

24 Section 12. Dissemination of confidential criminal
25 justice information. Dissemination of confidential criminal

1 justice information is restricted to criminal justice
 2 agencies or to those authorized by law to receive it. A
 3 criminal justice agency that accepts confidential criminal
 4 justice information assumes equal responsibility for the
 5 security of such information with the originating agency.
 6 Whenever confidential criminal justice information is
 7 disseminated, it must be designated as confidential.

8 Section 13. Development of statistical information --
 9 agreements as to access. (1) An individual or agency with
 10 the express purpose of developing statistical information
 11 may have access to criminal history record information
 12 pursuant to an agreement with a criminal justice agency. The
 13 agreement shall contain, but need not be limited to, the
 14 following provisions:

15 (a) specific authorization for access to specific
 16 information;

17 (b) a limitation on the use of the information to
 18 research, evaluative, or statistical purposes;

19 (c) assurance of the confidentiality and security of
 20 the information; and

21 (d) sanctions for violations of the agreement or this
 22 section.

23 (2) Proposed agreements and any completed research,
 24 statistical, or evaluative study or product developed from
 25 the use of statistical information is subject to review and

1 approval by the department of justice to ensure compliance
 2 with [this act].

3 Section 14. Criminal justice information system
 4 security. Provisions for the recording, preservation,
 5 dissemination, and management of court records are made by
 6 statute and may be supplemented by supreme court rule. Any
 7 other criminal justice agency shall protect the security of
 8 any criminal justice information system, automated or
 9 manual, under its control by taking reasonable precautions
 10 and establishing procedures to protect the system and data
 11 stored in the system from damage and for the prevention of
 12 and recovery from hazards such as fire, flood, power
 13 failure, and entry into secure areas by unauthorized
 14 persons.

15 Section 15. Automated equipment security. In an
 16 automated criminal justice information system, information
 17 shall be collected, processed, and preserved on a computer
 18 dedicated solely to criminal justice information, except
 19 that, if this is impractical, a central computer may be used
 20 if adequate safeguards are built into the criminal justice
 21 information system to prevent unauthorized inquiry,
 22 modification, or destruction of criminal justice information
 23 in conformity with the current federal regulations in 28
 24 C.F.R. section 20.21(f) or any amendment thereto.

25 Section 16. Computer programming security. Procedures

1 for each automated criminal justice information system shall
 2 assure that the information is secured by the following
 3 programming techniques and security procedures:

4 (1) the assignment of a terminal identification code
 5 to each terminal authorized to access the criminal justice
 6 information system;

7 (2) the assignment of a unique identification number
 8 to each authorized terminal operator, which number must be
 9 used to gain access to the files;

10 (3) the maintenance of a record of each inquiry to
 11 identify the inquiring agency, the program used to make the
 12 inquiry, the date of the inquiry, and the name of the file
 13 being queried;

14 (4) computer programming controls to ensure that each
 15 terminal user can obtain only that information which the
 16 user is authorized to use;

17 (5) creation and use of a safe place for storage of
 18 duplicate computer files;

19 (6) built-in program controls to ensure that each
 20 terminal is limited to the appropriate or authorized
 21 information that can be input, modified, or canceled from
 22 it;

23 (7) destruction or safeguarding of system
 24 documentation and data input INPWI forms; and

25 (8) creation of reports to provide for an audit trail

1 and periodic review of file accessed, modifications, and
 2 deletions. All criminal justice intelligence information
 3 shall be identified as such.

4 Section 17. Manual equipment security. In a manual
 5 criminal justice information system, information shall be
 6 protected as follows:

7 (1) provision of adequate physical security;

8 (2) marking of all criminal justice intelligence
 9 information and precautions against unauthorized copying;
 10 and

11 (3) establishment of a log of each external inquiry to
 12 reflect the identity of the inquirer, the date of inquiry,
 13 and the name of the files being queried.

14 Section 18. Personnel security. Each automated or
 15 manual criminal justice information system, except those
 16 that are or may be maintained by courts of criminal
 17 jurisdiction, shall establish the following procedures to
 18 ensure that personnel security is achieved and maintained:

19 (1) Applicants for employment and persons presently
 20 employed to work with or in a computer center or manual
 21 system that processes criminal justice information are
 22 subject to investigation by the employing agency to
 23 establish their honesty and fitness to handle sensitive
 24 information. Consent to such an investigation may be a
 25 prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 19. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect or transfer-to-any-other-person any criminal history record information maintained about the individual ~~OR TRANSFER~~

~~COPIES OF THAT INFORMATION TO ANY OTHER PERSON~~ upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of ~~COPIES OF~~ criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with [this act].

(3) (a) An individual may request inspection or transfer ~~OF COPIES~~, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy

1 must be clearly marked to indicate that it is for inspection
2 only.

3 (c) An agency employee should be available to answer
4 questions concerning record content. A record of each
5 request to inspect records under this section must be
6 maintained.

7 Section 20. Challenge and correction. (1) After
8 inspection of criminal history record information, an
9 individual may contest the accuracy or completeness, or
10 both, of the information about himself.

11 (2) If the agency maintaining the criminal history
12 record information does not correct it to the individual's
13 satisfaction, the individual may request review and
14 correction by the executive head of the agency.

15 (3) If the requested correction is denied by the head
16 of the agency, the individual may present a challenge to the
17 department of justice.

18 (4) If the agency in charge of the record in question
19 can verify the accuracy of its record by communication with
20 the originating criminal justice agency, it shall do so. If
21 accuracy or completeness cannot be verified and the agency
22 primarily originating the information containing the alleged
23 error or omission is in the state, the individual shall
24 address his challenge to that agency. If information
25 necessary to verify the accuracy or completeness of the

1 record cannot be obtained by the originating agency, it may
2 rely on verified written documents or include the
3 individual's allegation in its records in dissemination
4 until there is a final disposition of the challenge.

5 (5) If the challenge is successful, the agency shall:

6 (a) supply to the individual, if requested, a list of
7 those noncriminal justice agencies which have received
8 copies of the criminal history record information about the
9 individual; and

10 (b) immediately correct its records and notify all
11 criminal justice agencies to which it has given erroneous or
12 incomplete information of these changes.

13 Section 21. Dissemination of copied or inspected
14 records. (1) Criminal justice agencies shall maintain a
15 record of all agencies and individuals to which or whom
16 copies of criminal history record information have been
17 disseminated.

18 (2) A criminal justice agency supplying criminal
19 history record information to an individual upon request is
20 not responsible for the use or secondary dissemination of
21 copied or inspected information and is not required to
22 furnish updated information except upon a subsequent request
23 by the individual.

24 Section 22. Sanctions. The sanctions provided in
25 44-2-205, apply to any knowing or purposeful violation of

1 {this act}.

2 Section 23. Department of justice -- powers. The
3 department of justice may:

4 (1) adopt rules necessary to carry out the purposes of
5 {this act};

6 (2) hear and decide contested cases or challenges that
7 may arise under the provisions of the Montana Administrative
8 Procedure Act;

9 (3) ~~inspect--all--criminal-justice-information--files~~
10 ~~records--and--systems--of--all--criminal--justice--agencies~~
11 CONDUCT AUDITS OF THE CRIMINAL HISTORY RECORD INFORMATION
12 SYSTEMS OF A REPRESENTATIVE SAMPLE OF STATE AND LOCAL
13 CRIMINAL JUSTICE AGENCIES CHOSEN ANNUALLY ON A RANDOM BASIS
14 to determine whether they are in compliance with the
15 provisions of {this act}. The function authorized in this
16 subsection may not be assigned to any subagency that has
17 supervisory authority over any criminal justice information
18 system.

19 Section 24. Court order to enforce compliance. Any
20 person may apply for an order from a district court to
21 enforce compliance with any provision of {this act}.

22 Section 25. Saving clause. This act does not affect
23 rights and duties that matured, penalties that were
24 incurred, or proceedings that were begun before the
25 effective date of this act.

1 Section 26. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 27. Repealer. Sections 44-2-103, 44-2-203, and
8 44-2-204, MCA, are repealed.

-End-

March 17, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 271,
third reading copy, as follows:

1. Page 10, lines 22 and 23.

Strike: "in addition to any other records"