

CHAPTER 169
FORMERLY
SENATE BILL NO. 104

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8601, Title 11 of the Delaware Code as follows:

§ 8601. Purpose.

The purpose of this chapter is to manage and maintain an accurate and efficient criminal justice information system in Delaware consistent with Chapter 85 of this title and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal justice information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

Section 2. Amend § 8602, Title 11 of the Delaware Code as follows:

§ 8602. Definitions.

For the purposes of this chapter:

(1) "Access" means the physical or electronic privilege to view, modify, or make use of criminal justice information, whether direct or indirect. For purposes of this term:

a. "Direct" means access to CJIS whether via authorized and approved DELJIS credentials or an authorized agency portal.

b. "Indirect" means access to criminal justice information, in oral, online or printed form, by an individual without approved DELJIS credentials for direct access.

(2) "Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correction supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage, and dissemination of criminal justice information.

(3) "Authorized agency" means any entity, criminal justice agency, or governmental agency which the Board determines complies with §§ 8610 and 8611 of this title.

(4) "Authorized user" means any employee, intern, extern, contractor, volunteer, or other individual, acting on behalf of an authorized agency, who has been appropriately vetted by the Board and has been granted access to criminal justice information.

(5) "Biographic data" means information about individuals associated with a unique case, and not necessarily connected to identity data. Biographic data does not provide a history of an individual, only information related to a unique case.

(6) "Biometric data" means data derived from one or more intrinsic physical or behavioral traits of humans typically for the purpose of uniquely identifying individuals from within a population. The term includes fingerprints, palm prints, iris scans, and facial recognition data.

(7) "Board" means the Delaware Criminal Justice Information System Board of Managers.

(8) "Case or incident history" means all relevant information gathered about an individual, organization, incident, or combination thereof, arranged so as to serve as an organized record to provide analytic value for a criminal justice agency. In regard to criminal justice information, it is the information about the history of incidents.

(9) "Criminal history record information" has the same meaning as set forth in § 8502 of this title.

(10) "Criminal justice agency" has the same meaning as set forth in § 8502 of this title.

(11) "Criminal justice information" or "CJI" means all Criminal Justice Information System data. The term includes criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

(12) “Criminal Justice Information System” or “CJIS” means the computer hardware, software, and communication network which is managed, operated, and maintained by the Delaware Criminal Justice Information System (DELJIS) for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

(13) “Disposition” includes trial verdicts of guilty or not guilty; nolle prosequis; Attorney General probations; pleas of guilty or nolo contendere; dismissals; findings of incompetence to stand trial, delinquency or nondelinquency, or responsible or not responsible; and the initiation and completion of appellate proceedings.

(14) “Dissemination” means the transmission of criminal justice information, or the confirmation of the existence or nonexistence of such information. The term shall not include any of the following:

a. Internal use of information by an officer or employee of the agency which maintains such information.

b. Transmission of information to the State Bureau of Identification.

c. Transmission of information to a criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings.

d. Transmission of information in response to inquiries from criminal justice agencies.

(15) “Governmental agency” means any agency of the government of the United States or the State of Delaware or any political subdivision thereof. It does not include a private individual, corporation, or other nongovernmental entity.

(16) “Identity history” means textual data that corresponds with an individual's biometric data, providing a history of criminal or civil events for the identified individual.

(17) “Property data” means information about vehicles and property associated with a crime.

(18) “Requesting party” means any entity, criminal justice agency, or governmental agency seeking access to CJIS.

Section 3. Amend § 8603, Title 11 of the Delaware Code as follows:

§ 8603. Board of Managers — Established; purpose; composition; term of office; staff; powers.

(a) The Delaware Criminal Justice Information System Board of Managers is hereby established.

(b) The Board shall establish policy for the development, implementation, and operation of comprehensive data systems in support of the criminal justice system of this State.

Section 4. Amend § 8604, Title 11 of the Delaware Code as follows:

§ 8604. Board of Managers — Duty to ensure compliance with statute.

The Board shall ensure that all authorized agencies collecting, storing, or disseminating criminal justice information and other information concerning crimes and offenders comply with this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, and the rules and regulations promulgated by the Board under § 8605 of this title.

Section 5. Amend § 8606, Title 11 of the Delaware Code as follows:

§ 8606. Office of the Director; function and duties.

(a) *Appointment and duties of Executive Director.* — The Executive Director shall be appointed by and serve at the pleasure of the Board. The duties of the Executive Director shall include:

(1) The employment and supervision of required employees.

(2) The preparation and management of an annual budget, and such other funds as are designated for the development and operation of the Criminal Justice Information System.

(3) Providing such administrative support to the Board as may be necessary.

(4) The preparation of policy or procedure to implement this chapter and Chapter 85 of this title.

(5) Being the Chief Operational Officer of the Criminal Justice Information System.

(6) The preparation of an annual report on the status of the Criminal Justice Information System.

(7) Making and entering into a cooperative agreement, contract, or memorandum of understanding, whenever deemed necessary or desirable to perform the functions of the Criminal Justice Information System and whenever funds are available for such purpose. All necessary legal services shall be provided under Chapter 25 of Title 29.

(b) *Primary functions.*— The primary function of the Office of the Director shall be the assurance of the efficient and reliable development and operation of the hardware, software, and database which comprise the Criminal Justice Information System; thereby, effectively collecting, storing, and disseminating through the automated system, for all authorized users, criminal justice information.

(c) *Duty to provide security.* — The Office of the Director shall provide for automated security as follows:

(1) Provide secure access for all authorized users through the administration of the Delaware Criminal Justice Information System security programs.

(2) Employ effective and technologically adequate software and hardware designs to prevent unauthorized access or modifications to any information contained within the Criminal Justice Information System.

(3) Ensure that access to computer facilities, systems operating environments, data file contents, and system documentation, whether in use or stored in a media library, shall be restricted to authorized agencies and authorized users.

(4) Procedures shall be instituted to assure that all Delaware Justice Information System facilities provide safe and secure record storage.

(5) Procedures shall be instituted to assure that any authorized agency or authorized user shall be responsible for the physical security of criminal justice information, or other such sensitive information, under its control or in its custody, and such information shall be protected from unauthorized access, disclosure, or dissemination.

(6) Direct access to criminal justice information, or other such sensitive information, shall be available only to authorized users essential to the proper operation of the Criminal Justice Information System.

(7) Each authorized user working with, or having access to the Criminal Justice Information System shall be made familiar with the substance and intent of this chapter, Chapter 85 of this title, and any rules and regulations promulgated by the Board under § 8605 of this title.

(d) *Duty to maintain complete and accurate records; performance of an audit.* — The Office of the Director, or such contracted firms as may be employed, shall conduct an audit of the Criminal Justice Information System files and of the agencies accessing the system. The audit will be conducted according to established systems auditing procedures, and other such procedures as the Board may prescribe.

(e) *Duty to provide training.* — The Office of the Director shall assure that training programs are established for all automated systems within the scope of the Criminal Justice Information System and provide for adequate documentation and manuals for the use of such systems. No authorized user will be granted access to criminal justice information without attending minimum training as prescribed by the Board.

(h) *Duty to assure compliance with state criminal justice system; duty to provide effective management.* — The Office of the Director shall have the duty to assure that all Criminal Justice Information System developments shall meet the requirements of the state criminal justice system and its authorized agencies, and provide for the effective management of the development process.

(i) *Duties pursuant to cooperative agreement, contract, or memorandum of understanding.* — The Office of the Director shall perform such duties as the Board deems necessary within the bounds of the Criminal Justice Information System, its management and maintenance, as established through cooperative agreement, contract, or memorandum of understanding.

Section 6. Amend § 8607, Title 11 of the Delaware Code as follows:

§ 8607. Violations and investigations.

All suspected or reported violations of this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be reported to the Office of the Director who shall investigate the reported violation.

Section 7. Amend § 8608, Title 11 of the Delaware Code as follows:

§ 8608. Authorized users.

(a) No individual shall be an authorized user with an authorized agency which has or allows access to criminal justice information without meeting the minimum requirements prescribed by the Board to determine if the individual could endanger the security, privacy, or integrity of such information.

(b) The Board shall initiate or cause to be initiated administrative action leading to the suspension or removal of an authorized user's access if that authorized user violates this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title.

(c) The Board shall establish rules and regulations for resolving appeals by authorized users to the Board.

(d) Nothing in this chapter or in any rule promulgated by the Board under § 8605 of this title shall limit the authority of an authorized agency to deny the appointment, promotion, or transfer of any individual to any position which requires access to criminal justice information.

(e) An authorized user who knowingly or recklessly violates the terms of this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(f) Any individual who is denied access to criminal justice information shall be given a written statement of the reason or reasons therefor by the agency responsible for such action.

Section 8. Amend § 8609, Title 11 of the Delaware Code as follows:

§ 8609 Repealed

Section 9. Amend § 8610, Title 11 of the Delaware Code as follows:

§ 8610. Access to Criminal Justice Information System; conditions.

Access to the Criminal Justice Information System, including computerized criminal justice information, shall be available to a requesting party provided that the requesting party meets all of the following conditions:

(1) Offer written evidence that the public interest in dissemination or access outweighs the security and privacy interests of the person or persons upon whom access is sought, and that access is germane to the mission of the requesting party.

(2) Submit to an application procedure as established by the Board. The application procedure shall identify the specific information being sought.

(3) Have its application approved by the Board. The Board may approve an application in whole, in part, or as modified by the Board. The Board's decision on an application requires a majority vote of the Board.

(4) Enter into an agency agreement as prescribed in §8611 of this title, upon approval of the requesting party's application by the Board.

(5) Bear all costs associated with CJIS access, once granted.

Section 10. Amend Chapter 85 of Title 11 and Chapter 86 of Title 11 of the Delaware Code by transferring § 8514 of Title 11 to Chapter 86 of Title 11 and redesignating it as § 8611 of Title 11, and then as follows:

§ 8611. Agency agreements.

(a) Use of criminal justice information shall be restricted to the purpose for which it was given.

(b) An authorized agency shall not disseminate criminal justice information, except as otherwise provided in Chapter 85 of this title or as required by Delaware law.

(c) An agency agreement shall, at a minimum, do all of the following:

(1) Specifically authorize access to the data or information.

(2) Limit the use of the data or information to purpose for which it was given.

(3) Ensure the security and confidentiality of the data or information consistent with this chapter.

(d) An authorized agency which has entered into an agency agreement, and which knowingly or recklessly violates the terms of that agreement, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. Upon such violation, the agency agreement shall be terminable at the option of the State Bureau of Identification or the Board.

Section 11. Amend Chapter 85, Title 11 of the Delaware Code as follows:

§ 8513. Dissemination of criminal history record information.

(b) Upon application, the Bureau shall, based on the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record, provided that the requesting agency or individual submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of criminal history record information to all of the following:

(1) Individuals and public bodies for any purpose authorized by Delaware state statute or executive order, court rule or decision or order.

(2) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. Said agreement shall embody an agency agreement as prescribed in § 8611 of this title.

(3) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to a specific agreement with a criminal justice agency. Said agreement shall embody an agency agreement as prescribed in § 8611 of this title.

(4) Individuals and agencies for purposes of international travel.

(5) Individuals and agencies required to provide a security clearance for matters of national security.

§ 8513A. Repealed

Approved August 17, 2015