

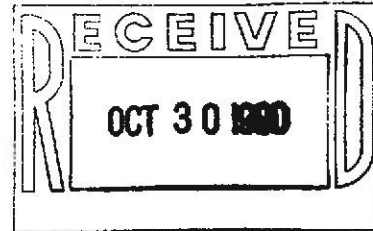
COMMONWEALTH OF PENNSYLVANIA



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October 30, 1990



Thomas R. Caltagirone, Chairman
House Judiciary Committee
106 South Office Building
Harrisburg, PA 17120

Re: SB 635
Criminal History Record Information Act

Dear Representative Caltagirone:

I have been informed that a public hearing has been scheduled for SB 635 on Thursday, October 31, 1990. Because my duties as Secretary of the Board of Pardons prevent me from attending, I would like to offer my comments on the significance of this legislation. I have great interest in SB 635 as it relates to the future of the Criminal History Record Information Act (CHRIA), Section 9106, specifically "Prohibited Information" which stipulates that intelligence, investigative, and treatment information may not be collected in a central repository nor in any automated information system maintained by a Pennsylvania criminal justice agency.

Please consider this a professional opinion which is based on twenty years of experience in the Pennsylvania criminal justice system, first with the Department of Corrections for ten years and since 1980 as the Secretary of the Pennsylvania Board of Pardons. I do not speak for the Lieutenant Governor who serves as Chairman of the Board of Pardons, the Attorney General, who is a member of the Board of Pardons, or the other three members of the Pardons Board. The following is strictly my personal/professional opinion as a criminal justice practitioner on the subjects of CHRIA and SB 635.

My professional concern is the need for background information retrieval to assess criminals after the fact of the occurrence of crimes. I do not speak for law enforcement whose informational needs are before the fact of crimes occurring or before crimes are solved. As the Pardons Board administrator I am responsible for collecting, compiling, and synthesizing criminal background information on clemency applicants. The Board of Pardons assembles all three types of what CHRIA defines as "prohibited information" (intelligence, investigative, and treatment) as part of its background investigations on clemency (pardon and commutation) applicants. Since 1874 when the Board was created, prison summaries (mostly "treatment information") have been prepared by state correctional institutions and forwarded to the Pardons Board for all commutation of sentence applicants. Since 1941 the Pennsylvania Board of Probation and Parole has been conducting background investigations for the Board of Pardons called "facts of crime investigations" (ie "investigative information") on every clemency applicant, and present status investigations ("intelligence information") on every pardon applicant.

All of the investigative information must be mailed or delivered to the Board of Pardons office in Harrisburg. If such information could be stored in automated systems, it could be transmitted to the Board of Pardons office electronically on dedicated phone lines that are not dial-up and cannot be hacked into. This ability would take the Commonwealth out of the dark ages and put us where we should be, technologically speaking. So long as Section 9106 of CHRIA exists, we (I refer primarily to Pardons, Parole, and Corrections) cannot accomplish this. Caseloads are rising so rapidly that we must be able to retrieve and process more information faster to keep up with the investigative demand.

When Pennsylvania criminal justice agencies first began to use computers, each agency constructed its own intra-agency computer system with no attention to the possible need in the future to share information inter-agency (via computers). This was an honest mistake because "networking" technology did not exist then. Consequently each agency has its own computer hardware ranging from large mainframe operations to personal computers. No multiagency planning was done even between the larger criminal justice agencies so that each agency's effort was mutually exclusive of each of the others. No coordination or planning for future data sharing took place. For example, the hardware and software used by the Department of Corrections and the Board of Probation and Parole are incompatible.

Computer technology now permits networking of data stored in databases. With proper hardware and software there is less and less data sharing incompatibility as technology improves. Many other states' criminal justice computer systems (i.e. Maryland) were designed initially so that all of the major agency databases were compatible. Such a design permits Corrections to capture Parole data via computer if necessary and vice versa.

The Commonwealth of Pennsylvania has been in the dark ages regarding this inter-criminal justice agency information sharing (networking) for entirely too long. Why? The first reason is as I have described above. We never planned to network computer data and never coordinated our efforts between agencies in the first place. That part is our fault. We started doing something about it approximately four years ago when the Pennsylvania Commission on Crime and Delinquency convened all of the agency computer experts. At the moment we are on the verge of being able to physically network our hardware. The anachronism for the network is "JANET" (Justice Assistance Network). However, CHRIA has prohibited our putting investigative, intelligence, and treatment data into computer databases since 1979. Therefore, even if all of Pennsylvania's criminal justice databases can begin to "talk" to each other it will still be illegal to store the data (investigative, intelligence, and treatment).

Why should the agencies store and share information which is not prohibited by Section 9106 of CHRIA in automated systems (databases) and be unable to store and share intelligence, investigative, and treatment information in computers? Our only option is to continue to store intelligence, investigative, and treatment information on hard paper locked up in file cabinets. In my opinion, it is easier for an "information burglar" to break open a file cabinet and steal hard paper than it is to break through the computer security which requires user identification and password codes. It is also virtually impossible for a computer "hacker" to tap into a dedicated phone line to usurp data from a network like JANET.

Countless examples exist of the information systems limitations we in the Pennsylvania criminal justice system live with daily. I am aware that some legislators fear the "Big Brother" scenario if any or some criminal information of the three prohibited types are automated in computers. I am also sensitive to the "War Games" type of fear regarding hacking into data systems. I read the transcript from April 26, 1989 Senate discussion on SB 635. A few Senators expressed concern about possible "abuses" of this kind of computer information by law enforcement investigators as an invasion of privacy. I personally believe that their concerns are unwarranted.

I strongly urge you to continue to support legislation to amend Section 9106 "Prohibited Information". If the General Assembly chooses to amend it, I support the current language found in SB 635. We must be able to use our technology to keep up with the crush of overwhelming caseloads. We must be able to collect all possible data from all possible sources as quickly as possible in the event of hostage taking, escape, commission of new crime, bail granting decision making, clemency decision making, etc. For too long, too many mutually exclusive yet somewhat different in content, files have existed on the same criminals in several agencies. We are choking ourselves to death with too much redundant paper! If we can automate these three kinds of information, we can take a quantum leap toward adequate management of criminal history information. I am aware that CHRIA has always permitted the automation of information "indices". In my opinion, the storing of indices is not enough and Section 9106 should be deleted and/or amended.

Please do not hesitate to contact me if you wish me to provide additional information about this subject.

Sincerely,



David S. Bayne, Secretary
Board of Pardons

Honorable H. William DeWeese
Honorable Allan J. Kukovich
Honorable Nicholas B. Moehlmann
Honorable Stewart J. Greenleaf
Honorable Thomas Lamb, Secretary for Legislative Affairs
Mr. John Hohenwarter, Deputy Secretary for Legislative Affairs