

An Act to Amend the Laws Relating to Criminal History Record Information and Intelligence and Investigative Information
 Proposed to be submitted by the Criminal Law Advisory Commission
 Part 2

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| <p>Sec. 3 16 MRSA c. 3, sub-c 11 is enacted to read</p> <p align="center"><u>SUBCHAPTER 11</u></p> <p align="center"><u>INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT</u></p> <p><u>§671. Definitions</u></p> <p><u>As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.</u></p> <p><u>1. Administration of criminal justice.</u> <u>“Administration of criminal justice” means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected crimes. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of criminal justice.</u></p> <p><u>2. Administration of civil justice.</u> <u>“Administration of civil justice” means activities relating to the anticipation, prevention, detection, monitoring or investigation of known or suspected civil violations, traffic infractions, juvenile crimes and prospective and pending civil actions. It</u></p> | <p>§611 1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.</p> | <p><i>New</i></p> |

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| <p><u>includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of civil justice.</u></p> <p>3. Criminal justice agency. <u>“Criminal justice agency” means a government agency or any subunit of a government agency that performs the administration of criminal justice or the administration of civil justice pursuant to a statute or executive order. Maine courts and courts in any other jurisdiction are considered criminal justice agencies. “Criminal justice agency” also includes any equivalent agency at any level of the Canadian government and any federally recognized Indian tribe.</u></p> <p>4. Dissemination. <u>“Dissemination” means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.</u></p> <p>5. Executive order. <u>“Executive order” means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.</u></p> <p>6. Intelligence and investigative information. <u>“Intelligence and investigative information” means information of record collected by a criminal justice agency or at the direction of a criminal justice agency while performing the administration of criminal justice</u></p> | <p>§611 4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.</p> <p>§611 6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.</p> <p>§611 7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.</p> <p>§611 8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity,</p> | |

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| <p><u>or the administration of civil justice. The term also includes information of record concerning security plans and procedures and investigative techniques and procedures prepared or collected by a criminal justice agency or another agency. "Intelligence and investigative information" does not include criminal history record information as defined in section 652, and does not include information of record collected to anticipate, prevent or monitor possible juvenile crime activity or information compiled in the course of investigation of known or suspected juvenile crimes to the extent addressed in the Maine Juvenile Code.</u></p> <p><u>7. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and America Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.</u></p> <p><u>8. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.</u></p> <p><u>§672. Application</u></p> <p><u>This subchapter applies to a record that is or contains intelligence and investigative information and that is prepared by, prepared at the direction of or kept in the custody of any Maine criminal justice agency.</u></p> | <p>including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.</p> <p>§611 11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.</p> <p>§611 12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.</p> | |

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| <p><u>§673. Limitation on dissemination of intelligence and investigative information</u></p> <p><u>Except as provided in section 674, a record that contains intelligence and investigative information is confidential and may not be disseminated to any person or public or private entity if there is a reasonable possibility that public release or inspection of the report or record would:</u></p> | <p>§614 1. Limitation on dissemination of intelligence and investigative information. Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources, the Department of Inland Fisheries and Wildlife or the Department of the Secretary of State, Bureau of Motor Vehicles, office of investigations (<i>added by PL 2011, c. 356, effective September 28, 2011</i>); or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson; or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty (<i>added by PL 2011, c. 210, effective September 28, 2011</i>) are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:</p> | <p><i>The list of agencies is not needed because of new §672</i></p> |
| <p><u>1. Interfere. Interfere with law enforcement proceedings relating to crimes, civil violations, traffic infractions, juvenile crimes or civil actions;</u></p> | <p>A. Interfere with law enforcement proceedings;</p> | |

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| <p><u>2. Result in dissemination of prejudicial information.</u> <u>Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;</u></p> | <p>B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;</p> | |
| <p><u>3. Constitute an invasion of privacy.</u> <u>Constitute an unwarranted invasion of personal privacy;</u></p> | <p>C. Constitute an unwarranted invasion of personal privacy;</p> | |
| <p><u>4. Disclose confidential source.</u> <u>Disclose the identity of a confidential source;</u></p> | <p>D. Disclose the identity of a confidential source;</p> | |
| <p><u>5. Disclose confidential information.</u> <u>Disclose confidential information furnished only by the confidential source;</u></p> | <p>E. Disclose confidential information furnished only by the confidential source;</p> | |
| <p><u>6. Disclose trade secrets.</u> <u>Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;</u></p> | <p>F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;</p> | |
| <p><u>7. Disclose investigative techniques, security plans.</u> <u>Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;</u></p> | <p>G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;</p> | |
| <p><u>8. Endanger law enforcement or others.</u> <u>Endanger the life or physical safety of any individual, including law enforcement personnel;</u></p> | <p>H. Endanger the life or physical safety of any individual, including law enforcement personnel;</p> | |

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| <p><u>9. Disclose arbitration or mediation information.</u> <u>Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;</u></p> | <p>I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;</p> | |
| <p><u>10. Statutorily confidential information.</u> <u>Disclose information designated confidential by another statute; or</u></p> | <p>J. Disclose information designated confidential by some other statute; or</p> | |
| <p><u>11. Identify sources of consumer or antitrust complaints.</u> <u>Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.</u></p> | <p>K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.</p> | |
| <p><u>§674. Exceptions</u></p> <p><u>Nothing in this subchapter precludes dissemination of intelligence and investigative information by a Maine criminal justice agency to:</u></p> <p><u>1. Another criminal justice agency.</u> <u>Another criminal justice agency;</u></p> <p><u>2. A government agency or subunit statutorily responsible for investigating child or adult abuse, neglect or exploitation.</u> <u>A government agency or subunit of a government agency that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children [under Title 22, chapter 1071] or incapacitated or dependent adults [under Title 22, chapter 958-A] for use in the investigation of suspected abuse, neglect or exploitation, subject to reasonable limitations to protect the interests</u></p> | <p>§614 3. Exceptions. Nothing in this section precludes dissemination of intelligence and investigative information to:</p> <p>A. Another criminal justice agency;</p> <p>B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;</p> | <p><i>Limited disclosure</i></p> |

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| <p><u>described in section 673;</u></p> <p><u>3. An accused person or that person's agent or attorney. A person accused of a crime or that person's agent or attorney for trial purposes if authorized by:</u></p> <p><u>A. The responsible prosecutorial office or prosecutor; or</u></p> <p><u>B. A court rule or court order.</u></p> | <p>C. An accused person or that person's agent or attorney if authorized by:</p> <p>(1) The district attorney for the district in which that accused person is to be tried;</p> <p>(2) A rule or ruling of a court of this State or of the United States; or</p> <p>(3) The Attorney General;</p> | |
| <p><u>As used in this subsection "agent" means a licensed private investigator, an expert witness, or a parent, foster parent or guardian if the accused person has not attained 18 years of age;</u></p> <p><u>4. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney, subject to reasonable limitations to protect the interests described in section 673. As used in this subsection "agent" means a licensed private investigator, or immediate family if due to death, age, physical or mental disease, disorder or defect, the victim cannot realistically act in the victim's own behalf;</u></p> <p><u>5. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as</u></p> | <p>D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; or</p> <p>E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice</p> | |

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| <p><u>defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in section 673. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:</u></p> | <p>agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:</p> | |
| <p><u>A. Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;</u></p> | <p>(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;</p> | |
| <p><u>B. Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;</u></p> | <p>(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;</p> | |
| <p><u>C. Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;</u></p> | <p>(3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;</p> | |
| <p><u>D. Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;</u></p> | <p>(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;</p> | |
| <p><u>E. Permit the criminal justice agency to</u></p> | <p>(5) Permit the criminal justice</p> | |

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| <p><u>perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this subsection;</u></p> | <p>agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;</p> | |
| <p><u>F. Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;</u></p> | <p>(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;</p> | |
| <p><u>G. Permit a criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this subsection; and</u></p> | <p>(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and</p> | |
| <p><u>H. Provide sanctions for any violations of this subsection.</u></p> | <p>(8) Provide sanctions for any violations of this paragraph.</p> | |
| <p><u>The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this subsection; or</u></p> | <p>The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.</p> | |

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| <i>ALTERNATIVE A</i> | | |
| <p><u>6. A government agency or subunit statutorily responsible for licensing entities or individuals that provide healthcare or social services.</u> A government agency or subunit of a government agency that pursuant to statute is responsible for licensing entities or individuals that provide healthcare or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.</p> | <p>B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults; (added by PL 2011, c. 52, effective July 1, 2011)</p> | <p><i>Question (not for RTK AC) about whether to write this exception broadly to cover just healthcare and social services providers</i></p> |
| <i>ALTERNATIVE B</i> | | |
| <p><u>6. A government agency or subunit statutorily responsible for licensing individuals who engage in a particular occupation or social services.</u> A government agency or subunit of a government agency that pursuant to statute is responsible for licensing individuals who engage in a particular occupation or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 673.</p> | | <p><i>or all licensed occupations</i></p> |
| <p>§ ____. Prohibition against release of identifying information of those providing information as to cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.</p> | <p>1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.</p> | <p><i>Move to Title 7 with Animal Welfare/Animal Cruelty statutes</i></p> |

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| <p><i>Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. CLAC believes this provision, making confidential identifying information under these circumstances, more properly belongs as part of a Department statute expressly addressing persons being encouraged to provide information to the Department pertaining to criminal or civil cruelty to animals.</i></p> | | |
| <p><u>§675. Restriction on use of disseminated intelligence and investigative information</u></p> <p><u>Intelligence and investigative information that is disseminated to a person or public or private entity that is not a criminal justice agency under section 671 may be used solely for the purpose for which it was disseminated and may not be disseminated further.</u></p> | | |
| <p><u>§ 676. Confirming existence or nonexistence of intelligence and investigative information</u></p> <p><u>Except as provided in section 673 and 674, a criminal justice agency to whom this subchapter applies may not confirm the existence or nonexistence of intelligence and investigative information to any person or public or private entity that is not eligible to receive the information itself.</u></p> | | |
| <p><u>§677. No right to access or review</u></p> | <p>§620. Right to access and review</p> | |

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| <p><u>A person who is the subject of intelligence and investigative information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.</u></p> <p><u>§ 678. Unlawful dissemination of intelligence and investigative information</u></p> <p><u>1. Offense. A person is guilty of unlawful dissemination of intelligence and investigative information if the person intentionally disseminates intelligence and investigative information knowing it to be in violation of any of the provisions of this subchapter.</u></p> <p><u>2. Classification. Unlawful dissemination of intelligence and investigative information is a Class E crime.</u></p> | <p>1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.</p> <p>§614 4. Unlawful dissemination of reports or records that contain intelligence and investigative information. A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.</p> | <p></p> <p>G:\STUDIES 2011\Right to Know Advisory Committee\CHRIA\III sbs 11-7-11.doc (11/7/2011 12:04:00 PM)</p> |