

GOVERNMENT OF AMERICAN SAMOA
OFFICE OF THE GOVERNOR
PAGO PAGO, AMERICAN SAMOA 96799

October 3, 1977

EXECUTIVE ORDER NO. 5-1977

THIS ORDER, WHICH SUPERSEDES EXECUTIVE ORDER NO. 4-1977, DATED
MAY 19, 1977, PROVIDES REGULATIONS WHICH CONCERN THE PRIVACY
AND SECURITY OF CRIMINAL HISTORY RECORDS

I. POLICY.

It is the Policy of the Government of American Samoa to provide complete and accurate criminal history information to those agencies and persons with an established need. The use of such information shall be confined to such purposes as established by law, court rule or executive order.

II. DEFINITIONS.

"Criminal History Record Information" means information contained on records collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, which provide individual identification of involvement in the criminal justice system (as an alleged or convicted felon or misdemeanant) except:

1. Poster, announcements or lists for identifying or apprehending fugitives or wanted persons;
2. Original records of entry maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are accessed solely on a chronological basis.
3. Court records of public judicial proceedings. This exception covers both manual and automated files, if such files are solely within the management and control of the court system.

4. Published Court or administrator opinions of public judicial, administrator or legislative proceedings.
5. Records of non-serious traffic offenses, which include violations of the territory's motor vehicle code except: leaving the scene of an accident; driving while under the influence of alcohol, other drug or narcotic; reckless driving; and vehicular homicide.
6. Records of any serious or non-serious traffic offenses maintained by the Department of Public Safety, Office of Motor Vehicles or any other commission or office for the purpose of regulating the issuance, suspension, revocation or renewal of drivers' or other operators' licenses.
7. Announcements of executive clemency.

Criminal history record information may be disseminated only in the manner and to the persons authorized by the Department of Justice Regulations* and this order. In particular, nothing in the Regulations or Order prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation; the apprehension, arrest, release or prosecution of an individual; the adjudication of charges; or the correctional status of an individual when the disclosure of such information is made at a time reasonably contemporaneous with the event to which the information relates or discloses the current status of an individual.

"Complaint, Victim and Witness Record Information" means information contained on records of criminal justice agencies identifying persons who have complained of or been victimized by conduct alleged to be a crime or delinquent act, or who have witnessed or allegedly witnessed events relevant to the proof of occurrence of or determining responsibility for a criminal or delinquent act.

"Criminal Justice Agency" means: (1) Courts; or (2) a government agency or a sub-unit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part (ordinarily more than 50%) of its annual budget to the administration of criminal justice.

"The Administration of Criminal Justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.

"Non-conviction Data" consists of all criminal history record information relating to an incident which has not lead to a conviction

*Title 28-29 Criminal Justice Information
Systems, Federal Register Vol. 40,
No. 98, pp 22114-22119.

or other disposition adverse to the subject and for which proceedings are no longer actively pending. "Conviction or other disposition adverse to the subject" means any disposition of charges except a decision not to prosecute, a dismissal or acquittal; provided, however, that a dismissal occurring after a period of probation, suspension or deferral of sentence shall be treated as a disposition adverse to the subject. There shall be a rebuttable presumption that proceedings are no longer pending if more than one year has elapsed since arrest, citation or service of warrant and no disposition has been entered.

"Disposition" means the formal conclusion of a criminal proceeding at whatever state it occurs in the criminal justice system. The term includes police dispositions such as decisions not to refer charges, prosecutor dispositions such as decisions not to file an information; court dispositions such as dismissals, acquittals, deferrals, and convictions; sentences; appellate division decisions reversing, modifying or affirming a trial division disposition; and "corrections dispositions" such as the granting of parole, completion of probation, release from supervision, pardon and restoration of civil rights.

"Dissemination" is disclosing criminal history record information, or disclosing the absence of a criminal record, to any person or agency outside the person or agency possessing the information, subject to the following exceptions:

1. When criminal justice agencies jointly participate in or contract with a record keeping service or the Department of Administrative Services as an alternative to maintaining separate internal records of criminal offenders, the furnishing of information to the record keeping service or department, or to personnel of one of the participating agencies, is not a "dissemination";
2. The furnishing of information by one criminal justice agency to another for the purpose of processing a matter through the criminal justice system (such as a police department providing information to a prosecutor for use in preparing a charge) is not a "dissemination";
3. The reporting of an event to a record keeping agency is not a dissemination. Individuals within an agency maintaining criminal history record information may refer to it for the purpose of the administration of criminal justice without this constituting a "dissemination".

"Victim of Criminal Acts" nothing in this executive order will prevent criminal justice agencies from the dissemination of conviction or non-conviction data to victims of criminal acts when the purpose of such dissemination is civil recovery by the victim or his successors in interest.

III. CENTRAL RECORDS REPOSITORY, RESPONSIBILITIES.

1. The Records Section of the Office of Public Safety, Territorial Police shall be responsible for the storage of records relative to the

criminal arrest of persons within the Territory of American Samoa.

2. Territorial Police shall retain appropriate identification records on all persons arrested for crimes within the territory. Such criminal history information shall be retained subject to retention schedules approved by the Commissioner of Public Safety.

3. It shall be the responsibility of all agencies which are involved in the processing of criminal offenders to report dispositions to the Records Section, Territorial Police within 10 days of such disposition. Such reports shall be on forms supplied by the Police.

4. Every year the Territorial Police shall audit their criminal history files for disposition. In those instances where no disposition has been received for a period of nine months, a list will be prepared. The list will be forwarded to the appropriate criminal justice agencies. Agencies receiving such lists shall immediately report dispositions to the Territorial Police.

5. The principal officer of any holding or correctional facility will report all persons placed in or released from his facility within 72 hours.

IV. INDIVIDUAL RIGHT OF REVIEW.

1. Any individual upon satisfactory proof of his identity may review his criminal history file. Such review will be limited to information relative to charges and dispositions commonly called the rap sheet. Such requests shall be on a form furnished by the Territorial Police.

2. Any individual may be assisted in this inspection by his attorney. If language difficulties exist the individual may be assisted by any person of his choice provided he sign a waiver giving this person permission to act in his behalf.

3. Persons requesting an inspection of their criminal history records may be fingerprinted at the discretion of the police for identification purposes.

4. A person may request a copy of his criminal history record for a reasonable fee. Such fee shall be established by the Commissioner of Public Safety.

5. Request for inspections of criminal history records by citizens shall only be permitted during the hours of 8:00 A.M. and 4:00 P.M., Saturday, Sunday and holidays excluded.

6. Challenges by a citizen to the accuracy of his record shall be in writing. Challenges shall be resolved by the Chief of Police or Commissioner of Public Safety. Any corrections approved shall be made promptly. Prompt corrections shall be made in any information previously disseminated.

V. DISSEMINATION.

1. Non-conviction criminal history information shall be disseminated only to other criminal justice agencies with the following exceptions:

- (1) Agencies entitled to such information by law.
- (2) Agencies entitled to such information by presidential or gubernatorial executive orders.
- (3) Any notation of arrest in a criminal history file which after 12 months has no disposition shall be considered non-conviction information.

2. The Commissioner of Public Safety shall establish rules for the release of conviction data. Such release shall be based on reasonableness of the request or public interest.

3. An audit trail shall be established for all criminal history information disseminated.

Nothing in this order shall restrict the court from dissemination of criminal history information by court rule or order.

VI. SECURITY.

1. All criminal history records shall be maintained in a secured area. Such records shall not be stored in areas where the public has access.

JUVENILE HISTORY INFORMATION

I. DEFINITIONS.

"Juvenile Record Information" means juvenile history record information and juvenile diagnostic and correctional treatment records, as defined below.

"Juvenile History Record Information" means information on individuals contained in official juvenile justice agency files recording: allegations of facts or circumstances pertaining to a person which have made, or legally could make, that person the subject of a court petition for delinquency or dependency; law enforcement agency contacts; arrests; probation or parole violations; and all juvenile dispositions.

"Juvenile Diagnostic and Correctional Treatment Records" (sometimes colloquially referred to as "social history") means all information, other than juvenile history record information, gathered by juvenile justice agencies in connection with recommending, developing, and implementing disposition and treatment programs for individual juveniles.

"Juvenile Justice Agency" means the office of the juvenile commissioner of the High Court and any public agency that performs activities which are part of the administration of juvenile justice pursuant to statute, executive order, or administrative regulation, and any private agency which contracts with a public agency to perform services which constitute the administration of juvenile justice.

"Administration of Juvenile Justice" means performance of any of the following activities: detection, investigation, apprehension, detention, pre-hearing release, prosecution, adjudication, and correctional supervision, treatment, or rehabilitation of individuals in connection with allegations or established facts relevant to delinquency or dependency as defined by law.

"Juvenile Disposition" means information disclosing that an interim or final conclusion of a specific juvenile proceeding has been reached by a juvenile justice agency. Juvenile dispositions shall include, but not be limited to: release, release to parent or custodian, placement on formal or informal probation, referral to a youth service office or other agencies performing diversion functions, placement, custodial supervision, and commitment.

"Dissemination" means disclosing juvenile record information, or disclosing the absence of a juvenile record, to any person or agency outside the person or agency possessing the information, subject to the following exceptions:

1. When juvenile justice agencies jointly participate in or contract with a record-keeping service or department as an alternative to maintaining separate internal records of juveniles, the furnishing of information by the record-keeping service or department to personnel of one of the participating agencies is not a dissemination;
2. The furnishing of information by one juvenile justice agency to another for the purpose of processing a matter through the juvenile justice system (such as the territorial police providing information to an intake counselor for use in preparing a petition) is not a dissemination;
3. The reporting of an event to a record-keeping agency is not a dissemination. Individuals within an agency maintaining juvenile record information may refer to it for the purpose of the administration of juvenile justice without this constituting a dissemination. However, multi-functional agencies should establish internal policies and rules which limit the availability of juvenile record information within the agency and which require the recording of uses of juvenile record information by personnel whose access thereto is for the purpose of performing a function other than the specific one for which the information was initially collected.

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3. The reporting of an event to a record-keeping agency is not a dissemination. Individuals within an agency maintaining juvenile record information may refer to it for the purpose of the administration of juvenile justice without this constituting a dissemination. However, multi-functional agencies shall establish internal policies and rules which limit the availability of juvenile record information within the agency and which require the recording of uses of juvenile record information by personnel whose access thereto is for the purpose of performing a function other than the specific use for which the information was initially collected.

II. COMPLETENESS AND ACCURACY.

1. A juvenile record shall be considered complete when it accurately reflects the organizations transaction relative to the juvenile.

III. AUDIT.

1. Each criminal justice agency which maintains juvenile history information shall yearly review such information for accuracy and completeness.

IV. INDIVIDUAL RIGHTS OF REVIEW.

1. The right of review of juvenile records shall be the same as those of adults. The review shall consist of date and type of transaction or charges.

V. DISSEMINATION.

1. Juvenile history information shall not be disseminated except for purposes of the administration of criminal justice or where there is a specific law or executive order authorizing such dissemination.

2. Nothing in this executive order will prevent criminal justice agencies from the dissemination of information to victims of criminal or delinquent acts when the purpose of such dissemination is civil recovery by the victim or his successors in interest.

VI. SECURITY.

1. Juvenile history information shall be kept in a secure place not open to general public access.

VII. RESEARCH.

Nothing in this order shall prevent access to criminal history or juvenile history information for bonafide research purposes. Reports prepared from such research shall not identify persons individually. Researchers must agree in writing to maintain the confidentiality and security of such information. Researchers must accept in writing all civil or criminal sanctions for failure to comply with these obligations.

VIII. COMPLAINT PROCEDURE.

Any citizen may report in writing a violation of the provisions of this executive order to the Office of the Governor or his appointed delegate. Violations of this executive order brought to the attention of a government agency shall be forwarded in writing to the Office of the Governor or his appointed delegate.

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IX. PENALTY.

Persons who violate the regulations prescribed in this executive order are subject to any of the following penalties or any combination of those penalties.

1. Letter of reprimand.
2. Suspension without pay.
3. Dismissal with cause.
4. A fine not to exceed \$500.



H. REX LEE
Governor of American Samoa