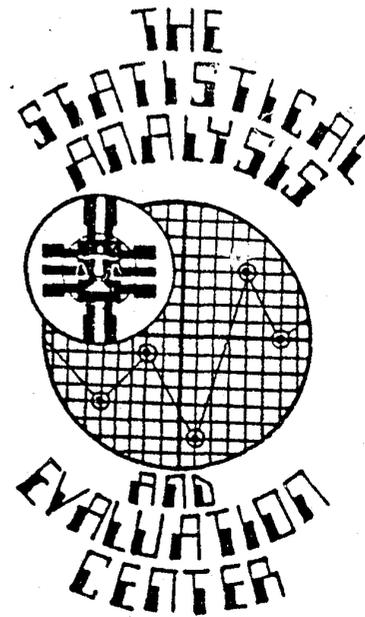


CRIMINAL JUSTICE INFORMATION
PRIVACY AND SECURITY
COOKBOOK

59310



BRUCE KING, GOVERNOR
DR. CHARLES E. BECKNELL
SECRETARY



UNITED STATES DEPARTMENT OF JUSTICE
 LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
 NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE
 NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE

WASHINGTON, D.C. 20531

Oct. 18, 1979

State Law Enforcement and Juvenile
 Delinquency Planning Agency
 Office of the Governor
 412 Kamamalu Bldg.
~~250 S. King Street~~ 1010 ~~Alaui St.~~
 Honolulu, HI 96813

*Possible ASL
 change.*

Dear Sir or Madam:

The National Criminal Justice Reference Service (NCJRS), an international information clearinghouse serving the law enforcement and criminal justice community, recently received a copy of the following document:

State of Hawaii - Juvenile Justice Plan, 1974

As the document does not appear to be of archival quality, we request your help. In order for the document to be entered into the NCJRS computerized bibliographic data base, the following action is required:

- Our copy of the document cited above is defaced and/or illegible. Please forward a clear and legible replacement copy to the address listed below.
- Our copy of the document cited above is missing page(s) 68-69. Please forward clear and legible replacement page(s) to the address listed below.
- Our copy of the document cited above is a draft. Please forward the final version when it becomes available to the following address:

*10/26/79
 encl. 1-2*

NCJRS
 Acquisition Department
 Temporary Processing Division
 Box 6000
 Rockville, MD 20850

We would appreciate being notified if no action is possible at this time.

Thank you in advance for your time and assistance in this matter.

Sincerely yours,

Christine Lundy

Christine Lundy
 Acquisition Department
 (301) 468-2400

CL:kn

CRIMINAL JUSTICE INFORMATION
PRIVACY AND SECURITY
COOKBOOK

NCJRS

JUL 16 1979

ACQUISITIONS

Prepared by Staff of
Statistical Analysis and Evaluation Center
Criminal Justice Department

March, 1979

PREFACE

This is a "cookbook" to be used by state and local agencies as they try to determine how they must respond to privacy and security laws and regulations. No agency is expected to know the answers to questions posed by the cookbook before working through each part; it is modular in design and should allow each user-agency to learn the answers that apply to its specific situation.

Agencies using this cookbook should also note that, while the regulations and statutes referred to are either quoted directly or paraphrased closely, interpretations here do not necessarily carry legal weight. They should be used as a familiarization device and a guide for further action. Regulations and statutes included here are current as of March, 1979. . Corrections will be published as inserts at appropriate points in the future.

Here is how the cookbook works:

1. Review the first two (2) parts of the cookbook ("Do You Know Why Information is Regulated?" and "Do You Know Under What Authority Information is Regulated?") to gain an appreciation for the background of privacy and security laws.
2. Complete each checklist in the third part of the cookbook ("Do You Know What Types of Information are and Whether or Not Your Agency is Regulated?"); there is one checklist for each law or set of regulations included in the cookbook.

3. Turn to the fourth part of the cookbook ("If You Are Regulated, Do You Know What You Must Do?") and read those regulations or laws that your checklist work indicates are applicable to your agency.

4. If you need further information or assistance in implementing privacy and security regulations, please contact the Statistical Analysis Center, Criminal Justice Department, 113 Washington Ave., Santa Fe, New Mexico 87501, (505) 827-5222.

CONTENTS

Do You Know Why Information is Regulated? 1

Do You Know Under What Authority Information is Regulated? 3

Do You Know What Types of Information Are and Whether or Not
Your Agency is Regulated? 4

If You are Regulated, Do You Know What You Must Do? 18

Do You Know Why Information is Regulated?

It would seem that one of the major functions of government today is to collect data on various activities within society. Indeed, society itself is becoming more and more data-centered; society increasingly depends for its proper functioning on the collection of data and its transformation into useful information.

This is particularly true in the areas of government and society that relate to criminal justice. Public organizations responsible for law enforcement, adjudication, and provision of correctional services thrive on a steady diet of data. These organizations require data to determine, often with assistance from research organizations, the effectiveness of their services and to anticipate where their services should be directed next. The public has every right to expect these organizations to maximize their value to society in every manner feasible, including use of criminal justice data.

Members of the public also have other rights that bear on this issue. First, in our free society, the public has a right to know what its governmental agencies are doing, for what reasons, and to whom. But, second, those members of the public who become involved with society's criminal justice complex have certain rights to privacy. To complicate matters even further, individual rights to privacy vary according to the degree of anti-social behavior committed by the individual (as determined by the judicial components of the criminal justice complex) and according to the age of the individual.

It is this complex situation that the privacy and security laws and regulations promulgated by the federal and state governments attempt to encompass. Together, they attempt to balance the individual's right to privacy against the public's right to know against the agencies' needs for feedback. Unfortunately, the results of the balancing act sometimes became fully as complicated as the problems to be solved.

This pamphlet is an effort by the Statistical Analysis and Evaluation Center of the New Mexico Criminal Justice Department to untangle the privacy and security laws and regulations to which public agencies are subject. The pamphlet is modular in design, and should allow an agency to focus only on those regulations which it must follow. Other regulations may be ignored or perused solely to satisfy curiosity.

The following questions are asked in consecutive sections within the pamphlet; we hope that, upon completion, the reader will be able to answer the questions for himself:

- Do you know why information is regulated?
- Do you know under what authority it is regulated?
- Do you know what types of information are and whether or not your agency is regulated?
- If you are regulated, do you know what you must do?

Do You Know Under What Authority Information is Regulated?

Listed below are the federal regulations and state statutes under which information oriented toward criminal justice is regulated:

1. Title 28, Code of Federal Regulations, Part 20B
2. Title 28, Code of Federal Regulations, Part 20C
3. Title 28, Code of Federal Regulations, Part 22
4. New Mexico Statutes Relating to Public Records
 - Chapter 14, Article 2, Inspection of Public Records (NMSA 14-2-1 to 14-2-3, 1978 Comp.)
 - Chapter 14, Article 3, Public Records, (NMSA 14-3-1 to 14-3-25, 1978 Comp.)
5. Automated Data Processing Act (NMSA 15-1-1 to 15-1-6, 1978 Comp.)
6. Criminal Offender Employment Act (NMSA 28-2-1 to 28-2-6, 1978 Comp.)
7. Chapter 29, Article 3, Identification of Criminals (NMSA 29-3-1 to 29-3-9, 1978 Comp.)
8. Arrest Record Information Act (NMSA 29-10-1 to 29-10-8, 1978 Comp.)
9. Controlled Substances Act (NMSA 30-31-1 to 30-31-40, 1978 Comp.)
10. Children's Code (NMSA 32-1-1 to 32-1-48, 1978 Comp.) and Rules of the Children's Court (esp. Rule 31)

Do You Know What Types of Information Are
and Whether or Not Your Agency is Regulated?

Use the pages in this part of the pamphlet as checklists to determine if you deal with some form of regulated information and are consequently subject to regulation. Work your way through all the checklists; then, turn to appropriate sections of the next part of the pamphlet to find out just what you must do to comply with applicable regulations.

Contents

Are You Regulated by Title 28, Code of Federal Regulations, Part 20B?	5
Are You Regulated by Title 28, Code of Federal Regulations, Part 20C?	7
Are You Regulated by Title 28, Code of Federal Regulations, Part 22?	8
Are You Regulated by New Mexico Statutes Relating to Public Records?	10
Are You Regulated by the Automated Data Processing Act?	11
Are You Regulated by the Criminal Offender Employment Act?	12
Are you Regulated by Chapter 29, Article 3, <u>Identification of Criminals?</u>	13
Are You Regulated by the Arrest Record Information Act?	14
Are You Regulated by the Controlled Substances Act?	16
Are You Regulated by the Children's Code and Rules of the Children's Court?	17

Are You Regulated by Title 28, Code of Federal Regulations,
Part 20B?

- I. Do you or does your agency collect, store or disseminate information? Yes No
- II. Is the information about individuals? Yes No
- III. Does the information contain names or other descriptions that would identify the individuals? Yes No
- IV. Does the information contain notations of any of the events listed below? Yes No
- Arrests
 - Detentions
 - Indictments
 - Informations
 - Other formal charges
 - Dispositions*
 - Sentencing
 - Correctional Supervision
 - Release
- V. Was the information collected by a governmental agency (or subunit thereof) that meets all three (3) of the criteria listed below? Yes No
1. Under terms of a statute or executive order,
 2. It performs one or more of these functions --
 - Detection
 - Apprehension
 - Detention
 - Pre-trial release
 - Post-trial release
 - Prosecution
 - Adjudication
 - Correctional Supervision
 - Rehabilitationof accused persons or criminal offenders,
 3. And, it devotes at least 50% of its annual budget to one or more of the functions listed above.

*See note on Page 6

If you answered "NO" to any of the questions above, do not go to the next question. Instead, move on to the next checklist. If you answer "YES" to Questions I through V, then you are dealing with Criminal History Record Information (as defined in federal regulations). Now answer the next question below to determine if your agency is regulated by Title 28, CFR, Part 20B.

Has your agency or have you received any funds from L.E.A.A. (either directly or indirectly) since August 1, 1973 to support collection, storage, or dissemination of the information described above?

Yes No

If you answered "NO" to this last question, you are not regulated by 28, CFR, 20B; go to the next checklist. If you answered "YES" to this last question, you or your agency are regulated by 28, CFR, 20B and you must take the steps prescribed in the section describing those regulations (see page 19).

NOTE: Dispositions include

- | | |
|--|--|
| 1. Acquittal | 13. <u>Nolo contendere</u> plea |
| 2. Acquittal by reason of insanity | 14. Conviction |
| 3. Acquittal by reason of mental incompetence | 15. Youthful offender determination |
| 4. Case continued without finding | 16. Deceased |
| 5. Charge dismissed | 17. Deferred disposition |
| 6. Charge dismissed due to insanity | 18. Dismissed-civil action |
| 7. Charge dismissed due to mental incompetence | 19. Found insane |
| 8. Charges pending due to insanity | 20. Found mentally incompetent |
| 9. Charge pending due to mental incompetence | 21. Pardoned |
| 10. Guilty plea | 22. Probation before conviction |
| 11. <u>Nolle prosequi</u> | 23. Sentence commuted |
| 12. No paper | 24. Adjudication withheld |
| | 25. Mistrial-defendant dismissed |
| | 26. Executive clemency |
| | 27. Placed on probation |
| | 28. Paroled |
| | 29. Released from correctional supervision |
| | 30. Other disposition |

Are You Regulated by Title 28, Code of Federal Regulations,
Part 20C?

I. Is your agency a governmental unit
(or part thereof) which meets all
three (3) of the criteria listed
below? Yes No

1. Under terms of a statute or
executive order,

2. It performs one or more of
these functions --

- | | |
|----------------------|------------------|
| - Detection | - Prosecution |
| - Apprehension | - Adjudication |
| - Detention | - Correctional |
| - Pre-trial release | Supervision |
| - Post-trial release | - Rehabilitation |

of accused persons or criminal offenders,

3. And, devotes at least 50% of its annual
budget to one or more of the functions
listed above.

II. Does your agency avail itself of the
services provided by the Identification
Division (NCIC) or the Computerized
Criminal History File systems operated
by the Federal Bureau of Investigation? Yes No

If you answered "NO" to either question, you are not regulated
by 28, CFR, 20C; go on to the next checklist. If you answered
"YES" to both questions above, then you are regulated by Title
28, CFR, Part 20C; you must take steps prescribed in the section
describing those regulations (see page 25).

Are You Regulated by Title 28, Code of Federal Regulations,
Part 22?

- I. Has your agency collected or does it plan to collect information? Yes No
- II. Was the information collected or will it be collected during conduct of a research or statistical project, program, or part thereof, whose purpose is to develop, evaluate, or otherwise advance the state of knowledge? Yes No
- III. Is the information intended to be used for research or statistical purposes? Yes No
- IV. Does the information contain names or other personal identifiers of, or is it susceptible to reasonable interpretation as referring to,
- an individual (acting in either private or official capacity),
 - a partnership,
 - a corporation, or
 - any other non-governmental organization?

If you answered "NO" to any of the questions above, you are not dealing with federally regulated information. Do not answer the questions below; go instead to the next checklist. If you answered "YES" to all four (4) of the questions above, you are dealing with research or statistical information identifiable to a private person. Now answer the questions below to determine if your agency is regulated by Title 28, CFR, Part 22.

- I. Are you or is your agency an applicant for a grant, contract, or sub-grant under the Omnibus Crime Control and Safe Streets Act of 1968 (as amended)? Yes No
- II. Are you or is your agency a recipient of a grant, contract, sub-grant, sub-contract or a participant in any inter-agency agreement funded under the Omnibus Crime Control and Safe Streets Act of 1968 (as amended)? Yes No

III. Are you employed by a recipient of funds (as described above in Question II) in connection with performance of a grant, contract or inter-agency agreement, sub-grant or sub-contract?

Yes No

If you answered "NO" to all three (3) questions above, you are not regulated by Title 28, CFR, Part 22; go on to the next checklist. If you answered "YES" to any of the questions above, you are regulated by Title 28, CFR, Part 22; you must take steps prescribed in the section describing those regulations (see page 26).

Are You Regulated by New Mexico
Statutes Relating to Public Records?

- I. Is your organization an agency of the State of New Mexico? Yes No
- II. Is your organization an agency of any political sub-division of the State of New Mexico? Yes No

If you answered "NO" to both questions above, you are not regulated by the Act. Go on to the next checklist. If you answered "YES" to either of the questions above, you are regulated to some degree by New Mexico statutes relating to Public Records (NMSA 14-2-1 to 14-2-3 and NMSA 14-3-1 to 14-3-25, 1978 Comp.), and you must take the steps prescribed in the section below that describes these statutes (see page 32).

Are You Regulated by the Automated Data Processing Act?

- I. Does your agency use information generated by or does it maintain a statewide, centralized, computer-based system? Yes No
- II. Is the system one that responds to the needs of one or more of the types of agencies listed below? Yes No

- Law enforcement agencies
- Courts
- Corrections agencies

of the state or any of its political subdivisions.

If you answered "NO" to either of the questions above, you are not regulated by the Act. Go on to the next checklist. If you answered "YES" to both questions above, you are regulated by the Automated Data Processing Act (NMSA 15-1-1 to 15-1-6, 1978 Comp.), and you must take the steps prescribed in the section describing this Act (see page 35).

Are You Regulated by the Criminal Offender Employment Act?

- I. Is your organization an agency of the State of New Mexico (other than a law enforcement agency)? Yes No
- II. Is your organization an agency of any political subdivision of the State of New Mexico (other than a law enforcement agency)? Yes No

If you answered "NO" to both questions above, you are not regulated by the Act; go on to the next checklist. If you answered "YES" to either of the questions above, you are regulated by the Criminal Offender Employment Act (NMSA 28-2-1 to 28-2-6, 1978 Comp.), and you must take steps prescribed in the section below that describes the Act (see page 36).

Are You Regulated by Chapter 29, Article 3,
Identification of Criminals?

- I. Is your organization the Technical Services Bureau/Criminal Justice Support Division of the Criminal Justice Department? Yes No
- II. Is your organization the State Police or another law enforcement agency of a political sub-division of the State of New Mexico? Yes No

If you answered "NO" to both the questions above, you are not regulated by this statute. Go on to the next checklist. If you answered "YES" to either one of the questions above, you are regulated (to some degree) by Chapter 29, Article 3, Identification of Criminals (NMSA 29-3-1 to 29-3-9, 1978 Comp.), and you must take the steps prescribed in the section below that describes the statute (see page 38).

Are You Regulated by the Arrest Record Information Act?

- I. Does your organization or do you maintain or use information? Yes No
- II. Is the information about individuals? Yes No
- III. Does the information contain names or other descriptions that would identify the individuals? Yes No
- IV. Does the information contain notations of any of the events listed below? Yes No
- Arrest
 - Detention
 - Indictment
 - Filing of an information
 - Other formal charge
- by a law enforcement agency
- V. Does the information contain a notation that any of these actions resulted in one of the events listed below? Yes No
- Criminal proceedings have been concluded and the defendant was found not guilty.
 - A prosecutor has elected not to refer a matter for prosecution.
 - Criminal proceedings have been indefinitely postponed.
 - Any of several other negative dispositions* has occurred.

*Included in the term "negative dispositions" are

- Acquittal
- Case continued without finding
- Charge dismissed
- Charge dismissed due to insanity or mental incompetence
- Charge still pending due to insanity or mental incompetence
- Nolle prosequi
- Deceased
- Deferred disposition
- Pardoned
- Extradition proceedings have been concluded
- Mistrial/defendant discharged

If you answered "NO" to any of the questions above, you are not dealing with Arrest Record Information. Do not answer the questions below; go instead to the next checklist. If you answered "YES" to all five (5) of the questions above, you are dealing with Arrest Record Information (as defined by New Mexico statutes). Now answer the questions below to determine if your agency is regulated by the Arrest Record Information Act (NMSA 29-10-1 to 29-10-8, 1978 Compilation).

- I. Is your organization an agency of the State of New Mexico or did you secure Arrest Record Information from such an agency? Yes No
- II. Is your organization part of any political sub-division of the State of New Mexico or did you secure Arrest Record Information from such an organization? Yes No

If you answered "NO" to both questions above, you are not regulated by the Arrest Record Information Act. Go on to the next checklist. If you answered "YES" to either of the two (2) questions above, you are regulated by the Arrest Record Information Act, and you must take the steps prescribed in the section describing the Act (see page 41).

Are You Regulated by the Controlled Substances Act?

- I. Is your organization the New Mexico Board of Pharmacy? Yes No
- II. Are you or is your organization (public agency, institution of higher learning, private organization) registered with the Board for purposes of conducting research, demonstrations, or special projects that bear directly on the misuse or abuse of controlled substances? Yes No

If you answered "NO" to both questions above, you are not regulated by this Act; go on to the next checklist. If you answered "YES" to either of the questions above, you are regulated by the Controlled Substances Act (NMSA 30-31-1 to 30-31-40, 1978 Comp.), and you must take the steps prescribed in the section below that describes that Act (see page 44).

Are You Regulated by the Children's Code or
By Rules of the Juvenile Court?

- I. Do you use or desire to obtain information about specific individuals (under the age of eighteen) in one or both of the forms listed below? Yes No
- Fingerprints
 - Photographs
- II. Do you collect, store, disseminate, or use information derived from a proceeding in juvenile court, including any of the forms below? Yes No
- Docket
 - Petitions
 - Motions
 - Other papers file in the case
 - Transcripts of testimony
 - Findings
 - Verdicts
 - Orders
 - Decrees
- III. Do you collect, store, disseminate, or use information in the form of records ordered under the authority of the Children's Code concerning social, medical, or psychological characteristics of an individual under eighteen years of age? (These would include any of the forms listed below.) Yes No
- Reports of preliminary inquiries
 - Pre-disposition studies
 - Supervision records of probationers
- IV. Have you attended a closed hearing on a matter before a juvenile court? Yes No

If you answered "NO" to all the questions above, you are not regulated by the Children's Code. If you answered "YES" to any of the questions above, you are regulated (to some degree) by the New Mexico Children's Code (NMSA 32-1-1 to 32-1-48, 1978 Comp.), and perhaps by Rule 31 of Children's Court Procedure; you must take steps prescribed in the section below that describes the Code and Rule 31 (see page 45).

This completes the series of checklists.

If You Are Regulated,
Do You Know What You Must Do?

Based on the results of your self-examination in the previous part, use this part to determine exactly what steps you must take to comply with applicable regulations. Each set of regulations is contained in a separate section. So, you may turn directly to the section of interest and disregard those sections that do not apply to your case. All regulations contained in this part are either quoted directly or are closely paraphrased, and are current as of March, 1979.

Contents

Regulations Imposed by Title 28, Code of Federal Regulations, Part 20B	19
Regulations Imposed by Title 28, Code of Federal Regulations, Part 20C	25
Regulations Imposed by Title 28, Code of Federal Regulations, Part 22	26
Regulations Imposed by New Mexico Statutes Relating to Public Records	32
Regulations Imposed by the Automated Data Processing Act ...	35
Regulations Imposed by the Criminal Offender Employment Act	36
Regulations Imposed by Chapter 29, Article 3, <u>Identification of Criminals</u>	38
Regulations Imposed by the Arrest Record Information Act ...	41
Regulations Imposed by the Controlled Substances Act	44
Regulations Imposed by the Children's Code and by Rules of the Children's Court	45

Regulations Imposed by Title 28, Code of Federal
Regulations, Part 20B

Agencies regulated by this part of Title 28 must observe a number of policies and procedures, specified below, in their treatment of Criminal History Record Information. Certain types of Criminal History Record Information, however, are exempted from the regulations. These exemptions are listed below:

1. Information used for purposes of individual identification and which does not show any past or present involvement with the criminal justice complex
2. Wanted posters
3. Original records of entry (e.g., police blotters and other records organized strictly on a chronological basis)
4. Court records of public judicial proceedings
5. Published court or administrative opinions
6. Proceedings of public judicial, administrative, or legislative activities
7. Records of transportation offenses maintained by states for the purpose of licensing drivers, pilots, or other vehicle operators
8. Announcements of executive clemency
9. Information derived directly and exclusively from sources listed above (numbers 1 - 8), so long as release of information is in response to a request specifying both person and date of alleged offense
10. Information related to offenses for which the subject is currently formally involved with the criminal justice complex
11. Information requested for purposes of international travel; e.g., for issuing visas, granting citizenship
12. Any Criminal History Record Information indicating a conviction disposition
13. Special Note - Investigative or Intelligence information is not covered by the parts of these regulations which compel dissemination.

Areas of Regulation

Agencies to which these regulations apply must establish privacy and security policies in five (5) areas. These areas include:

- Completeness and Accuracy
- Audit
- Access and Review
- Dissemination
- Security

of Criminal History Record Information. Agency policies must be consistent with federally mandated guidelines discussed next.

Completeness and Accuracy - The Criminal History Record Information collected, stored, or disseminated by regulated agencies must be complete and accurate to the maximum extent feasible. To ensure that this is so, regulated agencies will develop policies and procedures based on the following guidelines:

1. If at all possible, criminal history record information should be maintained in a central state repository.
2. If such a repository is in existence, regulated agencies must compare criminal history record information that is about to be disseminated to similar information kept in the central state repository. Differences arising from the comparison must be resolved prior to dissemination.

(Note: These requirements may be waived where time is of the essence.)

3. All notations added to records subsequent to July 1, 1978 that show arrests must also show dispositions for those arrests within 90 days from the dates on which dispositions have occurred.
4. Procedures must be established -- including double checking, personnel rotation, systematic audit, etc. -- which will, when followed, minimize record error.
5. Upon discovery of erroneous data, all agencies with which the erroneous data were shared must be notified and supplied with the correct data.

Audit - Systems of criminal history record information maintained by regulated agencies must be audited periodically to test for compliance with regulations. To facilitate this, regulated agencies will adhere to the following guidelines:

1. Regulated agencies must maintain their criminal history record information in ways which create "audit trails" for information transactions; these audit trails must consist at least of names of all persons to whom information was given and the date on which it was given.
2. Agencies selected as part of a representative sample from among all regulated agencies will open themselves to an annual compliance audit by the Criminal Justice Department.
3. (Note: Reporting of criminal justice information to federal, state, or local repositories does not constitute "dissemination" and will not require creation of audit trails.)

Access and Review - Individuals who are the subjects of criminal history record information have the right of access to such information. They may review their complete record and challenge any information they feel is inaccurate. To ensure access, regulated agencies will establish policies consistent with the following guidelines:

1. Any individual may, upon proper identification, review any criminal history record information of which he or she is the subject, and may also obtain a copy thereof for purposes of challenge and correction.
2. An effective means must be established by which the subject individual may challenge any erroneous data and cause them to be corrected.
3. In addition to the mandate set forth above, regulated agencies must provide a route of administrative appeal to subject individuals whose records are not corrected to the individual's satisfaction.
4. Upon request by a subject individual, a list of all non-criminal justice agencies (or individuals) with which erroneous data were shared will be provided to the subject individual.

5. The regulated criminal justice agency that initiates a correction to erroneous criminal history record information must transmit the correction to all other criminal justice agencies with which erroneous information was shared.
6. (Note: The rights of access and review contemplated by these regulations do not extend to any investigative or intelligence information, or to any data not defined by these regulations as criminal history record information.)

Dissemination - Dissemination of criminal history record information must be carefully controlled. To that end, regulated agencies will establish policies consistent with the following guidelines:

1. Non-conviction data within criminal history record information must be treated specially with regard to dissemination. Non-conviction data are arrest notations with accompanying information that
 - indicates no disposition of the case within one year of the date of arrest and also indicates that no active prosecution of the charge is pending, or
 - police have elected not to refer a matter to a prosecutor, or
 - a prosecutor has elected not to commence formal proceedings, or
 - proceedings have been indefinitely postponed, or
 - a dismissal has occurred.
2. Dissemination of non-conviction data will be limited to
 - criminal justice agencies, for the purpose of criminal justice administration and screening for employment by those agencies;
 - parties authorized access by statute, ordinance, executive order, court rule, decision or order (as construed by appropriate state or local officials);
 - parties who contract with regulated criminal justice agencies to provide services required for administration of criminal justice or to perform research, evaluation or statistical services.
3. Non-criminal justice agencies (or individuals) that request and subsequently receive criminal history record information from a regulated agency must agree in writing to use the information only for the purposes specified in the request.

4. No regulated agency or individual may confirm either the existence or non-existence of criminal history record information to parties that would be ineligible to receive the information itself.
5. Equivalents of criminal history record information in which the subject is a juvenile may not be disseminated to non-criminal justice agencies unless allowed by state or local statute, ordinance, etc. No matter what state or local law holds, however, information on juveniles may not be disseminated by regulated agencies more liberally than they are allowed by these regulations to disseminate criminal history record information on adults.

Security - Regulated agencies must be concerned with the security of their criminal history record information. These agencies must formulate security policies that are consistent with the following guidelines:

1. State-level policies on security of Criminal History Record Information, when promulgated, must be in the form of state statutes or regulations issued and approved by the Governor of the State.
2. Regulated criminal justice agencies must secure agreement (preferably in writing) from supporting central data processing agencies that the right will be afforded the criminal justice agency to audit, monitor, and otherwise inspect security procedures of the supporting agency.
3. In systems where computers are used to process regulated criminal history record information, hardware and software must be designed so as to prevent unauthorized access to the information.
4. Terminals in non-criminal justice agencies will be allowed only to inquire of systems of regulated criminal history record information; no input or update capabilities will be permitted.
5. Only specifically designated, secure terminals will be allowed to alter program coding in criminal history record information systems.
6. The capability to purge data from a criminal history record will be allowed only to those terminals under direct and secure control of the criminal justice agency that was responsible for originally creating the data.

7. Software will be created and used to restrict, detect, and record all unauthorized attempts to gain access to computerized systems of regulated criminal history record information and copies of program coding will be treated with maximum security.
8. It will be made known to all parties granted access to regulated criminal history records information that they will be personally responsible for the physical security of the information and for its protection from unauthorized access, disclosure, or dissemination.
9. Regulated criminal justice agencies will screen all their employees who will, as part of their job, be granted access to criminal history record information and reject them from employment for good cause.
10. Regulated criminal justice agencies will initiate or cause the initiation of proceedings to transfer or remove persons who violate these regulations or associated state or local statutes. Agencies found in violation of these regulations will be subject to penalties described below.
11. Access to regulated criminal history record information will be limited to authorized personnel with both a right and a need to know.
12. All personnel working with or having access to regulated criminal justice history record information will be made aware of both the substance and intent of these Title 28 regulations.
13. Regulated central repositories will be secured from unauthorized access, theft, sabotage, fire, flood, wind, and other natural or manmade disasters.

Special Note

One state may, as a condition for receiving criminal history record information from another state, agree to abide by the originating state's sealing and purging laws, without regard to Title 28 regulations.

Penalties

Violations of these regulations will be subject to a fine, not to exceed \$10,000, and possible cut-off of L.E.A.A. assistance.

Regulations Imposed by Title 28, Code
of Federal Regulations, Part 20C

Agencies regulated by this part of Title 28 must observe a number of policies and procedures, specified below, in their use of federally supplied criminal history record information.

1. Users of federally supplied criminal history record information must enter into written agreements with the Federal Bureau of Investigation; these agreements will govern the access to and use of such information.
2. Contributing criminal justice agencies are responsible for the completeness and accuracy of criminal history record information that they submit to the federal government; specifically, dispositions must be submitted to complete notations of arrest within 120 days after disposition has occurred.
3. A subject individual may gain access to and review federally maintained criminal history record information if he or she applies for access directly to the criminal justice agency originating the data. If a challenge is filed by the subject individual and the agency changes the data, the agency will notify the FBI of the correction. (Note: Procedures for access are suggested in the commentary following Title 28, Section 20 regulations as compiled in the Federal Register, March 19, 1976.)
4. Dissemination of factual data concerning the status of an active investigation is permissible if authorized by federal or state statutes and approved by the attorney general of the United States.
5. Arrest data more than one year old, when no active prosecution of the charge is known to be pending, will not be disseminated unless accompanied by information relating to the disposition of the arrest.
6. Computer terminals operated by user agencies will typically be limited to the inquiry mode only. Terminals that are used for input or update will be kept secure.
7. Access to federally supplied criminal history record information may be cancelled if dissemination is made outside the receiving criminal justice agency or related agencies.
8. Access may also be cancelled for other violations of these regulations.

Regulations Imposed by Title 28, Code
of Federal Regulations, Part 22

Agencies regulated by this part of Title 28 must observe policies and procedures, specified below, in their access to and use of research and statistical data.

The regulations specifically exempt the following types of information:

1. Any records from which identifiable research or statistical information was originally obtained
2. Any records that are designated as public under existing statutes
3. Information gained regarding future criminal conduct
4. Intelligence or information gathering activities in which data pertaining to specific individuals are obtained for purposes directly related to enforcement of criminal laws

Areas of Regulation

Agencies are regulated in their treatment of research and statistical information -- particularly that which is identifiable to a private person -- in seven (7) areas. These areas are:

1. General Use of Identifiable Data
2. Use of Identifiable Data for Judicial or Administrative Purposes
3. Revelation of Identifiable Data
4. Notices to Individuals About Whom Data are Collected
5. Requests for Transfer of Information
6. Final Disposition of Identifiable Materials
7. Privacy Certification

Each area is discussed in detail below.

General Use of Identifiable Data - Research or statistical information identifiable to a private person may be used only for research or statistical purposes.

Use of Identifiable Data for Judicial or Administrative Purposes -
Copies of research or statistical information identifiable to a private person

1. Shall be immune from the legal process, and
2. Shall be admitted as evidence or used for any other judicial or administrative proceeding only with the written consent of the individual to whom the data pertain.
3. Such consent
 - shall be obtained at the time that information is sought for use in judicial or administrative proceedings,
 - shall set out specific purposes in connection with which the information will be used, and
 - shall limit, where appropriate, the scope of the information subject to such consent.

Revelation of Identifiable Data - Revelation of such research or statistical data is governed by two (2) guidelines:

1. Information may be revealed in identifiable form
 - where prior consent is obtained from an individual, or
 - where the individual has agreed to participate in a project with the knowledge that findings cannot be expected (by virtue of sample size or uniqueness of subject) to totally conceal subject identity.
2. Except as outlined above, identifiable information may be revealed only to
 - officers, employees, and subcontractors of the recipient of assistance,
 - other persons or organizations for research or statistical purposes.

Notices to Individuals About Whom Data Are Collected - Individuals who will be subjects of research or statistical data gathering activities shall be notified of the conditions and terms of such activity. The following policies apply:

1. In projects where information identifiable to a private person is to be collected directly -- orally, by questionnaire, or other written document -- the person from whom the data were obtained will be notified

- that the information collected will be used or revealed only for research or statistical puposes, and
 - that compliance with the request for information is entirely voluntary and may be refused or terminated at any time.
2. In projects where identifiable information is collected through observation of individual activity or performance, subject individuals will be advised
 - of the particular types of information to be collected,
 - that the data will be used or revealed only for research or statistcical purposes, and
 - that participation in the project is voluntary and may be refused or terminated at any time.
 3. Where findings in a project cannot, by virtue of sample size or uniqueness of subject, be expected to totally conceal subject identity, individual subjects will be so advised.

These points of advice may be dispensed with, however, if, in the opinion of the researcher, notification of subject individuals is impractical or would impede the progress of research.

Request for Transfer of Information - Research or statistical data identifiable to a private person may be transferred from one researcher or agency to another, under certain conditions. These conditions are set forth below:

1. Requests received by a research or statistical project for transfer of identifiable data shall be reviewed by the project staff member in charge of data privacy.
2. The request itself (unless submitted by L.E.A.A.) must contain at least the following sections:
 - General objectives of the project for which information is requested
 - Justification of the need for information in identifiable form
 - Certification (and supporting detail) that the requesting project will not in any way cause legal, economic, physical, or social harm to individuals identified in the information requested.
3. Prior to release of any identifiable information to persons other than L.E.A.A. or staff members of the project that collected the data originally, an agreement shall be entered into by the holder and requestor of the data; the agreement will (at a minimum) provide that

- Identifiable information will be used only for research or statistical purposes.
- Identifiable information will not be revealed to any person for any purpose except
 - . where information has already been included in research findings (and/or data bases),
 - . and is revealed on a need-to-know basis for research or statistical purposes,
 - . provided that the revelation is approved by the holder of the data.
- Knowingly or willfully disseminating or using identifiable information contrary to the terms of this agreement will be punishable as a violation of these regulations.
- Adequate administrative and physical precautions will be taken to assure security of information.
- Access to information will be limited to those employees or subcontractors having a need for access in direct connection with performance of the activity for which the information was obtained through transfer.
- Such employees or subcontractors will be advised of and agree to comply with these regulations.
- Project plans will be designed to preserve anonymity of private persons to whom the information relates (including, where appropriate, name stripping and/or coding of data or other similar procedures).
- Project findings and reports prepared for dissemination will not contain information that can reasonably be expected to be identifiable to a private person.
- Information identifiable to a private person, obtained through transfer in accordance with this agreement, will be returned upon completion of the requesting project, and no copies of that information will be retained unless otherwise specified in the transfer agreement.

Final Disposition of Identifiable Information - Upon completion of a research or statistical project the security of information identifiable to a private person shall be protected by

1. Complete physical destruction of all copies of identifiable information at the close of a retention period of three (3) years or as soon as otherwise required by law, or
2. Removal of identifiers from the data and separate, secure maintenance of a name-code index.

Privacy Certification - Each applicant for financial support from L.E.A.A., whether application is direct or under the aegis of a state plan, shall submit a Privacy Certificate as a condition for approval of a grant application or a contract proposal in which is included a research or statistical component that will generate information identifiable to a private person. (Note: Sub-contractors need not submit a Privacy Certificate but should be made aware of these regulations.) The Certificate shall briefly describe the project and contain the following assurances:

1. Identifiable data will be treated in accordance with regulations on use and revelation.
2. Access to data will be limited to those employees having a need to know.
3. Employees having access to identifiable information will be advised of all applicable regulations and agree in writing to abide by them.
4. All subcontracts that require access to identifiable information will contain conditions meeting the requirements, specified above, for transfer of information.
5. Requirements relating to notices given to subjects of research will be followed, and any case in which the researcher elects not to notify a research subject (in order to retain the integrity of the data) will be fully justified.
6. Adequate precautions will be taken to insure administrative and physical security of identifiable data.
7. As applicable, a log will be maintained with entries indicating
 - transfers of data (to parties other than L.E.A.A, grantee/contractor staff, or subcontractors),
 - that such data have been returned, or
 - that alternative arrangements have been made for future maintenance of such data.
8. Project plans will be designed to preserve anonymity of private persons to whom information gathered by the project pertains, including name stripping, coding, or other similar procedures.

9. Project findings and reports prepared for dissemination will not contain information which can reasonably be expected to be identifiable (unless permitted by the regulations on revelation).
10. A description of the physical and/or administrative security procedures to be followed by the project will be attached to the certification, including arrangements for keeping secure any name-code indexes created.

Penalties

Violations of these regulations, or any grant or contract conditions entered into thereunder, may lead to termination of a grant or contract and/or to legal action culminating in imposition of a fine not to exceed \$10,000.

Regulations Imposed by New Mexico Statutes
Relating to Public Records

Virtually all public agencies within the State of New Mexico have statutory responsibilities to fulfill with regard to public records.

Areas of Regulation

Two (2) areas covered by the statutes, associated case law, and opinions of the attorney general should be well known by public agencies. These areas are

- Access to and Disposition of State Agency Records
- Inspection of Public Records

Each area is explored below.

Access to and Disposition of State Agency Records - The Public Records Act (NMSA 14-3-1 to 14-3-25, 1978 Comp.) specifies in what manner state agency records are to be disposed of and under what circumstances they can be accessed once disposal has occurred.

1. As used in the Public Records Act, the term "public record" refers to all books, papers, maps, photographs, or other documentary materials (regardless of physical form or characteristics) made or received by any agency pursuant to law or in connection with the transaction of public business; the records are preserved, or appropriate for preservation, by the agency or its legitimate successor because of the informational and historic value of the data contained in the records or as evidence of the organization's
 - functions
 - policies
 - decisions
 - procedures
 - operations
 - other governmental activities.

2. As used in the Public Records Act, the term "agency" includes only portions of state government or other bodies that are under direct supervision, or are branches, of a portion of state government; counties and municipalities are not included and the Act does not apply to them.*

*Opinion No. 60-181 of the Attorney General of New Mexico.

3. The Act provides for establishment of a state records center, and further provides that records stored at the center that are required by law to be confidential will be made promptly available, when called for, to the originating agency, but shall not be made available for public inspection except as provided by law.
4. The state records administrator may inspect or survey state agency records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest; such inspection or surveying must be done subject to the same restrictions imposed on employees of the agencies holding the records.

Inspection of Public Records - In general, public records are open to inspection.

1. This statute, NMSA 14-2-1 to 14-2-3, 1978 Compilation, does not define the term "public record;" associated case law* disallows use of the definition contained in the Public Records Act, shown above.
2. The attorney general** suggests that the criterion for determining what information is a public record is whether the information is required by law to be kept or is necessarily kept in the discharge of a duty imposed by law.
3. The statute specifies that every citizen of this state has a right to inspect any public records of the state except the following:
 - records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions
 - letters of reference concerning employment, licensing, or permits
 - letters or memoranda which are matters of opinion in personnel files or students' cumulative files
 - other exceptions provided by law
4. This statute, unlike the Public Records Act, applies to all political subdivisions of the state as well as to the entirety of state government.

*State ex rel. Newsome V. Alarid, 90 NM 790, 568, P. 2d 1236 (1977).

**Opinion No. 69-89 of the Attorney General of New Mexico.

5. All officers having custody of public records in this state shall furnish reasonable and proper opportunities for the inspection and examination of all the records requested of their respective offices; this requirement specifically calls for provision of reasonable facilities for making memoranda abstracts from public records during usual business hours.
6. The right to inspect or examine public records includes the right to make copies of them,* although the custodian agencies need not themselves bear the costs of abstracting or copying the records.**
7. The custodian agency may not, however, charge a fee for simple inspection or examination of public records.***
8. Penalties for violation of the inspection statute will be imposed on any officer having custody of public records if he or she refuses to allow any citizen of this state to inspect the public records requested; such a violation shall be punishable by imposition of a fine of between \$250 and \$500 or by sentence of from sixty (60) days to six (6) months in jail or both.

*Opinion No. 59-170 of the Attorney General of New Mexico

**Opinion No. 69-89 of the Attorney General of New Mexico

***Opinion No. 57-102 of the Attorney General of New Mexico

Regulations Imposed by the Automated Data Processing Act

This Act, in addition to enumerating the powers and duties of the Automated Data Processing Division, specifies regulations for providing adequate security to ensure that data and records are available only to those authorized under the Public Records Act or pursuant to regulations promulgated by the commission of public records.

Areas of Regulation

The Act concentrates on two (2) areas related to treatment of criminal justice data. These areas are

- System Stewardship
- Employee Responsibilities

The specifics of each are listed below.

System Stewardship - The Automated Data Processing Division has the following stewardship responsibilities:

1. ADPD will serve as the exclusive agency responsible for programming, operation and maintenance of any computer-based, centralized information system (funded from any source whatsoever) that responds to the needs of law enforcement agencies, courts, correction agencies, and similar agencies of the state's political subdivisions.
2. ADPD shall prescribe the format but not the content of records in such a central system.

Employee Responsibilities - ADPD employees have certain responsibilities with regard to criminal justice systems. These are as follows:

1. No ADPD employee or contract worker will disclose any records associated with a centralized system to anyone other than specifically authorized employees of the agency originating the information or other persons authorized by the originating agency to have access to the records.
2. (Note: The requirement above is not meant to prohibit ADPD staff from gaining access to and using the data necessary to the proper performance of their duties.)
3. ADPD employees should be aware that violations of these rules will be punishable as a misdemeanor, calling for a term of less than one year or a fine of less than \$1,000, or both.

Regulations Imposed by the Criminal Offender Employment Act

This Act specifies the uses to which criminal justice information may be put in connection with employment by governmental agencies in New Mexico or the issuance of licenses, permits, certificates or other authority to engage in a governmentally regulated trade, business, or profession.

It is important to note that all law enforcement agencies within the state are exempt from regulation by this Act.

Areas of Regulation

Affected agencies must be aware of rules imposed by the Act in two (2) areas. These areas are:

- Employment Eligibility
- Revocation of Employment

Each of these topics is discussed below.

Employment Eligibility - The following rules apply to determination of eligibility for public employment.

1. A person will not automatically be eliminated from consideration for public employment or issuance of a license, permit, certificate, etc., because he or she has been convicted of committing a crime.
2. Certain records may not be used in consideration of an application for public employment; these include
 - Arrest records not showing a valid conviction
 - Misdemeanor convictions not involving moral turpitude

Revocation of Employment - A public agency is restricted as to the grounds it can use to revoke public employment or license, permit, or other authority to engage in a trade, business or profession.

1. Any agency may refuse to grant or renew or may suspend or revoke public employment or license where an applicant, employee or licensee has been convicted of a felony (or misdemeanor involving moral turpitude) and the conviction relates directly to the particular employment, trade, business or profession.
2. An agency may also refuse to grant or renew or may suspend or revoke public employment or license where the applicant, employee or licensee has been convicted of a felony (or of a misdemeanor involving moral turpitude)

and where the conviction does not relate directly to the employment, but the agency determines (after investigation) that the person has not been sufficiently rehabilitated to warrant the public trust.

3. Completion by the applicant, employee or licensee of probation or parole supervision, or the passage of a period of three (3) years from release from incarceration without subsequent conviction, will serve as a presumption of "rehabilitation sufficient to warrant the public trust."
4. All decisions which have the effect of denying public employment or licensing on grounds related to an individual's status as an ex-offender will be rendered in writing, and will explicitly state the reasons for the denial.

Regulations Imposed by Chapter 29, Article 3,
Identification of Criminals

Although not extensive in scope, these statutory sections do place obligations on the Technical Service Bureau (Criminal Justice Department), New Mexico State Police and on other law enforcement agencies in the state.

Areas of Regulation

Affected agencies should be aware of their responsibilities in four (4) areas under the statute. These areas include

- Generation of Information
- Collection of Information
- Organization of Information
- Cooperation with Other Agencies

Each of these areas is discussed below.

Generation of Information - Information in the form of fingerprint impressions must be generated by state and local law enforcement officers.

1. Any person arrested for commission of either a felony offense or another offense punishable by imprisonment for more than six months (under the laws of New Mexico or any of its political subdivisions) shall be required to make fingerprint impressions.
2. Such impressions shall be made pursuant to rules adopted by the Criminal Justice Department.
3. All fingerprints made as a result of a felony arrest shall be made in duplicate, and one copy shall be forwarded to the Technical Services Bureau and one to the Federal Bureau of Investigation in Washington, D.C.
4. Fingerprints secured from persons arrested for commission of a crime punishable by more than six (6) months imprisonment may also be sent to the FBI, if
 - there is a question of identity, or
 - a check of FBI files is considered necessary for investigative purposes, or
 - the individual is suspected of being a fugitive.

Collection of Information - The Technical Services Bureau must collect various kinds of information.

1. The Bureau will keep complete systems of information for identification of criminals, including fingerprint and modus operandi systems.
2. The Bureau must obtain from whatever source possible and file and preserve for the record identification information about persons
 - attempting to commit a felony,
 - convicted of commission of a felony,
 - concealing or possessing a pistol or other dangerous weapon,
 - convicted of buying or receiving stolen property,
 - convicted of unlawful entry of a building,
 - convicted of escaping or aiding an escape from prison,
 - convicted of making or possessing a fraudulent check or draft,
 - convicted of petit larceny,
 - convicted of unlawfully possessing or distributing habit-forming, narcotic drugs, and
 - who are well known and habitual criminals.
3. The identification information collected may be in any of the following forms:
 - plates
 - photographs
 - outline pictures
 - fingerprints
 - measurements
 - descriptions
 - modus operandi statements
 - other forms
4. The Bureau may also obtain similar information on persons who
 - have been convicted of violating any of the military, naval, or criminal laws of the United States, and/or
 - have been convicted of a crime in another jurisdiction which in this state would be a felony.

Organization of Information - The Bureau shall record its information and arrange its files in a manner that will provide for quick and easy reference.

Cooperation with Other Agencies - The Bureau is encouraged to cooperate with other agencies.

1. It is the duty of the Bureau to cooperate with agencies of other states and of the United States in development of interstate, national, and international systems of criminal identification and investigation.
2. The Bureau must furnish, upon request, any information in its possession on any person charged with a crime to any court, district attorney, police/peace officer of this state, any other state, or the United States.

Regulations Imposed by
the Arrest Record Information Act

The Arrest Record Information Act provides that such information maintained by the state or any of its political subdivisions, pertaining to any person charged with commission of any crime, shall be confidential, and dissemination or revealing the contents of the information, except as provided in this Act, is unlawful.

Before discussing the two major areas of regulations, however, it must be noted that the Act exempts the following items:

1. Posters, announcements, or lists used for apprehending fugitives or wanted persons
2. Original records of entry; e.g., police blotters maintained by criminal justice agencies, compiled and organized chronologically, and required by law or by long standing custom to be made public. Police blotters* could contain
 - Name of person arrested
 - Physical description
 - Place and date of birth
 - Address
 - Occupation
 - Time and place of arrest
 - Offense
 - Name of arresting officer
3. Court records of public judicial proceedings
4. Published Court or administrative opinions or public judicial, administrative or legislative proceedings
5. Records of traffic offenses and accident reports
6. Announcements of executive clemency
7. Statistical or analytical records or reports in which individuals are not identified and from which identities are not ascertainable

These exempted records are public and may be obtained by anyone.

*Per Opinion No. 75-37 of the Attorney General of New Mexico.
(See also Opinion No. 78-9 of the Attorney General of New Mexico.)

Areas of Regulation

Agencies regulated by the Act must take special care in their treatment of Arrest Record Information in at least two (2) areas:

- Exchange and Dissemination of Information
- Access and Review by Individuals

Each of these topics is discussed below.

Exchange and Dissemination of Information - Arrest record information may be exchanged or disseminated only under the following circumstances:

1. A law enforcement agency may disseminate such information to a federal, state, or local law enforcement agency provided that, when dissemination is made outside the state, the information must be accompanied by the statement which begins this section of regulations (top of page 41).
2. Nothing in the Act prohibits direct access to arrest record information by the Attorney General, district attorneys, or the courts where such access is necessary to the performance of their functions.
3. Nothing in the Act prohibits direct access by a law enforcement agency to automated wanted information pertaining to a person or to stolen property.
4. A law enforcement agency may disclose to the public arrest record information related to an offense for which an adult individual is currently within the criminal justice system.
5. A law enforcement agency may also confirm arrest record information to members of the news media or to any other person under two (2) conditions.
 - Confirmation must be in response to a specific inquiry as to whether a named individual was arrested, detained, indicated, or the object of an information or other formal charge.
 - The arrest record information for which confirmation is requested must be derived solely from the exempted forms listed above (see page 41).

Access and Review by Individuals - Access to arrest record information is afforded to the types of individuals under the circumstances specified below:

1. Upon satisfactory verification of his or her identity, any individual may inspect -- in person, through legal counsel or through an authorized agent -- arrest record information maintained by a law enforcement agency concerning him or her.
2. A person who believes that arrest record information concerning him or her is inaccurate or incomplete shall be entitled to review and obtain a copy of such information for the purpose of challenge or correction.
3. If a law enforcement agency refuses to correct challenged information to the satisfaction of the person to whom it relates, that person shall be entitled to petition the district court to order the corrections.
4. Personnel assigned to contractual research for a state or federally approved criminal justice project will be permitted access to arrest record information, provided that such personnel shall not further disseminate the information except as statistical or analytical reports or records in which individuals are not identified and from which their identities are not ascertainable.

Regulations Imposed by the Controlled Substances Act

This Act places confidentiality obligations upon the Board of Pharmacy and upon those registered by it to conduct research on misuse or abuse of controlled substances.

Areas of Regulation

Insofar as information oriented toward criminal justice is concerned, the Act contains only one area of responsibility to which the Board and its registered researchers should pay heed. That area is confidentiality of subject identity. This subject is treated below.

Confidentiality of Subject Identity - In general, subjects of research under the auspices of the Act shall remain anonymous.

1. The Board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subject of such research.
2. Persons granted this authority can not be compelled to identify subject individuals in any civil, criminal, administrative, legislative or other proceeding.
3. A practitioner engaged in medical practice or research shall not be required to furnish the name or identity of a patient or research subject to the board; practitioners include
 - physicians
 - dentists
 - veterinarians
 - or other persons licensed to prescribe and administer drugs that are subject to the Controlled Substances Act.
4. Neither may practitioners be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

Regulations Imposed by the New Mexico
Children's Code and by Children's Court Rules

Criminal justice information in which juveniles -- persons who have not attained the age of eighteen -- are the subjects is afforded special treatment under the Children's Code and Rules of the Children's Court.

Areas of Regulation

Regulated agencies should be cognizant of seven (7) areas in which criminal justice information on juveniles is regulated. These areas are

1. Fingerprinting and photographing of juveniles
2. Hearings and court records
3. Law enforcement records
4. Social, medical, and psychological information
5. Other records
6. Penalties
7. Sealing of records

Each of these areas is discussed below.

Fingerprinting and Photographing of Juveniles - Juveniles are allowed to be fingerprinted and/or photographed only under special circumstances.

1. A child in custody may not be fingerprinted or photographed for criminal identification purposes without consent of the court; if consent is given, the fingerprints or photographs may be used only as specified in the court order.
2. A court order allowing fingerprinting or photographing of a child alleged to be delinquent or in need of supervision may be issued only upon a motion by the children's court attorney; the fingerprinting or photographing must be necessary for purposes of identification. (The motion may be granted ex parte.)
3. General identification -- as for runaways or to establish innocence -- may also be used as justification for requesting fingerprinting or photographing.

Hearings and Court Records - Juvenile hearings and resultant court records are generally guarded closely. The following rules apply:

1. The general public will be excluded from hearings on petitions under the Children's Code except
 - in hearings on contempt of court, or
 - in hearings alleging delinquency of a child previously judged delinquent.
2. At a closed hearing, only the parties, their counsel, witnesses, and other persons requested by a party (and approved by the court) may be present.
3. Other persons found by the court to have a proper interest in the case or in the work of the court -- including members of the bar -- may be admitted by the court to closed hearings on the condition that they refrain from divulging any information which would identify either the child or the family involved in the proceedings.
4. Accredited representatives of the news media are allowed to be present at closed hearings, provided that
 - they refrain from divulging information that would identify any child involved in the proceedings or parents or guardians of those children, and
 - they abide by those rules of the courtroom that the court finds necessary for maintenance of order, decorum, and to further the purposes of the Children's Code.
5. Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law, and the appeal shall be heard by the court of appeals upon the files, records, and transcript of the evidence of the Children's Court; the name of the child involved, however, shall not appear in the record on appeal.

Law Enforcement Records - Regulation of law enforcement records on juveniles is most notable by its absence.

1. Laws 1972, Chapter 97, Section 41, relating to confidentiality of law enforcement records concerning children, was repealed by Laws 1973, Chapter 95, Section 3.

2. In the absence of any section in the Children's Code dealing with the confidentiality of law enforcement records on juveniles, an opinion of the Attorney General of New Mexico (Opinion No. 73-39) states, "...because Section 13-14-41, supra was repealed by Chapter 195, supra, all information pertaining to a child that appears in law enforcement agency records is open to the public."
3. It should be noted that this interpretation is not necessarily binding. Agencies are cautioned to consult their legal advisors on questions related to release of law enforcement records on juveniles.

Social, Medical, and Psychological Information - Such information is highly confidential and is open to inspection only by select individuals.

1. Records ordered under the authority of the Children's Code concerning social, medical, and psychological characteristics of a child are open to
 - The judge, probation officers, and professional staff of the court,
 - Representatives of any agency providing supervision and having legal custody of a child,
 - The juvenile parole board,
 - Any other person by order of the court, or
 - A tribunal (any judicial forum other than a court) and its probation or other professional staff, or an attorney for the party, for use in considering the sentence imposed upon a convicted person who, prior thereto, has been a party to the proceedings in a Children's Court.
2. The records discussed immediately above include
 - reports of preliminary inquiries,
 - predisposition studies,
 - supervision records of probationers.
3. All or any part of the records listed above, when presented to the used by the court in a proceeding under the Children's Code, shall also be made available to the parties and their counsel.

Other Records - What follow are miscellaneous regulations of general interest.

1. All records other than those discussed immediately above are open only to the persons who would have access to social, medical, and psychological information.
2. These are records include
 - Dockets
 - Petitions
 - Motions
 - Other papers filed in the case
 - Transcripts of testimony
 - Findings
 - Orders
 - Verdicts
 - Decrees
3. Nothing in the Children's Code prohibits transfer of information on juveniles through the mail so long as both the recipient and the sender are entitled under the Children's Code to inspect the records.*
4. Court records pertaining to a child alleged to be delinquent in a proceeding under the Children's Code, and who has previously been judged delinquent, shall be public records.

Penalties - Violations of the rules set forth above shall be punishable under New Mexico statutes as petty misdemeanors.

Sealing of Records - Extensive provision is made in the Children's Code for sealing of records on juveniles.

1. Under certain conditions, on a motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code (or on the court's motion), the court shall vacate its findings, orders, and judgements on the petition, and shall order the legal and social files and records of the court, probation services, and of any other agency in the case sealed.
2. If requested, the court shall also order the law enforcement files and records sealed.

*Per statement by the Attorney General of New Mexico in a letter dated August 7, 1978, to the Administrative Office of the Courts.

3. The conditions mentioned above are
 - That two years have elapsed since final release of the individual from legal custody and supervision or since entry of any other judgement not involving legal custody or supervision, and
 - That the individual has not, within the two years immediately prior to the filing of the motion, been convicted of a felony (or of a misdemeanor involving moral turpitude), nor found delinquent or in need of supervision, nor is any proceeding pending.
4. Reasonable notice of the motion requesting sealing will be given to
 - the children's court attorney
 - the authority granting release (if final release was from an agency, parole, or probation)
 - the law enforcement officer, department, or central depository having custody of law enforcement files and records, if these are included in the motion, and
 - any other agency having custody of records or files subject to the sealing order.
5. Copies of the sealing order shall be sent to each agency or official named therein.
6. Upon entry of the sealing order, the proceedings in the case shall be treated as if they had never occurred, and all index references shall be deleted; the court, law enforcement officers, and departments and agencies shall (and the individual may) reply to an inquiry, "...that no record exists with respect to such person."
7. Inspection of files and records, or the release of information in the files and records, included in the sealing order may thereafter be permitted by the court only
 - upon motion by the individual who is the subject of the records and only to those persons named in the motion, or

- at the court's discretion, in an individual case, to any clinic, hospital, or agency that has the individual under care or treatment or to persons engaged in fact finding or research.

8. Any finding of delinquency or need of supervision, or conviction of a crime, subsequent to entry of the sealing order may, at the court's discretion, be used as a basis to set aside the sealing order.
9. A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records sealed.

END