

Federal and Maryland Laws and Regulations Governing the Criminal Justice Information System (CJIS)

The following summarizes a presentation (from the Department of Public Safety and Correctional Services before the Law Subcommittee) deriving from a list titled “Federal and Maryland Laws and Regulations” governing Maryland’s Criminal Justice Information System (CJIS).

Maryland’s Criminal Justice Information System (CJIS), like its counterpart in every other State, is a computerized repository of “criminal history record information” (CHRI) governed by the Code of Federal Regulations (28 CFR 20) on which Maryland’s statute (Article 27, § 742—755) and regulations (COMAR 12.15.01, .02, .03) are modeled. In Maryland, CJIS is jointly overseen by the Secretary of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals, with the advice of the Criminal Justice Information Advisory Board. For budgetary and administrative purposes only, CJIS Central Repository is housed in the Department of Public Safety and Correctional Services.

CHRI has a specific definition. It includes “reportable events” such as arrests, convictions, and incarcerations; it does not include “court records of public judicial proceedings”. These “reportable events” are so called because they are “reported” to the CJIS Central Repository from a variety of sources to form the chronological criminal history of an offender (the “RAP Sheet”). These sources are primarily the courts, but also include law enforcement and correctional agencies, etc. The Code of Federal Regulations and Maryland’s statute describe the permitted uses of the data, sets up rules for preventing unauthorized access to the information, and allows individuals to challenge and correct the database. While CHRI and its use may have originated in law enforcement and the courts, these offender-based and fingerprint-supported records as presently constituted are used by all criminal justice agencies for investigation, apprehension, prosecution, correctional and supervision classification, and other criminal justice purposes.

State and federal law and regulation also permit the limited use of CHRI outside of the criminal justice system, i.e., for non-criminal justice purposes, such as employment, licensing, or research. When authorized for specified purposes, employers, licensors, and other noncriminal justice entities (e.g., Public Housing Authorities) may obtain State only or State and national criminal history records checks via the CJIS Central Repository by submitting applications that include the subject’s fingerprints.

Terms and Definitions

Criminal history record information means data initiated or collected by a criminal justice agency on a person pertaining to a **reportable event**¹.

The term does not include:

- Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;
- Data pertaining to a proceeding under Subtitle 8 of Title 3 of the Courts Article (Juvenile Causes), but it does include:
 - (i) Data pertaining to a person following waiver of jurisdiction by a juvenile court; and
 - (ii) Information described under § 747(a)(21) and (22) and § 747A of this subtitle;
- Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;
- Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of any local ordinances, or any State or local regulations, or violations of the Natural Resources Article or public local laws;
- Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16 of the Transportation Article; or
- Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi.

Federal CHRI is CHRI maintained by the FBI that consists of reportable events related to federal arrests, convictions, incarcerations, etc.

¹ CHRI includes data from an agency that is required to report to the Central Repository under Title 12 of the Health - General Article, i.e., commitments to or releases from facilities in the Department of Health and Mental Hygiene (DHMH).

National CHRI is CHRI maintained by the FBI as a result of States reporting arrests and dispositions to the FBI.

Reportable event (see attachment, “*CJIS – Reportable Events (CHRI) & Sources*”)

CJIS – REPORTABLE EVENTS (CHRI) & SOURCES

REPORTABLE EVENT (Art 27, § 747)	FROM AGENCY/SYSTEM
(1) Issuance or withdrawal of an arrest warrant;	**
(2) An arrest;	Law enforcement; ABS
(3) Release of a person after arrest without the filing of a charge	Law enforcement; ABS
(4) Presentment of an indictment, filing of a criminal information, or filing of a statement of charges after arrest	Courts/JIS
(5) A release pending trial or appeal	Courts/JIS
(6) Commitment to a place of pretrial detention	Courts/JIS; DPDS
(7) Dismissal or quashing of an indictment or criminal information	Courts/JIS
(8) A nolle prosequi	Courts/JIS
(9) Placement of a charge on the stet docket	Courts/JIS
(10) An acquittal, conviction, verdict of not criminally responsible, or other disposition at or following trial, including a finding of probation before judgment	Courts/JIS
(11) Imposition of a sentence	Courts/JIS
(12) Commitment to a correctional facility, whether State or locally operated	(date rec'd): DOC, local detention centers
(13) Commitment to the Department of Health and Mental Hygiene under § 12-105 or § 12-111 of the Health – General Article as incompetent to stand trial or not criminally responsible	Courts/JIS; DHMH
(14) Release from detention or confinement	DOC, local detention centers
(15) Conditional release, revocation of conditional release, or discharge of an individual committed to the Department of Health and Mental Hygiene as incompetent to stand trial or as not criminally responsible	Courts/JIS; DHMH
(16) An escape from confinement, or escape from commitment	DOC, local detention centers
(17) A pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court	Courts/JIS; DOC; local detention centers, MPC
(18) Entry of an appeal to an appellate court	Courts/JIS
(19) Judgment of an appellate court	Courts/JIS
(20) Order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement	Courts/JIS
(21) An adjudication of a child as delinquent: (i) If the child is at least 14 years old, for an act described in § 3-804(e)(1) of the Courts and Judicial Proceedings Article; and (ii) If the child is at least 16 years old, for an act described in § 3-804(e)(4) or (5) of the Courts and Judicial	Courts/JIS

Proceedings Article	
(22) Issuance or withdrawal of a writ of attachment by a juvenile court; and	**
(23) Any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the Secretary or the Court of Appeals	

**Authorized National Criminal History Records Checks
P.L. 92-544²**

Applicant Categories	Authority	Conviction	Non-conviction
Caretakers			
Licensees and individuals who care for or supervise children	Family Law Article, §§ 5-560-5-	x (incl. NCR)	x (pending charges & PBJ only)
Department of Juvenile Justice employees	Article 83C, § 4-132	x	x
Providers and employees of congregate (sheltered) care for the elderly	Article 70B, § 4(b)(7)	x	x
Professions and Businesses			
Secondhand precious metal dealers and pawnbrokers, dealers, and employees	Business Regulations Article, §§ 12-202—12-207	x	
Specified mortgage lenders	Financial Institutions Article, §§ 11-501—11-507	x	x
Maryland Racing Commission Executive Director, employees of the Commission, applicants for licenses, and other individuals or agents identified by the Commission	Business Regulations Article, §§ 11-205—11-312	x	x
Check cashing services	Financial Services Article, §§ 12-101—12-107	x	x
For-hire drivers.	Public Utility Companies Article, § 10-104(b)(6).	x	x
Industrial hemp licensees	Agriculture Article, §§ 9-801—9-806	x	x
Applicants for taxicab license in Montgomery County	Article 27, § 754C	x	x
Security and Public Safety			
Security guard agency licensees and guards	Maryland Security Guards Act, Business Occupations and Professions Article, §§ 19-101—19-701	x	x
County paid and volunteer firefighters, paramedics, and rescue squad members	Article 38A, § 7A	x	x (arrests only)
Applicants for firearm dealer's license	Article 27, § 443	x	x
Applicants for handgun permits	Article 27, § 36E	x	x

² The results of an FBI check may go directly to a governmental employer/licensor, etc. However, when the employer is a private entity, the Central Repository receives the FBI check and screens it to produce a "printed statement" that indicates whether or not the applicant has a criminal "hit".

Applicant Categories	Authority	Conviction	Non-conviction
Security systems technicians	Security Systems Technicians Act, Business Occupations and Professions Article, §§ 18-101—18-601	x	x
Private home detention monitoring agencies and employees/monitors	Business Occupations and Professions Article, §§ 20-101—20-701	x (felony only)	
Applicants for private detective agency license and an employee of, or an applicant for employment with, a private detective agency	Business Occupations and Professions Article, §§ 13-101—13-706	x	x
Special police	As authorized by Article 41 § 4-902	x	x
Maryland Liquor Licensees			
Current counties included under this law are: Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Kent, Montgomery, St. Mary's, and Wicomico	Maryland Alcoholic Beverages Law (Article 2B, § 10-103)	x	x

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COMMENTARY ON ACCESS TO COURT RECORDS

Except under unusual circumstances, there is a constitutional right to public access to both civil and criminal trials and a corresponding right to review court documents attendant to these trials. However, it is not at all clear that there is a public right of access to all court-maintained records, such as electronic indices of persons coming into contact with the criminal justice system.

Although the Supreme Court has never dealt directly with the issue of public access to electronic court records not directly collected in connection with specific cases, it has spoken about the privacy interest implicated by disclosure of criminal history record information. In *Department of Justice v. Reporters Committee*, 489 U.S. 749, 764 (1989), the Court stated:

Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.

Even though the *Reporters Committee* case is based on an examination of the federal freedom of information law, the language in the opinion is instructive. The Court observes that when a request for records seeks information that is a compilation of what the Government happens to be storing, rather than what Government is "up to," then such an invasion of privacy is "unwarranted." *Id.* at 780.

In *Los Angeles Police Department v. United Reporting Publishing Corporation*, 528 U.S. 32 (1999), a case examining the validity of a California statute limiting access to the addresses of arrestees unless, *inter alia*, the requestor would declare that the address would not be used directly or indirectly to sell a product or service, the Supreme Court said the statute was not an abridgement of anyone's right to engage in speech and that California could decide not to give out any arrestee information at all without violating the First Amendment. *Id.* at 40.

Two state appellate courts have held that private companies compiling background information are not entitled to access to compilations of data from computerized court data bases. In *Westbrook v. County of Los Angeles*, 27 Cal. App. 4th 157, 32 Cal. Rptr.2d 382, 387 (1994), the California Court of Appeals indicated that there "is a qualitative difference between obtaining information from a specific docket or on a specified individual, and obtaining docket information on every person against whom criminal charges are pending in the municipal court." The court went on to say that "while there is no question that court proceedings generally should not be conducted in secret, the public's right to information of record is not absolute." *Id.* The aggregate nature of the information collected is the quality which makes its dissemination constitutionally dangerous [under the California constitution]. *Id.*

Likewise, the Supreme Court of Colorado, in *Office of the State Court Administrator v. Background Information Services, Inc.*, 994 P.2d 420 (1999), concluded, after balancing individual privacy concerns against the public interest in fair and just operation of the court system, that the release of bulk data generated from computerized record systems is inappropriate.

The cases cited reflect what is occurring in other court cases, some of which come to different conclusions. Courts are finding the access issue difficult because of the need to find a balance among competing interests. The final draft of the *Report of the National Task Force on Privacy, Technology and Criminal Justice Information* recognizes this difficulty and finds a there is a need to "balance the use of criminal justice information and the privacy interests of those to whom the information pertains".