

REFERENCE TITLE: central state repository; hate crimes.

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1483

Introduced by
Senator Burton Cahill; Representative Meza

AN ACT

AMENDING SECTION 41-1750, ARIZONA REVISED STATUTES; RELATING TO THE
DEPARTMENT OF PUBLIC SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1750, Arizona Revised Statutes, is amended to
3 read:

4 41-1750. Central state repository; department of public safety;
5 duties; funds; accounts; definitions

6 A. The department is responsible for the effective operation of the
7 central state repository in order to collect, store and disseminate complete
8 and accurate Arizona criminal history records and related criminal justice
9 information. The department shall:

10 1. Procure from all criminal justice agencies in this state accurate
11 and complete personal identification data, fingerprints, charges, process
12 control numbers and dispositions and such other information as may be
13 pertinent to all persons who have been charged with, arrested for, convicted
14 of or summoned to court as a criminal defendant for a felony offense or an
15 offense involving domestic violence as defined in section 13-3601 or a
16 violation of title 13, chapter 14 or title 28, chapter 4.

17 2. Collect information concerning the number and nature of offenses
18 known to have been committed in this state and of the legal steps taken in
19 connection with these offenses, such other information that is useful in the
20 study of crime and in the administration of criminal justice and all other
21 information deemed necessary to operate the statewide uniform crime reporting
22 program and to cooperate with the federal government uniform crime reporting
23 program.

24 3. Collect information concerning criminal offenses that manifest
25 evidence of prejudice based on race, color, religion, national origin, sexual
26 orientation, gender, ~~or~~ disability OR GENDER IDENTITY OR EXPRESSION.

27 4. Cooperate with the central state repositories in other states and
28 with the appropriate agency of the federal government in the exchange of
29 information pertinent to violators of the law.

30 5. Ensure the rapid exchange of information concerning the commission
31 of crime and the detection of violators of the law among the criminal justice
32 agencies of other states and of the federal government.

33 6. Furnish assistance to peace officers throughout this state in crime
34 scene investigation for the detection of latent fingerprints and in the
35 comparison of latent fingerprints.

36 7. Conduct periodic operational audits of the central state repository
37 and of a representative sample of other agencies that contribute records to
38 or receive criminal justice information from the central state repository or
39 through the Arizona criminal justice information system.

40 8. Establish and enforce the necessary physical and system safeguards
41 to ensure that the criminal justice information maintained and disseminated
42 by the central state repository or through the Arizona criminal justice
43 information system is appropriately protected from unauthorized inquiry,
44 modification, destruction or dissemination as required by this section.

1 9. Aid and encourage coordination and cooperation among criminal
2 justice agencies through the statewide and interstate exchange of criminal
3 justice information.

4 10. Provide training and proficiency testing on the use of criminal
5 justice information to agencies receiving information from the central state
6 repository or through the Arizona criminal justice information system.

7 11. Operate and maintain the Arizona automated fingerprint
8 identification system established pursuant to section 41-2411.

9 12. Provide criminal history record information to the fingerprinting
10 division for the purpose of screening applicants for fingerprint clearance
11 cards.

12 B. The director may establish guidelines for the submission and
13 retention of criminal justice information as deemed useful for the study or
14 prevention of crime and for the administration of criminal justice.

15 C. The chief officers of criminal justice agencies of this state or
16 its political subdivisions shall provide to the central state repository
17 fingerprints and information concerning personal identification data,
18 descriptions, crimes for which persons are arrested, process control numbers
19 and dispositions and such other information as may be pertinent to all
20 persons who have been charged with, arrested for, convicted of or summoned to
21 court as criminal defendants for felony offenses or offenses involving
22 domestic violence as defined in section 13-3601 or violations of title 13,
23 chapter 14 or title 28, chapter 4 that have occurred in this state.

24 D. The chief officers of law enforcement agencies of this state or its
25 political subdivisions shall provide to the department such information as
26 necessary to operate the statewide uniform crime reporting program and to
27 cooperate with the federal government uniform crime reporting program.

28 E. The chief officers of criminal justice agencies of this state or
29 its political subdivisions shall comply with the training and proficiency
30 testing guidelines as required by the department to comply with the federal
31 national crime information center mandates.

32 F. The chief officers of criminal justice agencies of this state or
33 its political subdivisions also shall provide to the department information
34 concerning crimes that manifest evidence of prejudice based on race, color,
35 religion, national origin, sexual orientation, gender or disability.

36 G. The director shall authorize the exchange of criminal justice
37 information between the central state repository, or through the Arizona
38 criminal justice information system, whether directly or through any
39 intermediary, only as follows:

40 1. With criminal justice agencies of the federal government, Indian
41 tribes, this state or its political subdivisions and other states, on request
42 by the chief officers of such agencies or their designated representatives,
43 specifically for the purposes of the administration of criminal justice and
44 for evaluating the fitness of current and prospective criminal justice
45 employees.

1 2. With any noncriminal justice agency pursuant to a statute,
2 ordinance or executive order that specifically authorizes the noncriminal
3 justice agency to receive criminal history record information for the purpose
4 of evaluating the fitness of current or prospective licensees, employees,
5 contract employees or volunteers, on submission of the subject's fingerprints
6 and the prescribed fee. Each statute, ordinance, or executive order that
7 authorizes noncriminal justice agencies to receive criminal history record
8 information for these purposes shall identify the specific categories of
9 licensees, employees, contract employees or volunteers, and shall require
10 that fingerprints of the specified individuals be submitted in conjunction
11 with such requests for criminal history record information.

12 3. With the board of fingerprinting for the purpose of conducting good
13 cause exceptions pursuant to section 41-619.55.

14 4. With any individual for any lawful purpose on submission of the
15 subject of record's fingerprints and the prescribed fee.

16 5. With the governor, if the governor elects to become actively
17 involved in the investigation of criminal activity or the administration of
18 criminal justice in accordance with the governor's constitutional duty to
19 ensure that the laws are faithfully executed or as needed to carry out the
20 other responsibilities of the governor's office.

21 6. With regional computer centers that maintain authorized
22 computer-to-computer interfaces with the department, that are criminal
23 justice agencies or under the management control of a criminal justice agency
24 and that are established by a statute, ordinance or executive order to
25 provide automated data processing services to criminal justice agencies
26 specifically for the purposes of the administration of criminal justice or
27 evaluating the fitness of regional computer center employees who have access
28 to the Arizona criminal justice information system and the national crime
29 information center system.

30 7. With an individual who asserts a belief that criminal history
31 record information relating to the individual is maintained by an agency or
32 in an information system in this state that is subject to this section. On
33 submission of fingerprints, the individual may review this information for
34 the purpose of determining its accuracy and completeness by making
35 application to the agency operating the system. Rules adopted under this
36 section shall include provisions for administrative review and necessary
37 correction of any inaccurate or incomplete information. The review and
38 challenge process authorized by this paragraph is limited to criminal history
39 record information.

40 8. With individuals and agencies pursuant to a specific agreement with
41 a criminal justice agency to provide services required for the administration
42 of criminal justice pursuant to that agreement if the agreement specifically
43 authorizes access to data, limits the use of data to purposes for which given
44 and ensures the security and confidentiality of the data consistent with this
45 section.

1 9. With individuals and agencies for the express purpose of research,
2 evaluative or statistical activities pursuant to an agreement with a criminal
3 justice agency if the agreement specifically authorizes access to data,
4 limits the use of data to research, evaluative or statistical purposes and
5 ensures the confidentiality and security of the data consistent with this
6 section.

7 10. With the auditor general for audit purposes.

8 11. With central state repositories of other states for noncriminal
9 justice purposes for dissemination in accordance with the laws of those
10 states.

11 12. On submission of the fingerprint card, with the department of
12 economic security to provide criminal history record information on
13 prospective adoptive parents for the purpose of conducting the preadoption
14 certification investigation under title 8, chapter 1, article 1 if the
15 department of economic security is conducting the investigation, or with an
16 agency or a person appointed by the court, if the agency or person is
17 conducting the investigation. Information received under this paragraph
18 shall only be used for the purposes of the preadoption certification
19 investigation.

20 13. With the department of economic security and the superior court for
21 the purpose of evaluating the fitness of custodians or prospective custodians
22 of juveniles, including parents, relatives and prospective guardians.
23 Information received under this paragraph shall only be used for the purposes
24 of that evaluation. The information shall be provided on submission of
25 either:

26 (a) The fingerprint card.

27 (b) The name, date of birth and social security number of the person.

28 14. On submission of a fingerprint card, provide criminal history
29 record information to the superior court for the purpose of evaluating the
30 fitness of investigators appointed under section 14-5303 or 14-5407, or
31 guardians appointed under section 14-5206.

32 15. With the supreme court to provide criminal history record
33 information on prospective fiduciaries pursuant to section 14-5651.

34 16. With the department of juvenile corrections to provide criminal
35 history record information pursuant to section 41-2814.

36 17. On submission of the fingerprint card, provide criminal history
37 record information to the Arizona peace officer standards and training board
38 or a board certified law enforcement academy to evaluate the fitness of
39 prospective cadets.

40 18. With the internet sex offender web site database established
41 pursuant to section 13-3827.

42 19. With licensees of the United States nuclear regulatory commission
43 for the purpose of determining whether an individual should be granted
44 unescorted access to the protected area of a commercial nuclear generating

1 station on submission of the subject of record's fingerprints and the
2 prescribed fee.

3 20. With the state board of education for the purpose of evaluating the
4 fitness of a certificated teacher or administrator or an applicant for a
5 teaching or an administrative certificate provided that the state board of
6 education or its employees or agents have reasonable suspicion that the
7 certificated person engaged in conduct that would be a criminal violation of
8 the laws of this state or was involved in immoral or unprofessional conduct
9 or that the applicant engaged in conduct that would warrant disciplinary
10 action if the applicant were certificated at the time of the alleged conduct.
11 The information shall be provided on the submission of either:

12 (a) The fingerprint card.

13 (b) The name, date of birth and social security number of the person.

14 H. The director shall adopt rules necessary to execute this section.

15 I. The director, in the manner prescribed by law, shall remove and
16 destroy records that the director determines are no longer of value in the
17 detection or prevention of crime.

18 J. The director shall establish a fee in an amount necessary to cover
19 the cost of federal noncriminal justice fingerprint processing for criminal
20 history record information checks that are authorized by law for noncriminal
21 justice employment, licensing or other lawful purposes. An additional fee
22 may be charged by the department for state noncriminal justice fingerprint
23 processing. Fees submitted to the department for state noncriminal justice
24 fingerprint processing are not refundable.

25 K. The director shall establish a fee in an amount necessary to cover
26 the cost of processing copies of department reports, eight by ten inch black
27 and white photographs or eight by ten inch color photographs of traffic
28 accident scenes.

29 L. Except as provided in subsection 0 of this section, each agency
30 authorized by this section may charge a fee, in addition to any other fees
31 prescribed by law, in an amount necessary to cover the cost of state and
32 federal noncriminal justice fingerprint processing for criminal history
33 record information checks that are authorized by law for noncriminal justice
34 employment, licensing or other lawful purposes.

35 M. A fingerprint account within the records processing fund is
36 established for the purpose of separately accounting for the collection and
37 payment of fees for noncriminal justice fingerprint processing by the
38 department. Monies collected for this purpose shall be credited to the
39 account, and payments by the department to the United States for federal
40 noncriminal justice fingerprint processing shall be charged against the
41 account. Monies in the account not required for payment to the United States
42 shall be used by the department in support of the department's noncriminal
43 justice fingerprint processing duties. At the end of each fiscal year, any
44 balance in the account not required for payment to the United States or to

1 support the department's noncriminal justice fingerprint processing duties
2 reverts to the state general fund.

3 N. A records processing fund is established for the purpose of
4 separately accounting for the collection and payment of fees for department
5 reports and photographs of traffic accident scenes processed by the
6 department. Monies collected for this purpose shall be credited to the fund
7 and shall be used by the department in support of functions related to
8 providing copies of department reports and photographs. At the end of each
9 fiscal year, any balance in the fund not required for support of the
10 functions related to providing copies of department reports and photographs
11 reverts to the state general fund.

12 O. The department of economic security may pay from appropriated
13 monies the cost of federal fingerprint processing or federal criminal history
14 record information checks that are authorized by law for employees and
15 volunteers of the department, guardians pursuant to section 46-134,
16 subsection A, paragraph 15, the licensing of foster parents or the
17 certification of adoptive parents.

18 P. The director shall adopt rules that provide for:

19 1. The collection and disposition of fees pursuant to this section.

20 2. The refusal of service to those agencies that are delinquent in
21 paying these fees.

22 Q. The director shall ensure that the following limitations are
23 observed regarding dissemination of criminal justice information obtained
24 from the central state repository or through the Arizona criminal justice
25 information system:

26 1. Any criminal justice agency that obtains criminal justice
27 information from the central state repository or through the Arizona criminal
28 justice information system assumes responsibility for the security of the
29 information and shall not secondarily disseminate this information to any
30 individual or agency not authorized to receive this information directly from
31 the central state repository or originating agency.

32 2. Dissemination to an authorized agency or individual may be
33 accomplished by a criminal justice agency only if the dissemination is for
34 criminal justice purposes in connection with the prescribed duties of the
35 agency and not in violation of this section.

36 3. Criminal history record information disseminated to noncriminal
37 justice agencies or to individuals shall be used only for the purposes for
38 which it was given. Secondary dissemination is prohibited unless otherwise
39 authorized by law.

40 4. The existence or nonexistence of criminal history record
41 information shall not be confirmed to any individual or agency not authorized
42 to receive the information itself.

43 5. Criminal history record information to be released for noncriminal
44 justice purposes to agencies of other states shall only be released to the

1 central state repositories of those states for dissemination in accordance
2 with the laws of those states.

3 6. Criminal history record information shall be released to
4 noncriminal justice agencies of the federal government pursuant to the terms
5 of the federal security clearance information act (P.L. 99-169).

6 R. This section and the rules adopted under this section apply to all
7 agencies and individuals collecting, storing or disseminating criminal
8 justice information processed by manual or automated operations if the
9 collection, storage or dissemination is funded in whole or in part with
10 monies made available by the law enforcement assistance administration after
11 July 1, 1973, pursuant to title I of the crime control act of 1973, and to
12 all agencies that interact with or receive criminal justice information from
13 or through the central state repository and through the Arizona criminal
14 justice information system.

15 S. This section does not apply to criminal history record information
16 contained in:

17 1. Posters, arrest warrants, announcements or lists for identifying or
18 apprehending fugitives or wanted persons.

19 2. Original records of entry such as police blotters maintained by
20 criminal justice agencies, compiled chronologically and required by law or
21 long-standing custom to be made public if these records are organized on a
22 chronological basis.

23 3. Transcripts or records of judicial proceedings if released by a
24 court or legislative or administrative proceedings.

25 4. Announcements of executive clemency or pardon.

26 5. Computer databases, other than the Arizona criminal justice
27 information system, that are specifically designed for community notification
28 of an offender's presence in the community pursuant to section 13-3825 or for
29 public informational purposes authorized by section 13-3827.

30 T. Nothing in this section prevents a criminal justice agency from
31 disclosing to the public criminal history record information that is
32 reasonably contemporaneous to the event for which an individual is currently
33 within the criminal justice system, including information noted on traffic
34 accident reports concerning citations, blood alcohol tests, intoxilyzer tests
35 or arrests made in connection with the traffic accident being investigated.

36 U. In order to ensure that complete and accurate criminal history
37 record information is maintained and disseminated by the central state
38 repository:

39 1. The arresting authority shall take legible fingerprints of all
40 persons arrested for offenses specified in subsection C of this section and,
41 within ten days of the arrest, the arresting authority shall forward the
42 fingerprints to the department in the manner or form required by the
43 department. On the issuance and service of a summons for a defendant who is
44 charged with a felony offense, a violation of title 13, chapter 14 or title
45 28, chapter 4 or a domestic violence offense as defined in section 13-3601,

1 the court shall order that the defendant be fingerprinted by the appropriate
2 law enforcement agency and that the defendant appear at a designated time and
3 place for fingerprinting. At the initial appearance or on the arraignment of
4 a summoned defendant who is charged with a felony offense, a violation of
5 title 13, chapter 14 or title 28, chapter 4 or a domestic violence offense as
6 defined in section 13-3601, the court shall order that the defendant be
7 fingerprinted at a designated time and place by the appropriate law
8 enforcement agency if the court has reasonable cause to believe that the
9 defendant was not previously fingerprinted.

10 2. In every criminal case in which the defendant is incarcerated or
11 fingerprinted as a result of the charge, an originating law enforcement
12 agency or prosecutor, within forty days of the disposition, shall advise the
13 central state repository of all dispositions concerning the termination of
14 criminal proceedings against an individual arrested for an offense specified
15 in subsection C of this section. This information shall be submitted on a
16 form or in a manner required by the department.

17 3. Dispositions resulting from formal proceedings in a court having
18 jurisdiction in a criminal action against an individual who is arrested for
19 an offense specified in subsection C of this section or section 8-341,
20 subsection T shall be reported to the central state repository within forty
21 days of the date of the disposition. This information shall be submitted on
22 a form or in a manner specified by rules approved by the supreme court.

23 4. The state department of corrections or the department of juvenile
24 corrections, within forty days, shall advise the central state repository
25 that it has assumed supervision of a person convicted of an offense specified
26 in subsection C of this section or section 8-341, subsection T. The state
27 department of corrections or the department of juvenile corrections shall
28 also report dispositions that occur thereafter to the central state
29 repository within forty days of the date of the dispositions. This
30 information shall be submitted on a form or in a manner required by the
31 department of public safety.

32 5. Each criminal justice agency shall query the central state
33 repository before dissemination of any criminal history record information to
34 ensure the completeness of the information. Inquiries shall be made before
35 any dissemination except in those cases in which time is of the essence and
36 the repository is technically incapable of responding within the necessary
37 time period. If time is of the essence, the inquiry shall still be made and
38 the response shall be provided as soon as possible.

39 V. The director shall adopt rules specifying that any agency that
40 collects, stores or disseminates criminal justice information that is subject
41 to this section shall establish effective security measures to protect the
42 information from unauthorized access, disclosure, modification or
43 dissemination. The rules shall include reasonable safeguards to protect the
44 affected information systems from fire, flood, wind, theft, sabotage or other
45 natural or man-made hazards or disasters.

1 W. The department shall make available to agencies that contribute to,
2 or receive criminal justice information from, the central state repository or
3 through the Arizona criminal justice information system a continuing training
4 program in the proper methods for collecting, storing and disseminating
5 information in compliance with this section.

6 X. Nothing in this section creates a cause of action or a right to
7 bring an action including an action based on discrimination due to sexual
8 orientation.

9 Y. For the purposes of this section:

10 1. "Administration of criminal justice" means performance of the
11 detection, apprehension, detention, pretrial release, posttrial release,
12 prosecution, adjudication, correctional supervision or rehabilitation of
13 criminal offenders. Administration of criminal justice includes enforcement
14 of criminal traffic offenses and civil traffic violations, including parking
15 violations, when performed by a criminal justice agency. Administration of
16 criminal justice also includes criminal identification activities and the
17 collection, storage and dissemination of criminal history record information.

18 2. "Administrative records" means records that contain adequate and
19 proper documentation of the organization, functions, policies, decisions,
20 procedures and essential transactions of the agency and that are designed to
21 furnish information to protect the rights of this state and of persons
22 directly affected by the agency's activities.

23 3. "Arizona criminal justice information system" or "system" means the
24 statewide information system managed by the director for the collection,
25 processing, preservation, dissemination and exchange of criminal justice
26 information and includes the electronic equipment, facilities, procedures and
27 agreements necessary to exchange this information.

28 4. "Central state repository" means the central location within the
29 department for the collection, storage and dissemination of Arizona criminal
30 history records and related criminal justice information.

31 5. "Criminal history record information" and "criminal history record"
32 means information that is collected by criminal justice agencies on
33 individuals and that consists of identifiable descriptions and notations of
34 arrests, detentions, indictments and other formal criminal charges, and any
35 disposition arising from those actions, sentencing, formal correctional
36 supervisory action and release. Criminal history record information and
37 criminal history record do not include identification information to the
38 extent that the information does not indicate involvement of the individual
39 in the criminal justice system or information relating to juveniles unless
40 they have been adjudicated as adults.

41 6. "Criminal justice agency" means either:

42 (a) A court at any governmental level with criminal or equivalent
43 jurisdiction, including courts of any foreign sovereignty duly recognized by
44 the federal government.

1 (b) A government agency or subunit of a government agency that is
2 specifically authorized to perform as its principal function the
3 administration of criminal justice pursuant to a statute, ordinance or
4 executive order and that allocates more than fifty per cent of its annual
5 budget to the administration of criminal justice. This subdivision includes
6 agencies of any foreign sovereignty duly recognized by the federal
7 government.

8 7. "Criminal justice information" means information that is collected
9 by criminal justice agencies and that is needed for the performance of their
10 legally authorized and required functions, such as criminal history record
11 information, citation information, stolen property information, traffic
12 accident reports, wanted persons information and system network log searches.
13 Criminal justice information does not include the administrative records of a
14 criminal justice agency.

15 8. "Disposition" means information disclosing that a decision has been
16 made not to bring criminal charges or that criminal proceedings have been
17 concluded or information relating to sentencing, correctional supervision,
18 release from correctional supervision, the outcome of an appellate review of
19 criminal proceedings or executive clemency.

20 9. "Dissemination" means the written, oral or electronic communication
21 or transfer of criminal justice information to individuals and agencies other
22 than the criminal justice agency that maintains the information.
23 Dissemination includes the act of confirming the existence or nonexistence of
24 criminal justice information.

25 10. "GENDER IDENTITY OR EXPRESSION" MEANS A PERSON'S GENDER-RELATED
26 SELF-IDENTITY, APPEARANCE, EXPRESSION OR BEHAVIOR REGARDLESS OF THE PERSON'S
27 ASSIGNED SEX AT BIRTH.

28 ~~10.~~ 11. "Management control":

29 (a) Means the authority to set and enforce:

30 (i) Priorities regarding development and operation of criminal justice
31 information systems and programs.

32 (ii) Standards for the selection, supervision and termination of
33 personnel involved in the development of criminal justice information systems
34 and programs and in the collection, maintenance, analysis and dissemination
35 of criminal justice information.

36 (iii) Policies governing the operation of computers, circuits and
37 telecommunications terminals used to process criminal justice information to
38 the extent that the equipment is used to process, store or transmit criminal
39 justice information.

40 (b) Includes the supervision of equipment, systems design, programming
41 and operating procedures necessary for the development and implementation of
42 automated criminal justice information systems.

1 ~~11.~~ 12. "Process control number" means the Arizona automated
2 fingerprint identification system number that attaches to each arrest event
3 at the time of fingerprinting and that is assigned to the arrest fingerprint
4 card, disposition form and other pertinent documents.

5 ~~12.~~ 13. "Secondary dissemination" means the dissemination of criminal
6 justice information from an individual or agency that originally obtained the
7 information from the central state repository or through the Arizona criminal
8 justice information system to another individual or agency.

9 ~~13.~~ 14. "Sexual orientation" means ~~consensual~~ A PERSON'S
10 homosexuality, BISEXUALITY or heterosexuality.

11 ~~14.~~ 15. "Subject of record" means the person who is the primary
12 subject of a criminal justice record.

13 Sec. 2. Short title

14 This act may be cited as the "Amancio Corrales Act".