

SB0104



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0104

Introduced 1/30/2009, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

705 ILCS 405/1-7

from Ch. 37, par. 801-7

705 ILCS 405/5-905

Amends the Juvenile Court Act of 1987. Permits persons or their staff charged by a unit of local government with the duty of investigating the conduct of law enforcement officers to inspect and copy law enforcement records maintained by law enforcement agencies that relate to a minor who has been arrested or taken into custody before his or her 17th birthday. Effective immediately.

LRB096 04166 RLC 14457 b

A BILL FOR

1 AN ACT concerning juveniles.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Sections 1-7 and 5-905 as follows:

6 (705 ILCS 405/1-7) (from Ch. 37, par. 801-7)

7 Sec. 1-7. Confidentiality of law enforcement records.

8 (A) Inspection and copying of law enforcement records
9 maintained by law enforcement agencies that relate to a minor
10 who has been arrested or taken into custody before his or her
11 17th birthday shall be restricted to the following:

12 (1) Any local, State or federal law enforcement
13 officers of any jurisdiction or agency when necessary for
14 the discharge of their official duties during the
15 investigation or prosecution of a crime or relating to a
16 minor who has been adjudicated delinquent and there has
17 been a previous finding that the act which constitutes the
18 previous offense was committed in furtherance of criminal
19 activities by a criminal street gang, or, when necessary
20 for the discharge of their official duties, persons or
21 their staff charged by a unit of local government with the
22 duty of investigating the conduct of law enforcement
23 officers. For purposes of this Section, "criminal street

1 gang" has the meaning ascribed to it in Section 10 of the
2 Illinois Streetgang Terrorism Omnibus Prevention Act.

3 (2) Prosecutors, probation officers, social workers,
4 or other individuals assigned by the court to conduct a
5 pre-adjudication or pre-disposition investigation, and
6 individuals responsible for supervising or providing
7 temporary or permanent care and custody for minors pursuant
8 to the order of the juvenile court, when essential to
9 performing their responsibilities.

10 (3) Prosecutors and probation officers:

11 (a) in the course of a trial when institution of
12 criminal proceedings has been permitted or required
13 under Section 5-805; or

14 (b) when institution of criminal proceedings has
15 been permitted or required under Section 5-805 and such
16 minor is the subject of a proceeding to determine the
17 amount of bail; or

18 (c) when criminal proceedings have been permitted
19 or required under Section 5-805 and such minor is the
20 subject of a pre-trial investigation, pre-sentence
21 investigation, fitness hearing, or proceedings on an
22 application for probation.

23 (4) Adult and Juvenile Prisoner Review Board.

24 (5) Authorized military personnel.

25 (6) Persons engaged in bona fide research, with the
26 permission of the Presiding Judge of the Juvenile Court and

1 the chief executive of the respective law enforcement
2 agency; provided that publication of such research results
3 in no disclosure of a minor's identity and protects the
4 confidentiality of the minor's record.

5 (7) Department of Children and Family Services child
6 protection investigators acting in their official
7 capacity.

8 (8) The appropriate school official. Inspection and
9 copying shall be limited to law enforcement records
10 transmitted to the appropriate school official by a local
11 law enforcement agency under a reciprocal reporting system
12 established and maintained between the school district and
13 the local law enforcement agency under Section 10-20.14 of
14 the School Code concerning a minor enrolled in a school
15 within the school district who has been arrested or taken
16 into custody for any of the following offenses:

17 (i) unlawful use of weapons under Section 24-1 of
18 the Criminal Code of 1961;

19 (ii) a violation of the Illinois Controlled
20 Substances Act;

21 (iii) a violation of the Cannabis Control Act;

22 (iv) a forcible felony as defined in Section 2-8 of
23 the Criminal Code of 1961; or

24 (v) a violation of the Methamphetamine Control and
25 Community Protection Act.

26 (9) Mental health professionals on behalf of the

1 Illinois Department of Corrections or the Department of
2 Human Services or prosecutors who are evaluating,
3 prosecuting, or investigating a potential or actual
4 petition brought under the Sexually Violent Persons
5 Commitment Act relating to a person who is the subject of
6 juvenile law enforcement records or the respondent to a
7 petition brought under the Sexually Violent Persons
8 Commitment Act who is the subject of the juvenile law
9 enforcement records sought. Any records and any
10 information obtained from those records under this
11 paragraph (9) may be used only in sexually violent persons
12 commitment proceedings.

13 (B) (1) Except as provided in paragraph (2), no law
14 enforcement officer or other person or agency may knowingly
15 transmit to the Department of Corrections, Adult Division
16 or the Department of State Police or to the Federal Bureau
17 of Investigation any fingerprint or photograph relating to
18 a minor who has been arrested or taken into custody before
19 his or her 17th birthday, unless the court in proceedings
20 under this Act authorizes the transmission or enters an
21 order under Section 5-805 permitting or requiring the
22 institution of criminal proceedings.

23 (2) Law enforcement officers or other persons or
24 agencies shall transmit to the Department of State Police
25 copies of fingerprints and descriptions of all minors who
26 have been arrested or taken into custody before their 17th

1 birthday for the offense of unlawful use of weapons under
2 Article 24 of the Criminal Code of 1961, a Class X or Class
3 1 felony, a forcible felony as defined in Section 2-8 of
4 the Criminal Code of 1961, or a Class 2 or greater felony
5 under the Cannabis Control Act, the Illinois Controlled
6 Substances Act, the Methamphetamine Control and Community
7 Protection Act, or Chapter 4 of the Illinois Vehicle Code,
8 pursuant to Section 5 of the Criminal Identification Act.
9 Information reported to the Department pursuant to this
10 Section may be maintained with records that the Department
11 files pursuant to Section 2.1 of the Criminal
12 Identification Act. Nothing in this Act prohibits a law
13 enforcement agency from fingerprinting a minor taken into
14 custody or arrested before his or her 17th birthday for an
15 offense other than those listed in this paragraph (2).

16 (C) The records of law enforcement officers concerning all
17 minors under 17 years of age must be maintained separate from
18 the records of arrests and may not be open to public inspection
19 or their contents disclosed to the public except by order of
20 the court presiding over matters pursuant to this Act or when
21 the institution of criminal proceedings has been permitted or
22 required under Section 5-805 or such a person has been
23 convicted of a crime and is the subject of pre-sentence
24 investigation or proceedings on an application for probation or
25 when provided by law. For purposes of obtaining documents
26 pursuant to this Section, a civil subpoena is not an order of

1 the court.

2 (1) In cases where the law enforcement records concern
3 a pending juvenile court case, the party seeking to inspect
4 the records shall provide actual notice to the attorney or
5 guardian ad litem of the minor whose records are sought.

6 (2) In cases where the records concern a juvenile court
7 case that is no longer pending, the party seeking to
8 inspect the records shall provide actual notice to the
9 minor or the minor's parent or legal guardian, and the
10 matter shall be referred to the chief judge presiding over
11 matters pursuant to this Act.

12 (3) In determining whether the records should be
13 available for inspection, the court shall consider the
14 minor's interest in confidentiality and rehabilitation
15 over the moving party's interest in obtaining the
16 information. Any records obtained in violation of this
17 subsection (C) shall not be admissible in any criminal or
18 civil proceeding, or operate to disqualify a minor from
19 subsequently holding public office or securing employment,
20 or operate as a forfeiture of any public benefit, right,
21 privilege, or right to receive any license granted by
22 public authority.

23 (D) Nothing contained in subsection (C) of this Section
24 shall prohibit the inspection or disclosure to victims and
25 witnesses of photographs contained in the records of law
26 enforcement agencies when the inspection and disclosure is

1 conducted in the presence of a law enforcement officer for the
2 purpose of the identification or apprehension of any person
3 subject to the provisions of this Act or for the investigation
4 or prosecution of any crime.

5 (E) Law enforcement officers may not disclose the identity
6 of any minor in releasing information to the general public as
7 to the arrest, investigation or disposition of any case
8 involving a minor.

9 (F) Nothing contained in this Section shall prohibit law
10 enforcement agencies from communicating with each other by
11 letter, memorandum, teletype or intelligence alert bulletin or
12 other means the identity or other relevant information
13 pertaining to a person under 17 years of age if there are
14 reasonable grounds to believe that the person poses a real and
15 present danger to the safety of the public or law enforcement
16 officers. The information provided under this subsection (F)
17 shall remain confidential and shall not be publicly disclosed,
18 except as otherwise allowed by law.

19 (G) Nothing in this Section shall prohibit the right of a
20 Civil Service Commission or appointing authority of any state,
21 county or municipality examining the character and fitness of
22 an applicant for employment with a law enforcement agency,
23 correctional institution, or fire department from obtaining
24 and examining the records of any law enforcement agency
25 relating to any record of the applicant having been arrested or
26 taken into custody before the applicant's 17th birthday.

1 (Source: P.A. 94-556, eff. 9-11-05; 95-123, eff. 8-13-07.)

2 (705 ILCS 405/5-905)

3 Sec. 5-905. Law enforcement records.

4 (1) Law Enforcement Records. Inspection and copying of law
5 enforcement records maintained by law enforcement agencies
6 that relate to a minor who has been arrested or taken into
7 custody before his or her 17th birthday shall be restricted to
8 the following and when necessary for the discharge of their
9 official duties:

10 (a) A judge of the circuit court and members of the
11 staff of the court designated by the judge;

12 (b) Law enforcement officers, probation officers or
13 prosecutors or their staff, or persons or their staff
14 charged by a unit of local government with the duty of
15 investigating the conduct of law enforcement officers;

16 (c) The minor, the minor's parents or legal guardian
17 and their attorneys, but only when the juvenile has been
18 charged with an offense;

19 (d) Adult and Juvenile Prisoner Review Boards;

20 (e) Authorized military personnel;

21 (f) Persons engaged in bona fide research, with the
22 permission of the judge of juvenile court and the chief
23 executive of the agency that prepared the particular
24 recording: provided that publication of such research
25 results in no disclosure of a minor's identity and protects

1 the confidentiality of the record;

2 (g) Individuals responsible for supervising or
3 providing temporary or permanent care and custody of minors
4 pursuant to orders of the juvenile court or directives from
5 officials of the Department of Children and Family Services
6 or the Department of Human Services who certify in writing
7 that the information will not be disclosed to any other
8 party except as provided under law or order of court;

9 (h) The appropriate school official. Inspection and
10 copying shall be limited to law enforcement records
11 transmitted to the appropriate school official by a local
12 law enforcement agency under a reciprocal reporting system
13 established and maintained between the school district and
14 the local law enforcement agency under Section 10-20.14 of
15 the School Code concerning a minor enrolled in a school
16 within the school district who has been arrested for any
17 offense classified as a felony or a Class A or B
18 misdemeanor.

19 (2) Information identifying victims and alleged victims of
20 sex offenses, shall not be disclosed or open to public
21 inspection under any circumstances. Nothing in this Section
22 shall prohibit the victim or alleged victim of any sex offense
23 from voluntarily disclosing his or her identity.

24 (3) Relevant information, reports and records shall be made
25 available to the Department of Juvenile Justice when a juvenile
26 offender has been placed in the custody of the Department of

1 Juvenile Justice.

2 (4) Nothing in this Section shall prohibit the inspection
3 or disclosure to victims and witnesses of photographs contained
4 in the records of law enforcement agencies when the inspection
5 or disclosure is conducted in the presence of a law enforcement
6 officer for purposes of identification or apprehension of any
7 person in the course of any criminal investigation or
8 prosecution.

9 (5) The records of law enforcement officers concerning all
10 minors under 17 years of age must be maintained separate from
11 the records of adults and may not be open to public inspection
12 or their contents disclosed to the public except by order of
13 the court or when the institution of criminal proceedings has
14 been permitted under Section 5-130 or 5-805 or required under
15 Section 5-130 or 5-805 or such a person has been convicted of a
16 crime and is the subject of pre-sentence investigation or when
17 provided by law.

18 (6) Except as otherwise provided in this subsection (6),
19 law enforcement officers may not disclose the identity of any
20 minor in releasing information to the general public as to the
21 arrest, investigation or disposition of any case involving a
22 minor. Any victim or parent or legal guardian of a victim may
23 petition the court to disclose the name and address of the
24 minor and the minor's parents or legal guardian, or both. Upon
25 a finding by clear and convincing evidence that the disclosure
26 is either necessary for the victim to pursue a civil remedy

1 against the minor or the minor's parents or legal guardian, or
2 both, or to protect the victim's person or property from the
3 minor, then the court may order the disclosure of the
4 information to the victim or to the parent or legal guardian of
5 the victim only for the purpose of the victim pursuing a civil
6 remedy against the minor or the minor's parents or legal
7 guardian, or both, or to protect the victim's person or
8 property from the minor.

9 (7) Nothing contained in this Section shall prohibit law
10 enforcement agencies when acting in their official capacity
11 from communicating with each other by letter, memorandum,
12 teletype or intelligence alert bulletin or other means the
13 identity or other relevant information pertaining to a person
14 under 17 years of age. The information provided under this
15 subsection (7) shall remain confidential and shall not be
16 publicly disclosed, except as otherwise allowed by law.

17 (8) No person shall disclose information under this Section
18 except when acting in his or her official capacity and as
19 provided by law or order of court.

20 (Source: P.A. 94-696, eff. 6-1-06.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.