

MEMORANDUM

TO: Committee on General, Housing & Military Affairs

FROM: William E. Griffin, Chief Assistant Attorney General

DATE: April 18, 2001

RE: Criminal Records

The House General Affairs Committee has asked whether a new statute, 20 V.S.A. §2056a, should be interpreted to deny liquor control investigators access to criminal records. My opinion is that the statute should not be interpreted that way. Liquor control investigators and other state and local law enforcement officers should continue to have access to Criminal Information Center records in accordance with the terms of the statute.

Section 2056a took effect last year with the passage of Act No. 151, An Act Relating to Fingerprinting and Criminal History Records. The section is entitled "Dissemination of criminal history records to criminal justice agencies." It added language to prior laws on the subject of criminal records, and provided that these records may be released to criminal justice agencies. It imposed penalties for the unauthorized disclosure of records obtained under the new statute.

Investigators in the Enforcement Division of the Department of Liquor Control are police officers. They have "the same powers and immunities as those conferred on the state police." 7 V.S.A. §561(a). Their special jurisdiction is the enforcement of alcoholic beverages statutes, which carry criminal penalties. 7 V.S.A. §§651-71.

Liquor investigators obtain criminal records from the Vermont Criminal Information Center under a Network User Agreement between the Enforcement Division and the Center. The investigators use these records in the performance of their statutory duties, which include the investigation of liquor law violations and liquor license applications. The Committee did not suggest that any investigator had used criminal records for other purposes or otherwise breached the User Agreement. The issue is simply one of statutory interpretation.

Subsection (b) of the records statute provides that "a criminal justice agency" may obtain criminal history records from the Vermont Criminal Information Center. Records may be obtained "for criminal justice purposes or other purposes authorized by state or federal law." 20 V.S.A. §2056a(b). The question is whether the Enforcement Division of the Department of Liquor Control is a "criminal justice agency."

Subsection (a) of the statute defines "criminal justice agencies" to mean "governmental agencies or subunits thereof that allocate at least 50 percent of the agency's annual appropriation to criminal justice purposes." 20 V.S.A. §2056a(a)(2). This language is ambiguous and requires interpretation because it leaves three questions unanswered:

1. What are "governmental agencies"?
2. What are the "subunits thereof"?
3. What is meant by the phrase "50 percent of the agency's annual appropriations"?

The terms "agencies" and "subunits" are not defined in the statutes that govern the Criminal Information Center (Title 20, chapter 117) or elsewhere in Title 20. Agencies and various subunits of agencies are defined by some general laws that discuss the organization of state government, but those general laws do not resolve the immediate issue. The general definitions draw a distinction between the "agencies" of state government, which "shall be headed by secretaries," and the "departments" and "divisions," which are headed by commissioners and directors. 3 V.S.A. §213(a) and (b). *See also* 3 V.S.A. §2101 ("A cabinet is created in the executive branch of government which shall consist of the secretaries of such agencies as are created by law.")

According to these general definitions, not even the Department of Public Safety or the Office of Attorney General are "agencies." Nor are they "subunits thereof." The only agencies of state government are the agencies of administration, commerce, human services, natural resources and transportation. Therefore a literal reading of the terms "agencies" and "subunits thereof" would make the criminal records laws practically meaningless.

The records laws, including the new statute, can be given effect only by avoiding a literal interpretation and by considering the real purpose of Vermont's criminal records system. The original laws (still in effect) established the Criminal Information Center "to

develop and carry on a uniform and complete state, interstate, national and international system of records of criminal activities and information." 20 V.S.A. §2053(a). The Center was placed within the Department of Public Safety and was directed to cooperate with "municipal police departments, sheriffs *and other law enforcement officers in this state.*" *Id.* (emphasis added).

The reference to "law enforcement officers" is useful because the Legislature has taken particular care to identify the personnel who are authorized to enforce criminal laws. The statutes that create the Criminal Justice Training Council define "law enforcement officer" to mean:

a member of the department of public safety who exercises law enforcement powers, a member of the state police, a municipal police officer, a constable who exercises law enforcement powers, a motor vehicle inspector, *an employee of the department of liquor control who exercises law enforcement powers*, a full time state investigator employed by the attorney general or a state's attorney, a fish and game warden, a sheriff or deputy sheriff who exercises law enforcement powers, or a railroad police officer commissioned [by the commissioner of public safety] pursuant to 30 V.S.A. chapter 45, subchapter 8"

20 V.S.A. §2358(c)(1) (emphasis added). This definition has become the gold standard for deciding who is and who is not a law enforcement officer. *See, e.g.*, 20 V.S.A. §3019(a)(2) (defining "law enforcement officer" as person certified under 20 V.S.A. §2358); 20 V.S.A. §4016 (same); 23 V.S.A. §1200(5) (same); 33 V.S.A. §702(11) (same).

The Legislature's intent that the Criminal Records Center cooperate with state and local law enforcement and its intent that records be disseminated to "agencies" that serve criminal justice purposes can both be served by giving "agencies" a practical definition consistent with the parallel statutes. Criminal records should be provided to governmental entities, however labeled, that spend the major part of their budgets on law enforcement and criminal justice. Records may not be withheld from an otherwise eligible governmental entity because it is organized as a department, division or office, and not as an "agency."

Therefore criminal records should continue to be shared with the governmental departments, offices and divisions that are staffed by the law enforcement officers listed in 20 V.S.A. §2358(c)(1). This group would include the Department of Public Safety, municipal police departments, the Enforcement Divisions of the Motor Vehicle, Liquor Control and Fish and Wildlife Departments, the Criminal Division in the Attorney General's Office and the several State's Attorneys Offices.

Records should also be shared with certain criminal justice entities outside the law enforcement group. This category would include "all Vermont courts," meaning the civil as well as the criminal courts, because they are expressly named in the statute. 20 V.S.A. §2056a(a)(2). And it would include the Department of Corrections, because records may be shared with agencies responsible for the "correction of persons suspected, charged or convicted of criminal offenses." 20 V.S.A. §2056a(a)(3); *compare* 28 V.S.A. §1 (purpose of Department of Corrections is administration of correctional program).

A committee member suggested that criminal records might be withheld from the Liquor Control Enforcement Division on grounds that (1) the Division is a subunit of a Department; and (2) the Department spends less than 50 percent of the Department budget on criminal justice activities. I do not think the statutory language ("50 percent of the agency's annual appropriations") requires that result. Nor do I think that was the legislative intent.

The statutory language does not require that the 50 percent test be applied to the budget of the parent agency (or department, or municipality) because, although the language could be read that way, that reading would make the reference to "subunits" superfluous. If the standard was meant to be the budget of the parent agency, there was no need to add the language about subunits. The Legislature could have referred simply to "governmental agencies that allocate at least 50 percent of their annual appropriation to criminal justice purposes."

Also, if the standard was meant to be the budget of the parent agency, criminal records would be denied to large segments of the law enforcement community. Municipal police departments are subunits of much larger political subdivisions; the Enforcement Division of the Fish and Wildlife Department is a subunit of that Department, which itself is a subunit of the Agency of Natural Resources; the Criminal Division of the Attorney General's Office is a subunit of the Office and accounts for less than half of the Office budget.

Thus a too literal reading of the fifty-percent rule would mean radical changes in police access to records and the relationship between the Criminal Information Center and Vermont's principal law enforcement agencies. The legislative findings that prompted the enactment of the fingerprinting and criminal records law speak in terms of "the effectiveness of the use of criminal histories" and "public safety," and say nothing about denying records to liquor control investigators or other police officers. If that was the legislative intent, the Legislature would have said so directly.

In summary, it is my opinion that the Criminal Information Center is authorized to provide criminal records to other law enforcement agencies including the Enforcement Division of the Department of Liquor Control. The records must be provided pursuant to user agreements, 20 V.S.A. §2056a(c), and may only be used "for criminal justice purposes or other purposes authorized by state or federal law," 20 V.S.A. §2056a(b). In the case of the Liquor Control Enforcement Division these purposes would include the investigation of liquor law violations and the investigation of liquor license applications.