

N.D.A.G. Letter to Bohn (Nov. 17, 1987)

November 17, 1987

Mr. William G. Bohn
Court Administrator
North Dakota Supreme Court
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Bohn:

Since the passage of the new criminal history records law in the 1987 Legislative Session, there has been some confusion as to its application, particularly with regard to the judiciary. I would like to clarify the position this office has taken relative to the relationship between N.D.C.C. ch. 12-60 and the courts.

N.D.C.C. ch. 12-60 represents an exception to the North Dakota open records statute that applies only to criminal history record information required or permitted to be retained by the Bureau of Criminal Investigation (BCI) under N.D.C.C. §§ 12-60-16.1 through 12-60-16.10. Specifically, N.D.C.C. § 12-60-16.2 identifies "events" that are to be reported, and assigns responsibility for their reporting to the various criminal justice agencies, while N.D.C.C. § 12-60-16.4 specifies the "offenses" for which the events are to be reported.

The reporting of offenses and events are activities assigned to criminal justice agencies, and it was the intent of the legislation to exclude the courts from the term "criminal justice agency." "Court" is defined independently in N.D.C.C. § 12-60-16.1.

The only other references to the courts are in N.D.C.C. § 12-60-16.2(3), which requires the courts to order fingerprinting after sentencing if the offender has not previously been fingerprinted for that offense; and, N.D.C.C. § 12-60-16.5(2) which ensures access by the courts to criminal history record information for purposes related to sentencing, probation, or release pending trial or appeal.

Criminal justice agencies report offenses and events to the BCI where they are compiled to form criminal history records. The law in question applies to those agencies and to those records. It does not apply to records maintained by the courts. Any requests for access to court information should be responded to in accordance with court policies and procedures and not with reference to N.D.C.C. ch. 12-60.

There are some issues which we may ask the Legislature to clarify in the in the next session, but we do not anticipate any change in the present exclusion of the courts in the criminal history records law.

If you have any comments on these matters, I would be very pleased to hear from you.

Sincerely,

Nicholas J. Spaeth

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