

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY
Ryan Green, Bar ID #: 021102
Deputy County Attorney
225 W Madison St, 4th Floor
Phoenix, AZ 85003
Telephone: (602) 506-5849
sp1div@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

FRANKLIN ARNETT CLIFTON,

Defendant.

CR2014-150114-001

STATE'S MEMORANDUM OF LAW RE:
LAWFUL AND PERMISSIBLE USE OF
CRIMINAL JUSTICE INFORMATION
CONSISTENT WITH A.R.S. §41-1750

(Assigned to Judge Monica Edelstein)

This is an ongoing capital First Degree Murder trial. The State is still presenting evidence in its case-in-chief to the jury. Nonetheless, on November 13, 2025, the assigned prosecutors received an Order from this Court dated the day prior. The Order announced that the Court is raising an issue on its own.¹ The Order further declared that “the Court

¹ “In our adversary system, ... we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). “[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties.” *Id.*, citing *U.S. v. Samuels*, 808 F.2d 1298, 1301 (C.A. 8 1987).

requires briefing as to whether use of the NCIC database to research jurors is a permissible use pursuant to the law, including an analysis of whether the States' procedures are consistent with A.R.S. §41-1756 and A.R.S. §41-1750(G)." (Docket #1049). This Court further ordered the State to submit its briefing before the end of the day on November 20th, a day in which the assigned prosecutors will also be in trial in this Court. *Id.*

In compliance with the Order, the State, through undersigned counsel, answers the Court's question as follows: Yes, the State may **obviously** use the NCIC database to research jurors in compliance with A.R.S. §41-1756 and A.R.S. §41-1750(G). This is evident based on the plain language of the relevant statutes, their history, case law, and **common sense**.

I. General History of NCIC and Related State Laws

Prior to 1967, there had been no national effort to allow law enforcement agencies from different jurisdictions to share information with each other. This changed with the FBI's creation of the National Crime Information Center (NCIC). In 1968, Congress passed the Omnibus Crime Control and Safe Streets Act. (Public Law 90-351—June 19, 1968). This Act created the Law Enforcement Assistance Administration (LEAA) which was empowered to make grants to the states for law enforcement assistance. (*Id.* at Part A, B and C.) In 1973, Congress amended the Act providing that all State and local criminal justice agencies that receive financial assistance must use criminal history information only for "law enforcement and criminal justice and other lawful purposes." (See Public Law 93-83-Aug.6, 1973, Sec. 524(a) and (b)). In the wake of the 1973 amendment, the

LEAA issued regulations that apply to all state and local criminal justice agencies that use federal funding for their criminal history record systems. These regulations are found at 28 C.F.R. Part 20. In order to maintain access to and participation in the federally funded NCIC system, states responded by passing or amending legislation to comply with 28 C.F.R. Part 20. This provides context for the language that now appears in Arizona's law, including the current version A.R.S. §41-1750.

Over the years, A.R.S. §41-1750 has been amended multiple times after its initial passage in 1929². However, to illustrate the interplay between our state law and the requirements of federal law, the State notes the following:

- Section R of §41-1750 specifically states that the Arizona law applies to all agencies storing criminal justice information where the funding is made available by the "law enforcement assistance administration...pursuant to title 1 of the crime control act of 1973..."
- Arizona Attorney General opinions interpreting §41-1750, for example, 1981 Ariz. Op. Atty. Gen. 83, notes that "the Arizona Plan for the Security and Privacy of Criminal History Record Information...were adopted to comply with federal restrictions on information provided by the federal government or possessed by agencies receiving LEAA money."
- 28 C.F.R. § 20.22 (b) requires that each State utilizing the federal resources must submit a certification that includes "[a] description of any legislation or executive order...that has been instituted to comply with these regulations."

² Laws 1929, Chapter 16 established the Bureau of Criminal Identification. The provisions were codified in Arizona Code Annotated, 1939 as Sections 45-201 through 45-214, later renumbered as Sections 13-1241 and 13-1242 in 1956. The provisions were renumbered as A.R.S. §§41-1650 et seq. in 1968 when responsibilities were transferred from the State Prison to the Arizona Highway Patrol. The provisions were renumbered again and are now found at A.R.S. §§ 41-1750 et seq. Source: Arizona State Library webpage.

The bottom line is that Arizona's restrictions on the use of NCIC are designed to conform to federal regulations that apply to all users of NCIC, including prosecutors, across the country.

II. The Plain Language of A.R.S. §41-1750 Permits the Prosecution to Utilize NCIC.

A.R.S. §41-1750(G)(1) allows the use of criminal justice information "specifically for the purposes of the administration of criminal justice...." Subsection (Q)(2) of A.R.S. §41-1750 provides "[d]issemination...may be accomplished by a criminal justice agency only if the dissemination is for criminal justice purposes in connection with the prescribed duties of the agency and not in violation of this section." Subsection Z of A.R.S. §41-1750 defines relevant terms, including the "administration of criminal justice," as follows (emphasis added):

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

Not surprisingly, this definition is nearly identical to the definition of "administration of criminal justice" contained in the federal regulations. See 28 C.F.R. § 20.3.

The First-Degree Murder prosecution of a "criminal offender" in State v. Franklin Clifton falls within the plain language of the statutory definition of the "administration of

criminal justice” as well as the definition in 28 C.F.R. § 20.3. Specifically, jury selection plays a critical role in the administration of justice. *See State v. Andujar*, 247 N.J. 275, 284, 254 A.3d 606, 611 (2021) (“This appeal highlights the critical role jury selection plays in the administration of justice.”)

The administration of justice includes verifying that prospective jurors are eligible to serve because they have “[n]ever have been convicted of a felony, unless the juror's civil rights have been restored.” A.R.S. § 21-201. The administration of justice also includes ensuring the truthfulness of answers provided by a juror under the penalty of perjury, a criminal offense per A.R.S. §13-2702.

III. Caselaw from Across the Country Proves that Prosecutors May Conduct Criminal History Searches During Jury Selection.

Accessing criminal justice information to research venire members during jury selection is a practice that has been well-recognized for decades nationwide. That the practice is regularly accepted is demonstrated by how often it appears in appellate decisions that, in most cases, are not even addressing the propriety of the practice. Instead, the issue is often whether the prosecution must share the documentation they have obtained. Among the many cases where the practice appears are the following: *Orr v. State*, No. CR-2023-0752, 2025 WL 1775851 (Ala. Crim. App. June 27, 2025) (State relied upon data provided by NCIC to move to strike seven prospective jurors that each failed to disclose during *voir dire* that they had been arrested or convicted of a crime.); *State v. Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 431 P.3d 47, 52 (2018) (Holding that, upon

motion by the defense, the district court must order the State to disclose any venire member criminal history information it acquires from a government database that is unavailable to the defense.); *People v. Davis*, 856 N.E.2d 653, 656 (2006) (Information contained in juror's rap sheet and his misrepresentations during *voir dire* provided facially race-neutral reasons for striking him.); *State v. Rasmussen*, 113 Wash. App. 1057 (2002)(unreported) (Trial court did not abuse its discretion by denying Rasmussen's motion for copies of whatever NCIC records the State might have obtained on prospective jurors.); *Files v. State*, 613 So. 2d 1301, 1302 (Fla. 1992) (The prosecutor cited a prospective juror's "rap sheet" indicating a prior DUI conviction that the juror had not volunteered when asked about prior convictions as a basis for striking the juror.); *State v. Culkin*, 791 S.W.2d 803, 811 (Mo. Ct. App. 1990) (Defendant's claim of error in the trial court's refusal to order the state to disclose, or to prohibit the state from using, confidential information from the NCIC computer in selecting and investigating potential jurors was not properly before the trial court and was not preserved for appeal.)

There are two states (New Jersey and Iowa) that have addressed the practice of obtaining juror criminal histories during jury selection and have instituted a requirement that the prosecution request court permission in advance.³

³ Massachusetts courts specifically permit the prosecutor to obtain a criminal history of a juror without court approval during jury selection so long as it is immediately shared with the defense. But, once the trial has started, the prosecution must obtain court approval prior to running the criminal history. *See Com. v. Hampton*, 928 N.E.2d 917, 931 (2010).

In 2021, the New Jersey Supreme Court noted that “[t]he practice of running background checks on prospective jurors raises a question of first impression for the Court.” *State v. Andujar*, 254 A.3d 606, 623 (2021). In *Andujar*, the State had explained that it is extremely rare for it to conduct background checks on prospective jurors. The New Jersey Supreme Court then noted:

“[the State] relies on regulations promulgated by the Department of Law and Public Safety as the source of its authority. The regulations restrict “[a]ccess to criminal history record information for criminal justice purposes ... to criminal justice agencies.” N.J.A.C. 13:59-2.4(a) (emphasis added). Criminal justice agencies may obtain that information “for purposes of the administration of criminal justice.” *Id.* at -2.1(a) (emphasis added). The highlighted terms encompass “[t]he detection, apprehension, detention, ... prosecution, [or] adjudication ... of accused persons or criminal offenders.” *Id.* at -1.1. Because jury selection is a part of the adjudicative process, the State contends, it has the power to run criminal history checks on prospective jurors.

There is very little case law on the subject. We therefore do not question the State's good-faith belief that it had the authority to run the background check it conducted in this case. But administrative regulations generally may not govern the intricacies of jury selection any more than they could control other aspects of a trial.

Id. at 624. Predictably, the New Jersey statutory scheme uses nearly the same definitions as the Arizona statute.⁴ While the New Jersey Supreme Court “did not question” the prosecution’s belief that it had legal authority under the statute, it ultimately held that

⁴ Compare N.J. Admin. Code § 13:59-1.1 definition of “administration of justice” to A.R.S. §41-1750.

“[g]oing forward from today, any party seeking to run a criminal history check on a prospective juror must first get permission from the trial court.” *Id.* at 626.

In 1987, the Iowa Supreme Court interpreted their criminal history statute, focusing on whether it was a “prescribed duty” of the prosecutor to run the criminal history of a juror. The Court held:

We believe the statute would permit the county attorney to obtain a rap sheet on an individual only when there is a reasonable basis for believing that the rap sheet may contain information that is pertinent to the individual's selection as a juror and that is unlikely to be disclosed through voir dire or through juror questionnaires. In such special cases we believe that the county attorney would be acting under a “prescribed duty,” as required by the statute.

State v. Bessenecker, 404 N.W.2d 134, 138 (Iowa 1987).

Finally, that a number of courts have imposed no restrictions on the prosecution in utilizing this practice is worth highlighting. Among these are Georgia where in *Coleman v. Georgia*, the state’s supreme court held that the defendant’s rights were not violated by his lack of access to criminal history records even though the state had access to the information during jury selection. 804 S.E.2d 24, 30 (2017). In Delaware, the state’s supreme court held that the defendant’s rights were not violated because the state had access to the jurors’ criminal records, and she did not have equal access. *Charbonneau v. State*, 904 A.2d 295, 319 (Del. 2006). In Virginia, the state’s court of appeals examined the prosecutor’s use of criminal history records under the state’s statute that, like Arizona, uses the phrase “administration of justice.” *Salmon v. Commonwealth*, 529 S.E.2d 815, 819 (2000). The court specifically held:

The Commonwealth's Attorney's use of potential jurors' criminal background information, therefore, is **directly related to the prosecution of criminal cases** and is authorized by Code § 19.2-389(A)(1). Thus, because the Office of the Commonwealth's Attorney is a criminal justice agency, and **because the “administration of justice” includes the prosecution of criminal cases**, Code § 19.2-389(A)(1) authorizes the Commonwealth's Attorney to review the criminal background records of prospective jurors.

Id. (emphasis added). See also *State v. Smith*, 532 S.E.2d 773, 780 (N.C. 2000) (In North Carolina, defendant was not entitled to information whether the state had checked the criminal records of prospective jurors).

IV. In Addition to the Plain Statutory Language and Caselaw, it is Common Sense That a Prosecutor Should Be Permitted to Use Criminal History Checks to Ensure the Integrity of the Jury Trial.

As a practical matter, there is generally only one party at a criminal trial that has access to the criminal history databases: the prosecution. Prohibiting the prosecution from accessing these databases during jury selection would undermine the integrity of the criminal justice process. Indeed, there is at least one high profile example of what can happen if nobody is permitted to check the criminal history of prospective jurors.

In 2006, after the trial of former Governor of Illinois George H. Ryan, media reports surfaced claiming that jurors had made false statements during *voir dire* about their criminal backgrounds, nearly derailing the trial and resulting in extensive post-verdict litigation. *United States v. Warner*, 498 F.3d 666, 674 (7th Cir. 2007). As a result, the Chief Justice of the Northern District of Illinois instituted a policy change permitting, but not

mandating, that trial courts in the Northern District conduct criminal background checks of potential jurors.⁵

In *State v. Farmer*, a New Jersey case, no criminal history checks were run on the prospective jurors. However, during deliberations, court personnel recognized a juror or his name leading the trial judge to confirm that the juror had three or four “indictable convictions” that rendered him disqualified under New Jersey law. 841 A.2d 420, 425 (App. Div. 2004). On appeal, it was held that the juror’s statutory disqualification required his discharge, even during deliberations. *Id.* at 428. The court then addressed the issue of whether a mistrial should have been declared.

Wartley v. State serves as an example of how a criminal history check protected the integrity of a trial. 978 S.W.2d 672, 674 (Tex. App. 1998). In *Wartley*, a sexual assault case, a criminal history check run by the prosecution’s investigator revealed “without question, that [the juror] lied to the prosecutor during voir dire.” *Id.* The juror was dismissed after the trial commenced. Had it not been for the trial court holding a hearing, the juror who under Texas law was “absolutely disqualified” would have otherwise continued to serve. On appeal, the Texas Court of Appeals held that the trial court did not abuse its discretion in removing the juror and upheld the conviction. *Id.* at 674.

⁵ Matt O’Connor, *Jury Pools Can Face Probes in Sensitive Trials*, Chicago Tribune, Dec. 11, 2006, <https://www.chicagotribune.com/2006/12/11/jury-pools-can-face-probes-in-sensitive-trials/>.

Criminal history checks of jurors is a commonsense method to verify juror eligibility and the accuracy of their answers during voir dire. Whether there ought to be guidelines applied to the process in Arizona is not an issue to be decided by this Court in the ongoing trial of State v. Clifton. Regardless, a prosecutor is clearly permitted to conduct this type of research as part of the “administration of criminal justice.” A.R.S. §41-1750.

V. Conclusion

The Massachusetts Supreme Court summed the issue up well. “Inquiring into the criminal records of jurors in a criminal case for the purposes of determining their qualifications to serve and their impartiality fits squarely within the ‘criminal justice duties’ of prosecutors. Representing the [government] in criminal trials is a quintessential prosecutorial function, of which the selection of a qualified and impartial jury is an integral part.” *Com. v. Cousin*, 873 N.E.2d 742, 748–49 (2007). Based on the plain language of A.R.S. §41-1750 and the well-recognized, nationwide use of criminal justice information in the prosecution of criminal cases, there is no doubt that the State’s access of the NCIC database to research jurors is lawful and permissible under A.R.S. §41-1750.

Submitted November 18, 2025.

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

BY: /s/ Ryan Green
Ryan Green
Deputy County Attorney

Copy e-mailed/e-filed November 18, 2025, to:

The Honorable Monica Edelstein
Judge of the Superior Court

Randall Udelman
Attorney for Crime Victim

Victoria E Washington
Kellie Sanford
Attorneys for Defendant

BY: /s/ *Ryan Green*
Ryan Green
Deputy County Attorney

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