

[News Notes](#) > [2011](#) > [08/09/2011](#) > Criminal Electronic Docket Info For Dismissed Case Not Expunged

Criminal Electronic Docket Info For Dismissed Case Not Expunged

The Iowa courts are not required by law to remove case information from the state's computerized docket system when a criminal case has been resolved in favor of the defendant, the Iowa Supreme Court held July 15 in two separate decisions (*Judicial Branch v. Iowa District Court for Linn County*, Iowa, No. 10-0163, 7/15/11; *Department of Public Safety v. Iowa District Court for Polk County*, Iowa, No. 10-0985, 7/15/11).

The judiciary's electronic docket is not covered by the statute that permits removal of criminal history data of persons who are acquitted or had charges dismissed, the court reasoned. It also found in one case that it was improper to bring a civil action to have records removed from the Division of Criminal Investigation system, because there is a statute that establishes an administrative process to achieve removal of those records.

The defendant in the first case was arrested and charged with driving while intoxicated and other traffic offenses, but the charges were dismissed. The defendant filed a motion seeking to have information about the dismissed charges removed from the Iowa Court Information System, and from the data storage systems of the county sheriff, the police department, the Division of Criminal Investigation, and the FBI, pursuant to Iowa Code §692.17, which provides that "[c]riminal history data in a computer data storage system shall not include arrest or disposition data or custody or adjudication data after the person has been acquitted or the charges dismissed."

The court granted the request except as to the FBI. Iowa's attorney general, appearing on behalf of the state's judicial branch and the court administrator, filed a petition to vacate the order, arguing that court docket information is a public record under Iowa Code §692.18(1) and a "source document" under Section 692.17(2)(a). The district court found for the defendant, and the attorney general petitioned for a writ of certiorari.

The Criminal History Data Act, enacted in 1973 and codified at Iowa Code ch. 692, governs the use of the crime computer system. Under that law, "criminal history data" include information about arrests, convictions, disposition, and adjudication. A computer system was developed to provide nationwide access to crime information, but the court explained that the information about the defendant's case was removed from this system pursuant to Section 692.17.

Electronic Docket

The present inquiry is whether the data should also be removed from the Iowa judicial branch's computerized docket. Iowa law has specific requirements for docketing criminal case information, and since September 1997, all such information is recorded electronically. "As an official record of judicial proceedings that clerks of court are required to keep by law, dockets are 'public records' under both statutory and common law," the court noted.

The provision stating that criminal history data cannot include disposition or adjudication data after the person has been acquitted or the charges dismissed must somehow be reconciled with the requirement to retain source documents and the public records exception to Section 692.17(1), the court said.

"Putting these provisions together, we do not believe the legislature has directed the judicial branch to purge from its official docket all criminal cases that ended in the defendant's favor," the court held. The computerized docket is the only docket, and therefore, erasing information would go against docketing requirements set forth in Section 602.8104(2)(a). Also, the docket, which has "independent legal significance and is the 'source' of other things, such as the record on appeal," may constitute a "source document" which must be retained by law.

*** Public Records**

Iowa Code ch. 692 was amended in 1996 "to make clear that criminal history data *are* public records." According to the court, this means that "public access to official records must be preserved," regardless of the outcome of the case. Section 692.17 permits data used for internal agencies purposes to be removed, but the public must have access to the official docket under the public

records exception, the court found. Although the public could still access the hard copy court file, "access would be more theoretical than real" without the docket available. "We think that giving a reasonable effect to all these laws leads to the conclusion that the judicial branch need not alter its official docket."

The defendant argued in the alternative that retaining the information in the electronic system violates the equal protection clause of the Iowa Constitution, given that records of criminal defendants who receive deferred judgments are placed into a confidential docket and are not accessible to the public. The court disagreed, finding that people who have had proceedings terminated in their favor are not a "suspect class," distinguished by race or national origin, and that making records of that class public does not burden their fundamental rights. Therefore, a rational basis test is applied, whereby the defendant would have to show that the classification bears no rational relationship to a legitimate government interest.

"The legislature could rationally have concluded that denying public access to criminal proceedings that result in a deferred judgment serves the legitimate governmental purpose of promoting rehabilitation and incentivizing defendants to meet the terms of their accompanying probation." It could also have rationally concluded that persons accessing information on dismissed cases can clearly see that the charges were resolved in the defendant's favor, and thus they need not be secret.

DPS

In the second case, the Iowa District Court, Polk County, ordered the removal of information relating to a dismissed criminal case from the computer systems of the clerk of court and the Department of Public Safety, Division of Criminal Investigation. The court suspended that order and set the request for a hearing after the attorney general's office communicated its dissent, but ultimately reaffirmed the order, finding, among other reasons, that the electronic docket entries were covered by Section 692.17(1). The attorney general filed a petition for writ of certiorari.

The reasoning in the *Judicial Branch* decision governed the decision as to the judicial branch here, the court said.

As to the Division of Criminal Investigation records, Iowa Code §692.5 permits a person to have these records corrected if information in the criminal history data about that person is "not authorized by law to be kept." Further, this provision is "the sole right of action against the department ... regarding improper storage or release of criminal history data."

The supreme court has rejected attempts to get around the Section 692.5 process, finding that the district courts do not have jurisdiction to order removal of records, and it did so here as well. "[S]ection 692.5 provides the exclusive administrative remedy for a person such as [the defendant] seeking removal of criminal history data from DPS files. It is not appropriate to bring a direct civil action ... or to use a prior criminal case ... for that purpose."

The full text of *Judicial Branch v. Iowa District Court for Linn County and Department of Public Safety v. Iowa District Court for Polk County* will be published in an upcoming issue of *Media Law Reporter*.

◀ Previous | Next ▶

⌕ Top

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ISSN 1944-0359

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