

**Use and Management of Criminal History Record Information: A  
Comprehensive Report**

**(outside cover)**

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Comprehensive Report**

**(inside cover)**

**U.S. Department of Justice**  
Office of Justice Programs  
Bureau of Justice Statistics

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Acting Director

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# Foreword

The Bureau of Justice Statistics is pleased to publish *Use and Management of Criminal History Record Information: A Comprehensive Report*. The report is the first descriptive review of the Nation's criminal history information systems and discusses in nontechnical terms the complex, interrelated network of local, State and Federal information systems that provide criminal history records to both criminal justice and noncriminal justice users.

The report is the latest in BJS's efforts to assist States in improving the quality of criminal history record information and to ensure that accurate data is readily available for operational and research purposes. We hope that the report will be of value to policymakers and practitioners addressing the critical issues relating to criminal history record information which will accompany expanded development of systems for the interstate exchange of this information.

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# Glossary of Terms

**Automated Fingerprint Identification System (AFIS):** An automated system for searching fingerprint files and transmitting fingerprint images. AFIS computer equipment can scan fingerprint impressions (or utilize electronically transmitted fingerprint images) and automatically extract and digitize ridge details and other identifying characteristics in sufficient detail to enable the computer's searching and matching components to distinguish a single fingerprint from thousands or even millions of fingerprints previously scanned and stored in digital form in the computer's memory. The process eliminates the manual searching of fingerprint files and increases the speed and accuracy of ten-print processing (arrest fingerprint cards and noncriminal justice applicant fingerprint cards). AFIS equipment also can be used to identify individuals from "latent" (crime scene) fingerprints, even fragmentary prints of single fingers in some cases. Digital fingerprint images generated by AFIS equipment can be transmitted electronically to remote sites, eliminating the necessity of mailing fingerprint cards and providing remote access to AFIS fingerprint files. (See pages 25-26 and 46-47.)

**Bureau of Justice Statistics Criminal History Record Improvement (BJS CHRI) Program:** The \$27 million grant program, administered by the Bureau of Justice Statistics, under which awards were made to all 50 States to improve the quality of criminal records, flag felony records and increase participation in the Interstate Identification Index (III). Awards were made over a three-year period: fiscal years 1990, 1991 and 1992. (See pages 68-70.)

**Central Repository:** The database (or the agency housing the database) which maintains criminal history records on all State offenders. Records include fingerprint files and files containing identification segments and notations of arrests and dispositions. The central repository is generally responsible for State-level identification of arrestees, and commonly serves as the central control terminal for contact with FBI record systems. Inquiries from local agencies for a national record check (for criminal justice or firearm check purposes) are routed to the FBI via the central repository. Although usually housed in the Department of Public Safety, the central repository may in some States be maintained by the State Police or some other State agency. (See page 19.)

**Criminal History Record Information (CHRI) or Criminal History Record Information System:** A record (or the system maintaining such records) which includes individual identifiers and describes an individual's arrests and subsequent dispositions. Criminal history records do not include intelligence or investigative data or sociological data such as drug use history. CHRI systems usually include information on juveniles if they are tried as adults in criminal courts, but in most cases do not include data describing involvement of an individual in the juvenile justice system. All data in CHRI systems are usually backed by fingerprints of the record subjects to provide positive identification. State legislation varies concerning disclosure of criminal history records for noncriminal justice purposes. (See Chapter II.)

**Data Quality:** The extent to which criminal history records are complete, accurate and timely. The key concern in data quality is the completeness of records and the extent to which records include dispositions as well as arrest and charge information. Other concerns include the timeliness of data reporting to State and Federal repositories, the timeliness of data entry by the repositories and the readability of criminal history records. (See pages 29-34, 37-39 and 59.)

**Felon Identification for Firearms Sales (FIFS):** The system and procedures developed by the FBI and State officials for the identification of felons who attempt to purchase firearms. FIFS includes the establishment of a felony flagging system in the III system to identify offenders who have been charged with or convicted of felonies. When implemented, system users will use a special inquiry code and responses will include a code indicating that the individual has a felony conviction, has no felony conviction or pending felony arrest, or has a record of unknown nature and status. One State, Virginia, is presently participating in a test to flag all records in the FBI index. (See page 66).

**Felony or Serious Misdemeanor:** The category of offenses for which fingerprints and criminal history information are accepted by the FBI and entered in the Bureau's files, including the III system. Serious misdemeanor is defined to exclude certain minor offenses such as drunkenness or minor traffic offenses. (See page 50.)



**Interstate Identification Index (III):** An “index-pointer” system for the interstate exchange of criminal history records. Under III, the FBI maintains an identification index to persons arrested for felonies or serious misdemeanors under State or Federal law. The index includes identification information (for example, name, date of birth, race, sex, etc.), FBI Numbers and State Identification Numbers (SIDs) from each State holding information about an individual. Search inquiries from criminal justice agencies nationwide are transmitted automatically via State telecommunications networks and the FBI’s National Crime Information Center (NCIC) telecommunications lines. Searches are made on the basis of name and other identifiers. The process is entirely automated and takes approximately five seconds to complete. If a hit is made against the Index, record requests are made using SIDs or FBI Numbers and data are automatically retrieved from each repository holding records on the individual and forwarded to the requesting agency. At present, 25 States participate in III and the system operates for criminal justice inquiries only. Responses are provided from FBI files where the State originating the record is not a participant in III. Participation requires that the State maintain an automated criminal history record system capable of interfacing with the III system and capable of responding automatically to all interstate and Federal/State record requests. If extended to cover noncriminal justice inquiries, as planned, the III system would eliminate the need for duplicate recordkeeping at the Federal and State level since it would no longer be necessary for the FBI to maintain records on State offenders. At present, III ensures higher quality criminal justice responses because, in most cases, reply data are supplied directly by the State from which the record originates. (For complete information, see Chapter V.)

**Interstate Identification Index (III) Compact:** An interstate and Federal/State compact designed to facilitate the exchange of criminal history data among States for noncriminal justice purposes and to eliminate the need for the FBI to maintain duplicate data about State offenders. Under the compact, the operation of this system would be overseen by a policymaking council comprised of representatives of the Federal and State governments, as well as system users. The key concept underlying the compact is agreement among all States that all criminal history information (except sealed records) will be provided in response to noncriminal justice requests from another State — regardless of whether the information being requested would be permitted to be disseminated for a similar noncriminal justice purpose within the State

holding the data. (That is, the law of the State which is *inquiring* about the data — rather than the law of the State which *originated* the data — governs its use.) In some cases, ratification of the compact will have the effect of amending existing State legislation governing interstate record dissemination, since most States do not currently authorize dissemination to all of the Federal agencies and out-of-state users authorized under the compact. At present, noncriminal justice inquiries are handled by the FBI from its files of voluntarily contributed State arrest and disposition records. This requires that the FBI maintain duplicates of State records and generally results in less complete records being provided, since FBI files of State records are not always complete due to reporting deficiencies. The FBI cannot abandon the duplicate records without a formal compact, however, since subsequent failure of a State to continue participation after cessation of the FBI’s State offender files would jeopardize future noncriminal justice services to the Federal and State agencies that now rely on those files. The compact has been approved by the U.S. Attorney General and it is expected that it will be considered by the U.S. Congress in 1993 or 1994. After Congressional approval, the compact will be submitted for ratification by State legislatures. (See Chapter V.)

**Juvenile Justice Records:** Official records of juvenile justice adjudications. Most adult criminal history record systems do not accept such records, which are frequently not supported by fingerprints and which usually are confidential under State law. Pursuant to an order dated July 15, 1992, the FBI now accepts, and will disseminate, juvenile records on the same basis as adult records. States are not required to submit such records to the FBI, however. (See page 23.)

**Live-scan and Card-scan:** Automated devices for generating and transmitting fingerprint images. Live-scan devices capture fingerprint images directly from subjects’ fingers, which are rolled onto scanning pads. The devices can print out multiple fingerprint cards or can transmit electronic fingerprint images to remote sites for printout or direct use in automated fingerprint identification computers. Card scanners scan standard inked fingerprint cards and can transmit electronic images, with related textual data, to remote sites for printout or direct use. (See page 46.)

**Master Name Index (MNI):** A subject identification index maintained by criminal record repositories that includes names and other identifiers for all persons about whom a record is held in the systems. As of 1992, almost all State MNIs were automated and included almost 100 percent of record subjects in the repositories. The automated name index is the key to rapidly identifying persons who have criminal records for such purposes as presale firearm checks, criminal investigations or bailsetting. MNIs may include “felony flags,” which indicate whether record subjects have arrests or convictions for felony offenses. (See pages 24 and 67.)

**National Crime Information Center (NCIC):** An automated database of criminal justice and justice-related records maintained by the FBI. The database includes the “hot files” of wanted and missing persons, stolen vehicles and identifiable stolen property, including firearms. Access to NCIC files is through central control terminal operators in each State that are connected to NCIC via dedicated telecommunications lines maintained by the FBI. Local agencies and officers on the beat can access the State control terminal via the State law enforcement network. Inquiries are based on name and other nonfingerprint identification. Most criminal history inquiries of the III system are made via the NCIC telecommunications system. NCIC data may be provided only for criminal justice and other specifically authorized purposes. For criminal history searches, this includes criminal justice employment, employment by Federally chartered or insured banking institutions or securities firms, and use by State and local governments for purposes of employment and licensing pursuant to a State statute approved by the U.S. Attorney General. Inquiries regarding presale firearm checks are included as criminal justice uses. (See page 22 and Chapter V.)

**National Fingerprint File (NFF):** A system and procedures designed as a component of the III system, which, when fully implemented, would establish a totally decentralized system for the interstate exchange of criminal history records. The NFF will contain fingerprints of Federal offenders and a single set of fingerprints on State offenders from each State in which an offender has been arrested for a felony or a serious misdemeanor. Under the NFF concept, States will forward only the first-arrest fingerprints of an individual to the FBI accompanied by other identification data such as name, date of birth, etc. Fingerprints for subsequent arrests would not be forwarded. Disposition data on the individual would also be retained at the State repository and would not be forwarded to the FBI. Upon receipt of the first-arrest fingerprint cards (or electronic images when new

technologies are implemented), the FBI will enter the individual’s fingerprint impressions in the NFF

and will enter the person's name and identifiers in the III, together with an FBI Number and a State Identification Number for each State maintaining a record on the individual. Charge and disposition information on State offenders will be maintained only at the State level and State repositories will be required to respond to all authorized record requests concerning these individuals for both criminal justice and noncriminal justice purposes. States would have to release all data on record subjects for noncriminal justice inquiries regardless of whether the data could be released for similar purposes within the State. The NFF concept is presently being tested in two States, Florida and North Carolina. Both of these States are in a position to conduct the test since they have nonrestrictive laws governing release of data for noncriminal justice purposes. (See Chapter V.)

### **National Law Enforcement**

**Telecommunications System (NLETS):** A computerized high-speed message switching system maintained by the States which provides for the interstate exchange of criminal justice-related information between local, State and Federal criminal justice agencies. NLETS supports inquiries into State criminal history files, motor vehicle registration files, drivers license files and other State databases. It also interfaces with NCIC and other FBI files, the Royal Canadian Mounted Police, the National Insurance Theft Bureau, the National Center for Missing and Exploited Children and other national-level files. State agencies use NLETS for the interstate exchange of criminal history records. More than 121,000 terminals send and receive more than a quarter-billion messages annually. NLETS is supported by fees paid by user agencies and is set up as a not-for-profit corporation headquartered in Phoenix, Arizona. (Referenced throughout the report.)

**NCIC 2000:** An initiative undertaken by the FBI to design, develop and implement a new generation automated NCIC system for the compilation, dissemination and exchange of timely criminal justice information, including criminal history records, records of wanted and missing persons, and records of identifiable stolen property. Among other improvements, the new system will have upgraded hardware and telecommunications capabilities to support the paperless exchange of information, including graphic information such as mug shots, tattoos and signatures of offenders. NCIC 2000 is scheduled to be fully implemented by the end of 1995. (See page 66.)

**NCIC Advisory Policy Board (APB):** A 30-member advisory committee, comprised of criminal justice officials, representatives of criminal justice associations and user representatives, that provides policy input to guide the FBI in the administration of the NCIC system. The APB meets at least twice a year to consider issues originating from periodic meetings of NCIC Control Terminal Officers in the four NCIC Regions or from other sources, such as NCIC participants meetings, technical meetings or FBI/NCIC staff. At present, the FBI is reviewing the roles of its advisory committees with a view to restructuring them in accordance with ongoing initiatives to upgrade and expand FBI information systems. (See pages 22 and 34.)

**Positive Identification:** Identification of an individual using biometric characteristics which are unique and not subject to alteration. Basically, in present usage, the term refers to identification by fingerprints but it may also include identification by retinal images, voiceprints or other techniques. Positive identification is to be distinguished from identification using name, sex, date of birth, etc., as shown on a document subject to alteration or counterfeit such as a birth certificate, social security card or drivers license. Because individuals can have identical or similar names, ages, etc., identifications based on such characteristics are not reliable. (See pages 20-21.)

**Security Clearance Information Act (SCIA):** Federal legislation requiring that States make criminal history records available to certain Federal agencies in connection with screening for security clearances. (See page 39.)

**Survey of Criminal History Information Systems (the "BJS Survey"):** A comprehensive 50-State survey describing the status of State criminal history record systems as of December 1992. Information includes the number of records, level of automation, record completeness, fingerprint procedures, firearm checking procedures, and participation in III. The survey updates an earlier survey conducted in 1989. The survey was conducted by SEARCH Group, Inc. under a grant from the Bureau of Justice Statistics. (See pages 24-29.)

# Introduction

## Purpose of this report

This report is the first comprehensive examination of the Nation's criminal history record systems and the major issues and developments that affect them.

It describes in nontechnical terms the complex and interrelated network of Federal, State and local information systems that provide criminal history records to criminal justice personnel and to authorized noncriminal justice users.

It also assesses the role these systems play in the effective functioning of the criminal justice system, and reviews the impact that new technologies and strategies are having on the completeness, accuracy and availability of criminal history records.

This report includes:

- An overview of how typical State criminal justice systems are structured, how the criminal justice process works, and how criminal history records are used in the justice system;
- An overview of existing State and Federal criminal history record systems and of the product they provide — the criminal history record;
- An overview of laws regulating criminal history record systems, and a look at two key issues affecting the systems — data quality and dissemination;
- A summary description of new technologies that affect criminal history record systems;

- A description of the Interstate Identification Index system and the role it plays in the decentralization of the Nation's criminal history record information system; and
- An overview of Federal initiatives and activities that affect criminal history record systems.

It is hoped that readers will derive a general understanding of how criminal history record systems work, the types of information they maintain, who reports the information to them and by what means, how accurate and complete the information is, and who obtains the information and for what purposes.

This report should also help readers to understand the changing relationship among local, State and Federal systems and how presently available and emerging technology is affecting the efficiency of the systems and the quality of the information they maintain and disseminate.

With this background, State and Federal legislators and other policymakers, as well as the general public, should better understand the critical role the criminal record repositories play and also how data quality problems and other problems — and the new strategies and technologies being used to solve them — affect the usefulness of the systems and ultimately the efficiency of criminal case processing and the effectiveness of crime control strategies.

## Background

### Repositories of criminal history record information

This report discusses in detail the operations of the State and national repositories of criminal history records that provide information about individuals' past criminal involvement to criminal justice practitioners and to noncriminal justice agencies and organizations that need such information to carry out their duties and functions.

#### —State systems

Each State operates a central criminal history record repository that receives case processing information contributed by law enforcement agencies, prosecutors, courts and corrections agencies throughout the State. These repositories compile this information into comprehensive criminal history records or "rap sheets," as they are often called. Rap sheets are made available to criminal justice personnel, for authorized purposes, by means of statewide telecommunications systems.

Maintenance of such central repositories relieves local and State criminal justice agencies of the need to maintain expensive and duplicative information systems that attempt to compile comprehensive offender records. They need only maintain systems that support their own case processing needs and can rely upon the State central repositories for information about the processing of cases in other agencies.

The State repositories also make criminal history records available to some noncriminal justice agencies, such as State agencies that are authorized by law to obtain the records for such purposes as employment screening and occupational licensing.

### **—Federal systems**

At the Federal level, the Federal Bureau of Investigation (FBI) maintains criminal history record files on Federal offenders, as well as files on State offenders to the extent that such information is voluntarily submitted by States. The FBI has accepted and recorded State offender information for some 70 years and has compiled a criminal history database that, to a great extent, duplicates the files of the State repositories.

The FBI also maintains a nationwide telecommunications system that enables Federal, State and local criminal justice agencies to conduct national record searches and to obtain information about individuals who are arrested and prosecuted in other States.

In addition, the FBI provides criminal record services to Federal and nonfederal noncriminal justice agencies that are authorized by Federal law to obtain such records.

### **Timely criminal history record information issues**

This report, which describes the State and Federal criminal history record repositories and the problems, issues and developments that affect them, should be timely for a number of reasons.

### **—Data quality**

First, recent developments have highlighted this fact: The information maintained by the State and Federal repositories is not always accurate and up-to-date, due primarily to the failure of criminal justice agencies to report information accurately, completely and regularly, but due also in some cases to a lack of adequate equipment and procedures at the repositories. For example, the low quality of the data stored in many repositories has hampered ongoing efforts to establish a national database of persons who have prior felony convictions and are therefore prohibited by Federal law from purchasing firearms.

Surveys and audits have shown the following:

- That a high percentage of arrests on file in many repositories lack dispositions;
- That arrest and disposition information may be inaccurate; and
- That the content and format of the records made available by some of the repositories do not meet the needs of some users.

These developments have led to a number of initiatives to improve criminal history record data quality nationwide, including Federal grant assistance to the States and the promulgation of voluntary data quality standards. Compliance with these standards will require officials in many States to seek funds from their State legislatures to provide additional equipment and other resources to the repositories and to the criminal justice agencies that provide information to the repositories.

Given the complexity of these recent developments, it is hoped that this report will guide and assist legislators and other policymakers in understanding these developments and the important role the repositories play in national initiatives to improve data quality.

### **—Decentralized recordkeeping**

Second, the State repositories and the FBI are engaged in a cooperative program designed to eliminate the maintenance of duplicative State offender records at both the State and Federal levels.

The current practice of maintaining centralized State offender files at the FBI will be replaced by a new system, the Interstate Identification Index, which will make the State repositories primarily responsible for providing State criminal history records for interstate and Federal-State purposes. Full participation in this program will require most of the States to modify their record dissemination laws and policies and to upgrade the technical capabilities of their repositories in order to realize the long-term cost savings inherent in the new approach.

### **—New technologies**

Third, new technologies are emerging that offer great potential for significantly increasing the efficiency of the criminal history record repositories and the quality of the information they maintain and disseminate. These technologies are expensive, however, and it is often difficult to persuade legislators and other policymakers that investment in this new equipment makes sense in times of tight State budgets.

## Content of this report

This report contains six major chapters that provide a comprehensive, nontechnical review of criminal history record information systems nationwide, and how the records contained in those systems are used and managed. Supporting tables and information are presented in 21 appendices. To find specific topics or areas of interest, readers are encouraged to refer to the detailed table of contents. Readers are also encouraged to refer to a glossary which defines the terms used in this report, and which is located following the table of contents.

Because the scope of this report is broad, readers may wish to refer to the other compendia, reports or documents — cited throughout this report in footnotes — for more specific or timely data. In addition, readers may find a certain amount of duplication between chapters; this is because each chapter is designed to stand alone as a reference document.

The chapters and the topics they cover are as follows:

**Chapter I** provides a brief overview of how typical State criminal justice systems are structured, how the criminal justice process works and how criminal justice practitioners use criminal history records. It describes the main case processing steps in a typical State's criminal justice system and identifies the decision points in these processes that require a reliance on criminal history records, with a brief explanation of the types of information needed and the time frames within which it is needed. The chapter also identifies the decisions and actions that occur in the course of criminal case

processing that are reflected, or should be reflected, on criminal history records.

**Chapter II** provides an overview of existing criminal history record systems, with emphasis on the State central repositories and the FBI's criminal history record systems. The chapter includes a summary of the historical evolution of the State repositories and the FBI's record systems. It then describes the types and numbers of records maintained by the repositories and the FBI, the extent of present and planned automation, the number of inquiries handled, and major criminal justice and noncriminal justice users. The chapter also describes how information is reported to the repositories and the FBI and how users have access to the information. Finally, the chapter describes the quality of the information maintained by the repositories, the format and content of the criminal history records they disseminate, and the principal systematic and procedural strategies utilized to ensure data quality and system integrity.

**Chapter III** analyzes the legal standards applicable to the criminal history record repositories, including constitutional and common law doctrines, as well as statutory and regulatory requirements. This chapter also analyzes in some detail the laws, regulations and policies relevant to two major issues concerning criminal justice information management — data quality and dissemination.

**Chapter IV** provides a summary description of new technologies and new technology applications that affect the efficiency, and therefore the cost, of criminal history record information systems and the quality of the records they provide. New technologies described include:

- Automated fingerprint identification technology and its impact on the accuracy of the identification function and the efficiency of inquiry and response procedures;
- Live-scan and card-scan fingerprint technology and the impact it will have on the efficiency and accuracy of arrest subject processing, inquiry processing and the transmission of fingerprint images to the repositories; and
- Automated reporting of criminal history information to the repositories by law enforcement agencies, prosecutors, courts and corrections agencies.

**Chapter V** describes the Interstate Identification Index system, including an overview of the system's structure and the history of phased testing and implementation up to the present. The chapter describes how the processing of criminal justice and noncriminal justice inquiries presently works using FBI files and how such processing will work when the new system, including the National Fingerprint File, is fully implemented. The chapter also describes the principal burdens and benefits that participation in the system will entail for the State repositories and the FBI. Finally, the chapter summarizes the provisions of a proposed interstate compact designed to implement the system and formalize participation by the FBI and the State repositories.

**Chapter VI** provides a brief overview of current Federal initiatives and activities that affect or are related to criminal history record systems. These include the following:

- The FBI's program to upgrade its technology and streamline its procedures;
- The U.S. Attorney General's program to establish a database of convicted felons to permit point-of-sale record checks for firearms sales;
- Federal grant programs to improve data quality;
- The voluntary reporting and data quality standards issued by the U.S. Department of Justice; and
- The pending Brady Bill, which, if passed, will provide additional funding for criminal history record data quality improvement.

# Chapter I: How the criminal justice system works and how it uses criminal history records

This chapter provides an overview of how the criminal justice system works and how criminal history records are utilized by criminal justice personnel.

**Section 1: Typical State criminal justice system structure**, describes a typical State criminal justice system structure, and includes a discussion of criminal codes and procedures, police agencies, local detention facilities, prosecution agencies, courts and corrections agencies.

**Section 2: Typical State criminal justice process**, describes how criminal cases are processed in a typical State criminal justice system — from investigation through arrest, prosecution, adjudication and correctional supervision.

**Section 3: How criminal justice practitioners use criminal history records**, identifies the actions and decisions in the criminal justice process that require a reliance on criminal history record information. This section also explains the types of information needed and the time frames within which it is needed.

## Background

This discussion is intended for those readers who may not be familiar with the structure of the criminal justice system and how persons accused of criminal offenses are processed through the system. This should enable these readers to understand why criminal history record systems are necessary and how the efficiency of these systems and the quality of the information they provide can significantly impact the effectiveness of criminal case processing and the success of crime control strategies.

## Section 1: Typical State criminal justice system structure

Although there are criminal justice systems at the local, State and Federal levels, most crimes by far are prosecuted under State law. For this reason, this discussion will focus primarily on the state-level systems and will describe a more or less typical State criminal justice structure. It should be stressed, however, that the systems at the three levels are significantly interrelated and depend upon a high level of cooperation among local, State and Federal officials.

This section discusses these components of a State criminal justice system:

- Criminal codes and procedures;
- Police agencies;
- Local detention facilities;
- Prosecution agencies;
- Courts; and
- Corrections agencies.

## Criminal codes and procedures

Some crimes are Federal by nature, such as attempts to assassinate the president, certain antitrust violations and some criminal conspiracies or enterprises that utilize the mails or other instruments of interstate commerce. These crimes are prosecuted in Federal courts and convicted offenders are usually, but not always, incarcerated in Federal correctional facilities.

Other crimes or violations are local in nature, such as loitering or public drunkenness. These less serious offenses are processed through local systems at the city, township or county level.

Most crimes, however, are State crimes, including the crimes of murder, robbery, burglary and rape, and other dangerous crimes that constitute the core of the Nation's serious crime problem.



Each of these governmental levels — local, State and Federal — defines its own criminal laws and criminal procedures. At the Federal level, the Congress<sup>1</sup> has enacted a Federal criminal code defining Federal crimes and a code of Federal criminal procedure setting out rules applicable in processing criminal cases through the Federal courts. State legislatures enact criminal statutes and procedural codes at the State level. City councils or similar governing bodies act at the local level.

Each of these levels depends upon a high degree of cooperation with criminal justice officials at other governmental levels. This interrelation and cooperation is especially important between local and State governments and exists at every phase of the criminal justice process, from investigation through correctional treatment. Sometimes these roles are defined by law, sometimes by formal agreements and sometimes by informal practice.

### **Police agencies**

Police protection is primarily local in nature — a function of cities, municipalities or counties. Most violations of State law are investigated by local police and suspects in these crimes are arrested and charged at the local level. In addition, other police units — such as State troopers, Federal Drug Enforcement Administration officers or FBI agents — may be involved with local police in the investigation, arrest and prosecution of certain cases.

### **Local detention facilities**

Jails, which also are primarily local in nature, detain not only persons arrested for local offenses, but also virtually all persons charged and awaiting trial under State law. Local jails may also house Federal detainees and often house State “prison-ready” inmates — persons who have been convicted and sentenced and are ready to move into a State prison but, because of overcrowding or other reasons, cannot be moved. In most such cases, State or Federal governments pay fees to the local communities which house these prisoners.

### **Prosecution agencies**

Prosecution is another essentially local function that plays a vital role in the enforcement of State criminal laws. Most prosecutors are elected locally, at the city, county or district level. They may be called District Attorneys, as they are in California and Wyoming, or State’s Attorneys, as they are in Illinois and South Dakota. They also may be called Prosecuting Attorneys, Commonwealth’s Attorneys, County Attorneys or City Attorneys.

These locally-elected and locally-accountable officials are charged with the responsibility of prosecuting not only local offenses but also virtually all offenses defined under State law. For many of them, prosecuting State crimes is their primary function, sometimes their exclusive function.

### **Courts**

Courts exist at the local, State and Federal levels. Most States have “integrated” court systems, that is, systems which as a result of reform and modernization have a more or less uniform statewide structure, combining local and State courts into essentially one system. Some States, such as Alaska and Maryland, have what are known as “unified” court systems. In such systems, all courts are directly administered by the State, usually through a state-level Office of Court Administration.

In the typical State judicial system, there are magistrates’ courts, lower-level trial courts, felony trial courts, and intermediate and final appellate courts. Magistrates, or Commissioners in some States, conduct initial appearances in criminal cases and may set bail, but usually have no trial jurisdiction. Lower-level trial courts, often called Municipal Courts, County Courts or District Courts, usually are limited to trying misdemeanor cases and conducting probable cause hearings in felony cases.

The next tier is the felony trial court, commonly called the Circuit Court or Superior Court. In New York, this court is called the Supreme Court. These are the basic State trial courts, with jurisdiction over felony offenses and often over misdemeanor cases that are appealed from the lower trial courts.

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<sup>1</sup>In this report, “the Congress” refers to the United States Congress.

About half of the States have intermediate appellate courts, usually called the Court of Appeals. At the top of the structure, the State Supreme Court is the highest State appellate court. In New York, this court is called the Court of Appeals.

Generally, there is a right of appeal to the State Supreme Court from the intermediate appellate court or directly from the trial courts if no intermediate appellate court exists. Under some circumstances, such as alleged denials of constitutional rights, State court decisions can be reviewed by Federal courts.

### Corrections agencies

“Corrections” is generally an umbrella term for probation agencies, State prisons and parole agencies. Correctional supervision is primarily a State function, although, again, cooperation among governmental entities is common. It has already been noted that local jails may hold State prisoners.

In addition, State prisons may hold Federal prisoners, such as those who are in special protection programs, while Federal prisons may hold State prisoners who are at particular risk in the State systems. Sometimes a prisoner may serve both State and Federal sentences or State and local sentences concurrently.

## Section 2: Typical State criminal justice process

Although there may be aspects of every State’s criminal justice system that are unique, the essential steps or functions in the system are similar in practically all States. The following discussion describes the functioning of these essential steps in a typical State system and points

out some pitfalls in the process that may detract from the creation of adequate records of criminal cases.

The steps or functions discussed in this section are:

- Investigation;
- Arrest;
- Booking;
- Initial court appearance;
- Preliminary hearing;
- Pretrial release decision;
- Prosecutor review;
- Grand jury indictment;
- Arraignment;
- Trial court action;
- Appeal;
- Sentencing; and
- Correctional supervision.

(See Figure 1, which illustrates the sequence of events in the criminal justice system.)

### Investigation

Most criminal investigations are carried out by the police, but investigations may be undertaken by grand juries or other special bodies such as crime commissions or legislative committees. Most of the information utilized by criminal investigators is commonly referred to as “intelligence” information (information compiled in an effort to anticipate, prevent or monitor *possible* criminal activity) or “investigative” information (information obtained in the course of the investigation of *specific* alleged criminal acts).

Many State laws make a sharp distinction between this type of information and criminal history record information. Intelligence and investigative information is regarded as more sensitive and potentially more harmful to privacy and confidentiality interests and

consequently is more strictly regulated in many States. Investigators do use criminal history record information, however, as shown in Section 3 of this chapter.

### Arrest

The next stage in the process, in most cases, is the arrest. An arrest may occur pursuant to an arrest warrant, although generally an arrest warrant is not needed except for a misdemeanor offense committed outside of the arresting officer’s presence or when the officer must enter the subject’s premises to make the arrest. The more typical arrest is sometimes referred to as an “on view” arrest. This occurs when the officer personally witnesses the crime or has sufficient information from a reliable source to establish probable cause that a crime occurred and the arrest subject was involved.

In most instances, the arrest is the event that triggers the creation of a criminal history record for a particular case. Virtually all of the States have laws or regulations requiring arresting agencies to report certain arrests to the central repository.<sup>2</sup> (State central criminal history record repositories are described in Chapter II.) These laws usually apply to all arrests for offenses classified as felonies or serious misdemeanors.

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<sup>2</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Data Quality of Criminal History Records*, Criminal Justice Information Policy series, by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, October 1985) p. 36. (Hereafter, Data Quality Report.)

**Figure 1: Sequence of Events in the Criminal Justice System**  
(Figure not available in electronic format)

**Figure 1: Sequence of Events in the Criminal Justice System  
(Figure not available in electronic format)**

In addition to reporting information about the arrest, the arrest subject and arrest charges, arresting agencies are also required to obtain and submit the arrest subject's fingerprints. These fingerprints provide so-called "positive identification" of the record subject and are crucial for these reasons:

- Searching criminal history record systems;
- Linking prior arrest and conviction records to persons who subsequently use false names, and
- Ensuring the admissibility of criminal records in subsequent proceedings for such purposes as sentencing.

For these reasons, it is vitally important that fingerprints be obtained and submitted to the repository for all cases that are required by law to be included in the repository's database.

In cases that begin by arrest, most arresting agencies have booking procedures designed to ensure that fingerprints are obtained and submitted as required. Not all cases begin by arrest, however. *Citations*, used in the past mostly for minor offenses, are being used more and more in many States for serious misdemeanors and even for some felonies.

Citations are paper forms that are given to the subject in lieu of arrest and booking, and which contain a legally-enforceable order to appear in court on a specified date or as ordered. Since the subject is not detained and booked, fingerprints are not obtained and submitted to the repository in the usual way.

If there are no procedures in place to ensure that fingerprints are obtained at the time of the subject's court appearance, or at some other point in the proceedings, the case history may lack a basis for positive identification and any resulting conviction may not be legally admissible in subsequent proceedings. Moreover, without positive identification, case information cannot reliably be associated with information about prior and subsequent offenses committed by the record subject, which is needed to form a comprehensive criminal history.

A similar problem is presented by cases in which *additional charges are filed against persons already charged in other cases*. For example, a person who is arrested, charged and fingerprinted in connection with an alleged burglary may, through subsequent investigation, be linked to additional burglaries, which may be charged as separate cases. New fingerprints are often overlooked for these new cases, even though the subject may still be in custody, and appropriate steps may not be taken to establish a link between the new cases and the earlier fingerprints.

Where an arrest does occur, the detained person may later be released without being booked and charged. In such cases, no report to the repository is required and none should be made. (This assumes that no report on the arrest, that is, a fingerprint card, has already been submitted to the repository.)

## Booking

The booking process is a critical stage in the information flow in a criminal case. Booking typically involves an entry into a chronological arrest log or arrest register, the filing of an arrest report by the arresting officer, and the preparation of a statement of charges as the arresting officer sees them.

The booking process also includes the taking and recording of personal information about the arrestee, such as name, address, date of birth, sex, race, eye and hair color, weight and any scars, marks or tattoos that may be useful in identifying the person.

As noted earlier, if the arrest is for a felony or a serious misdemeanor, the subject is fingerprinted. Typically, three sets of fingerprints are made — one for the arresting agency's files and two to be sent to the State repository (one for the repository's use and one to be forwarded to the FBI in appropriate cases).

At some point in the booking process, the agency makes inquiries of available criminal history record systems to determine whether the subject has a record of prior or pending cases that may affect how he is processed. The agency checks its own files and makes an inquiry of the State system and possibly the Interstate Identification Index, a national system that can determine whether the subject has a Federal record or a record in another State. (This national-level system, often referred to as "III" or "Triple I," is discussed in detail in Chapter V.)

The booking stage is another point at which the arrestee may be released without prosecution. If this occurs, it may cause a problem for criminal history record reporting purposes. If the subject has been fingerprinted before release and the fingerprints have already been sent to the repository, notice of the release must also be sent to avoid the creation of an open arrest record without a notation that the case has been officially terminated. A recent survey of State repositories revealed that slightly more than half of the States have laws or regulations that require law enforcement agencies to send such notices to the repository,<sup>3</sup> and audits have shown that failure to send such notices, even where required by law, is a pervasive problem.

Not all arresting agencies have booking facilities. In such cases, the arrestee is usually turned over to another agency for processing. This is commonly noted on the subject's record as "TOT," followed by the name of the receiving agency.

### **Initial court appearance**

The next step is the defendant's initial appearance before a court or magistrate. This must occur "without unnecessary delay," which in some States means within 24 hours.

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<sup>3</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Survey of Criminal History Information Systems, 1992*, Criminal Justice Information Policy series, by Sheila J. Barton, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, forthcoming) Table 7. (Hereafter, 1992 Survey.) Selected tables from the 1992 Survey are set out in this report as Appendices 10-20.

At the initial appearance, a number of things can happen:

- The judge or magistrate may make a probable cause finding. In felony cases, however, this is usually delayed until the next step in the process, the preliminary hearing, unless the two stages are combined, as they are in some jurisdictions.
- Charges against the defendant may be dismissed at this point.
- Legal counsel may be assigned if the defendant is indigent.
- A pretrial release decision may be made.
- In nonserious cases, the entire case may be completed and a disposition may be entered.

All of this information, with the exception of the handling of the nonserious case, typically is reportable to the State repository and has consequences for the completeness and accuracy of the criminal history record.

### **Preliminary hearing**

The next step is the preliminary hearing. Such a hearing may not be required in all jurisdictions, particularly in cases in which a grand jury must issue an indictment. Simply put, the purpose of the preliminary hearing is to determine whether there is enough evidence to hold ("bind over") the defendant for trial. To make this determination, the judge or magistrate must be satisfied beyond a reasonable doubt that a crime was committed and must find probable cause that the defendant committed the crime.

The court may take other actions at this time as well. For example, if the prosecutor cannot present enough evidence to meet the required findings, the judge will dismiss some or all of the charges. The judge may also make or change a pretrial release decision, such as an increase or decrease in bail.

### **Pretrial release decision**

As noted, the pretrial release decision may occur as early as the initial appearance and may be reviewed and changed, possibly several times, at later stages of the proceedings in the case.

Courts have a number of pretrial release choices, based upon available information about the crime with which the defendant is charged, his prior criminal record, and the likelihood that he will appear or fail to appear for trial:

- The defendant may be jailed without bail if he is charged with a capital offense or if the court finds that he may not appear for trial or may pose an undue risk to the community if released;
- He may be jailed in default of bond, if bail is set and he is unable to post bond;
- He may be released on cash bond or without bond (released on his own recognizance or "ROR"); or
- He may be released on specific conditions or restrictions designed to keep him out of trouble and reduce the likelihood of flight.

If the defendant is released and fails to appear for arraignment or trial, an arrest warrant may be issued, and bond may be revoked or changed.

## Prosecutor review

Although the point at which the prosecutor first becomes involved in the process varies from jurisdiction to jurisdiction, this involvement typically begins soon after arrest. After reviewing the circumstances of the offense, the arrestee's prior record, if any, and any other available information, the prosecutor may decide to file all of the charges indicated by the arresting officer in the statement of charges or he may decline to prosecute some or all of the charges. He also may add or modify charges.

If he decides to go ahead with the proceedings, the prosecutor may initiate prosecution in some cases by the filing of an "information" with the appropriate court.<sup>4</sup> He also may present the charges to a grand jury and seek an "indictment."

Grand jury indictment is commonly required in felony cases unless waived by the defendant. Once a case is filed, it takes a court order based upon good cause shown to drop any of the charges.

## Grand jury indictment

A grand jury is "grand" because it typically is larger than the regular trial jury, which usually includes 12 persons. Grand juries frequently consist of 23 jurors, although State laws may set other sizes. Grand juries receive complaints and accusations in criminal cases, hear the evidence presented by the prosecutor and decide whether there should be a trial. If a grand

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<sup>4</sup>An "information" is a formal accusation against a person for the commission of a crime. It differs from an indictment in that an information is presented by a public officer, usually the prosecutor, upon his oath, rather than by the grand jury.

jury finds that there is sufficient credible evidence to sustain the charges presented by the prosecutor, it issues a "true bill of indictment."

It is also possible in some cases for the grand jury to conduct investigations and initiate criminal proceedings on its own. It then issues what is commonly called a "grand jury original" indictment. If the subject of the indictment is not already in custody, the appropriate court may issue an arrest warrant. The court may also issue a "summons" directing the person to appear in court on a specified date. In such cases, care must be taken to ensure that the person's fingerprints are obtained at the court appearance or the case record may lack positive identification.

## Arraignment

After charges are formally filed by indictment or information, the accused person is scheduled for arraignment before a court. At this appearance, he is advised of the charges against him and of his rights under the law. For example, if he does not already have legal counsel, he is advised of his right to counsel, including the right to court-appointed counsel if he is indigent. If he has counsel or waives legal representation, he is asked to enter a plea.

Plea options include guilty or not guilty to some or all of the charges or *nolo contendere* (no contest) to some or all of the charges. The accused may also plead not guilty by reason of insanity or diminished capacity, or guilty but insane. In this regard, before the trial can continue, the judge must determine that the accused is competent to understand the proceedings and to assist his counsel in his defense.

The defendant may enter a plea as a result of charge negotiations or sentence negotiations with the prosecutor. The judge may reject a guilty plea if he finds that the defendant was coerced or does not understand the charges or the consequences of his plea. If the judge accepts a guilty plea or a no contest plea, he normally enters a judgment of conviction on the record and, if the charges are not serious ones, he may also impose sentence. In cases involving felonies or serious misdemeanors, sentencing is usually set for a later date and the judge may order a presentence report to guide the sentencing decision.

If the defendant pleads not guilty to some or all of the charges or if a guilty plea is rejected, the case is scheduled for trial on the remaining charges.

## Trial court action

Trial usually results in an acquittal or conviction on some or all of the charges. Other common trial court judgments can include, as to some or all of the charges: dismissal, *nolle prosequi* (no further prosecution), not guilty by reason of insanity, and guilty but insane.

There are still other trial outcome possibilities, however, that can result in confusing criminal history records. One such possible outcome is "probation without verdict." This usually results from plea negotiations and can occur before a plea is entered or after the entry of a guilty plea but before the entry of a judgment of conviction. In such cases, the defendant is placed on probation with specified restrictions or conditions for a specified period. At the end of that time, the charges are dismissed if the defendant has complied with the conditions. If the defendant has not complied, trial

may resume or the court may enter a judgment of conviction on the guilty plea and proceed to sentencing.

Another such outcome is indefinite postponement. This also is usually ordered pursuant to a plea negotiation and is undertaken to determine whether the defendant can refrain from law enforcement contact for a specified period. If so, the case is dismissed. If not, trial is resumed.

Deferred judgments of this kind present recordkeeping problems because oftentimes no notice is sent to the State repository at the end of the probationary period indicating whether the charges were dismissed or reinstated. As a result, the criminal history record maintained by the repository may be ambiguous as to whether the case has been concluded and what the final outcome was.

The conclusion of trial proceedings is another point at which bail may be reviewed and changed. After conviction, the risk of flight may be thought to have increased and increased bail may be justified. Bail may also be denied pending sentencing or appeal.

## Appeal

An appeal may follow sentencing or may be instituted before sentence is imposed. Some appeals may be automatic, as in death penalty cases, and in other cases the convicted person may have a right to appeal if he chooses. In other cases, however, appeal may be in the discretion of the appellate court.

There are also so-called “post-conviction actions” that can result in appellate review of some aspects of criminal cases. The most common is the writ of *habeas*

*corpus*, the function of which is to obtain release from unlawful imprisonment. This and other post-conviction actions can be based on claims of inadequate legal representation or denial of certain constitutional rights, among other grounds, and can result in review in State and Federal appellate courts.

## Sentencing

A sentence may be decided or recommended by the jury, as in capital cases, or imposed by the judge. Typically, a sentencing hearing is held for felony cases. In all States, the sentencing judge has the discretion, by express statutory authority or by virtue of inherent judicial powers, to order the preparation of a presentence report to guide the sentencing decision.<sup>5</sup> The presentence report almost always includes information about the defendant’s past criminal activity.

Sentencing options may include (separately or in combination):

- The death penalty;
- Incarceration in a prison, jail or other facility;
- Probation;
- A suspended sentence, in whole or in part;
- A fine;
- Restitution;
- Forfeiture of the proceeds of the crime;

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<sup>5</sup>U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Statutes Requiring the Use of Criminal History Record Information*, Criminal Justice Information Policy series, by Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, June 1991) Table 7 at pp. 47-50. (Hereafter, Statutes Report.) Selected tables from the Statutes Report are set out in this report as Appendices 1-7.

- Confinement in a mental health facility; or
- Community service.

The judge may have discretion as to sentence choices and sentence length, but State law may provide for mandatory, determinate or enhanced sentencing in some cases, and may limit or deny probation eligibility. Sentencing approaches are discussed in Section 3 of this chapter.

## Correctional supervision

The final step in the criminal justice process is correctional supervision. Basically, this step includes the so-called “three Ps”: probation, prison and parole.

Incarceration in a State prison is usually for persons who are convicted of felonies and receive sentences of one year or more. Sentences of less than a year usually are served in local jails or other local facilities. A person may receive a “split sentence”; that is, he may serve some time but also receive a period of probation. If a person is placed on probation in lieu of incarceration and fails to comply with the terms of probation — including making monetary restitution, if so ordered — probation may be revoked and the person may be sent to jail or prison. The same applies to a person who is paroled after serving part of a term of incarceration and fails to comply with the conditions of parole.



### Section 3: How criminal justice practitioners use criminal history records

This chapter has previously mentioned some of the uses that criminal justice practitioners make of criminal history records. This section reviews in more detail the uses, both mandatory and discretionary, that such practitioners make of criminal history records as they perform their duties in processing offenders through the criminal justice system. These uses include:

- Police uses;
- Pretrial release uses;
- Prosecutor uses;
- Court uses; and
- Corrections uses.

This section also discusses the types of criminal history record information needed to guide criminal justice decisionmaking, and also discusses the time frames within which the information is needed.

#### Background

The importance of the criminal history record to the effective functioning of the criminal justice system can hardly be overstated. Research has shown that as many as two-thirds of all persons arrested for criminal offenses have prior criminal records, often including offenses in multiple jurisdictions or States.<sup>6</sup> Many arrestees, if identified as prior offenders, would be treated differently than first offenders. For example:

- Prior offenders might not be released on bail or on their own recognizance;

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<sup>6</sup>Ibid., p. 1.

- Prior offenders might not be able to legally purchase firearms, which then enable them to commit more crimes;
- In many cases, prior offenders would not be eligible for probation or other lenient treatment;
- In some cases, prior offenders would be subject to upgraded or enhanced charging and sentencing and would receive longer prison terms; and
- In some cases, prior offenders might be subject to sentencing as career or habitual offenders to long prison terms without parole.

Thus, simply put, the availability or nonavailability of complete, accurate and timely criminal history records can have a direct impact on the functioning of the criminal justice system.

#### Police uses

Police agencies use criminal history records in numerous ways, including as an investigative tool. Criminal records can aid them in compiling suspect lists, based upon prior criminal patterns, or in eliminating suspects who can be determined to have been incarcerated at the time of the crime. Information about a suspect's prior record can also be helpful in obtaining a search warrant or establishing criminal knowledge or motive.

The record can be extremely useful to the police officer in the field. When an officer makes a stop, information about the stopped person's dangerousness or past violent activity can save the officer's life. In addition, information about a suspect's criminal record may be necessary to determine whether a crime has

occurred, such as possession of a firearm or other dangerous weapon by a felon. There are provisions in the penal codes of the Federal Government, 43 States, the District of Columbia and the U.S. Virgin Islands making it a criminal offense, usually a felony, for a person previously convicted of a felony to own, possess or carry a firearm or, in some States, certain other dangerous weapons.<sup>7</sup>

A suspect's status as an escapee or his failure to comply with conditions of his current status as a probationer, parolee or bailee can also be determined from his criminal record, if it is complete and current.

#### Pretrial release uses

The presence or absence of a prior criminal record is arguably the most relevant information to a judge or magistrate deciding whether and under what conditions to release a person on bail pending trial. Indeed, 47 States, the Federal Government, the District of Columbia, the U.S. Virgin Islands and Puerto Rico have statutory or constitutional provisions or court rules that explicitly require or permit the consideration of an arrested person's prior criminal record in making pretrial and post-trial release decisions.<sup>8</sup>

In some cases, pretrial release is prohibited by law if persons charged with designated offenses were already on bail when arrested or if they have previous convictions for designated offenses. In addition, laws in many States permit courts

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<sup>7</sup>Ibid., Table 10 at pp. 64-66, and p. 63. Table 10 is included in this report as Appendix 1.

<sup>8</sup>Ibid., Table 2 at pp. 7-10, and pp. 5-6. An excerpt from Table 2 is included in this report as Appendix 2.

to order “preventive detention” of persons with prior records that indicate that they would be dangerous or might commit further crimes if released.

Information that an arrested person has previously failed to appear as ordered (usually noted on criminal history records as “FTA”) is also important at the bail-setting stage. Virtually all States permit such information to influence pretrial release decisions, including the denial of bail if the subject is deemed likely to flee based on prior FTAs and the seriousness of the current crime.

### **Prosecutor uses**

Prosecutors are among the heaviest users of criminal history records. They use such records from the moment they become involved in criminal cases until the cases are terminated at the defendants’ parole hearings or earlier. Complete and accurate criminal history record information is needed by prosecutors to provide input and make decisions regarding:

- Bail;
- Enhanced charging;
- Plea bargaining;
- Presentations to grand juries;
- Habitual or career criminal prosecutions;
- Impeachment of witnesses;
- Sentence recommendations; and
- Parole board hearings.

All of the States have statutory provisions that authorize or require arrested persons with designated prior convictions to be charged as repeat offenders, habitual offenders or career offenders, and, if convicted, to be sentenced to

enhanced prison terms.<sup>9</sup> Under some of these laws, the prosecutor must allege habitual or repeat offender status in the charging document or give early notice of his intent to seek an enhanced sentence.

In addition, almost all of the States have provisions applicable to certain crimes that upgrade second and subsequent offenses, of the same or similar type, to higher classes of crimes than first offenses — from a misdemeanor to a felony, for example, or to a more serious class of felony or misdemeanor.<sup>10</sup> In some of these cases, the upgraded offense must be specified in the charging document. This means that the prosecutor must have complete information about a defendant’s prior record at the time the case is filed in court because the class of offense charged can affect the type of charging document that must be used or the court in which the case must be filed.

### **Court uses**

Courts are also heavy users of criminal history record information, although in some cases judges may not be aware that the information comes primarily from repository-supplied criminal history records, since they customarily receive the information in modified form — in bail reports prepared by bail agencies or other agencies, in presentence reports prepared by probation departments or in presentations by the prosecutor.

### **—For bail, pretrial and trial decisions**

As noted above, courts need criminal history record information for bail and pretrial release decisions at an early stage in criminal proceedings, many times within 24 hours of the defendant’s arrest. They also use criminal history record information in making probable cause determinations, issuing arrest warrants, and accepting or rejecting pleas.

In some instances, courts are authorized to consider evidence of prior crimes by a defendant during the trial itself. Such evidence may be admissible, for example, to show motive, intent, criminal knowledge, common plan or scheme, or method of operation (*modus operandi* or “M.O.”) Certain prior convictions also may be admissible to attack the credibility of the defendant, if he testifies, or of other witnesses.

### **—For sentencing decisions**

The most frequent use of criminal history records by courts, however, is in connection with sentencing. As mentioned, many State laws permit or require courts to upgrade charges or impose enhanced sentences for persons with prior conviction records, including, in some cases, life sentences without parole for certain habitual offenders.

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<sup>9</sup>Ibid., Table 5 at pp. 36-41, and pp. 13-14. An excerpt from Table 5 is included in this report as Appendix 3.

<sup>10</sup>Ibid., Table 3 at pp. 17-23, and p. 11. An excerpt from Table 3 is included in this report as Appendix 4.

Some of these enhancement laws take into consideration not only past convictions but also the number and duration of prison terms previously served and the length of time between release and renewed criminal involvement.<sup>11</sup> In addition, virtually all of these laws take into account convictions in any State or Federal court and, in some cases, in territorial or foreign courts as well.<sup>12</sup>

In lieu of, or in addition to, specific upgrade or enhancement laws, some jurisdictions have established sentencing guidelines or presumptive or determinate sentencing structures that are based in part on prior convictions as aggravating factors or on sentence computation formulas that include prior convictions as factors in the computation.<sup>13</sup>

#### **—For probation and parole decisions**

Courts also take criminal history record information into account in deciding whether to place offenders on probation or to impose limits on parole eligibility for incarcerated offenders. In some jurisdictions, these decisions are left to the discretion of the courts. In other instances, the limitations are mandatory. For example, many of the repeat offender, habitual offender and sentence enhancement laws mentioned earlier provide for mandatory prison terms, foreclosing probation as a possible sentence, and many of them deny or limit parole eligibility. Probation may also be prohibited by law for certain convicted persons who have

previously been convicted of certain serious offenses, such as murder or other offenses involving violence.<sup>14</sup>

#### **Corrections uses**

The most frequent use of criminal history record information by correctional agencies is in the preparation of presentence reports, which commonly are prepared by parole or probation agencies. Correctional officials also use such information for classification purposes,<sup>15</sup> however, and in making decisions about eligibility for good time credits, early release, work furlough or release on parole.<sup>16</sup>

As noted earlier, numerous States have reformed their sentencing structures in recent years to provide for determinate sentencing pursuant to sentencing guidelines or mandatory sentencing structures. Under some of these laws, offenders are required to serve the sentences imposed, less good time credits only, with release on parole prior to sentence expiration no longer permitted.

Other State laws deny or limit parole eligibility for certain offenders based on the number and seriousness of prior convictions. Even where parole eligibility is not specifically constrained by statute, parole decisions commonly are based in large part upon the seriousness of the offender's present offense and his past criminal record.

#### **Types of information needed**

It should be obvious that criminal justice practitioners use criminal history records to guide decision-making at every stage of the criminal justice process. It should also be obvious that the information they need for these purposes includes more than just a list of arrest charges and court dispositions. Proper enforcement of the laws and effective implementation of crime control strategies may require them to know not only the number, nature and dates of prior convictions, but also:

- Whether an offender was on bail or some other form of supervision at the time of arrest;
- Whether an offender has a history of violation of release conditions or failure to appear as ordered;
- Whether other cases are pending against the offender and the status of such cases;
- Whether particular past crimes involved the use of dangerous weapons or actual or threatened violence;
- Whether prior convictions were for felonies or misdemeanors;
- Whether an offender has served previous terms of imprisonment; and
- Whether new and prior incidents of criminal involvement were separated by specified periods during which the individual was free of criminal involvement.

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<sup>14</sup>Ibid., p. 14.

<sup>15</sup>Ibid., Table 8 at pp. 52-54, and p. 51. Table 8 is included in this report as Appendix 6.

<sup>16</sup>Ibid., Table 9 at pp. 57-61, and pp. 55-56. An excerpt from Table 9 is included in this report as Appendix 7.

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<sup>11</sup>Ibid., Table 4 at pp. 24-35, and p. 14. An excerpt from Table 4 is included in this report as Appendix 5.

<sup>12</sup>Ibid., p. 14.

<sup>13</sup>Ibid., pp. 12-13.

In addition, court officials often express a need for information about previous failures to pay fines or restitution and information about less serious offenses that in many States are not required to be reported to the repository,<sup>17</sup> usually because there is no legal requirement to obtain fingerprints in such cases.

Finally, it should be re-emphasized that virtually all of the laws that require or permit criminal justice decisions to be based upon past criminal involvement take into account prior convictions in any State or Federal court and sometimes in territorial or foreign courts as well.

### **Time frames within which information is needed**

The time frame within which criminal history record information is needed by criminal justice practitioners varies considerably. As mentioned earlier, information for bail-setting purposes may be needed within 24 hours of arrest. Some of the investigative needs of law enforcement officers may also necessitate short response times. Prosecutors need criminal history record information at an early stage of criminal proceedings for charging purposes and making bail recommendations.

Few States presently have procedures and facilities for making fingerprint-verified criminal history record responses available within such short time frames. Some jurisdictions have bail agencies or other agencies that are charged with the responsibility of obtaining and providing information for use in bail determinations. In some cases, these agencies may have the staff and facilities for making inquiries to obtain complete and accurate information concerning prior criminal records. In most cases, however, the only information available in time for initial bail determinations is a criminal history record transcript received in response to a name search of the State's criminal history system and whatever information is provided by the police or is known to the prosecutor or the court.

Since name searches are not fully reliable and existing criminal record files may be inaccurate and incomplete, particularly with respect to case disposition information, some short-term needs of criminal justice officials are not currently being met. In some jurisdictions, however, new technology is solving some of these problems. (This is discussed in Chapter IV.)

Other needs are not as time-critical. For example, agencies ordered to prepare presentence reports generally have time for investigation and compilation of needed information. There is often time to obtain a fingerprint-based search of the State's criminal record system, thus avoiding the risk of missing previous record information if the subject gave a fictitious name when arrested. There may also be sufficient time to receive a response from the III system indicating whether the subject has a record in another jurisdiction. Finally, there may be sufficient time to contact courts and correctional agencies, if necessary, to obtain missing disposition information or to verify the accuracy of recorded arrest and disposition information.

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<sup>17</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Report of the National Task Force on Criminal History Record Disposition Reporting*, Criminal Justice Information Policy series, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, June 1992) p. 3. (Hereafter, National Task Force Report.)



# Chapter II: Overview of existing criminal history record systems

This chapter describes the Nation's existing criminal history record systems at both the State and Federal levels.

**Section 1: Evolution of criminal history record systems**, provides a brief historical review of the evolution of criminal history record systems at the State and Federal levels.

**Section 2: Information maintained in the Nation's criminal history record systems**, summarizes the type of information maintained in State and Federal criminal history record repositories, including identification, criminal history and juvenile information.

**Section 3: The current status of the Nation's criminal history record systems**, summarizes a recent Bureau of Justice Statistics survey of State criminal history record systems and describes:

- The number of criminal history records maintained by State and Federal repositories;
- The extent of repository automation; and
- The reporting and access procedures utilized by the repositories.

**Section 4: The product of the repositories: The criminal history record**, discusses the quality of information maintained by the repositories, and the adequacy of the content and format of the criminal history records they produce.

## Background

### State-level systems

Criminal history records at the State level are collected, maintained and disseminated by "State central repositories," which are agencies or bureaus within State governments, often housed within the State police or a cabinet-level agency with public safety and criminal justice responsibilities, such as the Department of Law Enforcement or the Department of Public Safety.

Customarily, the repositories are charged under State law with the following:

- Establishing comprehensive files of criminal history records;
- Establishing an efficient and timely system for retrieving the records;
- Ensuring that the records are accurate and up-to-date; and
- Establishing rules and regulations governing the dissemination of criminal history records to criminal justice and non-criminal justice users. Today, all 50 States, Puerto Rico and the District of Columbia have established central repositories for criminal history records.<sup>18</sup>

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<sup>18</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Criminal History Record Information: Compendium of State Privacy and Security Legislation, 1992*, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, July 1992) p. 5. (Hereafter, 1992 Compendium.)

## Federal-level systems

At the Federal level, the Federal Bureau of Investigation (FBI) functions as a repository for criminal history information, holding both Federal offender information and records of arrests and dispositions under State law. As discussed in this chapter, the FBI's criminal history record information role is changing.

Currently, the FBI operates a centralized criminal history file that serves as the primary source for national record searches and interstate record exchanges. By the end of this century, however, the FBI will serve primarily as the "51st State repository" with respect to Federal offenders. The FBI will also maintain these systems:

- The Interstate Identification Index, which will permit authorized requestors to determine whether any State or Federal repository maintains a criminal history record about a particular subject; and
- The National Fingerprint File, which will provide positive identification of all offenders indexed in the national system. (These national systems are discussed in detail in Chapter V.)

## Section 1: Evolution of criminal history record systems

Although the Nation's criminal history record system is far from complete, vast strides have been made, both in terms of the extent to which the system is organized in an effective and coordinated manner, and in terms of the quality of the system's product. It was not always so.

This section reviews the historical evolution of criminal history record systems, and includes discussions of the following:

- Establishment of early police departments;
- Early identification and recordkeeping systems; and
- Efforts to establish State and Federal criminal history record systems.

### Establishment of early police departments

At the beginning of this century there was hardly such a thing as a criminal history record, much less a criminal history record system. Indeed, prior to 1835 not a single American city enjoyed even an organized police force, much less an organized police record system. In 1835, Boston became the first city to establish a full-time police force. In 1844, New York followed suit.

Meanwhile, in less populated areas of the country, State governments took on the role of establishing organized police forces. Texas, for instance, established the Texas Rangers in 1853. Shortly thereafter, Arizona established its own State police force. By the end of the 19th century, every major urban area and all regional and State areas had established law enforcement agencies.<sup>19</sup>

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<sup>19</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Intelligence and Investigative Records*, Criminal Justice Information Policy series, by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, February 1985) p. 14. (Hereafter, *Intelligence and Investigative Records*.) See also, James N. Gilbert, *Criminal Investigation* (Columbus, Ohio: Charles Merrill and

## Early identification and recordkeeping systems

This is not to say, however, that 19th century police forces were keeping criminal history record information. Rather, throughout the 19th century, most urban American police departments, if they kept records at all, kept what can be called the precursor of the criminal history record — the so-called "police blotter." The blotter was, and is, a purely chronological listing of events occurring each day in a particular police department or, more often, a particular precinct or subdivision of a police department. Customarily, the blotter contains the name, age, sex and race of persons arrested, along with citations to alleged offenses.<sup>20</sup>

It was not until the emergence of a reliable system for identifying individuals, and thus "positively" linking records to individuals, that law enforcement agencies began to keep records that were "about individuals," as opposed to being "about events." As early as the post-Civil War period, the famed detective, Allan Pinkerton, launched his own crude criminal history record system with respect

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Company, 1980) at Chapter 3. (Hereafter, Gilbert.)

<sup>20</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Original Records of Entry*, Criminal Justice Information Policy series, by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1990) pp. 6-7. See also, Michael J. Petrick, "The Press, the Police Blotter and Public Policy," *Journalism Quarterly* 46 (Autumn 1969) p. 475, n.1.

to persistent criminals. Pinkerton called for the establishment of a national system to collect and maintain records, including photographs, of active criminals.<sup>21</sup>

The first systematic attempts at developing criminal identification systems included name-based registers of habitual criminals in combination with photographs and an anthropometric system for taking exact measurements of physical features, which was developed in the mid-19th century by a Frenchman, Alfonse Bertillon. In 1896, the International Association of Chiefs of Police established the first “national” criminal identification system in Chicago.<sup>22</sup>

At about the same time, the “Henry Classification System” emerged as the first effective method for the use of fingerprints to positively identify previous offenders and to search identification files.<sup>23</sup> In 1908, the U.S. Department of Justice formed the Identification Bureau (the forerunner of the Federal Bureau of Investigation), with the mission, among others, of establishing a fingerprint-based criminal history record information system.<sup>24</sup> By 1911, fingerprinting was a commonplace and important part of the American criminal justice system. Fingerprints were being used by the police, in the courts, by corrections agencies and

for many other justice and government purposes.<sup>25</sup>

### **Efforts to establish criminal history record systems**

In 1924, fingerprinting and related recordkeeping received an important impetus when the U.S. Congress directed the FBI to create an “identification division” to acquire, maintain and use fingerprint information for criminal identification and certain other purposes.<sup>26</sup> The Identification Division started with just over 800,000 fingerprints, which represented contributions from the files of the International Association of Chiefs of Police, the Federal penitentiary at Leavenworth, Kansas, and the Justice Department’s own Identification Bureau records.<sup>27</sup>

Notwithstanding this significant progress, the Wickersham Report — the product of a congressionally chartered comprehensive examination of the criminal justice system undertaken in the 1930s — concluded that vast improvements were needed in the Nation’s criminal justice record system. Serious work on those improvements, however, had to wait almost 40 years.

In 1967, the President’s Commission on Law Enforcement and Administration of Justice published a comprehensive critique of the criminal justice system. It concluded that crime in the United States was a massive problem and that the Nation’s criminal justice system was too antiquated to mount an effective response.<sup>28</sup> The report called for, among other things, a significant Federal effort to establish and automate a national criminal history record system.

### **—LEAA efforts to establish State systems**

In 1969, the Law Enforcement Assistance Administration (LEAA), which was established in response to the Commission’s recommendations, initiated Project SEARCH, a consortium of the States to develop and demonstrate a computerized system for the interstate exchange of criminal history record information. At about the same time, the U.S. Attorney General authorized the FBI to manage the interstate exchange aspects of any operational system resulting from this successful demonstration.<sup>29</sup>

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<sup>21</sup>Intelligence and Investigative Records, p. 18. See also, Gilbert, p. 17.

<sup>22</sup>Gilbert, p. 17.

<sup>23</sup>Clarence G. Collins, *Fingerprint Science: How to Roll, Classify, File and Use Fingerprints* (Placerville, California: Copperhouse (formerly Custom) Publishing Company, 1985) p. 1. (Hereafter, Collins.)

<sup>24</sup>*Ibid.*

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<sup>25</sup>F.A. Reed, “The Finger Mark, the Prime Piece of Scientific Evidence,” *Journal of Forensic Science* (January 1981) p. 9.

<sup>26</sup>Collins, p. 2.

<sup>27</sup>*Ibid.*

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<sup>28</sup>President’s Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: Government Printing Office, February 1967).

<sup>29</sup>SEARCH Group, Inc., *Technical Report No. 14: The American Criminal History Record: Present Status and Future Requirements* (Sacramento, California: SEARCH Group, Inc., September 1976) p. 6.



In 1972, LEAA launched a Comprehensive Data Systems program (CDS) designed to encourage each State to develop a criminal justice information system to meet its own needs. By 1976, 26 States were participating in the Computerized Criminal History (CCH) component of the CDS program and these States and others had established central State repositories charged with maintaining statewide criminal history record systems.<sup>30</sup>

### **—FBI efforts to establish Federal systems**

As noted earlier, the FBI has collected and maintained criminal history records since the early part of the century. From its inception in the mid-1920s through the mid-1960s, the FBI's criminal history recordkeeping operation, centered in the Identification Division, maintained manual criminal history records. The records could be retrieved by name and other biographic identifiers, as well as by an FBI number. In addition, the records were "fingerprint-supported," which meant that a fingerprint card was maintained as a part of each criminal history record to provide positive identification of the offender.

In 1967, the FBI established the National Crime Information Center (NCIC) to provide a nationwide, user-oriented computer response for criminal justice records. NCIC maintains the so-called "hot files" containing information about wanted and missing persons, stolen

vehicles, stolen license plates, stolen guns, stolen boats, stolen securities, stolen articles of personal property and certain other types of files.<sup>31</sup> NCIC maintains its own nationwide telecommunications system and operates as a cooperative Federal-State venture with policy input provided through its state-based Advisory Policy Board.

In 1971, NCIC implemented an interstate computerized criminal history record system — the CCH System — containing records of individuals arrested for both Federal and State felonies and serious misdemeanors. By the mid-1970s, NCIC/CCH held several million automated criminal history records. However, concerns about the practicality, cost and wisdom of establishing a national centralized criminal history record system led the FBI to phase out the CCH program in the early 1980s in favor of a decentralized national criminal history record system — the Interstate Identification Index. (See Chapter V.)

## **Section 2: Information maintained in the Nation's criminal history record systems**

This section details the types of information maintained in State and Federal criminal history record systems, including:

- Subject identification information;
- Criminal history information;
- Juvenile record information;
- Other information (such as pretrial release information and felony conviction flags); and
- Master name indexes.

### **Background**

The heart of the mission of the State and Federal repositories is to maintain comprehensive criminal history records or "rap sheets." Criminal history records maintained by the State and FBI repositories contain:

- Information identifying the subject of the record; and
- Information about the record subject's current and past involvement with the criminal justice system (including arrests or other formal criminal charges, and any dispositions resulting from these arrests or formal charges).<sup>32</sup>

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<sup>31</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Criminal Justice "Hot" Files*, Criminal Justice Information Policy series, by Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1986) pp. 11-14. Information on the NCIC "hot files" was obtained from the NCIC Operating Manual and other documents published by the FBI, and from NCIC officials and staff.

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<sup>32</sup>The term "criminal history record information" is defined by Federal regulations to mean "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release." 28 C.F.R. § 20.

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<sup>30</sup>Ibid.

The repositories often limit their collection of criminal history information to felonies or serious misdemeanors.

Other types of criminal justice information are not included in criminal history files. For example, “investigative information,” “intelligence information” and records relating to traffic offenses and certain other petty offenses are specifically exempted from the definition of “criminal history records” in Federal regulations governing federally-funded record systems and are seldom maintained in State repositories.<sup>33</sup> With few exceptions, State criminal history record repositories also do not accept or maintain records of juvenile offenses, except, of course, in those cases where the juveniles are tried as adults.

### Identification information

#### —Personal description

Identification information usually includes the subject’s name, address, date of birth, social security number, sex, race, and physical characteristics such as hair and eye color, height, weight, and any distinguishing scars, marks or tattoos. Identification information may also include the subject’s place of employment, automobile registration and other pertinent information.

#### —Fingerprints

Most importantly, personal information also includes a biometric identifier — fingerprint

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<sup>33</sup>1992 Compendium, note 7 at p. 4.

information. As of 1989, 38 States reported that 100 percent of their criminal history files were fingerprint-supported.<sup>34</sup> By 1992, that number had grown to 41 States, the District of Columbia and the Virgin Islands. In 1992 alone, over 6.2 million fingerprint cards were submitted to the State central repositories.<sup>35</sup>

### Criminal history information

Criminal history information includes information about any arrests, along with available disposition data. Disposition data most commonly include information about “final” dispositions — decisions or actions that terminate cases, including police decisions to drop all charges, prosecutor decisions to not prosecute the cases and court dispositions. Where court action results in a conviction, the criminal history record should show the sentence imposed and information about correctional reception and release.

### Juvenile record information

Until recently, the FBI, like most of the State repositories, did not maintain juvenile record information, except with respect to juveniles tried as adults.<sup>36</sup> On July 15, 1992, however, the Attorney

General adopted a rule authorizing the FBI to accept state-reported records of serious offenses by juveniles.<sup>37</sup> In December 1992, the FBI announced that juvenile record information received pursuant to the new rule would be disseminated under the same standards that apply to the dissemination of adult criminal history records.<sup>38</sup>

The Justice Department has noted that the juvenile record program is necessary to respond to a marked rise in juvenile crime. Crimes by juveniles amount to between 10 and 40 percent of all serious crimes, depending upon the category. The Justice Department intends to use the new juvenile justice reporting standards to facilitate an early identification of repeat and chronic offenders.

### Other information

Practices vary as to additional information that may be contained in a criminal history record.

#### —Interim dispositions

Some repositories include information about pretrial release or confinement and “nonfinal” or “interim” dispositions such as prosecutor decisions to file, modify or drop charges referred by the police.

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<sup>34</sup>1992 Survey, Table 6. Table 6 is included in this report as Appendix 14.

<sup>35</sup>Ibid.

<sup>36</sup>Testimony of Lawrence K. York, Assistant Director, Identification Division, Federal Bureau of Investigation, before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, March 20, 1992. (Hereafter, York Testimony.)

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<sup>37</sup>U.S. Department of Justice, “Juvenile Records,” *Federal Register* 56 (June 5, 1991) p. 25642.

<sup>38</sup>Amending 28 C.F.R. § 20.32(a)(b).

### —*Felony flags*

Thirty States, the District of Columbia and Puerto Rico currently “flag” some or all felony convictions in their criminal history databases, and an additional 14 States collect sufficient data to flag at least some felonies.<sup>39</sup> Such information can be essential for users of criminal history records. For example, since the Federal government and most State governments prohibit the purchase or possession of firearms by convicted felons, systems that flag felony convictions can help to quickly identify individuals who are barred from buying or carrying firearms.

### —*Misdemeanor data*

While some State repositories collect comprehensive arrest and disposition information about misdemeanor offenses, most repositories collect information only about the most serious classes of misdemeanor offenses.<sup>40</sup> This lack of comprehensive misdemeanor arrest and disposition data has been identified as one of the major deficiencies in State criminal history record systems from the viewpoint of judicial users.<sup>41</sup>

### **Master name indexes**

In addition to criminal history record files, State central repositories and the FBI also

maintain “master name indexes.” The master name index is a key element of the criminal history system and, potentially, of a point-of-sale firearm check system, since it permits the user to identify a felony flag on a record of a named offender.

### —*Contents, usage*

The master name index is simply an index of names and identifiers for every offender for which the repository has a partial or complete criminal history file. The master name index may be made up of the identification segments of the criminal history file, or it may be a separate file.

In either case, if a criminal justice agency queries a repository’s master name index and a “hit” is made, the inquiring agency usually must then re-query the repository for the complete criminal history record file. That query may be serviced instantaneously if both the master name index and criminal history record file are automated. If the repository maintains only a hard-copy of the desired file, the query is processed manually.

### — *Number of records indexed*

The FBI maintains an automated master name index with about 12.5 million entries and each month it adds over 70,000 new entries. All except a few of the State repositories have also automated their master name indexes. All but 11 States have 100 percent of their records in an automated master name index.<sup>42</sup>

## **Section 3: The current status of the Nation’s**

<sup>42</sup>1992 Survey, Table 1. See, Appendix 10.

## **criminal history record systems**

### **Background**

The Bureau of Justice Statistics has just completed a survey that assesses the quality of the criminal history record information maintained by State repositories, as well as the policies of the States in such areas as criminal history file automation, felony flagging procedures, and data quality audit activity.<sup>43</sup> The survey covered the status of all State record systems through 1992. Information in this section that describes the status of State criminal history record systems is drawn from this 1992 survey. Data on Federal record systems is drawn from other sources.

This section looks at the following:

- The number of records in State and Federal criminal history record systems;
- The extent of automation in State criminal history files, State criminal fingerprint files, and Federal files;
- Reporting of information to the repositories, including the type of information reported, reporting requirements, and the time frame for reporting;
- Access methods for authorized requestors; and
- Response times.

<sup>39</sup>1992 Survey, Table 1. Table 1 is included in this report as Appendix 10.

<sup>40</sup>National Task Force Report, p. 3.

<sup>41</sup>For example, complete misdemeanor information sometimes is helpful in assisting courts in distinguishing chronic offenders from first or infrequent offenders. See, *Ibid.*

<sup>43</sup>See, 1992 Survey.

## Number of records

The number of criminal history records maintained by the State central repositories and the FBI is enormous — and continues to grow.

### —State records

According to the 1992 survey, which was conducted by SEARCH for the Bureau of Justice Statistics, more than 47.3 million individual offenders were in the criminal history files of the State central repositories as of December 31, 1992.<sup>44</sup> In comparison, eight years earlier, the repositories held only 30.3 million subjects in their criminal history files, and three years earlier in 1989, the number was 42.4 million — an increase of 56 percent from 1984 to 1992.<sup>45</sup> Similarly, more than 4.7 million dispositions were reported in 1992 to 33 State repositories providing disposition data for the 1992 survey, compared with 3.5 million dispositions reported by the 34 States that provided data to a similar survey in 1989.

### —Federal records

At the Federal level, the FBI's Identification Division maintains fingerprint-based criminal history record information with respect to about 25 million individuals.<sup>46</sup> These files include records relating

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<sup>44</sup>1992 Survey, Table 2. Table 2 is included in this report as Appendix 11.

<sup>45</sup>Ibid., Table 3. Table 3 is included in this report as Appendix 12.

<sup>46</sup>U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, *Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms* (Washington, D.C.: Government Printing Office, October 1989) p. 90. (Hereafter, *Firearms Report*.)

to Federal offenders, as well as records of State offenders voluntarily reported to the FBI by State agencies. The Identification Division's criminal history record system includes information about arrests for felonies and "serious or significant" misdemeanors. Records are not maintained with respect to arrests for drunk driving, vagrancy, disturbing the peace and most types of traffic offenses.

### Extent of automation

There is enormous variation in the extent to which State central repositories have automated their criminal history records. Automation is universally considered to be a critical component of a successful criminal history record system. Automation:

- Reduces the cost of maintaining a criminal record system;
- Improves the system's ability to record dispositions and otherwise amend and update files;
- Speeds retrieval times;
- Vastly improves a system's ability to be audited;
- Improves security by making it more difficult for information to be improperly accessed or modified; and
- Improves a system's ability to monitor problems by facilitating the use of delinquent disposition monitoring systems and other types of reporting and audit protocols.

Simply stated, automation makes recordkeeping easier, less expensive, more reliable and overall far more effective. And, of course, automation makes it possible for a system to interface with the national criminal history record system.

### —State criminal history files

The State repositories have been making rapid progress in the last decade in automating their criminal history files. In the three-year period 1989-1992, the percent of State criminal history records that are automated increased in some States by as much as 700 percent and in other States by well over 100 percent.<sup>47</sup> By 1992, 25 States and Puerto Rico reported that over 75 percent of their criminal history records were automated.<sup>48</sup>

On the other hand, by 1992 there were still 12 jurisdictions that had automated less than 50 percent of their files, five of which had no automated criminal history records (as opposed to entries in the master name index).<sup>49</sup>

Twenty-nine States indicated that they are steadily automating their manual criminal history records each time an offender with a prior manual record is arrested.<sup>50</sup> Overall, about 36.4 million of the estimated 47.3 million criminal history records maintained by the State repositories nationwide are automated.<sup>51</sup>

### —State criminal fingerprint files

In addition, the States have made an enormous investment in and commitment to the automation of criminal fingerprint files. As of 1990, for example, more than half of the States were operating statewide criminal justice automated fingerprint identification systems (AFIS), and by the end of

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<sup>47</sup>1992 Survey, Table 2. See, Appendix 11.

<sup>48</sup>Ibid.

<sup>49</sup>Ibid.

<sup>50</sup>Ibid., Table 4. Table 4 is included in this report as Appendix 13.

<sup>51</sup>Ibid., Table 3. See, Appendix 12.

the century every State is expected to operate or have access to such a system.<sup>52</sup>

As described in more detail in Chapter IV, an AFIS is a computer-based identification system which matches the fingerprints of search subjects with fingerprints held in an automated database. Fingerprint impressions are scanned into the computer system and converted to a digital format which can be matched against digital codes assigned to other fingerprints that have been similarly scanned. The States are also actively implementing live-scan and card-scan fingerprinting and other “paperless” technologies, which also are described in more detail in Chapter IV.

#### —Federal files

At the Federal level, about half of the 25 million criminal history records maintained by the FBI are fully automated and another 8.8 million records of individuals born after 1929 and arrested prior to July 1, 1974, are in the process of being automated. Approximately 3.6 million records of offenders born before 1929 are maintained in manual form and there are no plans to automate them.<sup>53</sup>

#### Reporting of information to the repositories

Criminal history record information is reported to the State repositories and to the FBI by criminal justice agencies at every level of government — Federal, State and local — and at each stage of the criminal justice system — by police departments, prosecutors, courts and corrections agencies.

For example, when a local police agency in California arrests an individual, the agency transmits fingerprints and information about the arrestee to the State central repository operated by the California Department of Justice. As the individual proceeds through the criminal justice process, the prosecutor’s office, courts and corrections agencies provide disposition data about the individual to the repository.

In some cases, the reporting agency transmits the arrest or disposition information via a computer terminal that links the agency with the State and FBI repositories or provides the information on computer-readable tape. In most cases, however, the information is mailed by the reporting agency to the repository on forms provided by the repository. (See Figure 2, which shows the flow of information to state central criminal record repositories.)

#### —Types of information reported

The types of criminal history information reported to the repositories vary according to: (1) what type of agency is sending the information (that is, police department, district attorney, corrections agency); and (2) State or Federal statutes, regulations and policies imposing reporting requirements.

Customarily, the first agency to make an entry about an individual is a police department or other law enforcement agency that arrests the individual. The arresting agency usually provides the following information to the State central repository:

- Name (and any known aliases);
- Sex, race, date of birth and social security number;
- Address (both home and business);
- Auto registration or driver’s license information; and
- Any pertinent physical characteristics (weight, height, eye color, hair color, tattoos or other distinctive physical characteristics).

The agency also reports the charges for which the individual was arrested. In most cases, the arresting agency also must submit a full set of fingerprints to the State central repository for all felony arrests and most States also require the forwarding of fingerprints for at least some misdemeanor arrests.<sup>54</sup>

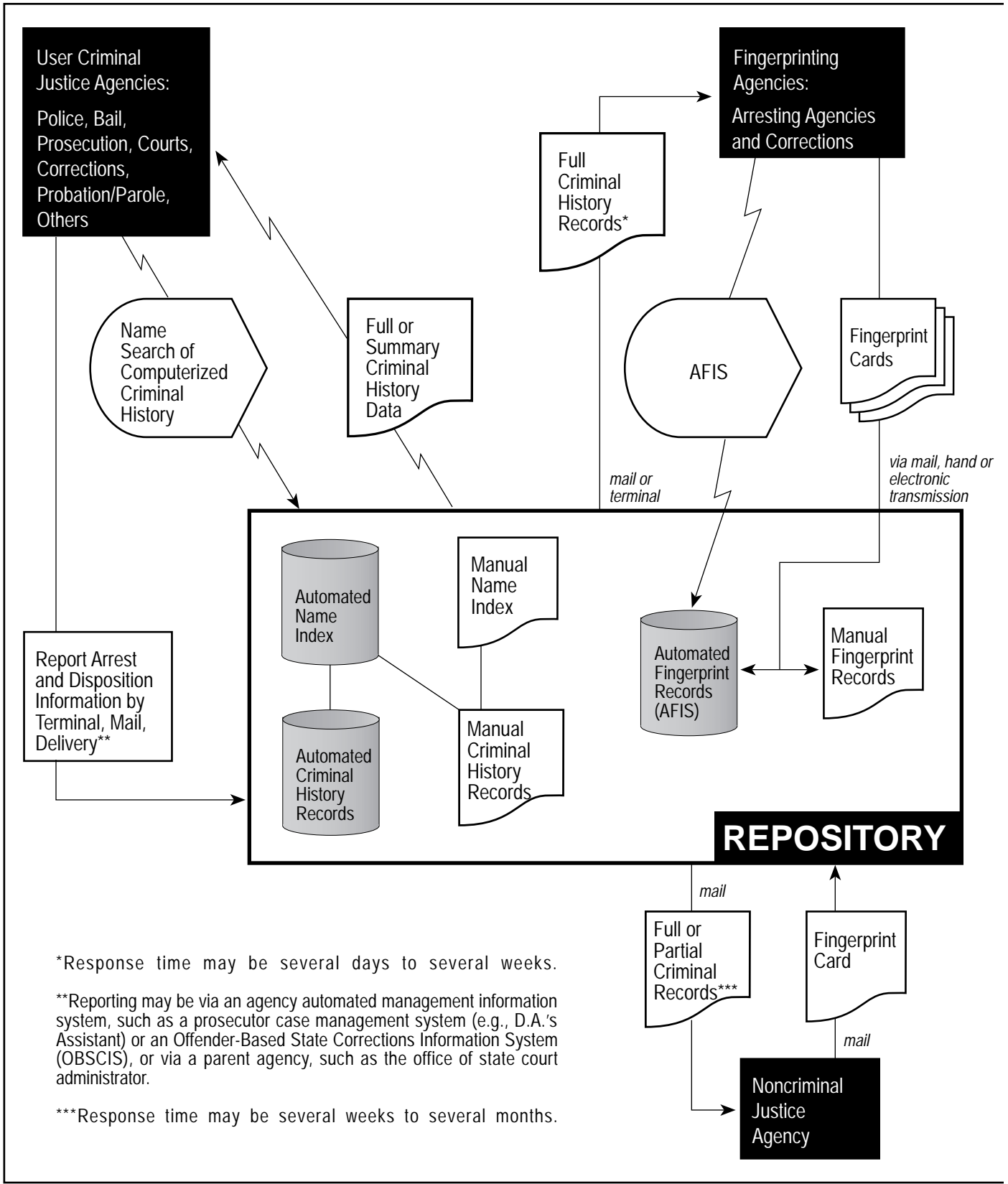
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<sup>52</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Legal and Policy Issues Relating to Biometric Identification Technologies*, by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, April 1990) Appendix I at pp. 84-103.

<sup>53</sup>Firearms Report, p. 91.

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<sup>54</sup>1992 Survey, Table 6. Only three jurisdictions — Alaska, Vermont and Puerto Rico — do not require arresting agencies to submit fingerprints to the State central repository for felony arrests. See, Appendix 14.



**Figure 2: Flow of Information to State Central Criminal Record Repositories**

As the arrested individual proceeds to subsequent phases of the criminal justice process, other agencies provide disposition data. For example, the prosecutor's office should notify the repository if initial charges are dropped or modified or if new charges are added. Courts should notify the repository of any final dispositions, such as if the individual is acquitted or convicted. If the individual is sentenced to correctional supervision, correctional facilities should report receipt and release information to the repository.

### —Reporting requirements

State and Federal statutes and regulations impose criminal history reporting requirements on criminal justice agencies. Most of these reporting requirements are aimed at ensuring that "down stream" criminal justice agencies — prosecutors, courts, probation/parole offices and corrections agencies — provide accurate and prompt disposition data to the State central repository.

For example, 35 States and the District of Columbia have statutes or regulations requiring prosecutors to report decisions to decline prosecution in criminal cases to the State repository,<sup>55</sup> while 43 States, the District of Columbia, Puerto Rico and the Virgin Islands have laws or regulations requiring courts to report dispositions in felony cases.<sup>56</sup>

However, there is still substantial variation among disposition reporting requirements. Twenty-nine States require law enforcement agencies to notify the State central

repository when an arrested person is released without formal charging after fingerprints have been sent to the repository, while 21 jurisdictions have no such requirement. In this regard, two States, Michigan and North Carolina, require police departments to charge or release a suspect *prior* to sending fingerprints to the State repository.<sup>57</sup>

### —Time frame in which reporting takes place

How quickly criminal history record information is reported to the State central repository varies greatly depending upon the type of agency doing the reporting and other factors.

According to SEARCH's 1992 survey of State central repositories, the average number of days between arrest and receipt of arrest data and fingerprints by the State repository is 13, ranging from less than one day in the District of Columbia (where the Metropolitan Police Department is both the reporting agency and the State repository) to 34 days in the State of Missouri.<sup>58</sup> The average time between receipt of fingerprints by the State repository and entry of names and identifying data into the master name index is 19 days, ranging from less than one day in North Dakota to 270 days in Louisiana.<sup>59</sup>

The reporting time frames are often longer for "down stream" criminal justice agencies. The average number of days between final trial court dispositions and receipt of information by the State repository is 43 days, ranging from less than one day in North Carolina to 180 days in Pennsylvania.<sup>60</sup> The average time between receipt of final trial court dispositions by the State repositories and entry of the dispositions into criminal history databases is 26 days.<sup>61</sup>

### Access methods for authorized requestors

#### —Criminal justice inquiries

The great majority of criminal justice inquiries to State repositories for criminal history record information are received on-line from remote computer terminals. On-line remote terminals provide direct access to the repository's master name index for the purpose of performing searches and to the criminal history files for the purpose of obtaining records.<sup>62</sup>

The remote terminal may be physically located in a police department, courthouse, corrections facility or other criminal justice facility. In a few jurisdictions, remote terminals have been installed in individual police cars, giving police officers access to

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<sup>60</sup>Ibid., Table 13. Table 13 is included in this report as Appendix 17.

<sup>61</sup>Ibid.

<sup>62</sup>Fisher-Orsagh Associates, Inc., "Characteristics and Operational Capabilities of State Criminal History Repositories to Supply Prompt and Accurate Criminal History Information" (unpublished report provided to the Bureau of Justice Statistics, April 25, 1989) p. 2. (This involved a survey and analysis of 20 State central repositories conducted in 1988-1989.)

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<sup>57</sup>Ibid., Table 7. Table 7 is included in this report as Appendix 15.

<sup>58</sup>Ibid., Table 12. Table 12 is included in this report as Appendix 16.

<sup>59</sup>Ibid.

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<sup>55</sup>Ibid., Table 5.

<sup>56</sup>Ibid.

criminal history records in the field. Other criminal justice inquiries to the repositories come via the telephone, walk-in, teletype or mail.

### **—Noncriminal justice inquiries**

Almost all noncriminal justice inquiries come to the State repositories via the mail. A 1989 study of 20 States found that none of these States provides noncriminal justice agencies with direct, on-line access to the State repository.<sup>63</sup> Recently, however, a few States have begun to experiment with on-line access for some noncriminal justice agencies.

### **—Computer searches**

Computer searches for criminal history records usually are made using the subject's name, date of birth, sex and race, although in certain cases, a search can be made using only a name and date of birth. These so-called "name searches" can provide one of three results:

- (1) If there is an exact match or "hit," the criminal history file is provided to the individual conducting the search. (If there is no exact hit, systems in some States search for alternative spellings of the subject's name in a process known as "fuzzing." In addition, some systems "fuzz" the subject's date of birth by using the given date of birth plus or minus one, two or more years.)

- (2) If there are multiple "hits" due to similarities in names and dates of birth, the full identification segments of the candidate records can be retrieved and reviewed to determine whether there is an identification. In addition, some systems prompt the searcher to provide additional information to narrow the search and increase the probability of a hit.
- (3) If no match is made, the inquirer is given a "no record" response, often worded to indicate that no record could be found using the information provided.

If fingerprints are submitted with search requests, they may be used to verify the results of name searches. If name searches fail to identify matching records, fingerprints can be utilized to perform "technical" searches of fingerprint files to determine whether the search subjects have records under different names. Many States require that the subject's fingerprints be submitted with all noncriminal justice access requests and permit the release of records only when a fingerprint comparison positively verifies that the record relates to the subject of the request.<sup>64</sup>

### **Response times**

Response times vary according to the purpose of the request and the communication mode used to conduct the search. Customarily, queries for criminal justice purposes receive a higher priority than noncriminal justice searches and thus enjoy a significantly shorter response time.

As would be expected, on-line searches via remote terminals are the fastest, followed by telephone inquiries, with mail searches being the slowest. Fingerprint searches take significantly longer than searches based solely on name, date of birth and other identifiers. For this reason, many repositories conduct manual fingerprint searches only for criminal justice purposes. As discussed in detail in Chapter IV, however, automated fingerprint identification systems are significantly reducing response times for fingerprint searches.

## **Section 4: The product of the repositories: The criminal history record**

This section looks at the repository's product — the criminal history record — and includes a discussion of:

- The accuracy and completeness (data quality) of criminal history records;
- Proper linking of arrest and disposition data on records, which is one of the most difficult data quality problems faced by repositories; and
- The content and format of criminal history records, including differences in content, format and terminology.

### **Accuracy and completeness**

The issue of the accuracy and completeness of criminal history records was identified as an important concern during the

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<sup>63</sup>Ibid.

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<sup>64</sup>1992 Compendium, p. 9.



earliest stages of the development of a national criminal history record program.<sup>65</sup> More recently, the data quality issue has emerged as one of the most important and timely issues confronting the criminal justice community.

As noted earlier, criminal history record information plays an essential role at virtually every stage of the criminal justice process. For example:

- The ability of a police officer to obtain an arrest or search warrant may turn on the subject's criminal history record.
- A prosecutor may or may not decide to formally charge an individual based upon a past record.
- In many States, judges are required to consider a subject's criminal history record in determining whether to grant or deny bail and in sentencing a convicted offender.

If criminal history records are not accurate or if the record lacks a disposition, the record cannot be used at all or, if it is used, there is a substantial risk that the user will make an incorrect or misguided decision. In this regard, former U.S. Attorney General Richard Thornburgh argued that there is a "straight-line relationship" between high quality criminal history record information and the effectiveness of the Nation's criminal justice system.<sup>66</sup>

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<sup>65</sup>Project SEARCH, *Technical Report No. 2: Security and Privacy Considerations in Criminal History Information Systems* (Sacramento, California: California Crime Technological Research Foundation, July 1970).

<sup>66</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Conference on Improving the Quality of Criminal*

Accurate and complete criminal history information also protects the privacy interests of individuals, ensuring that innocent people are not mistakenly arrested and that inaccurate information is purged from an individual's criminal history record. Finally, accurate criminal history record information affects more than just the criminal justice community. Increasingly, criminal history records are being used for a variety of noncriminal justice purposes, including the screening of individuals prior to public or private employment in sensitive positions and the screening of persons seeking to purchase firearms.

In the view of most experts, inadequacies in the accuracy and completeness of criminal history records is the single most serious deficiency affecting the Nation's criminal history record information systems.

Although SEARCH's 1992 survey found that in 23 jurisdictions, representing 51 percent of the Nation's population, 60 percent or more of arrests within the past five years had final dispositions recorded, there is still widespread variation among the States in the extent to which they maintain complete disposition data.<sup>67</sup> Five State repositories reported that for arrests logged within the last five years, 90 percent or more have final dispositions recorded, while in 11 States, final dispositions are available for 50 percent or less of the arrests logged within the last five years. When all arrests in State

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*History Records: Proceedings of a BJS/SEARCH Conference*, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, January 1992) p. 6. (Hereafter, *Data Quality Conference*.)

<sup>67</sup>1992 Survey, Table 1. See, Appendix 10.

criminal history files are taken into account, the number of State central repositories with final dispositions of 50 percent or less increases to 14.<sup>68</sup>

For its part, the FBI has well over 3 million criminal history records awaiting final disposition and, by most accounts, 50 percent or more of the state-reported criminal history records maintained by the Identification Division do not have dispositions.

While criminal justice officials generally agree that unreported arrests and missing or incomplete disposition data constitute the principal data quality problem afflicting criminal history record systems, the *inaccuracy* of arrest and disposition data also is a problem.

Although there have been few audits or reviews of the accuracy of the information maintained by State and Federal criminal history record repositories, most of those that have been conducted have found unacceptable levels of inaccuracies.<sup>69</sup> These audits have also shown, however, that automating reporting processes and using automated edit and review processes at the repositories to monitor data entry and prevent the entry of incomplete or questionable data have had a significant favorable impact on the quality of the data entered into the repositories' databases. Efforts to

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<sup>68</sup>Ibid.

<sup>69</sup>For example, SEARCH Group, Inc., "Alaska Criminal History Record Processing — Baseline Assessment" (unpublished, March 31, 1993); SEARCH Group, Inc., "Audit of the Completeness and Accuracy of Criminal History Record Information Maintained by the Maryland Criminal Justice Information System" (unpublished, January 18, 1990).

redesign data collection forms and to simplify and standardize reporting forms, reporting procedures and reporting terminology also have been proven to have a favorable impact on data accuracy.<sup>70</sup>

### **Linking of arrest and disposition data**

Aside from the failure of criminal justice agencies to report complete and accurate arrest and disposition data to the repositories, perhaps the most difficult data quality problem faced by the repositories is the proper linking of reported data to the appropriate individual and case, so that arrest, prosecutor, court and correctional data are linked to the appropriate offender record and the appropriate case event on that record.

#### **—Current practice**

All of the States and the FBI assign unique numbers to identify individual criminal offenders. These numbers — FBI numbers and State identification (SID) numbers — are assigned upon an individual's first arrest<sup>71</sup> and are associated with the fingerprints taken in connection with that arrest. The numbers are used thereafter to identify the individual throughout his criminal career and to ensure that all criminal cases in which he is involved are included on a single

comprehensive criminal history record.

Although this system works well, duplicate records for the same individual sometimes are created because of the use of false names and identifiers by arrested persons or due to clerical errors. These duplicate records are usually detected, however, when the fingerprints for the newer cases are processed, and the records are then consolidated.

A more difficult problem is encountered when the repositories try to match reported prosecutor, court and correctional dispositions with underlying arrest and charging information for a particular case. Although it may be relatively easy to identify the appropriate offender record, it may be difficult to identify the appropriate case on that record to which the reported disposition data should be matched. This is particularly problematic when the individual has more than one active case or when the reported disposition data for a particular case do not appear to match the recorded charge data due to such factors as charge modifications by the prosecutor or the acceptance of pleas to lesser charges. Failure to properly link reported information can result in unrecorded dispositions or, less commonly, the association of disposition data with the wrong case.

#### **—Case-tracking systems**

Some repositories apparently have successfully implemented data linking systems that use the subject's name in combination with the various case identification numbers assigned by criminal justice agencies. However, the few extensive repository audits that have been undertaken have shown that accurate linking of data is best facilitated by systems that utilize unique case-tracking numbers.<sup>72</sup>

These case-tracking numbers are assigned at the arrest stage (or at the case initiation stage, if the case is not originated by an arrest) and are included with all reported data associated with that case as it is processed through the criminal justice system.

The unique tracking numbers may be pre-printed on fingerprint cards and disposition reporting forms or may be assigned by arresting agencies and passed along with case papers. Whatever the approach used, it is important that the unique tracking number be assigned at the time of arrest and that it be attached to or recorded on the arrest fingerprint card forwarded to the central repository. In this way, the tracking number can be tied to positive identification of the arrested individual (and his FBI/SID number) and to the charges stemming from the arrest.

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<sup>70</sup>Data Quality Report, pp. 61-62.

<sup>71</sup>The State bureau of identification will assign a new SID number to a first offender and, if the arrest is reported to the FBI, an FBI number will be assigned and transmitted back to the State bureau so that the two numbers can be associated on the offender's record at both the State and Federal levels.

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<sup>72</sup>For example, SEARCH Group, Inc., "Audit of the Completeness and Accuracy of Criminal History Record Information Maintained by the Maryland Criminal Justice Information System, Final Report: Audit Results for Baltimore County and Baltimore City" (unpublished, August 11, 1988).

In cases which begin by citation or summons (without arrest), the tracking number is assigned at the individual's first court appearance and the individual's fingerprints are taken at that time and submitted, with the tracking number, to the repository.

These unique-number case-tracking systems have been shown to virtually eliminate data linking problems.<sup>73</sup> In automated systems, particularly if reporting to the repository is automated, procedures can be implemented to ensure that tracking numbers are accurately entered with all reported disposition data. Data entry screens can include the tracking number as a required data field and system edit procedures can reject disposition data entries that do not include the number. An additional safeguard is to include a check digit in the tracking number and to institute system edit procedures to monitor accurate keying of the number.

Aside from facilitating data linking, unique tracking numbers also increase the effectiveness of error notification procedures and can greatly facilitate data quality auditing if the numbers are included on all source documents.

#### **—Charge-tracking systems**

Although unique-number case-tracking systems can virtually ensure that disposition information is associated with the right case cycle, they do not necessarily provide the basis for reliably associating particular dispositions with particular charges and counts within a particular case.

Since many arrests result in multiple police charges, and since initial police charges may be modified or augmented at later stages of the case (for example, after prosecutor screening, grand jury action or plea bargaining), it is common for repositories to receive court dispositions that do not match the charges initially reported by the police. Even though these disposition data may be associated with the proper case, the criminal history record may appear ambiguous as to whether the disposition data are complete and accurate.

This problem has been successfully addressed in some States<sup>74</sup> by implementing a refinement of the unique-number tracking system, usually referred to as "charge-tracking."

Under this approach, each charge reported to the repository in a particular case is assigned a number (01, 02, 03, for example), and these numbers, in combination with the tracking number for the case, are used in subsequent processing of the case for reporting disposition data to the repository. If, for example, a charge is dropped or modified by the prosecutor, this action is reported to the repository by charge number and shown on the criminal history record. If new charges are added by the prosecutor or a grand jury, these charges are assigned new numbers and the information is reported to the repository. Court disposition information is then reported by

tracking number and charge number and a disposition is reported and recorded for each charge. This enables the repository to account for each charge shown on the criminal history record, thus eliminating a primary source of ambiguity.

#### **Content and format**

Although the FBI and SEARCH, among others, have proposed model criminal history record formats over the years, adoption of a uniform criminal history record format has never been made mandatory. Likewise, no mandatory guidelines regarding the content of criminal history records have ever been promulgated.

The State and Federal repositories have been left to adopt their own record formats and their own approaches concerning the types of offenses that should be included on criminal history records and the types of information about these offenses that should be included. Not surprisingly, this has resulted in considerable diversity in the formats of the criminal history records presently generated by the State repositories, as well as in the content of these records.

#### **—Differences in content**

For example, while virtually all of the repositories attempt to obtain and record information about all felony offenses, there is diversity concerning the types of misdemeanor offenses, if any, included on criminal history records. Moreover, there are considerable differences in the way State penal codes designate particular offenses as felonies or misdemeanors. Indeed, a few State codes do not even utilize these terms.

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<sup>73</sup>Ibid.

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<sup>74</sup>Illinois is an example.

As pointed out in Section 2 of this chapter, there is also diversity concerning the types of case processing information obtained and recorded by the repositories. While some repositories attempt to obtain little more than arrest charges and final dispositions, other repositories obtain and record other information, including bail and pretrial release data, pretrial detention data, prosecutor charge modifications, and correctional admission and release data.

### **—Differences in format and terminology**

The formats in use vary so greatly that it is probably true that no two State criminal history record formats are identical and many of them are not even similar.

Selected sample criminal history records are set out in Appendix 8. As a review of these samples will show, the formats vary from columnar designs with titles over values to various forms of linear designs utilizing indentations or upper- and lower-case type to distinguish titles from values. Some of the records may leave some data fields blank while others display “unknown” in all spaces where information is not provided.

While most of the formats utilize both literal descriptions as well as State penal code citations to display arrest charges and disposition charges, the terminology in use differs considerably from State to State. In some formats, disposition charges may not match arrest charges in cases where charges were modified or augmented after the initial charges were reported by the police. And some formats show dispositions for all charges, while others may show only one disposition even if there are multiple charges.

### **—Problems in deciphering records**

As a result of these differences and deficiencies in format, content and terminology, many of the criminal history records currently circulated by the repositories are difficult to decipher, particularly by noncriminal justice users and out-of-state users.

While criminal justice personnel within a particular State usually become familiar enough with the State repository’s criminal history record format to be able to interpret the records they receive, noncriminal justice users often lack a sufficient familiarity with criminal justice case processing and criminal justice terminology to be able to easily interpret and understand the records made available to them. Indeed, criminal justice personnel often have difficulty interpreting out-of-state records because of differences in format and terminology.

The problem of the difficulty of deciphering out-of-state records has become more serious in recent years with the advent of the Interstate Identification Index (III), a national-level criminal history record system for servicing interstate and Federal-State record searches and record exchanges. (The III system is addressed in Chapter V.)

In the past, most national searches have been serviced by the FBI, utilizing its files of Federal and State offenders. In servicing these requests, the FBI incorporates the State offender information in its files into a standard format, the FBI rap sheet, with which most criminal justice personnel in the country have become familiar.

The new system, on the other hand, utilizes an “index-pointer” approach to enable criminal justice personnel to obtain criminal history records directly from State repositories in other States. As a result, criminal justice personnel who have in the past received out-of-state offender information in a single familiar format are now receiving such information in numerous and diverse formats. Available evidence suggests that they are finding these records difficult to interpret. At a 1992 national conference on data quality issues,<sup>75</sup> officials from three States acknowledged during question-and-answer periods that interpretation of out-of-state records has presented a problem in the implementation of point-of-sale criminal record checks on gun purchasers.

### **—Calls for reform**

Not surprisingly, the problems outlined above have led to calls for reforms in the content and format of criminal history records.

- A national task force convened by the Bureau of Justice Statistics in 1990 to review disposition reporting problems and to make recommendations to improve the quality of criminal history records also looked at the issue of record format and content. In its 1992 report, the task force found that the content and format of many of today’s criminal history records do not meet the needs of the courts and other users, because, among other problems, the information is not presented in a legible format. The

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<sup>75</sup>Data Quality Conference.

task force recommended that each State convene its own high-level task force representing all components of the criminal justice system to look at data quality problems, including “the readability of criminal history records.”<sup>76</sup>

- The FBI’s National Crime Information Center Advisory Policy Board, in the course of its evaluation of the first test of the National Fingerprint File (see Chapter V), found that the lack of uniformity in record formats and the difficulty of understanding records with multistate segments have had an adverse impact on the utility of the records made available through the Interstate Identification Index system.<sup>77</sup>

- Finally, in its *Agenda for Improving Criminal Justice Information Management*, adopted in July 1991, the Membership Group of SEARCH, The National Consortium for Justice Information and Statistics, recommended that a study be conducted to evaluate the adequacy of the information included on criminal history records and that consideration be given to adopting a common format for rap sheets among the States.<sup>78</sup>

These calls have led to action. In May 1992, the Identification Services Subcommittee of the FBI’s NCIC Advisory Policy Board developed two improved criminal history record formats, one columnar and the other non-columnar. These formats are to be reviewed by the APB’s Regional Working Groups during their meetings in the fall of 1993.<sup>79</sup>

In addition, the Bureau of Justice Statistics and SEARCH have convened a National Task Force on Increasing the Utility of the Criminal History Record to evaluate the content and format of the criminal history records in use today and to recommend one or more standard formats for use by the States. The Task Force, which is comprised of representatives of all components of the criminal justice system, as well as noncriminal justice users, held its first meeting on May 27-28, 1993. It is expected to meet twice more before issuing a report.

Finally, the FBI and the Bureau of Justice Statistics have issued voluntary reporting standards that include recommended minimum data elements for arrest and disposition information reported to the State repositories and to the FBI. The standards are discussed in more detail in Chapter VI and the full text is set out as Appendix 9.

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<sup>76</sup>National Task Force Report, p. 15.

<sup>77</sup>Federal Bureau of Investigation, NCIC Advisory Policy Board, “Final Report from the November 5-6, 1991, Meeting of the National Fingerprint File (NFF) Pilot Project Evaluation Group” (unpublished, December 31, 1991) p. 3.

<sup>78</sup>SEARCH Group, Inc., “Agenda for Improving Criminal Justice Information Management” (unpublished, July 19, 1991).

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<sup>79</sup>Federal Bureau of Investigation, NCIC Advisory Policy Board, Identification Services Subcommittee, “Chairman’s Report on Identification Services Subcommittee” (unpublished, May 1992) p. 4.

# Chapter III: Overview of laws regulating criminal history record systems

This chapter summarizes relevant law applicable to criminal history records, and focuses on two dominant criminal history record information issues: data quality and dissemination.

**Section 1: Constitutional and common law doctrines**, discusses the impact of these doctrines on the collection, maintenance or dissemination of criminal history record information.

**Section 2: Statutory and regulatory requirements**, reviews the various Federal and State statutes and regulations that govern the collection, maintenance and dissemination of criminal history record information.

**Section 3: Two key issues — data quality and dissemination**, discusses these dominant criminal history record issues in detail. As for data quality, how accurate and complete should criminal history record information be and how can legal directives and other strategies help to improve data quality? As for dissemination, how confidential should criminal history record information be and, to the extent that the records are not confidential, who should be permitted to see them and for what purposes?

## Section 1: Constitutional and common law doctrines

### Constitutional doctrines

The courts have ruled that constitutional privacy principles have little impact on the collection, maintenance or dissemination of criminal history record information by criminal justice agencies. It is no exaggeration to say that the U.S. Constitution is largely neutral with respect to the dissemination of criminal history record information.

The Constitution does recognize that there is a legitimate privacy interest in sensitive personal information.<sup>80</sup> In 1976, however, the U.S. Supreme Court held, in *Paul v. Davis*, that constitutional privacy principles do not limit dissemination by criminal justice agencies of information about official acts such as an arrest.<sup>81</sup>

More recently, in a statutory context, the Court has recognized that there is a privacy interest in an automated comprehensive criminal history record.<sup>82</sup> Most experts, however, think it is unlikely that this principle will be applied in

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<sup>80</sup>*Whalen v. Roe*, 429 U.S. 589 (1977).

<sup>81</sup>424 U.S. 693, 713 (1976).

<sup>82</sup>*Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

such a way as to permit the Constitution to preempt State statutes that make criminal history record information available to the public or specified public users.

### Common law doctrines

Common law privacy doctrines have also proven to be largely irrelevant to the handling of criminal history record information. Sovereign immunity, civil and official immunity and the need to show tangible harm arising from the alleged misuse of the criminal history records pose insurmountable obstacles to most common law actions by record subjects.<sup>83</sup>

## Section 2: Statutory and regulatory requirements

The collection, maintenance and dissemination of criminal history record information is governed by a mosaic of Federal and State statutes and regulations.

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<sup>83</sup>SEARCH Group, Inc., *Technical Memorandum No. 12: Criminal Justice Information: Perspectives on Liability* (Sacramento, California: SEARCH Group, Inc., August 1977) pp. 5-20. See also, SEARCH Group, Inc., *Case Law Digest: Court Decisions on the Handling of Criminal History Records — Summaries and Analysis*, by Robert R. Belair and Paul L. Woodard (July 1981).

## Federal statutes and regulations

At the Federal level, the Congress by law and the Department of Justice by regulation have established minimum requirements for the management of criminal history record systems, leaving it to the States to develop more specific laws and policies to attempt to ensure that State criminal history records are complete, accurate, easily accessible to lawful users and held in confidence with respect to the public and other authorized users.

### —Statutes

The FBI's basic statutory authority to maintain criminal history records is found in Section 534 of Title 28 of the United States Code. Specifically, subsections (a)(1) and (a)(4) authorize the Attorney General to "acquire, collect, classify and preserve identification, criminal identification, crime and other records" and to "exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities and penal and other institutions."<sup>84</sup>

During the early 1970s, at a time when public concern about privacy, automation, and governmental and private information systems was running high, the Congress considered several legislative proposals that would have imposed a uniform national information management scheme for State and local handling of criminal history record information.

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<sup>84</sup>Other Federal laws and regulations authorizing the Attorney General to disseminate criminal history records are set out in Chapter V, footnote 124.

Although the Congress never enacted comprehensive legislation, it did enact a 1973 amendment to the Omnibus Crime Control and Safe Streets Act of 1968, the so-called Kennedy Amendment,<sup>85</sup> providing that all criminal history record information collected, maintained or disseminated by State and local criminal justice agencies with financial support made available under the Act must be complete and secure, must be made available for review and challenge by record subjects, and must be used only for law enforcement and other lawful purposes.

### —Regulations

In 1976, the Law Enforcement Assistance Administration (LEAA) issued comprehensive regulations to implement the amendment. Although the regulations did not expressly require the States to establish central criminal history record repositories, the commentary published with the regulations noted that the accuracy and completeness standards were written with State central repositories in mind. Indeed, provisions dealing with completeness state that complete records "should" be maintained in State central repositories.<sup>86</sup>

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<sup>85</sup>Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789g(b), as amended by § 524(b) of the Crime Control Act of 1973, Pub. L. No. 93-83, 87 Stat. 197 (1973) (sometimes referred to as the "Kennedy Amendment").

<sup>86</sup>28 C.F.R. § 20.21(a)(1).

## State statutes and regulations

As intended, the LEAA regulations proved instrumental in stimulating the States to enact their own statutes dealing with criminal history records, including the establishment of State central repositories.

Approximately one-half of the States have enacted comprehensive criminal history record statutes and all of the other States have enacted laws dealing with at least some aspects of criminal history records. Many of these laws impose requirements that are stricter than the requirements in the LEAA regulations.<sup>87</sup>

Virtually all of the States have enacted legislation governing at least the dissemination of criminal history records. The overwhelming majority of State laws follow the scheme of the Federal regulations, which distinguish between information referring to convictions and current arrests on the one hand, and nonconviction data on the other. Nonconviction information refers to arrests that are more than one year old and are without recorded dispositions or that have dispositions favorable to the accused, such as where the police or prosecutor drop the charges or where the accused is acquitted at trial. Most States place strict limits on the release of nonconviction data for noncriminal justice purposes, such as background checks for employment and licensing purposes.

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<sup>87</sup>1992 Compendium, p. 4.

Every State permits subjects to review their records and to institute procedures to correct errors. Virtually all of the States require the fingerprinting of persons arrested for serious offenses and the submission of such fingerprints to the State repository and, in addition, most of the States have statutory or regulatory provisions requiring criminal justice agencies to report disposition information to the repository.

### Section 3: Two key issues — data quality and dissemination

In the years since the issuance of the LEAA regulations, State legislative activity, as well as media and public policy debate, have focused on two key issues with respect to criminal history record information: data quality and dissemination.

This section discusses these two issues in more detail, including a look at:

- Federal data quality regulations;
- State laws and strategies designed to improve data quality, such as mandatory reporting requirements, transaction log requirements and other data quality safeguards;
- Dissemination of criminal history records for criminal justice and noncriminal justice purposes, dissemination trends, and statutory dissemination policies in the early 1990s.

### Federal data quality regulations

As noted previously, data quality was one of the primary concerns motivating passage of the Kennedy Amendment in 1973 and the subsequent adoption of the LEAA regulations. Reflecting sensitivity to the wide disparity in the quality of records in State criminal history record systems, the Kennedy Amendment provides that State criminal history records must be complete and accurate, but does not set specific data quality standards. The LEAA regulations provide somewhat more specific guidance to the States, although the regulations still leave the States wide discretion to set their own standards by State legislation and regulations.

Specifically, the Federal regulations require all covered criminal justice agencies to implement operational procedures designed to ensure that criminal history record information is complete and accurate.<sup>88</sup>

#### —Completeness provisions

To be complete, the regulations state that a record of an arrest must contain information concerning any disposition occurring within the State within 90 days after the disposition has occurred. In an effort to promote the dissemination of complete and up-to-date criminal history records, the regulations also

require that State and local agencies must query the State central repository prior to disseminating any criminal history information to ensure that the agency has the most recent disposition data available.<sup>89</sup>

#### —Accuracy provisions

The regulations address accuracy by defining the term literally to mean that “no record containing criminal history information shall contain erroneous information.”<sup>90</sup> To promote accuracy, two types of operational procedures are required:

- (1) A process of data collection, entry, storage and systematic audit that will minimize the possibility of recording or storing inaccurate information; and
- (2) Procedures for sending notices of corrections to all criminal justice agencies known to have received inaccurate information of a material nature.

As a practical matter, this provision requires agencies to maintain dissemination log books so that corrections can be sent to individuals who have received incorrect information. Finally, the regulations require agencies to give subjects an opportunity to review their criminal history records and to establish procedures for correcting erroneous information.<sup>91</sup>

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<sup>89</sup>28 C.F.R. § 20.21(a)(2). The regulations provide two exceptions where prior contact with the State central repository is not necessary: (1) when the agency is sure that the criminal history information is the most recent available; or (2) when time is of the essence and the repository is incapable of responding within the necessary time period.

<sup>90</sup>28 C.F.R. § 20.21(a)(1).

<sup>91</sup>28 C.F.R. § 20.21(g).

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<sup>88</sup>28 C.F.R. § 20.21(a).



## State data quality laws and strategies

The Federal LEAA regulations had the intended effect of prompting the States to adopt laws to ensure the accuracy and completeness of criminal history records. In 1974, prior to adoption of the regulations, only 14 States had enacted any type of statutory data quality safeguards. 52 States<sup>92</sup> have now adopted laws that deal with some aspect of data quality. These laws and implementing regulations are discussed in the following sections.

### —Mandatory reporting requirements

An important element of virtually all of the State data quality laws is mandatory arrest and disposition reporting. In all, 52 jurisdictions, as a matter of statute, regulation or established practice, require State and local agencies to report arrest and disposition data to the State central repository for all serious offenses (usually felonies and specified serious misdemeanors). In most States, arrest information is reported on arrest fingerprint cards, which include the subject's name and identification information, arrest event information (for example, date, place of arrest), arrest charges and inked fingerprint impressions.

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<sup>92</sup>The term "State" includes the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Every State except the Virgin Islands has enacted a data quality statute.

### —Transaction log requirements

The second most common form of statutory data quality safeguard, after mandatory arrest and disposition reporting requirements, is transaction log requirements. Thirty-three States have enacted statutes requiring criminal justice agencies to maintain logs identifying recipients of criminal history record information and the dates of the disseminations.<sup>93</sup> Thirty-three States include detailed and specific transaction log requirements.<sup>94</sup>

### —Other requirements

Many States have also adopted a variety of other statutory safeguards. Thirty States require the State central repository to conduct some type of data quality

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<sup>93</sup>1992 Compendium, p. 6. These states are as follows: Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Vermont, Virginia, Washington and Wyoming.

<sup>94</sup>Ibid., note 22 at p. 6. These states are as follows: Alabama, Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Pennsylvania, South Carolina, Vermont, Virginia and Washington.

audits;<sup>95</sup> 21 States require the repositories to audit State and local criminal justice agencies that submit records to the repository;<sup>96</sup> and 14 States require the repository to conduct an annual in-house audit.<sup>97</sup>

Statutes in 13 States require the repository to implement a delinquent disposition monitoring system (for example, a system designed to periodically identify arrest entries for which dispositions are probably available but not reported).<sup>98</sup> Four States impose training requirements on personnel involved in entering data into criminal history record systems.<sup>99</sup> Five States have adopted statutory

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<sup>95</sup>Ibid., p. 6. These states are as follows: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Virginia, Washington and Wyoming.

<sup>96</sup>Ibid. These states are as follows: Connecticut, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Missouri, Montana, New Hampshire, North Carolina, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Virginia, Washington and Wyoming.

<sup>97</sup>Ibid., pp. 6-7. These states are as follows: California, Illinois, Kentucky, Louisiana, Maryland, Missouri, New Hampshire, North Carolina, Oregon, Pennsylvania, South Carolina, South Dakota, Texas and Wyoming.

<sup>98</sup>Ibid., p. 7. These states are as follows: Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Louisiana, Missouri, Montana, Nebraska, New Hampshire and Washington.

<sup>99</sup>Ibid. These states are as follows: Alabama, Georgia, Kentucky and Louisiana.

provisions that require the use of a “tracking number system” that uses unique case cycle numbers to link disposition information to charge information.<sup>100</sup>

### —Data quality strategies

In addition to statutory requirements, State central repositories report that they have voluntarily employed a number of data quality improvement strategies, even though those strategies are not mandated by statute. For example, 15 State repositories and Puerto Rico report that they are currently using a delinquent disposition monitoring system that generates a list of arrests with no dispositions. Repositories in 28 States make field visits to contributing agencies. Thirty-six State repositories send form letters indicating data quality problems, and repositories in 38 States, Puerto Rico and the Virgin Islands telephone contributing agencies to discuss problems.<sup>101</sup> Further, repositories in 39 jurisdictions are using some type of tracking number system to link disposition and charge information.<sup>102</sup> In addition, 25 jurisdictions have undergone data quality audits in the past five years<sup>103</sup> and 22 States and Puerto Rico have conducted audits of agencies that contribute criminal history information to the repository or obtain information from the repository.<sup>104</sup>

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<sup>100</sup> Ibid. These states are as follows: Kentucky, Missouri, Pennsylvania, Texas and Washington.

<sup>101</sup> 1992 Survey, Table 15. Table 15 is included in this report as Appendix 18.

<sup>102</sup> Ibid., Table 16. Table 16 is included in this report as Appendix 19.

<sup>103</sup> Ibid., Table 20. Table 20 is included in this report as Appendix 20.

<sup>104</sup> Ibid., Table 19.

### Dissemination of criminal history record information

There is wide agreement, as a policy matter, about the importance and the need for the highest possible quality of criminal history record information. There is far less agreement as a policy matter with respect to the other issue that has dominated criminal history record information policy — the purposes for which criminal history record information should be disseminated.

#### —Dissemination for criminal justice purposes

From the outset, it has been recognized that criminal history record information should be available for virtually all purposes related to law enforcement and the administration of criminal justice. Indeed, the criminal history record owes its creation to the recognition that such a record would be of critical importance for criminal justice decisionmaking.

In recent years, there has been a significant increase in the availability and use of criminal history record information within the criminal justice community for a wide variety of criminal justice purposes. These purposes include using criminal history record information for:

- Bail and other pretrial determinations;
- Prosecution, including decisions about the upgrading of charges;
- The enhancement of sentences, including, in particular, enhancement with respect to chronic offenders;
- Preparing pre-sentence reports and making probation eligibility decisions;

- Correctional classification purposes; and
- Parole eligibility determinations.

As noted in Chapter I, numerous State statutes have been adopted in recent years that not only reflect these trends but, in fact, require criminal justice decisionmakers to take criminal history record information into account.<sup>105</sup>

#### —Dissemination for noncriminal justice purposes

Use of criminal history record information for noncriminal justice purposes, however, has been a much more problematic matter. In recent years, many public and private noncriminal justice agencies have made persuasive arguments for access to these records. Governmental agencies and, in particular, national security agencies and the military services have argued that it is essential that they be able to obtain criminal history information for use in making decisions about eligibility for military service, for security clearances and for access to sensitive facilities.

Responding to these needs, the Congress in 1985 enacted the Security Clearance Information Act (SCIA), which requires State and local criminal justice agencies to release criminal history record information to certain Federal agencies for national security background checks.<sup>106</sup>

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<sup>105</sup> Statutes Report, Tables 1-10. Selected tables from the Statutes Report are set out in this report as Appendices 1-7.

<sup>106</sup> Pub. L. No. 99-169, codified in part at 5 U.S.C. § 9101.

Private employers have also argued persuasively that they should be entitled to obtain criminal history record information for background checks on prospective employees who will be placed in sensitive positions handling substantial amounts of money or other valuable assets or, even more importantly, caring for vulnerable populations, such as children or elderly persons. In this connection, the Congress passed legislation in the 1980s permitting federally-held criminal history record information to be released for employment background checks for positions at certain kinds of banking institutions and securities organizations.<sup>107</sup>

Landlords have also argued for access to criminal history record information for background checks of employees. Indeed, both employers and landlords have been found liable under the negligent hiring doctrine for failing to check available criminal history data in cases where the putative subjects of those checks subsequently engaged in destructive and unlawful behavior that might have been predicted and avoided had a

background check been completed.<sup>108</sup>

Some proponents of more open access to criminal history records have argued that inasmuch as an arrest and any subsequent adjudication are public events, the records of those events, particularly when maintained by governmental agencies at public expense, should be available to the public without regard to the requestor's identity or need for the record. Indeed, at least a few States, including Florida, Oklahoma and Wisconsin, have adopted policies under which the public can obtain virtually all criminal history record information for virtually any purpose. Initial studies indicate that these "open record" policies have not resulted in significant privacy problems or other problems.<sup>109</sup>

On the other hand, advocates of stricter dissemination limits argue that criminal history record information can be and is used to stigmatize and harm offenders who are trying to rehabilitate themselves and re-enter society. These advocates also argue that release of this kind of information has a disproportionately adverse impact on minorities and the young.

Furthermore, advocates point to the fact that many criminal history records are inaccurate or incomplete or no longer timely and, for all of these reasons, fail to present an accurate and representative image of the record subject. Advocates argue that, at a minimum, only conviction record information should be made available for noncriminal justice purposes and that arrest information should be withheld in deference to the presumption of innocence.<sup>110</sup>

### —Dissemination trends

In the decade from the mid-1960s through the mid-1970s, most experts felt that dissemination trends moved in the direction of increased confidentiality and the imposition of restrictions upon the release of criminal history records for noncriminal justice purposes. However, as mentioned earlier, congressional efforts in the early 1970s to set nationwide standards for the dissemination of criminal history records for noncriminal justice purposes failed.

Similarly, the LEAA regulations refrained from attempting to establish a uniform national standard for noncriminal justice access. Rather, the regulations gave State legislatures and State executive agencies broad authority to set their own standards governing the dissemination of criminal history records for noncriminal justice purposes. Specifically, the regulations authorized noncriminal justice

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<sup>107</sup> 15 U.S.C. § 78q(f)(2). Today, numerous States permit or require the release of criminal history information for background checks for individuals who work with children. See, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Public Access to Criminal History Record Information*, Criminal Justice Information Policy series, by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1988) p. 29. See also, Pub. L. 92-544, 86 Stat. 1109, which authorizes the FBI to disseminate criminal history records to State and local governments for employment and licensing purposes when authorized by a State statute and approved by the U.S. Attorney General (October 25, 1972).

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<sup>108</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Privacy and the Private Employer*, Criminal Justice Information Policy series, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, December 1981) pp. 47-52.

<sup>109</sup> See SEARCH Group, Inc., *A Florida Case Study — Availability of Criminal History Records: The Effect of an Open Records Policy* (Sacramento, California: SEARCH Group, Inc., March 1990).

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<sup>110</sup> See SEARCH Group, Inc., *Technical Report No. 13: Standards for Security and Privacy of Criminal History Record Information*, third edition (Sacramento, California: SEARCH Group, Inc., July 1988) pp. 2-5.

access if “authorized by statute, ordinance, executive order, or court rule, decision or order as construed by appropriate State or local officials or agencies.”<sup>111</sup> The States initially used this flexibility to enact legislation that, for the most part, restricted private sector access to criminal history records and particularly to nonconviction records.<sup>112</sup>

In the mid-1970s, this trend reversed. Most observers cite the U.S. Supreme Court’s 1976 decision in *Paul v. Davis*<sup>113</sup> as providing impetus for judicial and, in particular, statutory efforts to loosen restrictions on access to criminal history records. In that case, the Supreme Court rejected a record subject’s claim that a law enforcement agency’s public dissemination of a flyer that included his name and photograph and identified him as an active shoplifter violated his constitutional right of privacy. The Court dismissed the notion that an arrest record is private information:

[Davis] claims constitutional protection against the disclosure of the fact of his arrest on a shoplifting charge. His claim is based not upon any challenge to the state’s ability to restrict his freedom of action in a sphere contended to be private, but instead on a claim that the state may not publicize a record of an official act such as an arrest. None of our substantive privacy decisions hold this or anything like this, and we decline to enlarge them in this manner.<sup>114</sup>

For the next 15 years following this decision, the trend in both judicial decisions and statutory enactments was decidedly in the direction of making criminal history record information more available to the private sector and even to the public.

As the 1990s start, however, there are signs that the pendulum may be swinging again in the direction of privacy. Once again the bellwether is a U.S. Supreme Court decision. In 1989, in *Department of Justice v. Reporters Committee for Freedom of the Press*,<sup>115</sup> the Supreme Court held that an individual has a cognizable privacy interest in his criminal history record information, even though all of the constituent parts of the record may be public information. The Court reasoned that the compilation of an entire history of an individual’s criminal activity, and, in particular, its automation in a format that makes the record easily retrievable, vastly increases the privacy risk to the record subject and makes it appropriate to extend privacy protections to the record.

At the start of the 1990s, polling data also indicate that privacy concerns are at historic high levels.<sup>116</sup> In addition, in the early 1990s, serious congressional consideration has been given to several pieces of Federal legislation that would restrict access to previously public record information, such as motor vehicle records and change-of-address information maintained by the U.S. Postal Service.

### —Statutory dissemination policies in the early 1990s

Despite a fair amount of variance, most State statutory dissemination schemes now share at least two common elements:

- (1) A majority of States now permit access to criminal history records for some compelling noncriminal justice purposes, including, for instance, background screening by licensing boards and private employers of applicants for sensitive positions, such as those involving child care, public safety, supervision of property or fiduciary responsibilities.<sup>117</sup>
- (2) Most States continue to treat conviction records differently from nonconviction records.

Customarily, the States place few or no restrictions on the dissemination of conviction records and a number of States also do not restrict the dissemination of open arrest records less than one year old. Nonconviction records, however, including records of cases with no disposition recorded after the passage of a year or longer, are restricted in most States and in some States may not be disseminated at all for noncriminal justice purposes or may be disseminated only for limited and specifically defined purposes.<sup>118</sup>

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<sup>111</sup> 28 C.F.R. § 20.21(b)(2).

<sup>112</sup> 1992 Compendium, p. 8.

<sup>113</sup> 424 U.S. 693 (1976).

<sup>114</sup> *Ibid.*, p. 713.

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<sup>115</sup> 489 U.S. 749 (1989).

<sup>116</sup> Louis Harris & Associates, *The Equifax Report on Consumers in the Information Age*, prepared by Alan Westin (Atlanta, Georgia: Louis Harris & Associates, 1990) p. 5.

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<sup>117</sup> 1992 Compendium, p. 9.

<sup>118</sup> *Ibid.*



# Chapter IV: The impact of new technologies

Perhaps the most significant factor in the successful evolution of the Nation's criminal history record repositories has been the widespread application of computer technology to improve their efficiency and increase the quality of the information they maintain.

This chapter briefly describes the utilization of new computer technology in criminal justice agencies.

**Section 1: Automated reporting to the repositories,** discusses how technology is speeding up the process of reporting arrest and disposition data to the repositories.

**Section 2: Automated fingerprint processing,** discusses how technology is speeding up the production, transmission and processing of fingerprints.

## Background

At the beginning of the 1970s, only a few of the State repositories were substantially automated and accessible to user agencies by computer terminals. By the end of that decade, thanks in large part to financial and technical assistance made available by the Law Enforcement Assistance Administration (LEAA), the majority of the repositories were utilizing automated data processing equipment to maintain their criminal history record databases.

In addition, almost all of them were providing terminal access to user agencies by means of a statewide telecommunications system. Today, all except seven of the repositories maintain automated databases and those seven States are in the process of installing automated systems. (See Chapter VI.)

Surveys show that State repository officials overwhelmingly believe that automation is the development that has resulted in the greatest improvement in information management in their agencies, and is the single most important tool for achieving greater efficiency and better data quality. Automated systems make it more practical and economical to implement many data quality enhancement strategies, such as improved data entry and editing procedures, data-linking methods and systems for monitoring the reporting of information by criminal justice agencies.

In addition to the automation of criminal history record databases and the provision of remote terminal access to user agencies, computer technology is being applied in other ways to improve the efficiency of the Nation's criminal history record repositories and the quality of the information they maintain.

## Section 1: Automated reporting to the repositories

Although most criminal justice agencies now have terminal access to their State repositories and to the FBI's files for conducting name searches and obtaining automated records, the *reporting* of case processing information to the repositories and to the FBI is accomplished predominantly through mailed paper documents — arrest fingerprint cards and disposition forms. Increasingly, however, computer technology is being used to speed the reporting process and save resources.

This section discusses methods for:

- Automated arrest reporting; and
- Automated disposition reporting.

## **Automated arrest reporting**

### ***—Problems with manual reporting***

Historically, arrest information<sup>119</sup> has been reported to the State repositories and to the FBI on fingerprint cards. In addition to spaces for inked fingerprint impressions, these cards contain spaces for typing or writing in textual information. Many State laws require fingerprint cards for reportable offenses to be submitted to the repositories within 24 to 48 hours after the arrests, while most of the other States require submission “promptly” or “without undue delay.”

Even where these laws are complied with, however, mailing time and normal processing time at the repository may mean that arrest information is not entered into the repository’s database until a week or more after the arrests. In addition to the delay, the manual processing of fingerprint cards and the entry of arrest information by repository personnel is a significant drain on repository resources.

### ***—Automation aids in arrest reporting***

Many high-volume law enforcement agencies throughout the country have implemented automated information management systems, including automated booking components. Since the information entered into these systems for local agency use typically includes all of the arrest

information required by the State repository for its criminal history database, these systems are being utilized in some jurisdictions as the basis for automated arrest reporting to the repositories, by computer tape or by direct computer-to-computer transmission.

### ***—Benefits***

Direct computer linkage can provide for real-time transmission, which means that the information can be entered into the repository database as the arrested person is booked at the local agency, immediately following the arrest.

These automated booking systems can incorporate the same kinds of edit and verification programs used by the repository to guard against the entry of inaccurate information and to make sure that all required information is entered. Redundant typing of arrest information by arresting agency personnel is eliminated, as is the necessity for data entry at the repository.

Fingerprint cards must still be mailed to the repository for identification, but, as explained in Section 2 of this chapter, in some cases fingerprint images can be transmitted to the repository electronically.

### **Automated disposition reporting**

The mailing of paper disposition forms to the repositories by prosecutors, courts and correctional agencies also is being replaced in some jurisdictions by automated reporting. Many of these agencies have installed automated case management systems which can be used to generate the case

disposition information required by the repositories. This information can be generated in magnetic tape form or directly entered into the repository database.

### ***—Reporting by local prosecutors, courts***

Moderately priced or public domain software has been available for some years to support prosecutor information management systems. As a result, many high-volume prosecutors’ offices and some smaller offices have installed automated case management systems. Similarly, courts in some high-volume jurisdictions also have installed automated case management systems. Some State repositories are implementing links with these local prosecutor and court systems to obtain disposition information in automated form.

### ***—Reporting by State courts systems***

Some of the States with unified court systems have implemented automated information management systems at the State level. In some of these States, local courts report case disposition information to the State system, by paper forms or on computer tape, and the State system then edits and combines this information and reports to the State criminal history repository, by computer tape or by direct electronic link.

### ***—Reporting by State corrections***

Finally, some States have implemented state-level automated correctional information systems or have installed automated information systems in some State correctional facilities. These systems typically can generate the correctional disposition information

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<sup>119</sup> This includes subject identification information, as well as information specific to the arrest event and the arrest charges.

needed by the criminal history record repositories and are being used in some States to report the information in automated form.

### **—Benefits**

Automated reporting techniques make disposition reporting more accurate, since duplicate data entry processes are eliminated, and also result in faster, easier and more economical reporting.

In some cases, careful planning and cooperation between local and State agencies has resulted in the implementation of automated systems in those agencies that:

- (1) Have saved time and money for the agencies in performing their own recordkeeping functions; and
- (2) Have made reporting to the State repository a by-product of these functions.

This occurs when agencies cooperate in adopting procedures which allow the linkage of arrests and/or charges to dispositions.

## **Section 2: Automated fingerprint processing**

During the last decade, automated data processing technology has helped to solve serious problems created by the manual processing of arrestee and applicant fingerprints.

This section discusses the problems of manual fingerprint processing and describes new technologies that have focused on two aspects of criminal justice fingerprint processing:

- The production and transmission of fingerprint images; and
- The use of automated fingerprint identification systems to search fingerprint files.

## **Background**

Fingerprints are submitted to identification bureaus — which are usually part of or closely associated with the criminal history record repositories — primarily as a result of an arrest or a criminal investigation, or in connection with employment or licensing applications. Until recent years, these arrest and applicant fingerprints were submitted almost exclusively in the form of inked impressions rolled onto ten-print cards transmitted by mail or courier.

At the identification bureaus, if an initial name search of the master name index failed to discover a previous record for the subject, the fingerprints were manually classified according to distinctive ridge patterns and searched against similarly classified criminal fingerprint files to determine whether the individual had a prior criminal record under a different name.

### **—Problems with manual fingerprint processing**

Although fingerprints are unique and unchanging and provide a basis for highly accurate and reliable identification, the manual procedures described above, which are still in use in many States, have several shortcomings, as outlined below.

- (1) The inked fingerprinting process is very time-consuming, especially since multiple copies typically are produced, and trained and experienced personnel are required in order to obtain good quality prints on a consistent basis. A substantial

number of fingerprint cards are returned to local agencies by the State identification bureaus and the FBI as unusable because of the poor quality of the fingerprint impressions.

- (2) The preparation, mailing and processing of fingerprint cards can consume a considerable amount of time, resulting in a delay of a week to several weeks between booking and receipt of a criminal history response from the repository. This means that arrested or detained persons who use fictitious names to avoid association with their prior criminal records may be released without being charged, released on bail, improperly charged or even improperly sentenced before their true identities are known. Similarly, unsuitable persons may be employed in sensitive positions before their true identities and criminal backgrounds are discovered.
- (3) The manual classification and searching of fingerprints by identification bureau personnel is labor-intensive and error-prone, especially if technicians are not properly trained and experienced. As a result, missed or erroneous identifications can occur and, even though the classification of incoming prints limits the search to a part of the existing criminal fingerprint files, such files are so massive in most States that substantial manpower must be devoted to manual fingerprint processing.



## **Fingerprint image production and transmission**

Arrest fingerprints historically have been produced as inked impressions rolled onto cardstock, a process that is time-consuming and results in significant numbers of low quality prints.

### **—Live-scan devices**

In the past few years, a new technology, called “live-scan” fingerprinting, has proved to be a viable method of producing higher average quality fingerprint impressions quickly and with reduced labor costs.

The technology eliminates the necessity of rolling the subject’s fingers onto inked pads and then onto multiple fingerprint cards. Instead, the subject’s uninked fingers are rolled onto a scanning pad attached to the live-scan device, which enables the device to capture an image of the fingerprints and then print out multiple fingerprint cards as needed. The machines enable the operator to evaluate the quality of the fingerprint impressions thus produced and re-roll fingers if necessary, resulting in a significant improvement in the average quality of the fingerprints.

Fingerprints produced by live-scan devices can be printed out at the local agencies where the machines are located and copies mailed to the State repository. Copies can also be printed out on remote printers located at the repository, eliminating the necessity of mailing. The devices also offer the possibility of converting the fingerprint images to electronic images that are computer-readable and can be transmitted to the repositories and directly utilized by

automated fingerprint processing devices, which are discussed below.

### **—Card-scan devices**

Law enforcement agencies also may use newly-developed “card scanner” devices to eliminate the necessity of mailing fingerprint cards. These machines can scan standard inked fingerprint cards and can transmit electronic images of the fingerprint images, together with keyed textual data from the fingerprint cards, to the State identification bureau, the FBI or other remote sites.

Live-scan and card-scan technology is expensive, however, and currently is in limited use, principally in large volume law enforcement agencies.

### **Use of automated fingerprint identification systems to search files**

The technology that has had the greatest impact on fingerprint processing is Automated Fingerprint Identification System (AFIS) technology, which provides improved methods of searching fingerprint files and transmitting fingerprint images.

### **—AFIS benefits**

This newly developed computer equipment can scan fingerprint impressions and automatically extract and digitize identifying characteristics in sufficient detail to enable the computer’s searching and matching algorithms to distinguish a single fingerprint from thousands or even millions of file prints that have been similarly scanned and stored in digital form

in the computer’s memory. This concept of computerized digital image processing has eliminated the necessity to manually search fingerprints and has increased the speed and accuracy of ten-print processing.

Aside from automated scanning and searching, the technology offers other important advantages over manual procedures. In manual processing, if the name search performed as the initial step in the processing of an incoming fingerprint card produces one or more match candidates, the technician must use the agency’s hard copy fingerprint files to retrieve the fingerprints associated with the candidates. The technician must then manually compare them with the incoming prints to determine whether there is a verifiable match. If this process does not result in a match, the technician must manually classify the incoming fingerprints and then use the hard-copy files to retrieve and compare stored fingerprints of the same or similar classification in an effort to find a match.

The AFIS technology not only eliminates this type of searching, it also provides the capability of rapidly retrieving stored digital information about probable matching fingerprints and displaying computer-generated images of both the incoming search print and the retrieved candidate prints side-by-side on the operator’s screen. This enables the operator to visually verify the match without leaving the terminal.

### —State AFISs

At present, 39 of the State identification bureaus have AFIS systems or are in the process of procuring them, and most of the other bureaus have plans to acquire AFIS systems at some future time. Many local law enforcement agencies in larger cities also have AFIS equipment and other cities are expected to acquire them. The digital image transmission capability of the systems will enable these agencies to have remote access to their State identification bureau's AFIS fingerprint files for purposes of performing computerized fingerprint searches and retrieving fingerprint images for screen display or hard-copy printout. Communication from one vendor's AFIS to another vendor's AFIS has not yet been accomplished.

### —Federal AFIS

At the national level, the FBI currently is in the early stages of implementing a new fingerprint image-based identification system which can meet projected increases in FBI workloads. This new system ultimately will offer the capability of making it possible to eliminate paper fingerprint cards at every step of the identification process. This national system is called IAFIS (Integrated Automated Fingerprint Identification System). A new subsystem, the Identification Tasking and Network (ITN) subsystem, will provide the workstations, workflow control, telecommunications and fingerprint image files to support paperless processing.

Under IAFIS, fingerprint images will be taken at local law enforcement agencies by live-scan or card-scan equipment, processed at a local AFIS and then electronically transmitted to and processed by a State identification bureau AFIS. If an identification is not made at the local or State level, the fingerprint data and related textual data will be transmitted to the FBI and processed by its AFIS and a response returned electronically to the local booking station.

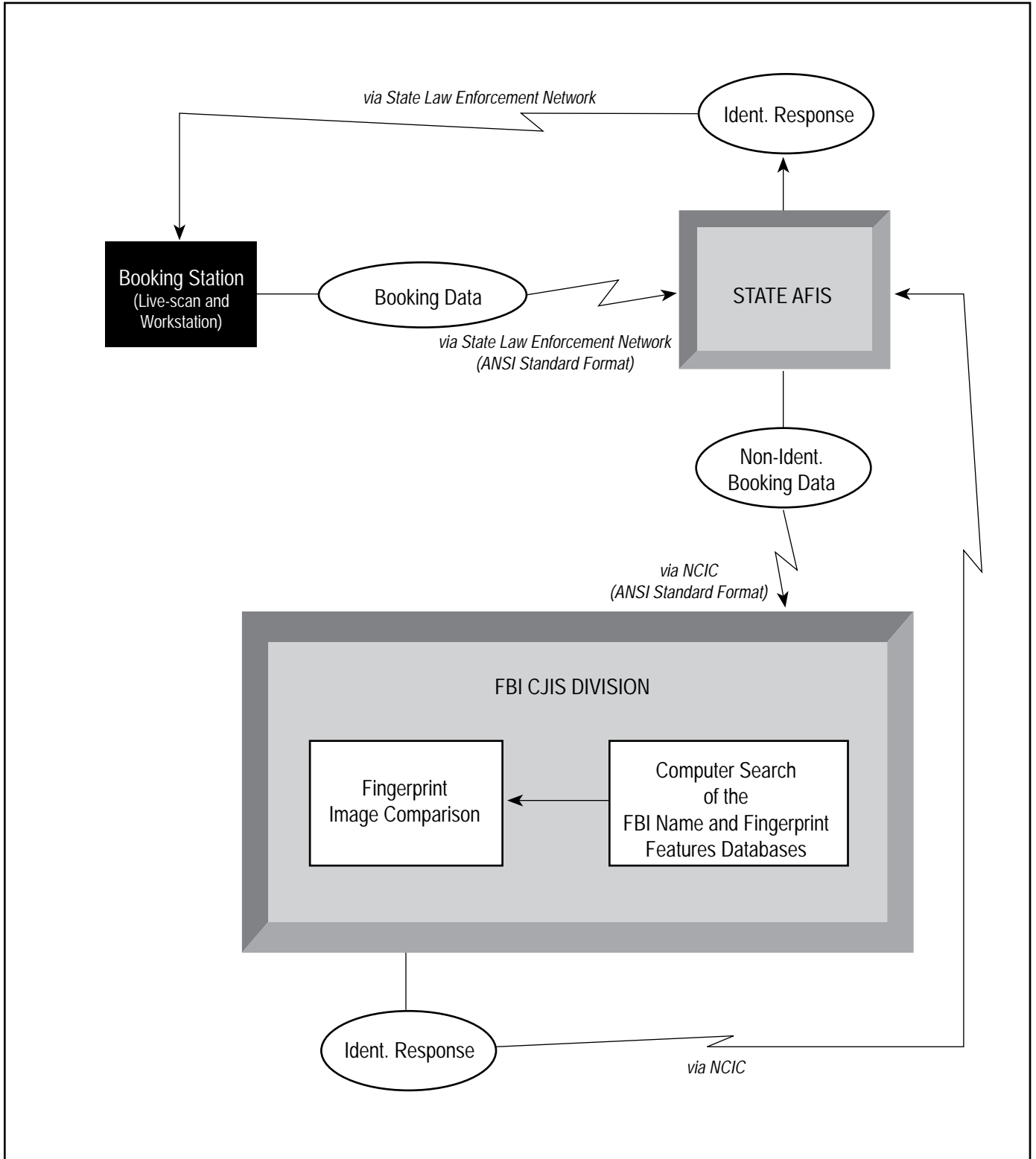
The entire process can consume two hours or less. This will mean that law enforcement agencies will be able to identify previous offenders and fugitives, even if they use false identities, and obtain criminal history record information about them prior to their release from the booking station or their initial court appearance for bail setting. (See Figure 3, which illustrates the core IAFIS service.)

The Federal components of IAFIS will be located at the FBI's new Criminal Justice Information Services (CJIS) Division facility in Clarksburg, West Virginia, and are expected to be operational in 1996. Although local and State governments are not required to alter their identification services so as to adapt to the FBI changes, States and localities which do adapt

will achieve improvements in the quality and efficiency of the identification services they provide. These services support local criminal justice agencies within the States, and also governmental and private employers who require fingerprint-based criminal history checks as part of the employment or licensing process. The improvements that can be expected include increased identification accuracy, reductions in response times for urgent identification requests, reduction in labor costs associated with data entry and filing, and increased file security through the paperless file concept.<sup>120</sup>

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<sup>120</sup>See, Federal Bureau of Information, National Crime Information Center Advisory Policy Board, *Integrated Automated Fingerprint Identification System (IAFIS) Planning Guide* (Washington, D.C.: Federal Bureau of Investigation, April 30, 1993).



**Figure 3: IAFIS Service  
Electronic Criminal Ten-Print Submission**

# Chapter V: National criminal history record checks and the Interstate Identification Index

This chapter describes procedures for conducting national criminal record checks for criminal justice and noncriminal justice purposes, and also provides an in-depth look at the Interstate Identification Index.

**Section 1: Maintenance and use of current FBI files,** addresses national criminal history checks using FBI files. The section covers the FBI's current practice, authorized categories of users, and terminal access to FBI files for criminal justice and noncriminal justice inquiries.

**Section 2: The Interstate Identification Index,** describes the III concept and explains how the processing of search inquiries and record responses under that approach works.

**Section 3: III system impact,** identifies the principal benefits and impacts of the III system for the States and the Federal government.

**Section 4: The proposed III compact,** explains the major provisions of a proposed interstate compact that would support a fully implemented III system.

## Background

Most persons arrested for criminal offenses have prior arrest records and many of them have arrest records in more than one State. Federal Bureau of Investigation (FBI) officials have estimated that of all Federal and State arrest fingerprint cards processed by the FBI, which includes submissions for most of the arrests in the country for serious offenses, two-thirds of the arrest subjects have prior arrests. Further, of the criminal subjects in the FBI's automated files of State and Federal offenders, an estimated 25 to 30 percent are "multistate" offenders; that is, they have both Federal and State records or arrests in more than one State.<sup>121</sup>

Obviously, then, there is a need for some efficient means of performing a national criminal record search other than the impractical approach of making separate queries to all of the other States and jurisdictions that operate central criminal history record repositories.

Prior to 1971, the only means of obtaining such a national search was by application to the FBI, which, under congressional authorization dating back to 1924, maintains criminal record files containing fingerprints and arrest and disposition information

pertaining to Federal and State offenders. Most search applications were handled by mail and required manual processing by FBI personnel.

In 1971, the FBI's National Crime Information Center (NCIC) implemented an on-line interstate computerized system called the Computerized Criminal History (CCH) Program. Like the FBI manual system, CCH was a "national repository" system; that is, full criminal history records for Federal offenders and State offenders from participating States were maintained in the FBI's centralized database. The system was used for both criminal justice and noncriminal justice purposes. Access for criminal justice purposes was by name search or by Federal and State identification numbers submitted by terminals on the nationwide NCIC network. Applications for searches for authorized noncriminal justice purposes required either a State or Federal identification number for an on-line record or the submission of fingerprint cards to the FBI by mail.

The CCH system continued throughout the 1970s even though participation by the States was poor, due primarily to objections to the cost and difficulty of maintaining duplicate files on State offenders at both the State and Federal levels. The FBI's centralized files were continued during this period and automation of them began in 1974.

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<sup>121</sup> Statutes Report, p. 1.

Most State officials preferred the development of a “decentralized” national criminal history record system; that is, a system that would not entail the continuance of a duplicative national repository of criminal records, but instead would undertake to strengthen the State repositories and provide the means of tying them together into a viable interstate system.

Prior to the 1970s, it was generally conceded that most of the existing State repositories lacked the technology and the policy and organizational structure necessary for effective participation in such a program. By the end of that decade, however, substantial progress had been made in improving existing State repositories, establishing repositories in States that lacked them, and providing these agencies with the technology, organizational capability and policy structures necessary for the creation of a decentralized national criminal history program based on shared responsibilities and mutual commitments.

Recognizing this progress, in 1978 the U.S. Department of Justice and State officials approved the concept of the Interstate Identification Index (III), and the FBI and selected States began phased testing and implementation of the concept in 1980.

## **Section 1: Maintenance and use of current FBI files**

This section discusses how the FBI maintains fingerprints and criminal history records, and the uses that are made of these files. This discussion includes:

- Current practices for submission and storage of fingerprint and criminal history data;
- The authorized users of the FBI files, whether criminal justice or noncriminal justice, and the data they are entitled to receive; and
- How terminal access to the FBI files is provided to users.

### **Current practice**

Under the authority of Title 28, Section 534 of the United States Code, the FBI currently maintains fingerprints and criminal history records for persons arrested for Federal offenses and also maintains State offender records that, to a great extent, duplicate the records of the State repositories.

### **—Fingerprint submissions**

For their mutual benefit, State and local arresting agencies throughout the country are encouraged to submit arrest fingerprint cards to the FBI for all “criterion offenses,” that is, all felonies and all misdemeanors except designated nonserious ones.

In most States, two arrest fingerprint cards are submitted to the State repository; the repository then sends one card to the FBI. In States participating in this “single-source submission” program, the FBI will not accept fingerprint submissions directly from arresting agencies. This approach ensures that the repositories will not be bypassed at the critical arrest fingerprint reporting stage.

In States that have not implemented single-source submission, fingerprint cards may be submitted directly to the FBI by State and local law enforcement agencies. The FBI thus has records of some State offenses that were not reported to the State repositories, primarily records established before single-source fingerprint reporting was implemented or before the State repositories began automating records in the past 20 years.

### **—Disposition submissions**

The FBI accepts and records final disposition and correctional information for these arrests. Both fingerprint card submission and disposition reporting to the FBI are voluntary, however, and the incidence and quality of reporting varies from State to State. Arrest reporting to the FBI is thought to be good in most States, but is known to be poor in a few States.

Disposition reporting to the FBI from most States is incomplete, perhaps averaging about 50 percent.<sup>122</sup> By comparison, felony trial court disposition reporting to the State repositories is estimated to be somewhat higher, with reporting in 10 States at 95 percent or higher.<sup>123</sup>

As of April 1, 1993, the FBI was obtaining disposition information from 10 State repositories by computer tape, which results in more complete and timely reporting. Seven additional States are testing computer software to produce automated disposition reports.

#### **—Extent of automation**

Approximately 17.1 million of the FBI's criminal history records were fully automated (identification and charge/disposition information) at the beginning of 1993 and the Bureau maintains an automated index to an additional 8.3 million manual records. Also, there are about 3 million manual records with a manual index.

#### **Authorized users of data**

The criminal history records maintained by the FBI are available for criminal justice use and some noncriminal justice purposes. The FBI is authorized by law<sup>124</sup> to provide criminal record services to the following major categories of users:

- (1) Federal and State criminal justice agencies for criminal justice purposes, including the screening of applicants for criminal justice employment;
- (2) Federal noncriminal justice agencies for official purposes authorized by Federal statute or executive order, such as national security purposes and background screening of Federal employees;
- (3) Federally chartered or insured banks and authorized segments of the securities and commodities industries, for employment screening; and
- (4) State and local governmental agencies for licensing and employment purposes if authorized by a State statute approved by the U.S. Attorney General.

These agencies receive the FBI's complete criminal history on offenders with all reported arrests regardless of whether there is a disposition for each arrest notation and regardless of the nature of recorded dispositions. It should be noted that information about State offenses, when submitted to the FBI and incorporated into the FBI's files, has been interpreted to be Federal information subject to the Federal Privacy Act and other Federal standards that provide for the disseminations outlined above.<sup>125</sup>

Pursuant to these standards, some noncriminal justice agencies in some States are able to receive State offender information from FBI files that they could not obtain directly from repositories in States that have laws regulating noncriminal justice use which are more restrictive than the Federal standard. Conversely, in States with more open laws, some noncriminal justice agencies can obtain State records but are denied access to FBI data.

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<sup>122</sup> Reported by officials of the FBI's Criminal Justice Information Services Division as a result of analysis of court disposition reporting as of March 1993.

<sup>123</sup> 1992 Survey, Table 8.

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<sup>124</sup> 28 U.S.C. § 534; PL 99-169, as amended by PL 99-569 and PL 101-246, 5 U.S.C. § 9101; Exec. Order 10450; PL 91-452; PL 101-647; PL 92-544, 86 Stat. 1115; PL 100-413, 102 Stat. 1101; PL 94-29, as amended by PL 100-181, 15 U.S.C. § 78q(f)(2); PL 97-444, 7 U.S.C. §§ 12a, 21(b)(4)(e); PL 99-399, 42 U.S.C. § 2169; PL 101-604, 49 U.S.C. App. § 1357(g); 28 CFR 0.85(b); U.S. Dept. of Justice Order 556-73, 28CFR 16.30-16.34.

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<sup>125</sup> When a Federal agency receives "records" from a State agency, these records become Federal records for purposes of Federal law. Records Disposal Act, 44 U.S.C. § 3301; *Forsham v. Harris*, 445 U.S. 169, 185 (1980); *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 151-52 (1980).

## Terminal access to FBI files

### —*Criminal justice inquiries*

Terminal access for authorized name searches of the FBI's files, and for obtaining automated records, is provided for criminal justice purposes to criminal justice agencies nationwide by means of the NCIC telecommunications network.

Criminal justice agencies may also obtain searches and record responses by submitting arrest fingerprints to the FBI. As pointed out earlier, arresting agencies typically send two sets of fingerprints to their State repository. The repository searches its files and returns a response to the agency. If the arrest is for a criterion offense, the repository sends the second set of fingerprints to the FBI for a search of its national files and subsequent retention.

### —*Noncriminal justice inquiries*

Access to FBI files for noncriminal justice purposes, such as State agency licensing and employment screening authorized by State law, is not provided by means of terminal name search. Such applications require the submission of the applicant subject's fingerprints. Access requests by State agencies under approved State statutes are submitted through the State repositories and, upon request, responses are returned to the repositories, which screen the responses, if necessary, pursuant to State dissemination laws and practices. Applications from Federal agencies, banks, and securities and commodities firms are channeled directly to the FBI.

## Section 2: The Interstate Identification Index

This section provides a detailed look at the Interstate Identification Index, and the uses made of it for criminal justice and noncriminal justice purposes.

### Background

The Interstate Identification Index (III) system is a decentralized "index-pointer" system that ultimately will be used for all interstate and Federal-State purposes, replacing the existing national repository system described in Section 1 of this chapter. Under the III concept, when it is fully implemented, the FBI will no longer maintain duplicate criminal history files for State offenders.<sup>126</sup> Rather the FBI will maintain:

- Federal offender records, containing arrest and disposition information pertaining to persons arrested for Federal offenses;
- The Interstate Identification Index, containing names and identifying information for all State and Federal offenders in the system; and
- The National Fingerprint File (NFF), containing fingerprints of Federal offenders and a single set of fingerprints for each indexed State offender from each State in which the person has been arrested.

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<sup>126</sup>The FBI will continue to maintain some older State offender records that the States have not automated.

The Interstate Identification Index and the National Fingerprint File provide the means of conducting national criminal record searches (both name searches and fingerprint-based searches) and "pointing" the inquiring agency to the FBI and/or any participating State repository that maintains a criminal record on the subject. Inquiring agencies are then able to obtain the records directly from the indicated State or Federal files by means of the NCIC network or the National Law Enforcement Telecommunications System (NLETS), a system maintained by the States.

It is important to emphasize that the III system, when fully implemented, will be a decentralized system that will supplant the FBI's recordkeeping responsibility for State offenders by making the State repositories primarily responsible for record maintenance and dissemination. State agencies will no longer submit fingerprint cards and disposition information to the FBI for all criterion arrests, as they now do. Rather they will channel fingerprints through their State repositories and the repositories will submit only "first-arrest" fingerprint cards<sup>127</sup> to the FBI, for

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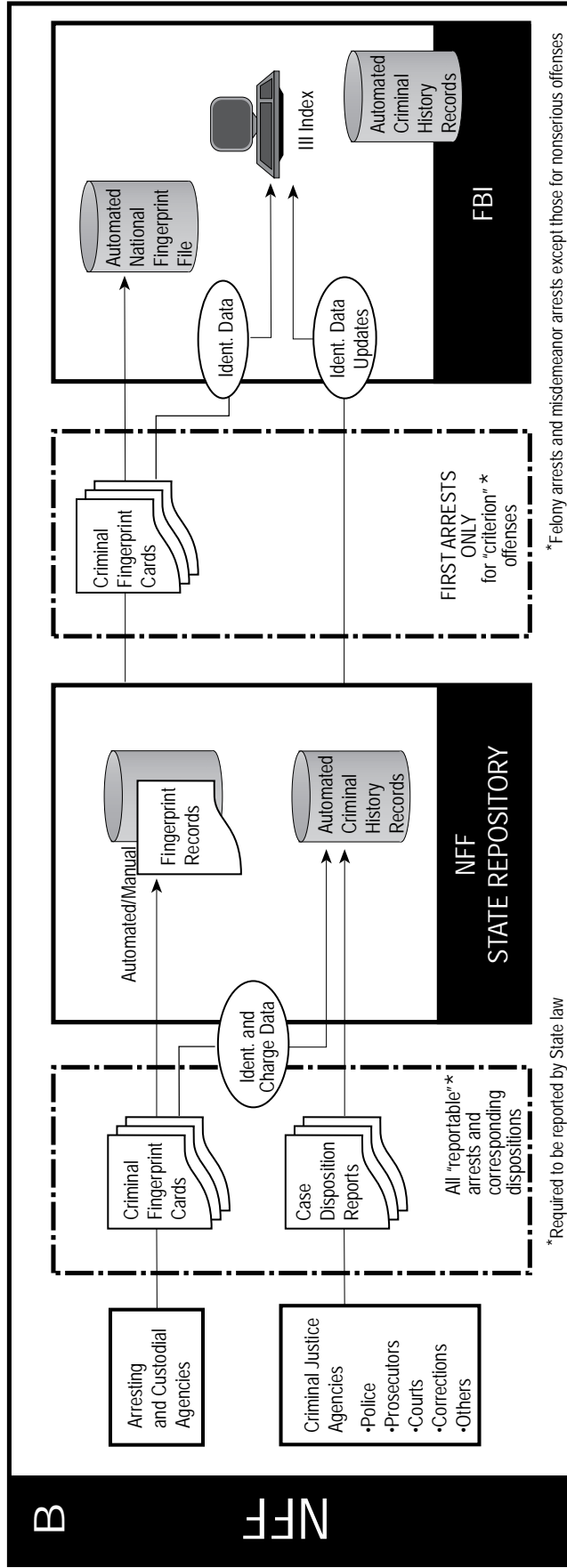
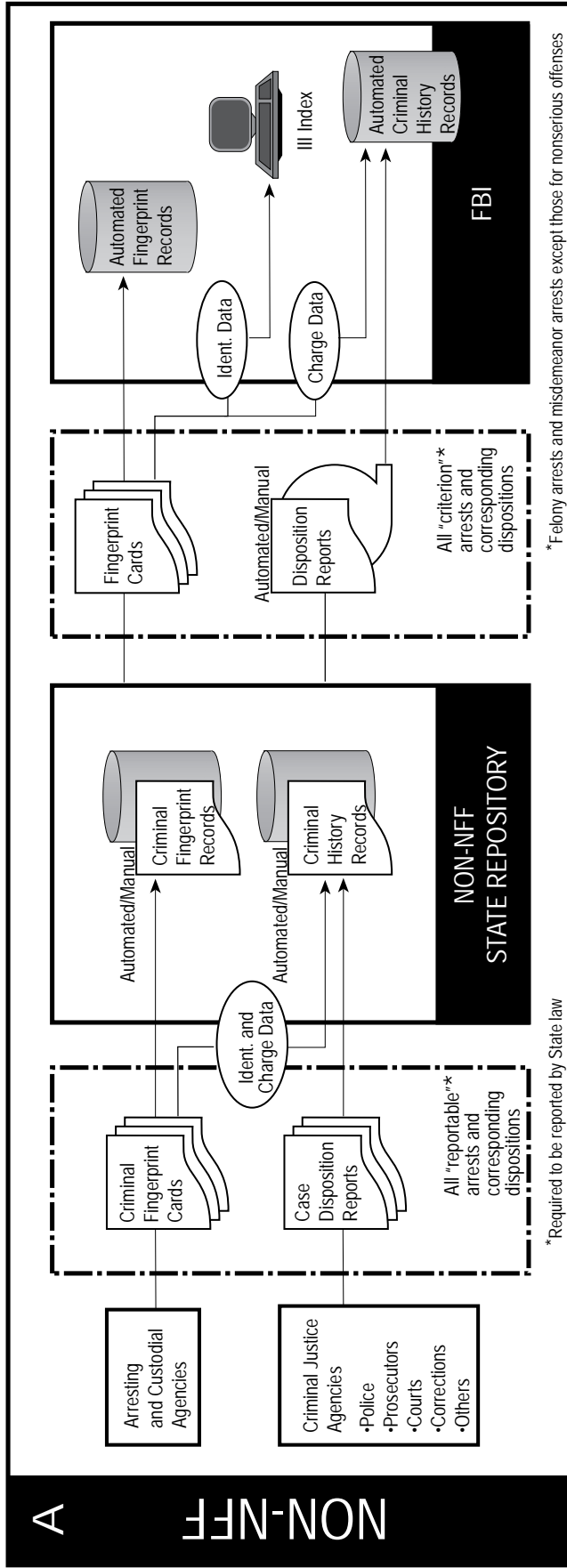
<sup>127</sup>The repositories will forward fingerprints only for persons that they cannot identify as having a prior arrest record in the State.

inclusion in the NFF and for updating the III. State repositories will not send “second and subsequent” arrest fingerprints to the FBI, nor will any charge or disposition information for any arrests be sent. Thus, the State repositories will become the only sources of State criminal history records for these arrests — for both criminal justice and noncriminal justice purposes. (See Figure 4, which illustrates the reporting and maintenance of records in a decentralized III system.)

### **Use of III for criminal justice purposes**

The III system has been partially implemented through a series of tests and operational phases that began in 1980. Essentially, the system is utilized for criminal justice purposes only. (Ongoing tests of noncriminal justice use of the system are described later in this section.) Access for name searches and record requests for criminal justice purposes is provided to criminal justice agencies nationwide by means of the NCIC network. The NLETS network is used by the States for transmitting record responses. (Figure 5 shows, in somewhat simplified form, how III record requests and record responses are routed for criminal justice purposes.)





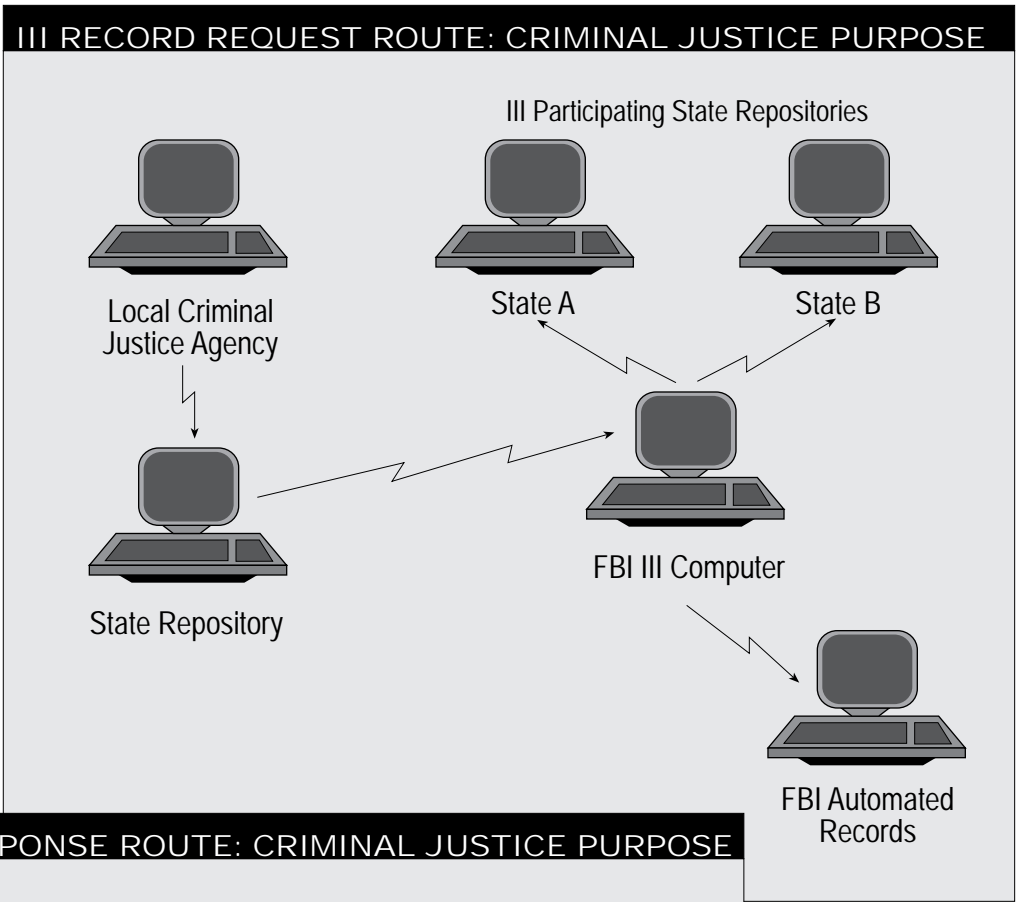
**Figure 4: Reporting and Maintenance of Records in a Decentralized Ill System**

#### **Figure 4: Reporting and Maintenance of Records in a Decentralized III System**

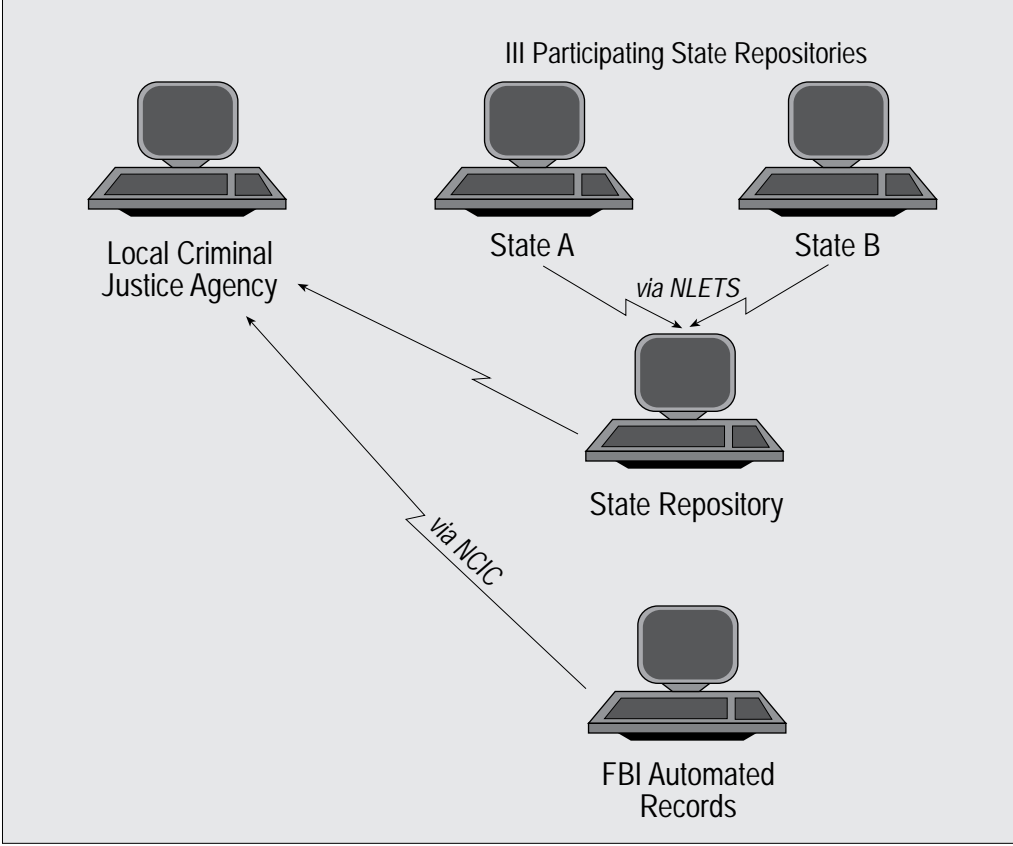
Figure 4A shows present procedures for the reporting of arrest and custodial fingerprints and case disposition data to the FBI by State repositories that are not participating in the decentralization phase of the III system (referred to as non-NFF repositories). This includes repositories that are not participating at all in III, as well as repositories that are participating in III as record providers for criminal justice purposes only. Since these repositories are not providing records from their files to all Federal and out-of-state noncriminal justice agencies authorized to obtain national record searches, criminal justice agencies in these States continue to submit fingerprints and charge/disposition information to the FBI for all arrests for criterion offenses. This is done in order that the FBI may provide record services (Federal offender and State offender records) to authorized noncriminal justice users.

Figure 4B shows how reporting and record maintenance will work when State repositories begin to participate in the decentralization phase of III implementation (often referred to as implementation of the National Fingerprint File). These repositories (referred to as NFF repositories) will assume an obligation to provide interstate record services to all authorized III users for both criminal justice and noncriminal justice purposes. Thus, there will be no need for these States to continue submitting fingerprints and criminal history data to the FBI for all criterion arrests. They will submit fingerprint cards only for the first arrest of an individual for a criterion offense within each state. This will enable the FBI to include the record subject in the III index (and set a “pointer” to the submitting State), and to include the subject’s fingerprints in the NFF, so as to be able to direct inquiring agencies to the full record(s) for the individual maintained only at the State level. NFF repositories will submit revised subject identification information, as necessary, to keep the III index up-to-date. Fingerprint images and subject identification data may in some cases be transmitted to the FBI by electronic means.

Criminal justice agencies throughout the country can obtain criminal history records through the III system. Record request messages are transmitted to the State repository by means of the State telecommunications network. The repository forwards the message to the III computer by means of the NCIC network. The III computer switches the messages to State repositories that maintain records on the inquiry subject and/or to the FBI if the subject has a Federal record or a record in one or more States not participating in III.



### III RECORD RESPONSE ROUTE: CRIMINAL JUSTICE PURPOSE



Records supplied from the FBI's automated files are returned to the inquiring State repository via the NCIC network. Participating State repositories utilize the NLETS network to transmit record responses. The receiving State repository assembles multistate record components, if necessary, and transmits a response to the requesting agency. The entire process usually takes less than a minute.

**Figure 5: III Record Requests and Responses: Criminal Justice Purposes**

As of August 8, 1993, 25 State repositories<sup>128</sup> had begun participating in the III system as direct record providers, which means that they are responding to criminal justice requests for their III-indexed records from local, State and Federal criminal justice agencies nationwide. Numerous other State repositories plan to begin participating as record providers within the next few years and all of the other States currently have plans for their repositories to join III at some future time. In the meantime, the FBI continues to provide the records of nonparticipating States, as described earlier, and to provide some older State records that participating States have not automated.

As of August 1, 1993, the III system provided access to 21,182,040 automated records. Of these, 11,801,279 records were maintained by the participating State repositories and 9,380,761 were maintained by the FBI. About 1,756,000 inquiry transactions are processed each month. These inquiries are for criminal justice purposes, including criminal investigations. On the average, a positive response is provided for one out of three inquiries. Inquiry transactions are processed by the III computer within five seconds. More than 478,000 criminal histories are provided monthly through the III system.

### **Use of III for noncriminal justice purposes**

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<sup>128</sup>The 25 States are Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Michigan, Minnesota, Missouri, Montana, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington and Wyoming.

Because the III system is not being used for handling interstate noncriminal justice requests, except on a limited test basis, such requests continue to be handled by the FBI. For this reason, the FBI's files of State offenders must continue to be maintained and must be kept up-to-date.

Criminal justice agencies in all of the States, including those States whose repositories are participating in the III system as record providers for criminal justice purposes only, are continuing to submit arrest and disposition information to the FBI for all criterion arrests. Such submissions must continue until, on a state-by-State basis, the State repositories are able to assume the responsibility of providing record responses for both criminal justice and noncriminal justice purposes and there are assurances of continued service into the future. Only then can decentralization of the FBI's files be fully implemented.

### **—Revision of State laws and policies necessary**

In order to participate fully in the III system, most of the States will have to make changes in their laws and policies governing the dissemination of criminal history records.

While all States permit virtually unrestricted access to all types of criminal history records for criminal justice purposes, State laws and policies governing access and use for noncriminal justice purposes are extremely diverse, ranging from essentially "open record" access in a few States to very restrictive access rules in a few States, especially concerning records of arrests without recorded dispositions or records of cases that resulted in favorable outcomes for the accused person. The other States fall somewhere in between, with sometimes complex statutory and regulatory approaches that differ greatly as to the types of noncriminal justice agencies that may have access to particular types of records for particular purposes.<sup>129</sup>

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<sup>129</sup>1992 Compendium, pp. 7-11.

This diversity and complexity of State laws was viewed from the beginning as a serious obstacle to developing and implementing an effective interstate system, especially an “index pointer” type of system. Design of a national index that could take into account the frequently amended dissemination laws and policies of the 50 States was seen as a difficult, if not impossible, technical problem. Even if technical difficulties could be overcome, a national system designed merely to provide noncriminal justice requestors with whatever limited information the various States will make available under current laws and policies would not provide the same overall level of service (for example, the full record) that the many Federal and State agencies now obtain from the FBI under the Federal access standards mentioned previously.

#### **—Uniform dissemination standard proposed**

For these reasons, the III system concept proposes a uniform standard for interstate noncriminal justice access and dissemination with which all participating State repositories would comply.

Since a fundamental goal of the system is to continue existing levels of service to current FBI users, the III system concept adopts the access and dissemination rules currently applicable to the FBI. Under this approach, full participation in the III system would require State repositories to provide full criminal history record information<sup>130</sup> in response to out-of-state record requests for:

- Criminal justice purposes;
- Noncriminal justice purposes authorized by Federal laws and regulations — primarily Federal agency employment, national security purposes, military recruiting, and employment in the banking and securities/commodities industries; and
- Noncriminal justice purposes authorized by approved State statutes — primarily State governmental licensing and employment.

States would continue to enforce their own dissemination laws governing the availability of criminal history records to nonfederal agencies located within their State borders. However, access requests by Federal agencies and out-of-state agencies would be governed by the uniform III access rules outlined above. State repositories that do not presently have broad enough legal authority under their State laws to comply with that standard would need to seek appropriate modifications by statutory amendment, policy changes or other actions, such as ratification of the proposed interstate/Federal-State compact discussed in Section 4 of this chapter.

#### **—Pilot test underway**

A pilot project to test the use of the III system for handling noncriminal justice requests is currently being undertaken by the FBI and the State repositories in Florida and North Carolina. Since the laws of these States permit record service to all current FBI users, their repositories were able to undertake an obligation to provide record responses for all in-state and out-of-state requests. On this basis, these States and the FBI are testing the decentralization component of the III system. The States are submitting only first-arrest fingerprints to the FBI and are not submitting any disposition information. The test in Florida began on April 21, 1991, and evaluation of the progress of the test has been favorable. The test in North Carolina began on February 15, 1993, in order to more fully assess III concept requirements. Oregon is scheduled to begin participating in the test in the near future. (Figure 6 shows how noncriminal justice record requests and record responses will be handled in a decentralized III system.)

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<sup>130</sup>The State repositories may withhold “sealed” information.

### **Section 3: III system impact**

Full implementation of the III system will offer significant benefits to criminal justice practitioners and to noncriminal justice agencies that obtain records through the system. Since studies and audits have indicated that records maintained at the State level sometimes are more complete and timely than comparable State offender records maintained by the FBI, the ability to obtain records directly from the State repositories is expected to result in an improvement in the quality of available information. Further data quality improvements will result from computer matching of State and Federal records and the resolution of identified discrepancies.

This section, in addressing the impact of the III system, describes the following:

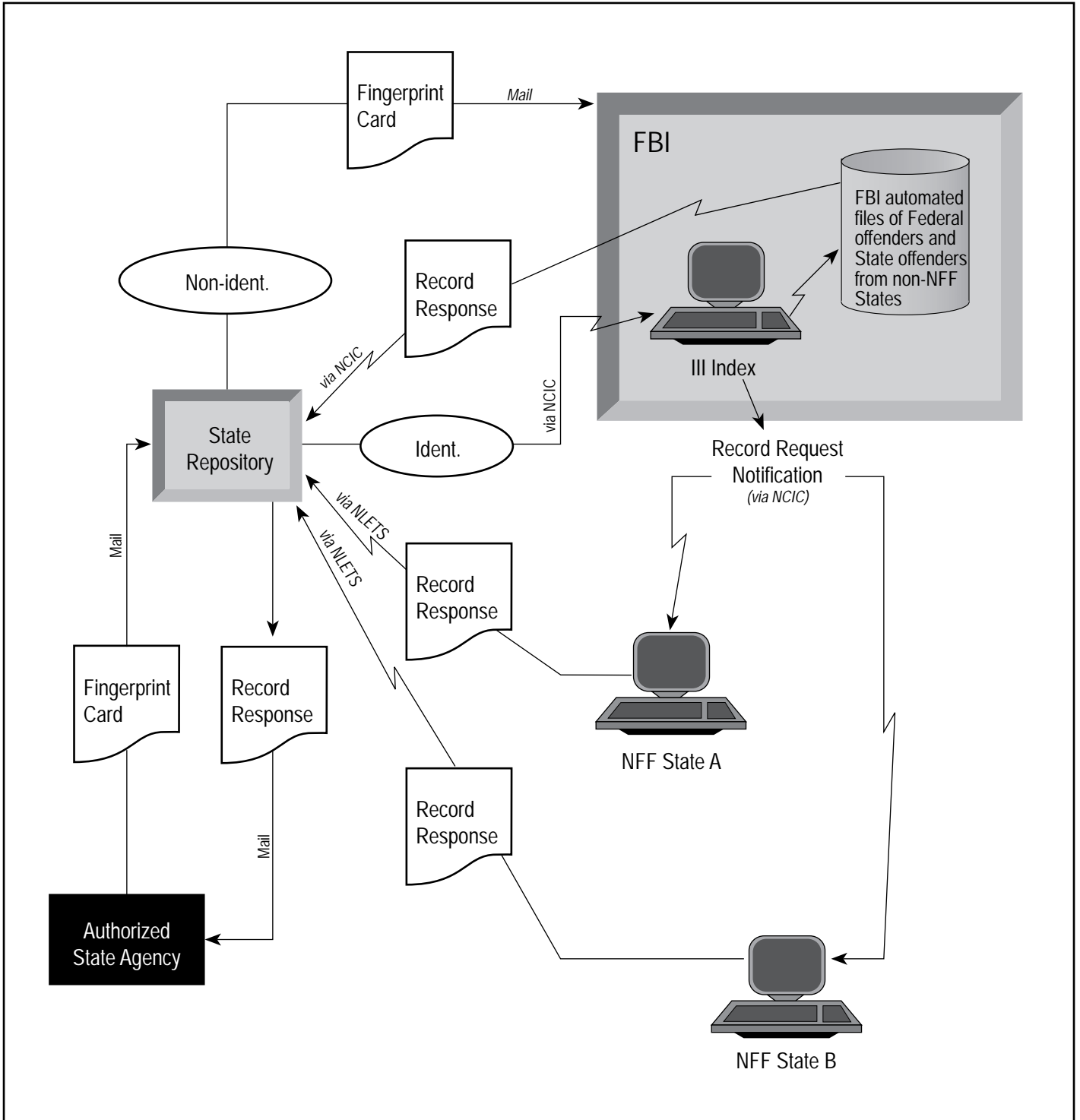
- Benefits of III participation;
- Benefits of NFF participation;
- Burdens of III participation; and
- Expected overall impact.

### **Benefits of III participation**

Whether a State repository is a full participant or participates only as a record provider for criminal justice purposes, participation in the III system affords cost-saving benefits. The computer interface with III provides automatic updating of State files to add newly-assigned FBI numbers, eliminating the mailing of forms and the manual matching and data entry previously performed by State personnel. The repositories also are able to set single-state/multistate flags in their files indicating whether their records on particular offenders are complete or whether there are additional data available from other States or the FBI.

In addition, an increase in system security will result from III requirements for written agreements with all user agencies concerning security measures designed to prevent unauthorized access to or use of system data. These measures include:

- Physical and system security;
- Transaction logging;
- Organizational/administrative requirements; and
- Sanctions for noncompliance.



**Figure 6: III Record Request and Response Processing for Noncriminal Justice Purposes**

**Figure 6: III Record Request and Response Processing for Noncriminal Justice Purposes**

A State noncriminal justice agency authorized by law to obtain a III record search must submit the search subject's fingerprints to its State repository. If the repository positively identifies the subject as having an in-state criminal record ("Ident."), its files will contain an FBI number for the subject which can be used to access III to determine whether the subject also has a Federal record or a record in another State. If the repository is a III participant, its files will contain "flags" indicating whether the subject has a record in another State (or a Federal record), making III inquiries unnecessary if the subject is not a "multistate" offender. If the subject does have an out-of-state record, the III computer automatically transmits record request notifications to any NFF State repository maintaining a record on the subject and/or to the FBI if the subject has a Federal record or a record in a State not participating in the NFF. These repositories return full-record responses to the originating State repository, which screens the records and forwards to the requesting noncriminal justice agency all information that can be released under State law.

If the State repository cannot identify the subject in its files ("Non-Ident."), it forwards the fingerprint card to the FBI for processing. If the FBI positively identifies the subject as having a Federal record or a record in a non-NFF State, it provides these records from its automated files. If the subject has a record in one or more NFF States, those repositories are automatically notified to provide the records directly to the originating State repository.

If the subject cannot be identified at the State or Federal level, an appropriate no-record response is returned to the requesting agency.

Federal noncriminal justice agencies submit fingerprints directly to the FBI, which processes the requests essentially as described above, assembles record components, as necessary, including obtaining records from NFF States, as appropriate, and provides an appropriate record response to the requesting Federal agency.

**Benefits of NFF participation**

For repositories that participate in the National Fingerprint File (providing records in response to III requests for both criminal justice and noncriminal justice purposes), there will be additional benefits — for these repositories and the FBI.

**—Duplicate files eliminated**

Maintenance of duplicate State and Federal files for offenders from these States will be discontinued. The State repositories will be relieved of the burden of submitting second and subsequent arrest fingerprints and charge/disposition information to the FBI, and the FBI will be relieved of the burden of maintaining State offender files for these States. This may free personnel and resources that can be applied to other programs to further improve Federal and State criminal record files. The FBI intends to reinvest cost savings resulting from III implementation in new technology to improve the speed and accuracy of fingerprint processing and to reduce record response times.

**—Uniform dissemination standard**

Full implementation of the III system will establish a single uniform standard governing the interstate exchange of criminal history record information for purposes of noncriminal justice dissemination. This standard will replace the varied and sometimes conflicting standards set out in current Federal and State laws. At the same time, however, State repositories receiving full criminal history records from other State repositories or the FBI will be able



to screen these records and delete any information that cannot be released for intrastate purposes under their own dissemination laws.

### —Faster response times

Some noncriminal justice users will enjoy faster response times, since the repositories in their States will receive automated record responses from the FBI rather than the mailed responses that are now provided.

### Burdens of III participation

There are some new burdens to the States associated with participation in the III system. Most of the States that are not now participating will need to upgrade the technical capability of their repositories in order for them to be able to interface with III and achieve required system support levels. This work is in progress in most of these States. In addition, there are some modest start-up costs for system software and other changes necessary for the basic III interface.

Once full participation begins, the repositories assume increased responsibilities for providing records in response to out-of-state inquiries that are now serviced by the FBI — both criminal justice and noncriminal justice inquiries. However, since many criminal justice responses are already handled electronically and since the volume of noncriminal justice record responses is low, these new burdens should not be significant in States that have efficient systems.

### Expected overall impact

On balance, full implementation of the III system, including implementation of the NFF, is expected to result in significant improvements in the quality of the information available through the system, increased system security and an overall long-term reduction of costs for both the FBI and the State repositories.

### Section 4: The proposed III compact

This section discusses a proposed interstate and Federal-State compact that would implement the III system, including a look at:

- Why such a compact is necessary;
- The emergence of the III compact concept; and
- The major provisions of the proposed III compact.

### Background

Full participation in the III system will require most of the States to modify their existing laws and policies governing the availability of criminal history records for noncriminal justice purposes, in order to be able to meet the proposed interstate standard on record availability. In addition, Federal and State officials recognize a need for the FBI and the participating State repositories to be formally committed to long-term participation in a decentralized system.

When decentralization is accomplished<sup>131</sup> and State criminal justice agencies cease submitting charge and disposition information to the FBI, the FBI's files of State offenders, which now provide the basis for national criminal record searches, will be essentially eliminated. The participating State repositories will become the only sources of complete and up-to-date information on State offenders and some way must be found to ensure that they will continue to make appropriate information available to authorized noncriminal justice users in other States and to authorized Federal agencies. In addition, there is a need for the establishment of a policymaking council to provide policy direction for the use of the III system for noncriminal justice purposes.

### Emergence of the III compact

Although these goals could possibly be realized through the enactment of Federal legislation, uniform State laws or independent State legislative action, there has been a strong consensus almost since the emergence of the III concept that favors the use of an interstate/Federal-State compact to implement the system.

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<sup>131</sup> Operationally, decentralization occurs for a State when it agrees to abide by the rules of the National Fingerprint File as set out in the III compact.

### —Compact advantages

The primary advantages of a compact are as follows:

- It must be ratified in identical form by all parties and, after ratification, no party can unilaterally amend it.
- Ratifying parties can withdraw from the compact only through the same formal action used for ratification, a feature that provides some assurance of long-term participation by ratifying parties.
- Since compacts take precedence over conflicting State or Federal laws and since the compact authorizes the State repositories to provide record responses for all authorized III purposes, ratification of the compact would have the effect of providing the repositories with needed interstate record dissemination authority in those cases where such authority is now lacking under State law.

### —Compact development status

Work on a compact to implement the III system has been underway for over five years, with input from Federal and State officials and from numerous organizations representing State and Federal interests. On June 4, 1992, the FBI Director approved a draft compact recommended by the NCIC Advisory Policy Board and endorsed by SEARCH, The National Consortium for Justice Information and Statistics. On

October 29, 1992, the Attorney General approved this compact proposal and recommended its use as the base document for ratification by the States and the Federal government.<sup>132</sup>

### Compact provisions

Major provisions of the proposed "Interstate and Federal-State Compact on the Exchange of Criminal History Records for Noncriminal Justice Purposes"<sup>133</sup> include the following:

- The compact would bind the FBI and ratifying States to participate in the noncriminal justice access program of III in accordance with the compact and established system policies;
- Authorized users would be the same as those currently authorized to obtain records from the FBI's files;
- Participating State repositories would be authorized and required to make all unsealed criminal history records available in response to authorized noncriminal justice requests;
- All noncriminal justice access to the system would be through the FBI and the State repositories and would be based upon fingerprint identification of record subjects to ensure positive identification;

- Release and use of information obtained through the system for noncriminal justice purposes would be governed by the laws of the receiving States and the receiving repositories would be required to screen record responses and delete any information that cannot legally be released within the State; and
- The compact would establish a compact council, comprised of Federal and State officials and other members representing user interests, to establish operating policies for noncriminal justice uses of the III system.

The proposed compact is expected to be the subject of congressional hearings during late 1993 or early 1994.<sup>134</sup> Ratification action in some States may also begin during 1994. Ratification of the compact has not yet been made a condition of State participation in III, but it is expected that all participating States will ratify the compact, since, in most States, it will provide record dissemination authority now lacking under State laws.

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<sup>132</sup>The proposed compact is included in this document as Appendix 21.

<sup>133</sup>The proposed compact governs only the use of the III system for noncriminal justice purposes. Use of the system for criminal justice purposes, which has not been controversial or problematic, is to be governed by written agreements among III parties.

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<sup>134</sup>The Congress must ratify the compact to authorize Federal participation, that is, participation by the FBI. In addition, under Article I of the Constitution, the Congress must formally consent to entry into the compact by the States, since the compact deals with subjects of Federal interest.



# Chapter VI: Federal initiatives and criminal history records

This chapter looks at major national initiatives that will affect how criminal history records are maintained and used.

**Section 1: FBI system upgrades**, discusses the FBI's comprehensive program to upgrade its identification and information services.

**Section 2: Federal database for identifying felons**, describes efforts to develop a national database that would identify felons who attempt to purchase firearms.

**Section 3: Federal grant programs and related initiatives**, identifies criminal history record grant programs administered by the U.S. Department of Justice, as well as national initiatives that involve criminal history records.

**Section 4: The Brady Bill**, reviews the status and provisions of the Brady Handgun Violence Protection Act of 1993, which would impose a waiting period for all handgun purchases.

## Background

The Federal government plays a principal role in criminal history record information policies and practices. As described in Chapter V, the FBI's files of fingerprints and criminal history records are and will continue to be a critical part of the Nation's criminal history record system. In addition, Federal noncriminal justice agencies, principally the military services and Federal intelligence agencies, are the largest consumers of criminal history record information.

The Federal justice assistance grant programs also contribute to the Federal government's central role in the Nation's criminal history record system. The U.S.

Department of Justice, through the Bureau of Justice Statistics (BJS), the Bureau of Justice Assistance (BJA) and other agencies of the Office of Justice Programs (OJP), annually provides millions of dollars in grants to State and local agencies for support and enhancement of criminal history record systems and for improvement of criminal history record data quality.

In addition, the Congress has enacted broad statutory requirements relating to criminal history records and data quality applicable to State and local agencies receiving Federal grants; and the U.S. Department of Justice, originally through its Law Enforcement Assistance Administration and, after its demise in 1979, through BJS and BJA, has issued regulations governing the collection, storage and

dissemination of criminal history record information by State and local agencies.

In the past few years, the Federal government has launched several new initiatives that are also having a material effect on how criminal history records are maintained and used at the local, State and Federal levels. This chapter looks at the most important of these initiatives.

## Section 1: FBI system upgrades

The FBI currently is well along in a comprehensive program to upgrade and revitalize its identification and information services capabilities.

This section looks at these FBI initiatives:

- IAFIS;
- The new CJIS Division;
- NCIC 2000; and
- Additional short-term goals.

## IAFIS

A key part of this program, the Integrated Automated Fingerprint Identification System (IAFIS), was briefly described in Chapter IV. IAFIS will include FBI facilities for automated storage and search of arrest fingerprints, as well as telecommunication facilities for the exchange of fingerprint images and related data with State identification bureaus. It will include a capability for State identification bureaus to *submit* electronic arrest fingerprints, receiving in return an FBI determination of identification or

nonidentification, and also a capability for State identification bureaus to *search* the FBI files, receiving in return fingerprint images of likely identification candidates for a State determination of identification or nonidentification. All communication of fingerprint image data will be conducted using a new national standard format, which can also be adopted by the States to link State identification bureaus with local arrest booking agencies.

### CJIS Division

Another key part of the FBI's modernization program is the relocation of its new Criminal Justice Information Services (CJIS) Division from FBI headquarters in Washington, D.C., to expanded and improved facilities in Clarksburg, West Virginia. The move, which is expected to begin in 1995, is the most costly item on the Nation's criminal record improvement agenda — estimated at about \$600 million in capital investment over the next four years, including \$200 million for the new building in West Virginia and \$400 million for its automated equipment and systems.<sup>135</sup>

### NCIC 2000

Another FBI initiative, called "NCIC 2000," will upgrade the National Crime Information Center's telecommunications system and its hardware to permit the paperless exchange of information. In addition, NCIC will

be able to handle graphic information in a paperless imaging format. This graphic information will include mug shots, tattoos and signatures of offenders.<sup>136</sup>

### Short-term goals

In connection with these upgrade initiatives, the FBI has announced the following short-term goals that are relevant to its criminal history record improvement program:

- To revitalize the identification process;
- To develop/deploy NCIC 2000;
- To develop a user participation plan;
- To develop data quality auditing standards and policies;
- To create a public awareness program; and
- To develop and implement a strategy for assisting States and other users in creating linkages to the FBI's automated systems.<sup>137</sup>

## Section 2: Federal database for identifying felons

### Background

Federal law prohibits persons convicted of felony offenses and individuals who fall into certain other categories from purchasing

firearms.<sup>138</sup> Recognizing that the Federal government lacked any effective program for checking the eligibility of a firearms purchaser, the Congress, in the Anti-Drug Abuse Act of 1988, directed the Attorney General to "develop a system for the immediate and accurate identification of felons who attempt to purchase firearms."<sup>139</sup> The statute further directed that the Attorney General:

- (1) "shall report to the Congress a description of the system and a plan (including cost analysis of the proposed system) for implementation of the system . . ."; and
- (2) "shall begin implementation of the system 30 days after the report to the Congress."

In response to this directive, the Attorney General appointed a Task Force on Felon Identification in Firearms Sales to identify options for the development of a felon identification system. The task force's final report, issued in October 1989, identified several options for systems to identify felons who attempt to purchase firearms, but made no specific recommendations.<sup>140</sup>

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<sup>135</sup> U.S. Congress, Office of Technology Assessment, *The FBI Fingerprint Identification Automation Program: Issues and Options, Background Paper*, OTA-BP-TCT-84 (Washington, D.C.: Government Printing Office, November 1991) p. 9.

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<sup>136</sup> Jennifer Jones, "FBI's Christensen Merges Criminal ID Systems" *Federal Computer Week* (Feb. 1, 1993) p. 29.

<sup>137</sup> William S. Sessions, "Criminal Justice Information Services: Gearing Up For the Future," *FBI Law Enforcement Bulletin* (February 1993) p. 3.

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<sup>138</sup> 18 U.S.C. § 922(g)(1); and §6213(c).

<sup>139</sup> Section 6213 of the Anti-Drug Abuse Act of 1988, P.L. 100-690, 102 Stat. 4181 (1988).

<sup>140</sup> Firearms Report.

The Attorney General forwarded his report to the Congress on November 20, 1989.<sup>141</sup> The report transmitted the Task Force's final report and recommended a four-part program to enhance efforts to stop firearms sales to felons.

This section looks at this four-part system, including:

- Telephone checks;
- Felon database;
- Enhancement of the FBI's record system; and
- Monitoring advances in biometric technology.

### Telephone checks

The Attorney General's first recommendation, and the underpinning for the plan for a national program to identify felons who attempt to purchase firearms, is establishment of a system for point-of-sale approval of firearms purchasers through telephone checks.<sup>142</sup>

This program is envisioned as a cooperative, Federal/State system that requires gun dealers to obtain telephone clearance from designated law enforcement agencies at the time of firearm sales.

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<sup>141</sup> Letter from Attorney General Richard Thornburgh to the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives. See also, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Attorney General's Program for Improving the Nation's Criminal History Records and Identifying Felons Who Attempt to Purchase Firearms: Overview* (Washington, D.C.: Government Printing Office, March, 1991). (Hereafter, Attorney General's Program.)

<sup>142</sup> Attorney General's Program, pp. 1-3.

The specific elements of the system would include an immediate telephone check of automated criminal history records by gun dealers through a designated law enforcement agency and a secondary fingerprint-based verification procedure for all individuals who are rejected after the initial telephone check.<sup>143</sup>

The gun dealer would require the prospective purchaser to show two pieces of identification, at least one of which would be required to have a current photograph. The gun dealer would telephone the designated State law enforcement agency using an identification code to verify his identity. The State law enforcement agency would use existing telecommunications systems to check the master name index of the State repository and, if necessary, the Interstate Identification Index, both of which presumably would be flagged to indicate individuals who have felony conviction records maintained at the State or Federal level. The law enforcement agency would also access State and Federal wanted persons files.

The Attorney General's program recognizes that, at least initially, some individuals who are qualified to purchase firearms may be designated by the system as unqualified because the databases that will be accessed are not accurate and complete and do not utilize effective systems for flagging felony convictions. In all cases where the sale is denied, however, the applicant would have an opportunity to be fingerprinted and to request a complete national background check.<sup>144</sup>

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<sup>143</sup> Firearms Report, p. 26.

<sup>144</sup> Ibid.

The report presenting the Attorney General's program notes that, "It is anticipated that as technological advances are made and as technical and policy issues are resolved, alternative methods for identifying gun purchasers, for transmitting the data, and for protecting record system integrity will be considered."<sup>145</sup>

### Felon database

The second part of the Attorney General's program directs the FBI to establish a complete and automated database of felons who are prohibited from purchasing firearms.

As a part of this initiative, the Attorney General directed the FBI, in concert with BJS, to issue voluntary standards for State and local criminal justice agencies with respect to improvements in their criminal history record systems. The Attorney General also directed that BJA, through BJS, provide \$9 million in grant funds in each of the three fiscal years 1990 through 1992, to be made available to the States to improve criminal history record information, to identify convicted felons, and to comply with the FBI/BJS voluntary reporting standards.<sup>146</sup> That grant program and the voluntary reporting standards are discussed in Section 3 of this chapter.

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<sup>145</sup> Attorney General's Program, p. 3.

<sup>146</sup> Ibid., p. 2.

## **FBI record system enhancement**

The Attorney General directed the FBI to enhance its own criminal history record systems in two ways:

- (1) The Bureau was directed to eliminate a backlog of fingerprint cards and dispositions submitted by State agencies that have not yet been processed and entered into the FBI system.
- (2) The Bureau was directed to automate approximately 8.8 million manual criminal history records relating to individuals born after 1929, but arrested for the first time prior to July 1, 1974. In fiscal year 1992, the FBI received an additional appropriation of \$12.5 million and 487 additional positions, dedicated, at least in part, to these two initiatives.<sup>147</sup>

## **Advances in biometric technology**

The Attorney General also directed the FBI to monitor advances in the use of biometric technology,<sup>148</sup> particularly the live-scanning of fingerprints.

The Attorney General's program recognizes that in order to establish an effective point-of-sale system for screening firearms purchasers,

the State repositories will have to be able to provide accurate, complete and timely criminal history record information. As discussed in more detail in Chapter II, many States are not yet able to do this. The Attorney General's program recognizes this shortcoming.<sup>149</sup>

## **Section 3: Federal grant programs and related initiatives**

This section looks at:

- The BJS Criminal History Record Improvement (CHRI) Program;
- The BJA block grant set-aside program;
- A law requiring States to report alien convictions to the Immigration and Naturalization Service; and
- Voluntary reporting standards promulgated by the FBI and BJS.

### **BJS criminal history record improvement program**

The task force appointed by the Attorney General to identify options for the establishment of a national felon identification system cited the lack of complete and accurate criminal history records, at both the State and Federal levels, as one of the most significant impediments to the implementation of a point-of-sale system for the identification of felons who attempt to purchase firearms.

The task force recognized, moreover, that incomplete and inaccurate criminal history records frustrate not only attempts to identify felons, but also the ability of judges to make informed bail and pre-trial release decisions, the ability of prosecutors to charge repeat offenders under tough career criminal statutes, and the ability of judges and probation officers to make intelligent sentencing and post-confinement supervision decisions based on a defendant's criminal history record.

As noted, one of the major components of the Attorney General's plan to develop a nationwide system to identify felons who attempt to purchase firearms was the announcement that \$9 million in discretionary grant funds authorized under the Anti-Drug Abuse Act of 1988 would be allocated in each of the fiscal years 1990, 1991 and 1992 for grants to the States for the specific purpose of improving and updating their criminal history record information systems. The Attorney General directed the Bureau of Justice Statistics to administer this \$27 million Criminal History Record Improvement (CHRI) Program.

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<sup>147</sup> York Testimony.

<sup>148</sup> Biometric identification technologies measure a unique and unchanging physiological or behavioral characteristic for purposes of personal identification. Examples include fingerprinting, DNA tissue typing, retinal scanning and signature dynamics.

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<sup>149</sup> Attorney General's Program, p. 4.

### **—Purposes for using grants**

In its program announcement, BJS identified five purposes for which Federal grants to the States could be used:

- (1) Identifying individuals in State criminal history record systems who have been convicted of felony offenses;
- (2) Improving the reporting of disposition data to State repositories;
- (3) Increasing the automation of State criminal history record systems;
- (4) Meeting the voluntary FBI/BJS reporting standards (discussed later in this section); and
- (5) Making felony conviction information readily accessible to appropriate Federal and State agencies.<sup>150</sup>

### **—Data quality, system improvement strategies**

BJS identified a number of proven data quality and system improvement strategies and authorized States to use CHRI grant funds to implement these strategies.

Specifically, the BJS guidelines authorized funds for the following types of programs:<sup>151</sup>

- Developing systems to identify convicted felons through an examination of the subject's automated or manual criminal history record and to include a felony "flag" in such records;
- Developing programs and procedures to meet the FBI/BJS voluntary reporting standards for identifying convicted felons;
- Designing systems to improve reporting to the State central repositories of all arrests, dispositions and other related criminal justice information;
- Ensuring a higher degree of criminal history automation by implementing State master name indexes, including the placement of felony conviction identifiers in such indexes;
- Ensuring a higher degree of criminal history automation by establishing a computerized criminal history (CCH) record system, increasing the number of individuals recorded in existing systems, and improving the quality and timeliness of criminal history records;
- Developing procedures to participate in the Interstate Identification Index system;
- Conducting baseline audits of criminal history record systems to assess existing data quality levels, identify problem areas,

- and establish a basis for evaluating the success of data quality improvement programs;
- Upgrading existing data systems to meet improved data quality requirements by enhancing hardware such as disks, printers and communications lines; and
- Coordinating activities under this program with the implementation of the Immigration and Naturalization Service's new criminal records reporting program.

### **—Status of the program**

All \$27 million in funding has been awarded under the BJS CHRI grant program, with every State plus the District of Columbia, American Samoa and the Northern Mariana Islands participating (all are referred to as "States" in this program review).<sup>152</sup> Twenty-three of the participating States have used at least some of their CHRI grant funds to establish a felony file or flag. Thirty-one of the participating States have used the Federal funding to assist in automating their criminal history systems. Of these, seven States that maintained essentially manual systems prior to the grant program are using grant funds to implement automated criminal history record systems.<sup>153</sup> Four States have used grant funds to implement live-scan fingerprinting and four have used the funds to install or upgrade AFIS systems.

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<sup>150</sup>U.S. Department of Justice, Bureau of Justice Assistance and Bureau of Justice Statistics, "Improvement of Criminal History Record Information and Identification of Convicted Felons: Notice of Program Announcement," *Federal Register* 55 (May 23, 1990) pp. 21350-51.

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<sup>151</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Attorney General's Program for Improving the Nation's Criminal History Records: Bureau of Justice Statistics Implementation Status Report* (Washington, D.C.: Government Printing Office, February 1992) pp. 2-3.

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<sup>152</sup>Status information provided by the Bureau of Justice Statistics, U.S. Department of Justice.

<sup>153</sup>American Samoa, District of Columbia, Maine, New Mexico, Tennessee, Vermont and West Virginia.



Nine States have used grant funds to upgrade their repositories in order to be able to participate in the Interstate Identification Index system. Twenty-five States have used grant funds to implement electronic data sharing interfaces between the repository and reporting agencies or between agencies. Thirty States have used grant funds to reduce backlogs of unprocessed disposition reports or fingerprint cards, or to obtain unreported arrests or dispositions.

Fourteen States have used the Federal funding, in part at least, to perform baseline audits or user needs assessments. Nine States have used grant funds to train repository personnel or other criminal justice personnel. Ten States used grant funds to standardize repository processing procedures.

The BJS CHRI grant program is currently being evaluated in depth, but it is already clear that, by almost any measure, the program was an important success.

### **BJA block grant set-aside program**

The Congress also recognized the importance of improving the quality and completeness of State criminal history record systems by including a provision in the Crime Control Act of 1990 that requires each State to set aside at least five percent of its Edward Byrne Memorial State and Local Law Enforcement block grant monies for the improvement of criminal justice records.<sup>154</sup> The improvements may include the following:

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<sup>154</sup> Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4850 (codified at 42 U.S.C. § 3759(a)).

- Completion of criminal histories to include final dispositions of all felony arrests;
- Full automation of all criminal history and fingerprint records; and
- Increasing the frequency and quality of criminal history records sent to the FBI.

### **—Fund guidelines**

BJA, which administers the Byrne grant program, has issued guidelines for the expenditure of the five-percent set-aside funds.<sup>155</sup> The guidelines require every State to take the following actions before spending any of its set-aside funds:

- Establish a criminal justice records improvement task force;
- Conduct an assessment of the completeness and quality of criminal history records within the State;
- Identify the reasons why criminal history records are incomplete or inaccurate; and
- Develop a records improvement plan, which must be approved by BJA.

The five-percent minimum set-aside applies to funds appropriated in fiscal year 1992 and all subsequent yearly formula grants awarded under the Byrne grant program. Given the fiscal year 1992 appropriation of approximately \$420 million for Byrne program

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<sup>155</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Guidance for the Improvement of Criminal Justice Records* (Washington, D.C.: Government Printing Office, December 10, 1991) and *Addendum to the Guidance for the Improvement of Criminal Justice Records* (January 8, 1992).

formula grants, the States must allocate collectively a minimum of \$21 million of their 1992 awards to criminal history record improvement efforts.

BJA's guidelines provide that set-aside funds may be used for other innovative purposes, such as the development of law enforcement incident-based reporting systems. The Director of BJA, at the request of a State, may waive the five percent set-aside upon a finding, supported by an independent audit, that the quality of the State's criminal history records meets standards set out in the guidelines.

### **Reporting alien convictions to INS**

The Immigration Act of 1990 requires that each State, as a condition of receiving formula funds under the Edward Byrne Memorial law enforcement grant program, must implement procedures to provide the Immigration and Naturalization Service (INS) with certified copies of criminal history records of aliens who have been convicted of violating the criminal laws of the State.<sup>156</sup> The records must be provided to INS within 30 days of the date of conviction, and the State may not charge a fee for such records.

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<sup>156</sup> Immigration and Nationality Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (November 29, 1990), which amended § 503(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (codified as 42 U.S.C. § 3753(a)(11)).

The reporting provision in the 1990 Immigration Act was designed to assist both INS and State and local governments in dealing with criminal aliens. For INS, the provision will assist in the prompt identification of aliens who have committed offenses for which they can be deported. INS estimates that more than 10 percent of the inmates currently in State prisons are foreign-born. Once released from prison, these offenders may be deported, thus reducing the likelihood of recidivist behavior in this country. The States will also save court and correctional supervision costs as a result of the deportation of alien offenders who are convicted but not yet sentenced.

In 1991, the Congress further amended the Immigration Act to reduce the reporting burden on State and local law enforcement agencies imposed by the 1990 Act. As amended, the law now permits the States to provide INS initially with a notice of the conviction of a suspected alien and to provide a certified copy of the conviction record later, if requested by INS.<sup>157</sup> The amendment also permits the States to provide copies of conviction records in the most convenient format to the States, ranging from paper records held by the courts to electronic documentation maintained by the State central repositories.

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<sup>157</sup> H.R. 3049 — The Miscellaneous and Technical Immigration and Naturalization Service Amendments Act of 1991, amending § 503 (a)(11) of the Omnibus Crime Control and Safe Streets Act of 1968, as added by § 507 of the Immigration and Nationality Act of 1990 (December 18, 1991).

In addition, BJA and INS have agreed to a two-phase implementation process. The first phase targets serious offenders — that is, those sentenced to jail or prison — and must be implemented immediately. The second phase requires the reporting of conviction records for all alien offenders. The States are required to collect and provide information about the offender's place of birth (and citizenship, if available) to determine alien status. The INS, however, will retain responsibility for investigating and verifying alien status.

### **FBI/BJA voluntary reporting standards**

The Attorney General's recommendations to the Congress regarding the development of a system for the identification of felons who attempt to purchase firearms included an announcement that the FBI, in conjunction with the Bureau of Justice Statistics, would develop voluntary standards to encourage the States to improve disposition reporting and otherwise improve their criminal history records.

In making this announcement the Attorney General noted that the current state of criminal history records among the States was not sufficiently advanced to facilitate the development of a national system for the immediate and accurate identification of felons:

No one list of felons exists. In addition, many of the criminal history records maintained by law enforcement are either out of date or incomplete, or both. Finally, current records often contain arrest information without notification of a final disposition.<sup>158</sup>

After publication of a draft of the voluntary standards in March 1990 and review by the FBI's Advisory Policy Board, SEARCH and other interested organizations, the FBI and BJS published the final "Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information" on February 13, 1991.<sup>159</sup> The complete text of the standards is set out in Appendix 9.

In brief, the standards:

- Set minimum requirements for the content of arrest and disposition reports submitted to the repositories and to the FBI, and establish minimum reporting time frames;
- Provide for the maintenance of fingerprints to support all criminal history records maintained by the repositories and for the submission of fingerprints to the FBI for inclusion in the national system;

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<sup>158</sup> Letter from Attorney General Richard Thornburgh to the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives, November 20, 1989.

<sup>159</sup> U.S. Department of Justice, Federal Bureau of Investigation and Bureau of Justice Statistics, "Recommended Voluntary Standards for Improving the Quality of Criminal History Information," *Federal Register* 56 (February 13, 1991) p. 5849.

- Provide for the flagging of felonies in criminal history databases and in disposition reports submitted to the repositories and to the FBI; and
- Provide for annual audits of criminal history record systems and for security measures to protect criminal history record information from unauthorized access, modification or destruction.

The Commentary accompanying the standards states that the intent is to emphasize enhanced recordkeeping for arrests and convictions occurring within the five-year period prior to publication of the standards and in the future. The Commentary notes that the standards are voluntary and that adoption by criminal history record systems nationwide should be viewed as a goal and not as a requirement. Nevertheless, the standards have been widely accepted as representing a consensus of informed thought on the subject of record maintenance and data quality, and compliance with the standards has been incorporated as a major goal of virtually all of the States' criminal history record improvement plans.

## Section 4: The Brady Bill

As this report is published, expectations are high that the 103rd Congress will pass and the President will sign the Brady Handgun Violence Protection Act of 1993. That act would impose a seven-day waiting period for all handgun purchases, during which a criminal history record search could be made to determine whether the purchaser has a felony record. The Act also would require the Attorney General to establish a National Instant Check System (NICS) to facilitate criminal history record checks of firearms purchasers. Once the NICS is operational and accessible within particular States, gun dealers would use the system to initiate point-of-sale checks and the States could opt to dispense with the waiting period requirement.

The NICS would have two key components: (1) on-line participation by the States and (2) improvement in State criminal history record systems to the point where the States could meet an 80 percent disposition reporting rate for arrests occurring within the State within the prior five years. As currently written, the system would have to be in place within 30 months of the enactment of the legislation and every State would have to meet the two substantive criteria set out above within five years.

To help the States comply with these requirements, the Brady Bill would establish a Federal grant program to be administered by BJS to provide funding to the States for the following:

- (1) To create a computerized criminal history record system or improve an existing system;
- (2) To improve accessibility to the NICS; and
- (3) Upon establishment of the NICS, to assist the States in the transmittal of criminal records to the national system.

It is expected that the system for the immediate and accurate identification of felons who attempt to purchase firearms recommended by the Attorney General to the Congress (discussed in Section 2 of this chapter), including the use of III and a point-of-sale telephone check, would provide the basis for any national system established under the Brady legislation, if it becomes law.

**Appendix 1**

“Statutes making possession of a firearm by a convicted felon a criminal offense”

Table 10 from  
*Statutes Requiring the Use of Criminal History Record Information*

**Statutes making possession of a firearm by a convicted felon a criminal offense**

<b>State</b>	<b>Citation</b>	<b>Prohibited weapons*</b>	<b>If previously convicted of</b>	<b>Penalty (or offense level)</b>
United States	18-922(g), 924	Firearm or ammunition shipped in interstate commerce	Any felony**	Up to 10 years or \$5,000 fine, or both
Alabama	13A-11-72, 84	Pistols	Crime of violence or attempt	Up to five years
Alaska	11.61.200	Concealable firearm	Any felony within five years***	Class C felony
Arizona	13-3101, 3102	Firearm or lethal weapon	Violent felony or possession of deadly weapon	Class 6 felony
Arkansas	5-73-103	Firearm	Any felony	Class D felony
California	P. C. § 12021	Firearm	Any felony	Felony
	P. C. § 12560	Firearm	Felony with firearm	Up to \$1,000 fine or one year, or both
Colorado	18-12-108	Firearm or deadly weapon	Burglary, arson or felony involving violence or deadly weapon within 10 years	Class 5 felony; second or subsequent offense is class 4 felony
Connecticut	53a-217	Handgun or electric stun gun	Capital felony or other serious felony	Class D felony (must serve two years)
Delaware	11-1448	Deadly weapon	Felony, crime of violence or certain drug offenses.	Class E felony
District of Columbia	22-3203, 22-3215	Pistol	Felony, pandering, bawdy house or vagrancy	Up to \$1,000 fine or one year, or both.
Florida	790.23	Firearm or electric stun gun	Felony	Second degree felony
Hawaii	134-7(b), (f)	Firearm or ammunition	Crime of violence or drug trafficking	Class B felony
Illinois	38-24-1.1	Firearm, ammunition or other dangerous weapon	Any felony	Class 3 felony
Iowa	724.26	Firearm or offensive weapon	Any felony	Aggravated misdemeanor
Kansas	21.4204	Firearm with barrel under 12"	Any felony within five years	Class D felony
Kentucky	527.040	Handgun	Any felony	Class D felony
Louisiana	14:95.1	Firearm	Enumerated serious felonies within 10 years	\$3,000-5,000 fine and three to 10 years without probation or parole
Maine	15-393	Firearm	Felony or any offense with dangerous weapon or firearm	Class C crime

\* The statutes uniformly criminalize owning or possessing specified, prohibited weapons. Some statutes also prohibit buying, concealing, transporting, carrying or using or intending to use such weapons.

\*\* The Federal law defines "felony" as a crime punishable by imprisonment for more than one year.

\*\*\* The statutes that apply only to crimes committed within specified time periods prior to the new offense usually calculate the time from the date of the earlier crime or the date of release from supervision resulting from any sentence imposed for the earlier crime, whichever is later.

**Statutes making possession of a firearm by a convicted felon a criminal offense**

<b>State</b>	<b>Citation</b>	<b>Prohibited weapons*</b>	<b>If previously convicted of</b>	<b>Penalty (or offense level)</b>
Maryland	Art. 27 § 445(c)	Handgun	Crime of violence, weapon violation or drug violation	Misdemeanor. Up to \$5,000 fine or three years, or both
	Art. 27-374, 375	Machine gun	Crime of violence	Felony. Up to 10 years
Minnesota	624.713	Pistol	Crime of violence within 10 years or drug offense	Felony
Mississippi	97-37-5	Deadly weapon	Felony	Felony. One to five years
Missouri	571.070	Concealable firearm	Dangerous felony within five years	Class C felony
Montana	45-8-316	Deadly weapon	Any felony	\$1,000 fine or up to five years, or both
Nebraska	28-1206	Firearm with barrel under 18" or brass knuckles	Any felony	Class IV felony
Nevada	202.360	Firearm	Any felony	\$5,000 fine and one to six years
	202.380	Tear gas bomb or weapon	Felony drug offense or other enumerated serious felonies	Felony
New Hampshire	159:3	Firearm or dangerous weapon	Any felony	Class B felony
New Jersey	2C:39-7	Firearm or other lethal weapon	Enumerated serious offenses or drug offense	Fourth degree crime
New Mexico	30-7-16	Firearm	Any felony within 10 years	Misdemeanor
New York	Pen. Law § 265.01	Rifle or shotgun	Felony or serious offense	Class A misdemeanor
	Pen. Law § 265.02	Firearm	Felony or class A misdemeanor within five years	Class D felony
North Carolina	14-415.1	Handgun or firearm with barrel under 18" or overall length under 26" or any weapon of mass death and destruction	Enumerated felonies and serious offenses within five years	Class 1 felony
North Dakota	62.1-02-01	Firearm	Violent felony within 10 years or any other felony or misdemeanor involving violence or use of firearm or dangerous weapon within five years	Class C felony
Ohio	2923.13	Firearm or dangerous ordnance	Violent felony or drug offense	Fourth degree felony
Oklahoma	21-1283, 84	Concealable firearm	Any felony	Felony

**Statutes making possession of a firearm by a convicted felon a criminal offense**

<b>State</b>	<b>Citation</b>	<b>Prohibited weapons*</b>	<b>If previously convicted of</b>	<b>Penalty (or offense level)</b>
Oregon	166.270	Firearm or enumerated dangerous weapons	Felony involving firearm or switchblade knife within 15 years	Class C felony
Pennsylvania	18-6105, 6119	Firearm	Crime of violence	First degree misdemeanor
Rhode Island	11-47-5	Firearm	Crime of violence	Two to 10 years without probation
South Carolina	16-23-30, 50	Pistol	Crime of violence	Felony
Tennessee	39-17-1307	Firearm, club, knife with blade over 4"	Violent felony or felony with deadly weapon within five years	Class E felony
Texas	Pen. Code § 46.05	Firearm	Violent felony	Third degree felony
Utah	76-10-503	Firearm or dangerous weapon	Crime of violence	Felony (level depends on circumstances)
Virgin Islands	14-2253(a)	Firearm	Felony	Up to 15 years and \$12,000 fine depending on type of weapon
Virginia	18.2-308.2	Firearm or enumerated dangerous weapons	Felony	Class 6 felony
Washington	9.41.040	Pistol or firearm with barrel under 12"	Violent crime, felony with firearm or felony drug offense	Class C felony
West Virginia	61-7-7	Firearm or other deadly weapon	Felony	Misdemeanor. 90 days to a year or fine or both
Wisconsin	941.29	Firearm	Felony	Class E felony
Wyoming	6-8-102	Firearm	Violent felony or attempt	Felony

## **Appendix 2**

“Statutes requiring or permitting prior criminal records  
to be considered in bail decisions”

Excerpt from Table 2, from  
*Statutes Requiring the Use of Criminal History Record Information*



**Statutes\* requiring or permitting prior criminal records to be considered in bail decisions**

*(Note: States which do not have statutes requiring or permitting prior criminal records to be considered in bail decisions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
United States (Federal)	18 USC § 3142(e)(1); (f)1; (g)(3)(A)	Bail considerations may include criminal history and record of appearance; rebuttable presumption of denial of bail if previously convicted of crime of violence or enumerated serious offenses or combination of offenses.
Alabama	Rules Judic. Admin., R. 2	Bail factors shall include evidence of prior convictions.
	Rules Crim. Proc., R. 7.2	Courts may impose conditions of release to secure appearance or to protect the public based upon, among other things, defendant's prior criminal record.
Alaska	12.30.020(c)(8)	Factors affecting conditions of release shall include the person's record of convictions and record of appearance.
Arizona	13-3967(C)	Factors affecting method of release or amount of bail shall include person's record of arrests and convictions and appearance at court proceedings.
	Const., art. II, § 22	Provides for denial of bail for felony offenses committed while on bail for a prior felony offense.
Arkansas	Rule Crim. Proc., R. 9.2	Factors affecting amount of bail shall include person's prior criminal record and history of response to legal process.
California	Pen. Code § 1275	Bail factors shall include defendant's previous criminal record.
Colorado	16-4-101 et seq.	Factors affecting bail amount or denial of bail on grounds of public danger shall include defendant's prior criminal record and record of appearance.
	Const. art. 2, §§ 19, 20	Authorizes denial of bail on grounds of dangerousness for persons charged with crimes of violence committed while on release, parole or probation or who have specified prior felony convictions.
Connecticut	54-63b	Release criteria shall include defendant's prior criminal record and record of appearance. Bail commissioner's report shall include defendant's prior criminal record.
Delaware	11-2105(b)	Bail factors shall include defendant's prior criminal record and record of appearance.
District of Columbia	23-1303	Bail agency report to judicial officer shall include defendant's prior criminal record.
	23-1321(b)	Judicial bail determinations regarding imposition of release conditions shall be based upon, among other things, defendant's record of convictions and record of appearance.
	23-1322	Authorizes pretrial detention to protect public based upon, among other things, defendant's prior criminal history.
Florida	903.046(2)(d)	Bail factors shall include defendant's record of convictions and record of appearance. Prior record of failure to appear renders defendant ineligible for some types of bond.
	907.041	Authorizes pretrial detention to protect public, based upon, among other factors, specified previous convictions, previous violations of release, or commission of a dangerous crime while on probation, parole or release.
Georgia	17-6-1	Prohibits bail, except upon order of Superior Court, of persons charged with enumerated serious felonies who have previously been convicted of such a felony or who committed the new offense while on probation, parole or bail for such a felony.

\*Including constitutional provisions or court rules.

**Statutes\* requiring or permitting prior criminal records to be considered in bail decisions**

*(Note: States which do not have statutes requiring or permitting prior criminal records to be considered in bail decisions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Hawaii	804.3	Rebuttable presumption of danger to community (and denial of bail) if defendant has been convicted of a crime of violence during previous 10 years, or if defendant was on bail, probation or parole for a violent felony charge at time of arrest.
Illinois	38-110-5(a)	Bail factors shall include defendant's record of convictions and delinquency adjudications, and whether defendant is already on bail or under supervision.
Indiana	35-33-8-4	Factors relevant to release on bail (and bail amount) shall include defendant's criminal or juvenile record and record of non-appearance.
Iowa	811.2	Bail considerations shall include defendant's record of convictions and record of appearance or flight.
Kansas	22-2802(4)	Pretrial bail considerations shall include defendant's record of convictions and appearance or non-appearance or flight, and whether defendant is on parole.
Kentucky	431.525	Amount of bail shall be considerate of the past criminal acts of the defendant.
Louisiana	Code Crim. Proc., art. 317	Factors in determining amount of bail shall include the defendant's previous criminal record.
	Art. 317.1	Magistrate setting bail may apply to juvenile court for defendant's juvenile abstract.
Maine	15-1026.4	Pretrial bailsetting official shall consider defendant's criminal record and record of appearance and whether defendant is on probation or parole or other supervision.
	15-1051.2	Same factors shall be considered in post-conviction bail determinations.
Maryland	Art. 27, § 616 1/2(c)	Rebuttable presumption of bail denial for person charged with enumerated serious offenses committed while on bail for prior enumerated serious offenses.
	Art. 27, § 616 1/2(d)	No personal recognizance for person charged with enumerated serious offenses if previously convicted of such an offense.
Massachusetts	276-58	Bail factors shall include defendant's record of convictions and record of failure to appear or flight, and whether defendant already is on bail, parole, probation or other form of supervision.
Michigan	Const., art. 1, § 15	Permits denial of bail for persons charged with violent felonies if convicted of two or more violent felonies within previous 15 years, and persons charged with violent felonies while on bail, probation or parole for previous violent felony.
	765.6	Amount of bail shall reflect the defendant's previous criminal record.
	Const., art. 1 § 15	Bail may be denied for person charged with a violent felony who has been convicted of two violent felonies within previous 15 years or who was already on bail, parole or probation in connection with a violent felony charge or conviction.
Minnesota	Rules Crim. Proc., R. 6.02(2)	Release condition factors shall include defendant's record of convictions and record of appearance or flight.
Mississippi	99-3-18	Release factors concerning a person arrested for a misdemeanor shall include prior arrest record.

\*Including constitutional provisions or court rules.

### **Appendix 3**

“Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals”

Excerpt from Table 5, from  
*Statutes Requiring the Use of Criminal History Record Information*

**Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals**

*(Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
United States (Federal)	28 U.S.C. §§ 994(h)	Provides that sentencing guidelines shall ensure substantial prison terms for persons who commit crimes of violence and have two or more previous felony convictions for crimes of violence or serious drug offenses.
	Sentencing Guidelines §4B1.1	Provides for sentencing of career offenders (as defined above) at the maximum criminal history category level, which substantially increases the maximum and minimum sentences.
Alabama	13A-5-9	Provides for enhanced punishment for persons who commit felonies after committing prior felonies, ranging from one grade level enhancement for persons who have one prior felony conviction to life imprisonment without parole for persons who have three prior felonies and commit another class A felony.
	13A-12-231	Provides for sentencing under the recidivist statute of persons who commit serious drug offenses after one or more prior felony convictions.
	32-5A-191	Repeat DUI offenders. Provides for sentencing to increasingly enhanced fines and jail terms based on number of prior DUI convictions within specified time periods.
Alaska	12.55.155	Provides for sharply enhanced sentencing for aggravating factors, including prior felony convictions or repeated offenses similar to the instant offense.
Arizona	13-604	Dangerous and repetitive offenders. Provides for enhanced sentences for repetitive offenders up to five times the normal sentence, with limited parole eligibility, based upon the seriousness of the offense charged and the number and seriousness of prior offenses.
	13-604.01	Dangerous crimes against children. Provides for enhanced sentences, up to life imprisonment without parole, for persons who commit enumerated offenses against children and who have prior convictions for such offenses.
Arkansas	5-4-501	Provides for sentencing of habitual offenders to enhanced terms, up to life imprisonment for persons with four or more prior felonies, depending on the seriousness of the present offense and the number of prior felony convictions.
	16-90-202	Provides that persons who commit murder, rape, carnal abuse or kidnapping and who have two or more prior convictions for any such offenses shall be deemed habitual criminals and sentenced to life imprisonment, if the death penalty does not apply.
California	Pen. Code 667.7	Provides for enhanced sentences as habitual offenders for persons who commit violent felonies and who have served two or more previous sentences for violent or serious offenses within the previous 10 years.
Colorado	16-13-101	Provides that persons convicted of felonies who have previously been convicted of two felonies within the past 10 years or three felonies at any time shall be adjudged to be habitual offenders and sentenced to 25-50 years (two previous felonies) or life imprisonment (three or more previous felonies), if not sentenced to death.
Connecticut	53a-40	Provides for enhanced sentences for persistent dangerous felony offenders, persistent serious felony offenders, persistent larceny offenders and persistent felony offenders, depending on the offense charged and the number and nature of prior convictions and sentences.

**Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals**

*(Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Delaware	11-4214	Provides for enhanced penalties for persons convicted for the third time of enumerated serious felonies (mandatory life imprisonment if death is not imposed) or for the fourth time of any felony offense (up to life imprisonment).
District of Columbia	22-104a	Provides for enhanced sentences up to life imprisonment for persons convicted for the third time of felony offenses.
Florida	775.084 <i>et seq.</i>	Provides for enhanced penalties (up to life without parole) for habitual felony offenders (two or more previous felonies) and habitual violent felony offenders (previous violent felony conviction). Requires law enforcement agencies to employ enhanced law enforcement management efforts and resources for investigation, apprehension and prosecution of career criminals.
Georgia	17-10-7(b)	Provides that persons convicted of fourth felony must be given maximum term and cannot be paroled.
Hawaii	706-606.5	Provides for enhanced sentences (up to 30 years imprisonment) for persons with prior felonies within specified periods, depending on the seriousness of the charged offense and the number of prior felony convictions.
	706-661, 662	Provides for enhanced penalties (up to life) for persistent offenders (two or more previous felonies) and professional criminals.
	845-1 <i>et seq.</i>	Establishes a career criminal prosecution program to provide additional financial and technical resources for the prosecution of persons with prior convictions of designated types within specified periods.
Idaho	19-2514	Provides for mandatory prison terms of five years to life for persistent violators - persons who have three or more felony convictions.
Illinois	38-33B-1	Provides for mandatory life terms, if death penalty is not imposed, for persons who commit violent offenses and who have two or more prior convictions for violent offenses within 20 years.
Indiana	35-50-2-7.1, -8	Provides for adding eight to 30 years to normal sentences for habitual felony offenders who have two or more prior felony convictions, depending on the crime charged, the nature of the previous offenses and the time period during which they were committed.
	35-50-2-10	Provides for enhanced terms of three to eight additional years for habitual drug offenders - those with two or more drug offense convictions within specified periods.
Iowa	902.8, 9	Provides for mandatory minimum prison terms for persons convicted of designated felonies who have two or more felony convictions.
Kansas	21-4504	Provides for sentences of up to twice the prescribed minimum and maximum sentences for persons convicted for the second time for a felony offense and for up to three times the prescribed minimum and maximum for persons convicted of three or more felonies.
Kentucky	532.080	Provides for enhanced prison terms for persistent felony offenders - those who have one or more prior felony convictions within specified periods. Sentences range from the next highest degree of offense to life, depending on the seriousness of the present offense and the number of prior felonies.

**Appendix 4**

“Statutes providing for upgraded charges for offenders with prior convictions”

Excerpt from Table 3, from  
*Statutes Requiring the Use of Criminal History Record Information*

**Statutes providing for upgraded charges for offenders with prior convictions**

*(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Alabama	13A-12-213	Second offense of simple possession of marijuana is class C felony.
Alaska	11.46.130	Theft of property of value of \$50 - \$500 is class C felony if person has been convicted and sentenced for theft or concealment offenses twice within the previous five years.
	11.46.140	Theft of property of value of less than \$50 is a class A misdemeanor if the person has been convicted and sentenced for theft or concealment offenses twice within previous five years.
	11.46.220	Concealment of stolen merchandise by a person who has been convicted and sentenced for the same offense twice within the previous five years is a class C felony if the value of the property is \$50 to \$500, and is a class A misdemeanor if the property is a value under \$50.
	11.46.484	Criminal mischief involving property valued at \$50 - \$500 is a class A misdemeanor, but if the person has been convicted of criminal mischief within the previous seven years, the offense is a class C felony.
	11.71.010	Drug misconduct is an unclassified felony if the criminal offense is a felony and is part of a continuing series of at least five drug violations undertaken with at least five other persons supervised by the offender.
Arizona	13-1406.01	First offense of sexual assault of a spouse is a class 6 felony; subsequent offenses are class 2 felonies.
	13-3410	Serious drug offenders (those who commit serious drug offenses as part of a pattern of at least three related drug violations) shall be sentenced to life imprisonment.
	13-3415	Consideration of whether an object is prohibited drug paraphernalia shall include, among other factors, any prior drug convictions of person owning or controlling the object.
	28-692.01.E	Person convicted of a second driving under the influence of drugs or alcohol (DUI) violation within 60 months is guilty of a class 1 misdemeanor. A third or subsequent violation is a class 5 felony.
California	Pen. Code § 666	Person convicted of petty theft after previous conviction for theft, robbery or burglary shall be sentenced to up to one year in county jail.
	Pen. Code § 313.4	Person convicted of distribution or exhibition of harmful matter to minor is punishable by up to \$2,000 fine or up to one year in jail or both. Subsequent offense is punishable as a felony by imprisonment in state prison.
	Pen. Code § 314	Indecent exposure is punishable by up to one year in jail. Subsequent offense is punishable as a felony and imprisonment in state prison.
Colorado	12-22-127	First offense of violation of provisions relating to druggists and sale of drugs is a class 2 misdemeanor; second or subsequent offense is a class 6 felony.
	18-12-108	First offense of possession of firearm by convicted felon is a class 5 felony. Second or subsequent offense is a class 4 felony.

**Statutes providing for upgraded charges for offenders with prior convictions**

*(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Connecticut	53a-40	Provides for sentencing of persons with designated prior convictions as (1) a persistent dangerous felony offender (class A felony), (2) a persistent serious felony offender (next most serious degree of felony), (3) a persistent larceny offender (class D felony) or (4) a persistent felony offender (next most serious degree of felony).
Delaware	Senate Bill No. 58, July 1, 1989, Truth in Sentencing Act	Classifies offenses for sentencing purposes, including some offenses upgraded based on prior convictions.
Georgia	16-5-45	Interference with child custody. First offense is a misdemeanor; second offense is upgraded misdemeanor; third offense is a felony.
	16-8-14	Shoplifting. First offense is a misdemeanor; second offense is an upgraded misdemeanor with mandatory fine; third offense is an upgraded misdemeanor with mandatory jail term; fourth or subsequent offense is a felony.
	16-11-126	Carrying concealed weapon. First offense is a misdemeanor; second or subsequent offense is a felony.
	16-11-128	Carrying a firearm without a license. First offense is a misdemeanor; second or subsequent offense is a felony.
Idaho	18-8005	DUI. First offense is a misdemeanor with possible fine and jail term; second offense within five years is a misdemeanor with mandatory jail term; third or subsequent offense within five years is a felony.
Illinois	23-2355	Child endangerment. First offense is a class A misdemeanor; second or subsequent offense is a class 4 felony.
	38-11-14	Prostitution. First and second offenses are misdemeanors; third and subsequent offenses are felonies.
	38-11-20	Obscenity is a class A misdemeanor; second or subsequent offense is a class 4 felony.
	38-12-15	Criminal sexual abuse is a class A misdemeanor; second or subsequent offense is a class 2 felony.
	38-16-1	Theft of property not exceeding \$300 in value is a class A misdemeanor, but if the offender has previously been convicted of theft, robbery, burglary, possession of burglary tools or home invasion, the offense is a class 4 felony.
	38-24-1	Unlawful use of weapons. First offense for carrying or possessing an unlawful weapon is a class A misdemeanor; a second or subsequent violation is a class 4 felony.
	38-28-3	Keeping a gambling place. First offense is a class C misdemeanor; a second or subsequent offense is a class 4 felony.
	38-33A-3	Commission of a felony with a category II weapon is a class 2 felony; a second or subsequent violation is a class 1 felony.
	38-37-1	Maintaining a public nuisance. First offense is a class A misdemeanor; second or subsequent offense is a class 4 felony.
	56 1/2-1406	Controlled substance offenses. First offenses are class A misdemeanors; second and subsequent offenses are class 4 felonies.



**Appendix 5**

“Statutes providing for enhanced sentences for offenders with prior convictions”

Excerpt from Table 4, from  
*Statutes Requiring the Use of Criminal History Record Information*

**Statutes providing for enhanced sentences for offenders with prior convictions**

*(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
United States (Federal)	18-924(c)	Firearms violations. Provides for enhanced sentences for second and subsequent offenses involving crimes of violence or drug trafficking committed with a firearm. First offender gets five years (30 if the weapon is a machine gun or is equipped with a silencer); second and subsequent offenders get 20 years (machine guns or silencer: life without release).
	18-841(h)	Use of explosives to commit a felony. First offense - one to 10 years; second or subsequent offenses - five to 25 years with no suspension or probation.
	28-991 <i>et seq.</i>	Federal Sentencing Guidelines. Provides for sentence enhancements for all except minor offenses based upon seriousness of the offense and prior criminal record.
Alabama	15-18-9	Repeat felony offenders. Second or subsequent class B or C felony offenses are increased by one level of degree; second or subsequent class A felony offenses are punishable by 15 years to life.
	13A-5-49	Capital offenses. Provides that aggravating circumstances supporting death sentence shall include fact that offender has previously been convicted of a capital felony or a violent felony.
	13A-12-231	Drug trafficking. First offense - class A felony; second or subsequent offense is punishable under the habitual felony offender law (13A-5-9).
	20-2-71(a)(3)	Drug offenses- failure to keep required records. First offense - class A misdemeanor; second or subsequent offense - class B felony.
	32-5A-191	DUI. Provides for enhanced penalties for second or subsequent offenses, including a mandatory 60-day jail term for a third offense.
Alaska	12.55.125, .145	Repeat felony offenders. Sets out enhanced presumptive sentences for second and third convictions of various classes, if prior offenses occurred within 10 years.
	12.55.175	Sentencing of felony offenders. Provides that the presumptive sentences for felony offenders may be increased if the offenders have three or more prior felony convictions.
Arizona	13-604	Sentencing of dangerous and repetitive offenders. Provides for enhanced sentences (up to five times the normal sentence) for persons charged with felonies who have prior convictions for felonies.
	13-604.01	Dangerous crimes against children. Provides for enhanced presumptive sentences for persons with prior offenses.
	13-703	Capital offenses. Aggravating circumstances supporting death sentence include prior convictions for capital offenses or violent offenses.
	13.604.02	Offenses committed while on release. Provides for enhanced sentences (up to life without parole sooner than 25 years) for felony offenses committed while on parole, probation or other release following a prior felony conviction.
Arkansas	5-4-604	Capital offenses. Aggravating circumstances supporting death sentence include prior convictions for violent felonies and commission of offense while escaped after sentencing for felony conviction.

**Statutes providing for enhanced sentences for offenders with prior convictions**

*(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Arkansas (cont.)	16-90-201	Repeat felony offenders. Provides for enhanced sentences up to one and one-half times the normal sentence, depending on the number of prior convictions and the seriousness of the new offense.
	20-64-304	Drug offenses. Provides for enhanced penalties for second offenses (up to \$2,000 fine and three to five years) and third offenses (up to \$5,000 fine and five to 10 years).
California	Pen. Code § 190.05	Murder. Provides that a person convicted of second degree murder who has a prior conviction for first or second degree murder shall be sentenced to life without parole or 15 years to life, depending on aggravating or mitigating circumstances.
	Pen. Code § 190.2	First degree murder. Provides that aggravating circumstances supporting death penalty shall include prior convictions for first or second degree murder.
	Pen. Code § 666.5	Felony vehicle theft. Second offense - three to five years.
	Pen. Code § 666.7	Receiving stolen vehicles or parts. Provides for enhanced penalty (up to \$10,000 fine or four years, or both) for third or subsequent offense.
	Pen. Code § 667.5	Violent offenses. Provides for sentence enhancements of three years for every previous prison term served for a violent offense within 10 years.
	Pen. Code § 667.51	Lewd acts with child. Provides for enhanced prison terms for previous offenses.
	Pen. Code § 667.6	Sex crimes. Provides for an enhancement of five years for each prior conviction within 10 years and a 10 year enhancement for each prior prison term served within 10 years.
	Pen. Code § 667.7	Violent offenses. Two prior prison terms for such offenses within 10 years - life with no parole prior to 20 years. Three or more prior prison terms within 10 years - life without parole.
	Pen. Code § 667.75	Drug violations. Provides for enhanced term of life without parole sooner than 17 years if offender has served two or more prison terms for drug offenses within 10 years.
	Pen Code § 667.9, .10	Violent offenses against aged, disabled or underage persons. Provides for a two-year enhancement for each prior conviction for such offenses.
Colorado	18-18-105	Drug trafficking. Provides for a mandatory 20 year prison term for second offense of drug trafficking in or near a school.
Connecticut	53a-46a	Capital offenses. Provides that aggravating factors supporting death penalty shall include two or more prior felony convictions.
	21a-277	Drug offenses. Provides for enhancements for second or subsequent offenses up to 30 years and a \$250,000 fine.
Delaware	11-4209.	Capital offenses. Provides that aggravating factors supporting death penalty shall include a prior conviction for murder, manslaughter or a violent felony.
	16-4763	Drug offenses. Provides for enhanced penalties for second or subsequent offenses based upon the new offense committed.
	16-4764	Drug offenses. Provides for conditional discharge for first offense of possession.

**Appendix 6**

“Statutes authorizing consideration of criminal history in  
correctional classification and supervision”

Table 8 from  
*Statutes Requiring the Use of Criminal History Record Information*, pp. 52-54

**Statutes authorizing consideration of criminal history in  
correctional classification and supervision**

*(Note: States which do not have statutes authorizing consideration of criminal history in correctional classification and supervision are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Alabama	15-22-25	Requires that the board of pardons and paroles shall make a complete investigation of each newly received prisoner and compile a report that must include the prisoner's criminal record.
Alaska	33.30.091	Requires commissioner of public safety to assign prisoners to programs based upon, among other things, the prisoner's record of convictions, with particular emphasis on convictions for sex crimes.
Arizona	13-701	Provides that the presentence report, which includes the offender's criminal history, must be forwarded to the Department of Corrections.
Arkansas	12-27-113(e)	Requires the director of the Department of Corrections to compile a complete record on each inmate including trial, conviction and past history.
	12-29-101	Requires the director of the Department of Corrections to establish a system for classifying prisoners according to department, taking into consideration their records prior to commitment.
California	Pen. Code § 5068	Requires the Director of Corrections to classify a prisoner for program assignment based upon all pertinent circumstances including "the antecedents of the violation of law because of which he or she has been committed."
Florida	921.20	Requires the classification board to compile a classification summary for each prisoner, including "criminal, personal, social and environmental background."
	944.17(5)	Requires the sheriff or other officer delivering an offender to the Department of Corrections to deliver any available presentence reports.
	944.1905	Requires the Department of Corrections to classify inmates pursuant to an objective classification scheme that takes into consideration the inmate's verified history involving intentional violence.
Georgia	42-8-291	Requires that presentence reports (including State and FBI criminal history sheets) shall be delivered with each offender to the Department of Corrections and the Board of Pardons and Paroles.
Hawaii	353-7	Authorizes establishment of a high security correctional facility for high risk inmates, including recidivists.
Idaho	20-224	Requires the Board of Corrections to establish a record on each inmate, including the inmate's previous criminal record.
Illinois	38-1003-8-1	Requires the sheriff delivering a prisoner to the Department of Corrections to deliver the presentence report which must include the inmate's criminal history.
Indiana	35-38-3-5	Requires classification of new inmates as to degree of security and candidacy for home detention based upon, among other things, prior criminal record.
Iowa	901.4	Requires presentence reports, with criminal history records, to be delivered to the Department of Corrections with inmates.

**Statutes authorizing consideration of criminal history in  
correctional classification and supervision**

*(Note: States which do not have statutes authorizing consideration of criminal history in correctional classification and supervision are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Louisiana	Code Crim. Proc. art. 875, 876	Requires a presentence report (which includes offender's previous criminal record) to be sent to the division of probation and parole if the offender is committed. If an offender is committed and no presentence report has been compiled, the division must compile one within 60 days.
Maryland	27-691	Requires the Division of Correction to compile a case record for each inmate including previous criminal record and to classify inmates to training, treatment or employment programs on the basis of such case record.
Massachusetts	127-2	Requires the superintendents of correctional institutions to keep full and accurate records on inmates and gives such superintendents access to the State criminal record repository for such purposes.
	127-27	Requires the prosecutor of committed offenders to forward their criminal history records to the Department of Corrections.
Michigan	791.264	Requires the bureau of penal institutions to classify prisoners on the basis of files established by classification committees and requires clerks of court and probation officers to make criminal records available to the classification committees.
Mississippi	47-5-103	Requires classification committee to consider an inmate's criminal and juvenile history in determining work duties, living quarters, rehabilitation programs and privileges.
Missouri	217.305	Requires sheriff delivering a prisoner to the Department of Corrections to deliver prisoner's previous criminal record.
	217.345	Requires the Department of Corrections to establish treatment programs for first offenders.
Nebraska	83-178(1)(d), (2)	Requires the chief executive officer of each correctional facility to establish files for inmates to be used for classification, transfer, parole and other purposes. Each such file must contain the inmate's criminal history record.
Nevada	209.351(2)(d)	Requires the director of the Department of Corrections to establish a system of classification, based upon, among other things, the inmate's record of convictions.
	209.481	Makes eligibility for assignment to honor camp dependent upon, among other things, past criminal history.
New Jersey	30:4-141	Requires the board of managers to obtain and record information about each inmate's "past life," among other things.
	30:4-147	Authorizes inmates between the ages of 15 and 30 to be committed to the youth correctional complex if they have not previously been sentenced to prison.
New York	Cr. Proc. Law § 390.60	Requires copies of presentence reports (which include criminal histories) to be delivered with offenders committed to terms of imprisonment.
Ohio	2929.221	Provides that a person convicted of a third or fourth degree felony may serve the term of imprisonment in a county jail if offender has no prior felony conviction.
Rhode Island	12-19-2	Provides that certain first offenders may be sentenced to work release at a minimum security facility.

**Statutes authorizing consideration of criminal history in  
correctional classification and supervision**

*(Note: States which do not have statutes authorizing consideration of criminal history in correctional classification and supervision are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Rhode Island (cont.)	42-56-20.2	Prohibits eligibility for community confinement if convicted or previously convicted of certain enumerated crimes.
South Carolina	24-13-710	Makes eligibility for supervised furlough dependent on, among other things, previous criminal convictions and sentences.
Texas	Govt. Code § 497.002	Requires the Department of Corrections to classify inmates on the basis of, among other things, criminal histories.
Utah	76-3-404	Requires the Department of Corrections to conduct presentence investigations and prepare reports that must include criminal histories.
Washington	9.94A.110	Requires that presentence reports, which include criminal history information, must accompany offenders committed to the Department of Corrections.
West Virginia	62-12-7, 7a	Requires that presentence reports, which include information on offenders' criminal histories, be delivered to the Department of Corrections.
Wisconsin	972.15(5)	Provides that the Department of Corrections may use presentence reports, which include criminal history information, for correctional classification and parole purposes.
Wyoming	7-13-104	Requires the State board of parole to keep complete records on all prisoners and requires the State criminal record repository to make records available for that purpose.
	7-13-303	Requires the presentence report, which includes criminal history record information, to be forwarded to the penal institution with committed offenders.

**Appendix 7**

“Statutes providing that parole eligibility shall or may be affected by prior convictions”

Excerpt from Table 9, from  
*Statutes Requiring the Use of Criminal History Record Information*



**Statutes providing that parole eligibility shall or may be affected by prior convictions**

*(Note: States which do not have statutes providing that parole eligibility shall or may be affected by prior convictions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Alabama	15-22-27.1	Person convicted of murder or a violent felony resulting in serious injury who has a conviction for a violent felony within previous five years is ineligible for parole.
	15-22-27.2	Person given life sentence for second class A felony is ineligible for parole.
Alaska	33.16.090, .100	Limits eligibility for discretionary parole for persons sentenced to enhanced terms as repeat offenders.
	33.16.110	Provides that the parole board shall consider the presentence report compiled for the sentencing court, including the prisoner's criminal and juvenile history and his previous experience on parole or probation.
Arizona	41-1604.07	Bases rates of earned release credits upon, among other things, prior criminal record.
	13-604	Limits parole eligibility [person must serve a designated number of years before becoming eligible for parole consideration] for dangerous and repetitive offenders, based upon the seriousness of the offense and the number and seriousness of prior offenses.
	13-604.01	Limits parole eligibility for persons convicted of dangerous crimes against children who have prior convictions for such offenses.
	13-604.02	Limits parole eligibility for persons convicted of felonies while on parole, probations or any other form of release.
	31-233.01	Provides that eligibility for release on work furlough shall depend on, among other things, the prisoner's prior criminal record.
	31-233(I)	Prohibits early release (because of overcrowding) of prisoners with prior felony convictions.
	13-1406.01	Limits parole eligibility for persons convicted for a second or subsequent time of sexual assault of a spouse.
Arkansas	16-93-601 thru 610	Establishes parole eligibility depending on date of offense, seriousness of offense and prior criminal record.
California	Pen. Code § 667.7	Limits parole eligibility for habitual offenders based upon number of prior prison terms served for enumerated serious offenses.
	Pen. Code § 667.75	Limits parole eligibility for persons convicted of enumerated drug offenses who have served prior prison terms for drug offenses.
	Pen. Code § 190.05	Provides for life sentence without parole for a person convicted of second degree murder who has served a prison term for murder.
	Pen. Code § 190.2	Provides for life without parole for a person convicted of first degree murder who has a prior conviction for murder.
Colorado	17-22.5-303.5	Establishes parole guidelines that set out aggravating circumstances affecting the length and conditions of parole, including whether the offender was on parole or probation when he committed the crime for which he was committed and the offender has numerous or increasingly serious adult or juvenile convictions.
Florida	947.002, .165	Provides for establishment of objective parole criteria for persons serving parole-eligible sentences based upon the offender's present criminal offense and his past criminal record.
Georgia	17-10-7	Prohibits parole for persons convicted of a felony for the fourth or subsequent time.

**Statutes providing that parole eligibility shall or may be affected by prior convictions**

*(Note: States which do not have statutes providing that parole eligibility shall or may be affected by prior convictions are omitted from the table.)*

<b>State</b>	<b>Citation</b>	<b>Statutory provision</b> <i>(Statutory provisions are summarized or paraphrased.)</i>
Hawaii	706-669	Requires the state paroling authority to establish guidelines for determining minimum terms of imprisonment, taking into account the seriousness of the offense and the offender's prior criminal history.
	706-660.1	Provides for mandatory terms of imprisonment without parole for persons convicted of second or subsequent firearm felony offenses.
Idaho	20-223(b)	Provides that persons serving sentences for sex offenses who have a history of previous sex offenses shall be ineligible for parole.
Illinois	38-1003-3-4	Provides that parole board shall make its determination based upon, among other things, the presentence report (which contains information about the offender's criminal history).
	38-1005-5-3	Provides for sentencing certain offenders to terms of imprisonment without parole based upon prior criminal history.
Indiana	11-13-3-3	Provides that parole decisions shall be based in part upon inmates' past criminal histories.
Iowa	902.8	Habitual offenders not eligible for parole until minimum sentence is served.
	902.11	Person convicted of a forcible felony with a prior violent felony conviction or convicted of a nonforcible felony with a prior forcible felony conviction within previous five years is ineligible for parole until half of maximum sentence is served.
	906.5	Parole board to consider previous criminal history.
Kansas	22-3717(f)	Parole board to consider previous criminal history.
Kentucky	532.045	Prohibits parole for persons convicted of second or subsequent sex offense against a minor.
	439.340	Parole board required to obtain criminal history record of all parole-eligible offenders. Board shall consider previous criminal record in parole decisions.
Louisiana	15:574.4	Portion of sentence that convicted felon must serve before parole eligibility dependent upon numbers of previous felony convictions and whether previous sentence has been served. Parole board shall consider previous criminal record.
	Code Crim. Proc. art. 875, 876	Requires presentence report (with criminal history) to be sent to division of probation and parole with committed offender.
Maryland	27-286, -286D	Limits parole eligibility for persons convicted of repeat drug violations.
	27-643B	Provides for mandatory 25-year term with limited parole eligibility for person convicted of third crime of violence who has served at least one prior prison term for a crime of violence. Provides for life without parole for fourth conviction for a crime of violence.
Massachusetts	127-133B	Person convicted as habitual offender not eligible for parole until half of maximum term is served.
	94C-32H	Person convicted of repeat drug offenses not eligible for parole until mandatory minimum term is served.
Michigan	333.7413	Person convicted of drug trafficking for second or subsequent time sentenced to life without parole.

## Appendix 8

### Sample Criminal History Record Formats

- Florida
- Hawaii
- Utah
- Virginia

**Editor's note:** These criminal history records are actual sample test records provided by these States, and each record appears in its original format.

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## **Appendix 9**

Federal Bureau of Investigation/Bureau of Justice Statistics  
Recommended Voluntary Reporting Standards for Improving the  
Quality of Criminal History Record Information

## Federal Bureau of Investigation/Bureau of Justice Statistics Recommended Voluntary Reporting Standards for Improving the Quality of Criminal Record Information

The following 10 “Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information” were jointly developed by the Bureau of Justice Statistics and the Federal Bureau of Investigation.<sup>1</sup> After adoption of these standards, the functions referred to as FBI Identification (FBI ID) in the standards were taken over by the Criminal Justice Information Services Division of FBI (FBI-CJIS).

1. Every State shall maintain fingerprint impressions or copies thereof as the basic source document for each arrest (including incidents based upon a summons issued in lieu of an arrest warrant) recorded in the criminal history record system.

2. Arrest fingerprint impressions submitted to the State repository and the FBI Identification Division (ID) should be complete, but shall at least contain the following data elements: date of arrest, originating agency identification number, arrest charges, a unique tracking number (if available) and the subject’s full name, date of birth, sex, race and social security number (if available).

3. Every State shall ensure that fingerprint impressions of persons arrested for serious and/or significant offenses are included in the national criminal history records system.

4. All disposition reports submitted to the State repository and the FBI ID shall contain the following: FBI number (if available), name of subject, date of birth, sex, state identifier number, social security number (if available), date of arrest, tracking number (if available), arrest offense literal, court offense literal, and agency identifier number of agency reporting arrest.

5. All final disposition reports submitted to the State repository and the FBI ID that report a conviction for an offense classified as a felony (or equivalent) within the State shall include a flag identifying the conviction as a felony.

6. States shall ensure to the maximum extent possible that arrest and/or confinement fingerprints are submitted to the State repository and, when appropriate, to the FBI ID within 24 hours; however, in the case of single-source states, state repositories shall forward fingerprints, when appropriate, to the FBI ID within two weeks of receipt.

7. States shall ensure to the maximum extent possible that final dispositions are reported to the State repository and, where appropriate, to the FBI ID within a period not to exceed 90 days after the disposition is known.

8. Every State shall ensure that annual audits of a representative sample of State and local criminal justice agencies shall be conducted by the State to verify adherence to State and Federal standards and regulations.

9. Wherever criminal history record information is collected, stored, or disseminated, each State shall institute procedures to assure the physical security of such information, to prevent unauthorized access, disclosure, or dissemination, and to ensure that such information cannot improperly be modified, destroyed, accessed, changed, purged, or overlaid.

10. Every State shall accurately identify to the maximum extent feasible all State criminal history records maintained or received in the future that contain a conviction for an offense classified as a felony (or equivalent) within the State.

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<sup>1</sup>U.S. Department of Justice, Federal Bureau of Investigation and Bureau of Justice Statistics, “Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information,” *Federal Register* 56 (February 13, 1991) p. 5849.

**Appendix 10**

“Overview of State criminal history record systems, 1992”

Table 1 from  
*Survey of Criminal History Information Systems, 1992*

**Table 1. Overview of State criminal history record systems, 1992**

State	Percent of record subjects in master name index	Fully automated master name index	Percent of arrests		System has in database which have <u>final dispositions recorded</u>		System flags subjects with felony convictions	information to identify unflagged felony convictions
			Number of subjects (individual offenders) in <u>State criminal history file</u>	Automated	All arrests	Arrests within past 5 years		
Total			47,307,900	36,404,800				
Alabama	100%	Yes	1,300,000	1,300,000	25%	40%	All <sup>†</sup>	
Alaska	100	Yes	180,500	130,500	84	86	All <sup>††</sup>	
Arizona	100	Yes	631,000	342,600	...	57	All <sup>†</sup>	
Arkansas	100	No <sup>a</sup>	417,600	132,600	...	...	All <sup>††</sup>	
California	100	Yes	4,675,400	3,675,400	...	70	Some <sup>††</sup>	All
Colorado	100%	Yes	575,700	575,700	11%	...	Some <sup>**</sup>	All
Connecticut	100	Yes	648,700	325,600	...	95%		
Delaware	100 <sup>b</sup>	Yes	237,300	158,000	50	62		Some
District of Columbia	100	No <sup>c</sup>	456,100	101,100	...	...	Some <sup>††</sup>	Some
Florida	100	Yes	2,671,700	2,671,700	52	32	Some <sup>**</sup>	Some
Georgia	100%	Yes	1,445,000	1,445,000	54%	45%	All <sup>†††</sup>	
Hawaii	100	Yes	309,600	309,600	87	...	All <sup>†††</sup>	
Idaho	100	Yes	132,300	76,200	...	45	All <sup>†††</sup>	
Illinois	88 <sup>d</sup>	Yes	2,493,200	2,193,200	52	...	All <sup>†††</sup>	
Indiana	100	No <sup>e</sup>	735,800	667,800	30	40-50		
Iowa	100%	Yes	377,000	226,200	90%	90%		All
Kansas	100	Yes	599,600	137,800	...	...	Some <sup>††</sup>	Some
Kentucky	100 <sup>f</sup>	No <sup>g</sup>	530,500	424,500	30	30		Some
Louisiana	100	Yes	1,591,500	579,400	...	...		All
Maine	68	No <sup>h</sup>	300,000	0	90	97		Some
Maryland	100%	Yes	1,050,900	563,200	70%	70%	Some <sup>i</sup>	All
Massachusetts	... <sup>j</sup>	No <sup>k</sup>	2,500,000	2,500,000	95	98		Some
Michigan	100	Yes	939,900	939,900	71	74		Some
Minnesota	100	Yes	232,500	157,500	50	70	Some <sup>l</sup>	All
Mississippi	100	No	350,000 <sup>+</sup>	26,000	20-30	50		
Missouri	100%	Yes	647,700	473,900	50%	65%	All <sup>†††</sup>	
Montana	100	Yes	107,100	107,100	...	...	All <sup>†</sup>	
Nebraska	100	No <sup>m</sup>	124,000	117,000	75	55	Some <sup>††</sup>	
Nevada	100	Yes	102,800	102,800	40	40		All
New Hampshire	100	Yes	253,900	173,900	50	50	All <sup>†</sup>	
New Jersey	100%	Yes	1,187,400	987,400	90%	85%	All <sup>†††</sup>	
New Mexico	100	Yes	201,000	0	15	20		Some
New York	88 <sup>n</sup>	Yes	4,123,500 <sup>o</sup>	3,575,600	63	74	All <sup>†</sup>	
North Carolina	100	Yes	529,800	459,300	87	85	Some <sup>††p</sup>	Some
North Dakota	100	No <sup>q</sup>	212,900	54,200	60	90	Some <sup>†r</sup>	Some
Ohio	100% <sup>s</sup>	No <sup>t</sup>	2,444,400	820,000	...	...	Some <sup>†u</sup>	Some
Oklahoma	100	Yes	600,000	360,000	50%	50%		Some
Oregon	100	Yes	661,800	661,800	...	...	Some <sup>††</sup>	
Pennsylvania	100	Yes	1,414,500	1,414,500	...	65	All <sup>†</sup>	
Puerto Rico	100	Yes	64,100	64,100	71	71	All <sup>††</sup>	
Rhode Island	100%	Yes	186,700	186,700	...	...		
South Carolina	100	Yes	695,900	629,200	71%	80%	Some <sup>††</sup>	All
South Dakota	100	Yes	125,000	70,500	60	60		All
Tennessee	100	No <sup>v</sup>	590,000	165,000	...	...		
Texas	100	Yes	4,277,700	4,277,700	39	...		Some
Utah	100%	Yes	325,000	325,000	50	55	All <sup>††</sup>	
Vermont	100	Yes	130,000	0	95	85		Some <sup>w</sup>
Virginia	100	Yes	874,500	615,900	82	...	All <sup>**</sup>	
Virgin Islands	NA <sup>x</sup>	NA <sup>*</sup>	11,300	0	...	...		
Washington	100	Yes	643,300	643,300	70	68	All <sup>††</sup>	
West Virginia	100%	No <sup>*</sup>	750,000	0	...	75%		
Wisconsin	100	Yes	574,800	393,300	...	...	Some <sup>††</sup>	Some <sup>y</sup>
Wyoming	100	Yes	67,100	67,100	78%	83		Some

### Explanatory Notes for Table 1

The notes below expand on the data in Table 1. The explanatory information was provided by the respondent.

Note: Percentages and numbers reported are results of estimates. Numbers have been rounded to the nearest 100. Percentages have been rounded to the nearest whole number. The figures contained in the column "Number of subjects (individual offenders) in State criminal history file" apply only to the criminal history file, including partially automated files, and do *not* include the master name index. Final dispositions include release by police without charging, declination to proceed by prosecutor, or final trial court disposition.

\* State is fully manual.

. . . Not available.

NA Not applicable.

† Flag is set when arrest information is entered.

†† Flag is set when conviction information is entered.

\*\* Flag is set at both arrest and conviction.

<sup>a</sup>All automated records and approximately 50% of the manual records are contained in an automated master name index (MNI).

<sup>b</sup>Response indicates an increase from 95% reported in 1990.

<sup>c</sup>Traffic and misdemeanor cases are not included in the automated MNI.

<sup>d</sup>Response indicates an increase from 86% reported in 1990.

<sup>e</sup>More arrest information is being placed in the MNI than in 1989 which has resulted in a backlog which should be cleared in 12-18 months. New information is current, but adding the additional information to prior MNI entries has not been completed.

<sup>f</sup>Response indicates an increase from 70% reported in 1990.

<sup>g</sup>The manual file is not in the automated MNI.

<sup>h</sup>Approximately 20,000 names, name derivatives and aliases have been entered into a temporary, abbreviated automated MNI; however, the MNI is not usable at this time for a name search.

<sup>i</sup>The flag is generated on demand when an inquiry is made against the file.

<sup>j</sup>There are 2.5 million records in the criminal history file which is court-based; these records are not on the MNI. There are 760,000 records that are arrest/fingerprint-based; these records are on the MNI.

<sup>k</sup>There are 760,000 records that are automated; a backlog consisting of 80,000 records are not yet on the MNI.

<sup>l</sup>The data field has been created, but the flag is not currently being set.

<sup>m</sup>Adding all records onto the automated MNI is in process.

<sup>n</sup>Manual records with no activity since 1971 are not on the MNI.

<sup>o</sup>The figure represents the number of subjects in the criminal history file; however, 28% of the database consists of civil purpose files.

<sup>p</sup>Most of the current dispositions contain a felony or misdemeanor flag for each offense; however, the programs to flag the identification segment for an inquiry with purpose code "F" have not been developed.

<sup>q</sup>Only those with a date of birth of 1940 and later are included in the automated MNI.

<sup>r</sup>Effective July 1, 1993, the flag is now set at conviction.

<sup>s</sup>Response indicates an increase from 35% reported in 1990.

<sup>t</sup>The automated MNI contains all arrest subjects since 1972.

<sup>u</sup>Only recent additions to the file are flagged.

<sup>v</sup>Respondent is undertaking an on-going data entry program to fully automate the MNI.

<sup>w</sup>Changes in court documents have resulted in not "all" cases having sufficient information to flag felonies.

<sup>x</sup>The Virgin Islands Record Bureau does not have a MNI; only a manual criminal history file is maintained.

<sup>y</sup>Currently some arrest transactions are flagged indicating felony convictions. A felony flag that will appear in the identification segment of the record is currently being developed.

**Appendix 11**

“Number of subjects (individual offenders) in State  
criminal history file, 1984, 1989 and 1992”

Table 2 from  
*Survey of Criminal History Information Systems, 1992*

**Table 2. Number of subjects (individual offenders) in State criminal history file, 1984, 1989 and 1992**

State	Number of subjects in manual and automated files		Number of subjects in manual and automated files, 1992			Percent of automated files		Percent change in total files	
	1984	1989	Total	Manual file	Automated file	1989	1992	1984-89	1989-92
Total	30,367,500 <sup>a</sup>	42,476,400 <sup>b</sup>	47,307,900	10,903,100	36,404,800		77%	40%	11%
Alabama	900,000	1,000,000	1,300,000	0	1,300,000	50%	100%	11%	30%
Alaska	124,400	143,000	180,500	50,000	130,500	86	72	15	21
Arizona	500,400	742,100	631,000	288,400	342,600	39	54	48	-15 <sup>c</sup>
Arkansas	550,100	480,000	417,600	285,000	132,600	0	32	-13	-15 <sup>d</sup>
California	3,600,000	4,500,000	4,675,400	1,000,000 <sup>e</sup>	3,675,400	67	79	25	4
Colorado	336,800	489,000	575,700	0	575,700	100%	100%	45%	18%
Connecticut	50,000	401,400	648,700	323,100	325,600	58	50	703	62
Delaware	206,000	600,000	237,300	79,300	158,000	83	67	191	-60 <sup>f</sup>
District of Columbia	...	427,000	456,100	355,000	101,100	0	22	...	7
Florida	1,651,700	2,427,900	2,671,700	0	2,671,700	95	100	47	10
Georgia	782,000	1,055,000	1,445,000	0	1,445,000	100%	100%	35%	37%
Hawaii	203,600	270,500	309,600	0	309,600	100	100	33	14
Idaho	137,100	105,000	132,300	56,100	76,200	100	57	-23	26
Illinois	1,900,000	2,152,300	2,493,200	300,000	2,193,200	86	88	13	16
Indiana	375,000	670,000	735,800	68,000	667,800	10	91	79	10
Iowa	275,000	300,000	377,000	150,800	226,200	43%	60%	9%	26%
Kansas	400,000	520,000	599,600	461,800	137,800	3	23	30	15
Kentucky	297,000	535,100	530,500	106,000	424,500	72	79	80	-1
Louisiana	261,400	1,449,000	1,591,500	1,012,100	579,400	33	36	454	10
Maine	285,000 <sup>g</sup>	270,000	300,000	300,000	0	0	0	-5	11
Maryland	250,000	649,300	1,050,900	487,700	563,200	69%	54%	160%	62%
Massachusetts	1,740,000	2,260,000	2,500,000	0	2,500,000	21	100	30	11
Michigan	668,800	771,800	939,900	0	939,900	100	100	15	22
Minnesota	143,000	190,600	232,500	75,000	157,500	61	68	33	22
Mississippi	...	350,000	350,000 <sup>+</sup>	324,000	26,000	0	7	...	...
Missouri	503,000	593,000	647,700	173,800	473,900	81%	73%	91%	-32%
Montana	70,700	86,000	107,100	0	107,100	100	100	22	25
Nebraska	180,000	300,000	124,000 <sup>c</sup>	7,000	117,000	40	94	67	-59
Nevada	no repository	31,300	102,800	0	102,800	100	100		228
New Hampshire	135,000	155,000	253,900	80,000	173,900	93	68	15	39
New Jersey	1,000,000	1,090,200	1,187,400	200,000	987,400	77%	83%	9%	9%
New Mexico	...	207,000	201,000 <sup>h</sup>	201,000	0	0	0	...	-3
New York <sup>i</sup>	4,000,000	3,812,100	4,123,400	547,800	3,575,600	82	88	-5	8
North Carolina	307,800	432,800	529,800	70,500	459,300	83	87	41	22
North Dakota	179,500	202,000	212,900	158,700	54,200	21	25	13	5
Ohio	1,641,300	2,315,700	2,444,400	1,624,400	820,000	25%	34%	41%	6%
Oklahoma	...	500,000	600,000	240,000	360,000	33	60	...	20
Oregon	337,600	548,500	661,800	0	661,800	100	100	63	21
Pennsylvania	1,053,300	1,265,800	1,414,500	0	1,414,500	39	100	20	12
Puerto Rico	...	45,400	64,100	0	64,100	100	100	...	45
Rhode Island	...	156,900	186,700	0	186,700	100%	100%	...	19%
South Carolina	383,900	572,900	695,900	66,700	629,200	87	90	49%	21
South Dakota	150,000	144,000 <sup>j</sup>	125,000	54,500	70,500	0	56	-6	-13
Tennessee	...	500,000	590,000	425,000	165,000	0	28	...	18
Texas	3,001,000	3,789,500	4,277,700	0	4,277,700	99	100	26	13
Utah	226,300	430,200	325,000 <sup>k</sup>	0	325,000	77%	100%	90%	-25% <sup>l</sup>
Vermont	100,000	118,000	130,000	130,000	0	0	0	18	10
Virginia	570,000	744,000	874,500	258,600	615,900	56	70	31	18
Virgin Islands	...	...	11,300	11,300	0	...	0	...	...
Washington	275,000	474,100	643,300	0	643,300	100	100	72	36
West Virginia	192,100	650,000	750,000	750,000	0	0%	0%	238%	15%
Wisconsin	371,600	491,000	574,800	181,500	393,300	55	68	32	17
Wyoming	52,100	62,000	67,100	0	67,100	84	100	19	8

Note: The numbers reported are results of estimates. ... Not available.  
 Numbers have been rounded to the nearest 100.  
 Percentages have been rounded to the nearest whole number. Numbers reported in the "Total" and "Automated file" columns include subjects whose records are partially automated, but do not include the master name index.

### Explanatory Notes for Table 2

The notes below expand on the data in Table 2. The explanatory information was provided by the respondent.

<sup>a</sup>This figure does not include the District of Columbia, Mississippi, New Mexico, Oklahoma, Puerto Rico, Rhode Island, Tennessee and the Virgin Islands for which 1984 data was not reported. It also does not include Nevada which did not have a repository in 1984. Except for Massachusetts and Vermont for which corrected data was submitted, the data in this column is taken from Bureau of Justice Statistics, *Technical Report: State Criminal Records Repositories* (October 1985), Table 1. The numbers have been rounded to the nearest 100.

<sup>b</sup>This figure does not include the Virgin Islands for which 1989 data was not reported. Except for Arkansas, Massachusetts, Missouri and Puerto Rico for which corrected data was submitted, the data in this column is taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal History Information Systems* (March 1991), Table 2.

<sup>c</sup>The total number of criminal history files has decreased due to the elimination of deceased records and purged records.

<sup>d</sup>The total number of criminal history files has been decreasing due to purging of old and duplicate records, as well as civil files that were erroneously given criminal identification numbers.

<sup>e</sup>The number of manual records has decreased from 1,500,000 in 1989 due to the purging of older, inactive files.

<sup>f</sup>Decrease in total files is the result of excluding traffic files which were assumed included in the 1989 figure.

<sup>g</sup>Respondent indicated that this figure includes many records which have since been purged because the records contained only non-serious offenses.

<sup>h</sup>Response is based on more accurate information which is now available.

<sup>i</sup>Variations in the figures for 1984, 1989 and 1992 are attributable to a five-year purge project in which 700,000 records were removed.

<sup>j</sup>The number of subjects reported for 1989 included outdated misdemeanor records which were purged when automation of the arrest data began in 1990.

<sup>k</sup>The lower number in 1992 is the result of purging inactive files.

<sup>l</sup>Utah now uses only the automated criminal history file.



**Appendix 12**

“Number of final dispositions reported to State  
criminal history repository, 1983, 1989 and 1992”

Table 3 from  
*Survey of Criminal History Information Systems, 1992*

**Table 3. Number of final dispositions reported to State criminal history repository, 1983, 1989 and 1992**

State	Number of dispositions reported			Percent change	
	1983	1989	1992	1983-89	1989-92
Alabama	...	35,000	192,000		449%
Alaska	16,600	40,800	26,400	146 %	-35
Arizona	59,900	112,500	112,200	88	<-1
Arkansas	4,000	7,000	18,000	75	157
California	590,000	850,000	1,011,300	44	19
Colorado	24,600 <sup>a</sup>	...	...		
Connecticut	110,300	142,900	139,800	30%	-2%
Delaware	20,800	74,000	92,000	256	24
District of Columbia	...	...	13,600		
Florida	171,300	110,000	173,400	-36	58
Georgia	...	260,000	...		
Hawaii	21,800	54,800	56,000	151%	2%
Idaho	...	...	20,000		11
Illinois	...	135,000	149,400		
Indiana	30,900	20,000	44,600	-35	123
Iowa	...	23,000	...		
Kansas	24,700	28,900	41,300	17%	43%
Kentucky	25,200	6,000	...	-76	
Louisiana	19,500	30,000	21,100	54	-30
Maine	15,000	30,000	27,800 <sup>b</sup>	100	-7
Maryland	...	436,600	500,100		14%
Massachusetts	...	...	270,000		
Michigan	54,700	...	307,400 <sup>c</sup>		
Minnesota	24,000	45,000	103,000	88%	129
Mississippi	...	...	...		
Missouri	...	...	...		
Montana	...	9,600	...		
Nebraska	16,200	12,400	25,900	-24%	109%
Nevada	...	20,000	29,700		48
New Hampshire	32,200	...	...		
New Jersey	95,600	200,000	250,000	109%	25%
New Mexico	...	2,600	9,800		277
New York	...	443,000	500,000		13
North Carolina	50,000	60,000	65,000	20	8
North Dakota	2,300	4,000	6,200	74	55
Ohio	40,400	65,000	...	61%	
Oklahoma	...	...	15,000		
Oregon	50,400	...	...		
Pennsylvania	56,600	74,200	219,000	31	195%
Puerto Rico	...	...	...		
Rhode Island	...	...	...		
South Carolina	62,400 <sup>a</sup>	...	...		
South Dakota	...	...	...		
Tennessee	...	...	...		
Texas	113,100	...	...		
Utah	20,000	...	...		
Vermont	...	18,700	...		
Virginia	104,400	141,600	228,100	36%	61%
Virgin Islands	...	...	...		
Washington	41,800	...	...		
West Virginia	12,800	38,000	6,000	197%	-84% <sup>d</sup>
Wisconsin	49,000	58,800	90,800	20	54
Wyoming	13,700	6,000	9,000	-56	50

Note: Final dispositions include release by the police without charging, decline to proceed by prosecutor, or final trial court disposition. Numbers reported are the results of estimates. Numbers have been rounded to the nearest 100. Percentages have been rounded to the nearest whole number. Except for Maine, North Carolina, Pennsylvania and Virginia for which corrected data was submitted, the data in the column for 1983 is taken from Bureau of Justice Statistics, *Technical Report: State Criminal Records*

*Repositories* (October 1985), Table 3. The data in the column for 1989 is taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal History Information Systems* (March 1991), Table 3.

... Not available.

<sup>a</sup>The figure represents the number of dispositions during the fiscal year (July-June) rather than the calendar year 1983.

<sup>b</sup>Since 1989, courts have noted a decrease in caseload, although Uniform Crime Reports show an increase in crime.

<sup>c</sup>The number reported is atypical due to a records improvement project which has resulted in a higher number of dispositions during this period.

<sup>d</sup>The number of reported dispositions has decreased due to personnel shortages.

**Appendix 13**

“Automation of master name index  
and criminal history file, 1989 and 1992”

Table 4 from  
*Survey of Criminal History Information Systems, 1992*

**Table 4. Automation of master name index and criminal history file, 1989 and 1992**

State	Master name index is automated		Criminal history file is automated		Prior manual record is automated if offender is re-arrested	
	1989	1992	1989	1992	1989	1992
Alabama	Yes	Yes	Partial	Yes	Yes	
Alaska	Yes	Yes	Partial	Partial	Yes	Yes
Arizona	Yes	Yes	Partial	Partial	Yes	Yes
Arkansas	Partial	Partial <sup>d</sup>	No	Partial		Yes
California	Yes	Yes	Partial	Partial	No	No
Colorado	Yes	Yes	Yes	Yes		Yes
Connecticut	Yes	Yes	Partial	Partial	Yes	Yes
Delaware	Partial	Yes	Partial	Partial	No <sup>b</sup>	No <sup>b</sup>
District of Columbia	Partial	Partial <sup>c</sup>	No	Partial		No <sup>b</sup>
Florida	Yes	Yes	Partial	Yes	Yes	
Georgia	Yes	Yes	Yes	Yes		
Hawaii	Yes	Yes	Yes	Yes		No <sup>b</sup>
Idaho	Yes	Yes	Yes	Partial <sup>d</sup>		Yes
Illinois	Partial	Yes	Partial	Partial	Yes	Yes
Indiana	Yes	Partial <sup>e</sup>	Partial	Partial	Yes	Yes
Iowa	Yes	Yes	Partial	Partial	Yes	Yes
Kansas	Yes	Yes	Partial	Partial	No	Yes
Kentucky	Partial	Partial <sup>f</sup>	Partial	Partial	Yes	Yes
Louisiana	Yes	Yes	Partial	Partial	Yes	Yes
Maine	No	Partial <sup>g</sup>	No	No		No
Maryland	Yes	Yes	Partial	Partial	...	No <sup>b</sup>
Massachusetts	Yes	Yes <sup>h</sup>	Partial	Yes	Yes	Yes
Michigan	Yes	Yes	Yes	Yes		
Minnesota	Yes	Yes	Partial	Partial	No	No <sup>b</sup>
Mississippi	No	Partial	No	Yes		No
Missouri	Yes	Yes	Partial	Partial	Yes	Yes
Montana	Yes	Yes	Yes	Yes		
Nebraska	Partial	Partial <sup>i</sup>	Partial	Partial	Yes	Yes
Nevada	Yes	Yes	Yes	Yes		
New Hampshire	Yes	Yes	Partial	Partial	Yes	Yes
New Jersey	Yes	Yes	Partial	Partial	Yes	Yes
New Mexico	Yes	Yes	No	No	No	No
New York	Yes	Yes	Partial	Partial	Yes	Yes
North Carolina	Yes	Yes	Partial	Partial	Yes	Yes
North Dakota	Partial	Partial <sup>j</sup>	Partial	Partial	Yes	Yes
Ohio	Partial	Partial <sup>k</sup>	Partial	Partial	No	No
Oklahoma	Yes	Yes	Partial	Partial	Yes	Yes
Oregon	Yes	Yes	Yes	Yes		
Pennsylvania	Yes	Yes	Partial	Yes	Yes	Yes
Puerto Rico	Yes	Yes	Yes <sup>l</sup>	Yes <sup>l</sup>	...	
Rhode Island	Yes	Yes	Yes	Yes		
South Carolina	Yes	Yes	Partial	Partial	Yes	Yes
South Dakota	Yes	Yes	Partial	Partial	Yes	Yes
Tennessee	Partial	Partial <sup>m</sup>	No	Partial		Yes
Texas	Yes	Yes	Partial	Yes	Yes	Yes
Utah	Yes	Yes	Partial	Yes	Yes	Yes
Vermont	Yes	Yes	No	No		
Virginia	Yes	Yes	Partial	Partial	Yes	Yes
Virgin Islands	NA	NA <sup>n</sup>	...	No		
Washington	Yes	Yes	Yes	Yes		
West Virginia	No	No	No	No		
Wisconsin	Yes	Yes	Partial	Partial	Yes	Yes
Wyoming	Yes	Yes	Partial	Yes	Yes	Yes

Note: Except for Puerto Rico for which additional information has been submitted, the data in the columns for 1989 is taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal History Information Systems* (March 1991), Table 4.

... Not available.  
NA Not applicable.

#### Explanatory Notes for Table 4

The notes below expand on the data in Table 4. The explanatory information was provided by the respondent.

<sup>a</sup>All automated records and approximately 50% of the manual records are contained in an automated master name index (MNI).

<sup>b</sup>Only the new arrest information is automated.

<sup>c</sup>Traffic and misdemeanor cases are not included in the automated MNI.

<sup>d</sup>A backlog of arrest cards for second/subsequent arrests is awaiting entry onto the automated criminal history file.

<sup>e</sup>More arrest information is being placed in the MNI than in 1989. New information is current, but adding the additional information to the prior MNI entries has not been completed.

<sup>f</sup>The manual file is not in the automated MNI.

<sup>g</sup>Approximately 20,000 names, name derivatives and aliases have been entered into a temporary, abbreviated automated MNI; however, the MNI is not usable at this time for a name search.

<sup>h</sup>There are 760,000 records that are automated; however, a backlog consisting of 80,000 records are not yet on the MNI.

<sup>i</sup>Adding all records onto the automated MNI is in process.

<sup>j</sup>Only those with a date of birth of 1940 and later are included in the automated MNI.

<sup>k</sup>The automated MNI contains all arrest subjects since 1972.

<sup>l</sup>Automated file was initiated in 1987. It contains only felonies and related misdemeanors.

<sup>m</sup>Respondent is undertaking an on-going data entry program to fully automate the MNI.

<sup>n</sup>The Virgin Islands Record Bureau does not have a MNI; only a manual criminal history file is maintained.

**Appendix 14**

“Arrest records with fingerprints, 1989 and 1992”

Table 6 from  
*Survey of Criminal History Information Systems, 1992*

**Table 6. Arrest records with fingerprints, 1989 and 1992**

State	Number of arrest fingerprint cards submitted to State criminal history repository		Percent change, 1989-92	Quality of fingerprint submissions				Percent of arrest events in criminal history files which are fingerprint supported	
	1989	1992		Percent of arrest fingerprint cards returned by State criminal history repository as unacceptable		Percent of returned fingerprints resubmitted and accepted		1989	1992
Total	6,012,400	6,255,800	4%						
Alabama	292,900	197,200	-33%	4%	3%	0%	0%	100%	99% <sup>a</sup>
Alaska <sup>b</sup>	15,900	12,000	-25	18-20	0 <sup>c</sup>	0	0	75 <sup>d</sup>	39
Arizona	101,900	110,000	8	4	3	1	...	100	100
Arkansas	23,000	32,400	41	3	2	1	10	100	100
California	1,000,000	1,100,000	10	0	0			100	100 <sup>e</sup>
Colorado	137,000	130,700	-5% <sup>f</sup>	8-15%	3%	0%	0-1%	100%	100%
Connecticut	97,100	114,000	17	<1	1	0	0	75 <sup>g</sup>	100
Delaware	40,000	50,000	25	<1	0	0	0	95 <sup>h</sup>	90 <sup>i</sup>
District of Columbia <sup>j</sup>	10,000 <sup>k</sup>	42,700	327		1		0	95 <sup>l</sup>	100
Florida	585,400	507,000 <sup>m</sup>	-13	6	0-1	25	30-50	100	100
Georgia	330,000	346,500	5%	4%	1%	0%	0-5%	100%	100%
Hawaii	52,700	52,600	-<1	...	0	...	...	98 <sup>n</sup>	100
Idaho	27,300	28,200	3	2	0	10		100	100
Illinois	200,300	404,800	102	0	0			100	100
Indiana	46,400	52,300	13	15	40	5	10	100	100
Iowa	30,000	47,300	58%	7%	2%	<1%	0%	100%	100%
Kansas	46,800	62,100	33	0	0	...	...	70-75 <sup>o</sup>	0-65
Kentucky	22,500	41,300	84	10-15	0 <sup>p</sup>	90-95		98	100
Louisiana	179,000	...	...	10	5 <sup>q</sup>	90	3 <sup>q</sup>	100	100
Maine	6,500	7,300	12	<1	0-1	50	50	30 <sup>r</sup>	30
Maryland	103,000	105,300	-31%	0%	1-2%	...	...	100%	100%
Massachusetts	50,000-55,000	60,000	9-20	5-10	5	...	15%	0 <sup>t</sup>	0
Michigan	116,800	124,100	6	0	0			100	100
Minnesota	26,500	35,600	34	3	2-3	<1%	50	100	100
Mississippi	9,000	8,400	-7	50	...	75	...	100	100
Missouri	92,000	91,900	-<1%	10%	0-1%	0%	0%	100%	100%
Montana	12,000	26,000	117	5	0 <sup>u</sup>	1		100	100
Nebraska	13,700	18,500	35	25	10	1	0	100	100
Nevada	36,300	53,700	48	7	1	1	25	100	100
New Hampshire	9,300	...	...	0	...	...	...	25-35 <sup>v</sup>	50
New Jersey	145,700	123,300	-15% <sup>w</sup>	8%	2%	4%	50%	100%	100%
New Mexico	26,200	33,600	28	1	6	5	1	98	100
New York	520,100	496,500 <sup>x</sup>	-5	<5	0-5	100	100	90	99
North Carolina	63,200	75,000	19	5	5	10	10	100	100
North Dakota	5,000	7,000	40	10	10	0	0	100	100
Ohio	114,500	140,900	23%	5%	5%	1%		100%	100%
Oklahoma	60,000	59,500	-<1	17	8	10	...	100	100
Oregon	92,100	106,000	15	<1	...	<1	...	100	100
Pennsylvania	166,700	168,100	1	11	0	75		100	100
Puerto Rico <sup>b</sup>	...	...	...	...	...	...	...	...	0
Rhode Island	30,000	...	...	1%	...	...	...	100%	100%
South Carolina	154,400	161,900	5%	5	1	2%	0%	100	100
South Dakota	17,600	20,000	14	5-7	0 <sup>y</sup>	<1		100	100
Tennessee	75,000	90,000	20	5	12	25	1-2	100	100
Texas	398,400	450,000	13	0	0			100	100
Utah	50,200	53,500	7%	0%	5%		...	100%	100%
Vermont <sup>b</sup>	9,000	7,000	-22	35-45	30	20%	10	35-40 <sup>z</sup>	20 <sup>aa</sup>
Virginia	110,000	134,100	22	20	1	90	5	100	100
Virgin Islands	...	300	...	...	3	...	0	...	100
Washington	131,600	160,600	22	5	2	3	...	100	100
West Virginia	37,200	...	...	5%	...	1%	...	100%	100%
Wisconsin	78,600	96,500	23%	...	13%	...	...	100	100
Wyoming	11,100	10,100	-9	0	1		0%	100	100

### Explanatory Notes for Table 6

The notes below expand on the data in Table 6. The explanatory information was provided by the respondents.

Note: Percentages and numbers reported are results of estimates. Numbers have been rounded to the nearest 100. Percentages have been rounded to the nearest whole number. The total arrest fingerprint cards submitted to State criminal history repositories in 1989 and in 1992 was calculated using the mid-point of the range where a range appears in the underlying data. Except as noted in the explanatory notes, arrest information is reported to all State criminal history repositories by fingerprint cards only.

Except for Maryland and Wisconsin for which corrected data was submitted, the data in the columns for 1989 is taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal History Information Systems* (March 1991), Table 6.

. . . Not available.

<sup>a</sup> A change in procedure now allows the use of a court disposition as an arrest document when no arrest fingerprint card is received.

<sup>b</sup> State does not have a legal requirement that fingerprints and arrest data for all felony arrests must be submitted to the State criminal history repository.

<sup>c</sup> The State repository retains all fingerprint cards. Approximately 20% of the cards submitted are of such poor quality that they are not entered into the automated fingerprint identification system (AFIS), but they are retained as manual paper cards.

<sup>d</sup> Arrest information is reported by fingerprint cards, terminal, and court judgments.

<sup>e</sup> All disseminated arrests are fingerprint-based, with the exception of in-house bookings at the California Department of Corrections (CDC). Those bookings are based on a hook-up to the original fingerprint submitted by CDC. Dummy arrests are not disseminated and are considered statistical data only, not criminal history data.

<sup>f</sup> Due to resource constraints, submission of certain fingerprints have been discouraged; these include subsequent traffic arrests from the same agency (driving under the influence, hit and run, vehicular homicide excepted), and failure to appear and/or contempt of court when fingerprints were submitted for the original charges.

<sup>g</sup> Arrest information is reported on fingerprint cards and on uniform arrest reports which may not include fingerprints.

<sup>h</sup> Arrest information is reported by fingerprint cards and criminal summonses.

<sup>i</sup> In some cases of minor offenses, State law and/or policy does not require information to be supported by fingerprints; information is entered from criminal summonses that are not supported by fingerprints. The decrease in the percent of arrest events in the criminal history file from 1989 is the result of more accurate figures based on a recent data quality audit.

<sup>j</sup> The Metropolitan Police Department also serves as the central repository for criminal records for the District of Columbia; fingerprinting, therefore, is performed by the Police Department/repository.

<sup>k</sup> Figure is for fiscal year 1989 rather than calendar year 1989.

<sup>l</sup> Arrest information is reported by hard copies of the arrest report.

<sup>m</sup> Repository no longer receives fingerprint cards for non-serious charges.

<sup>n</sup> Arrest information is reported by terminal.

<sup>o</sup> Arrest information is reported by fingerprint cards, terminal, final dispositions, FBI abstracts, and other documents.

<sup>p</sup> Approximately 50% of the fingerprints received are unacceptable; however, none are returned. Approximately 40% do get re-submitted.

<sup>q</sup> The practice of returning most unacceptable fingerprints has been discontinued due to the low rate of resubmissions. This percentage is for agencies which have persons in custody or under supervision, *i.e.*, the Department of Corrections and Probation and Parole.

<sup>r</sup> Approximately 70% of all persons charged with a criminal offense are summoned to appear in court. In 1987, the fingerprint law was changed to provide that persons being summoned instead of arrested are to be fingerprinted. Prior to the change, the law mandated that a person had to be "in custody charged with the commission of a crime" to be fingerprinted. Training is on-going to bring the submission rate into compliance.

<sup>s</sup> Resubmissions are rare.

<sup>t</sup> Although arrests are fingerprint-supported, the arrests are not linked to the case cycle; therefore, the criminal history file is not fingerprint-supported.

<sup>u</sup> The repository is no longer returning unacceptable fingerprints.

<sup>v</sup> Arrest information is reported by fingerprint cards and court abstracts.

<sup>w</sup> The decrease in fingerprint cards submitted was due to a decrease in criminal arrests.

<sup>x</sup> The 1992 figure reflects a decrease in arrests.

<sup>y</sup> Approximately 8% of the fingerprints submitted are unacceptable, but none are returned; a jacket is created to store the fingerprint card.

<sup>z</sup> Arrest information is reported on an arrest/custody form which need not be accompanied by fingerprints.

<sup>aa</sup> Response is based on the results of an audit.



**Appendix 15**

“Notice to State criminal history repository of release of  
arrested persons without charging, 1989 and 1992”

Table 7 from  
*Survey of Criminal History Information Systems, 1992*

**Table 7. Notice to State criminal history repository of release of arrested persons without charging, 1989 and 1992**

State	If an arrestee is not charged after submission of fingerprints, State law requires notification of repository		Percent of fingerprint submissions for which repository is notified that arrestee has not been charged	
	1989	1992	1989	1992
Alabama	Yes	Yes	<1%	1%
Alaska	No	No		
Arizona	No	Yes		...
Arkansas	No	No	<1	
California	Yes	Yes	...	...
Colorado	Yes	Yes	10%	...
Connecticut	No	No		
Delaware	No	No		
District of Columbia <sup>a</sup>				
Florida	No	No	...	
Georgia	Yes	Yes	100%	...
Hawaii	Yes	Yes	90+	99%
Idaho	Yes	Yes	...	...
Illinois	Yes	Yes	0	...
Indiana	Yes	Yes	50	...
Iowa	Yes	Yes	...	98%
Kansas	Yes	Yes	...	...
Kentucky	No	Yes		...
Louisiana	No	No		
Maine	Yes	Yes	<1%	3
Maryland	Yes	Yes	...	...
Massachusetts	No	No		
Michigan <sup>b</sup>		Yes		...
Minnesota	Yes	Yes	80%	80%
Mississippi	No	No	10	
Missouri	No	No		
Montana	Yes	Yes	...	
Nebraska	Yes	Yes	10%	40%
Nevada	Yes	Yes	90	80
New Hampshire	No	No		
New Jersey	No	No		
New Mexico	No	No		
New York	No	Yes		...
North Carolina <sup>b</sup>	No	No		
North Dakota	Yes	Yes	...	...
Ohio	No	No		
Oklahoma	No	No		
Oregon	No	No		
Pennsylvania	Yes	Yes	...	
Puerto Rico	No	No	...	
Rhode Island	No	No		
South Carolina	No	No	75%	
South Dakota	Yes	Yes	1	
Tennessee	No	No		...
Texas	No	Yes		...
Utah	No	No		
Vermont	Yes	Yes <sup>c</sup>	100% <sup>d</sup>	
Virginia	No	No		
Virgin Islands	...	No		
Washington	No	Yes		...
West Virginia	Yes	Yes	60%	...
Wisconsin	Yes	Yes	...	...
Wyoming	Yes	Yes	60	80%

Note: Percentages reported are results of estimates. Percentages have been rounded to the nearest whole number. Except for Florida and Puerto Rico for which corrected data was received, the data in the columns for 1989 is taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal Information Systems* (March 1991), Table 7.

... Not available.

<sup>a</sup>Both the fingerprinting and the filing of charges are performed at the same unit.

<sup>b</sup>Police must release or charge an individual *before* sending fingerprints to the repository.

<sup>c</sup>Although the requirement exists, it is not enforced.

<sup>d</sup>The repository receives arraignment reports on all arraignments from the courts. If no arraignment is received within six months, the repository contacts the arresting agency.

**Appendix 16**

“Average number of days to process arrest data submitted  
to State criminal history repository, 1989 and 1992”

Table 12 from  
*Survey of Criminal History Information Systems, 1992*

**Table 12. Average number of days to process arrest data submitted to State criminal history repository, 1989 and 1992**

State	Average number of days between arrest and receipt of arrest data and fingerprints		Average number of days between receipt of fingerprints and entry of data into:				Backlog of entering data into criminal history database	
	1989	1992	Master name index		Criminal history database		1989	1992
			1989	1992	1989	1992		
Alabama	7	10	3	5 <sup>a</sup>	3	5 <sup>a</sup>	No	No
Alaska	14	15 <sup>b</sup>	7	15	7	15 <sup>b</sup>	No	No
Arizona	17	14 <sup>c</sup>	17	11 <sup>d</sup>	17	11 <sup>d</sup>	No	No
Arkansas	30	5	60	30	60	30	Yes <sup>e</sup>	Yes <sup>f</sup>
California	21	25-30 <sup>g</sup>	15-20	60 <sup>h</sup>	15-20	72 <sup>h</sup>	No <sup>i</sup>	Yes <sup>j</sup>
Colorado	7	10	2	1-2	2	... <sup>k</sup>	No	Yes <sup>j</sup>
Connecticut	7	10	7	60 <sup>l</sup>	7	60 <sup>l</sup>	No	Yes <sup>m</sup>
Delaware	2-3	5	2-3	2-3	...	0-1	No	No
District of Columbia	<1	<1	<1	1	NA <sup>n</sup>	1	No	Yes <sup>o</sup>
Florida	3-5	3-10	30	30	30	30	Yes <sup>p</sup>	Yes <sup>q</sup>
Georgia	3-4	2	252	1	252	1	Yes	No
Hawaii	7	7-30	7	1	7	1	No	No
Idaho	6	30 <sup>r</sup>	7	5	7	5	No	Yes <sup>s</sup>
Illinois	1-5	10 <sup>t</sup>	1	...	1	...	No	Yes <sup>u</sup>
Indiana	7	7	60	30	7-21	30-60	Yes <sup>v</sup>	Yes <sup>j</sup>
Iowa	7	7	7	7	7	90 <sup>w</sup>	No	Yes <sup>x</sup>
Kansas	3-5	10 <sup>y</sup>	1	...	1	...	No	Yes <sup>j</sup>
Kentucky	14	10	2	3	2	3	No	No
Louisiana	7	5	365	270	365	630 <sup>z</sup>	Yes <sup>aa</sup>	Yes <sup>bb</sup>
Maine	14	14	1	1	3	3	No	No
Maryland	7	6-10	3	1	60	5	Yes <sup>dd</sup>	No <sup>cc</sup>
Massachusetts	28	14	300	14 <sup>ff</sup>	300	NA <sup>cc</sup>	Yes <sup>dd</sup>	Yes <sup>cc</sup>
Michigan	7	...	5	10 <sup>ff</sup>	5	10 <sup>ff</sup>	No	No
Minnesota	14	28 <sup>gg</sup>	14	1	14	1	No	No
Mississippi	21	...	2	...	2	...	No	No
Missouri	30	34 <sup>hh</sup>	3	2-3	3	2-3	No	No
Montana	...	...	1-7	...	1	...	No	Yes <sup>ii</sup>
Nebraska	30	7	1	3	1	3	No	No
Nevada	10	10	60	2	60	2	Yes <sup>jj</sup>	Yes <sup>kk</sup>
New Hampshire	...	30	...	2	1-2	2	...	No
New Jersey	7-14	14	1	1	1	1	No	No
New Mexico	21	20	2	2	NA	NA	No	No
New York	7	0-7	<1-14 <sup>ll</sup>	0-7	<1-14 <sup>ll</sup>	0-7	No	Yes <sup>mm</sup>
North Carolina	7	5	15-20	12	15-20	12	No	Yes <sup>j</sup>
North Dakota	7-10	7-10	<1	0-1	<1	0-1	No	No
Ohio	14	25 <sup>nn</sup>	14	10	14	35 <sup>nn</sup>	No <sup>oo</sup>	Yes <sup>j</sup>
Oklahoma	7-14	30	5	180 <sup>pp</sup>	2	180 <sup>pp</sup>	No	Yes <sup>j</sup>
Oregon	14	3-5	1-10	2	1-10	2	No	No
Pennsylvania	5	7	7-112	14	7-112	14	Yes <sup>qq</sup>	No
Puerto Rico	...	1	...	5	...	5	...	No
Rhode Island	30	...	3	...	3	...	No	Yes <sup>rr</sup>
South Carolina	5	10 <sup>ss</sup>	10	10	10	10	No	No
South Dakota	7-14	5-14	1	1	1	1	No	No
Tennessee	7-14	14	2	14	2	14	No	Yes <sup>j</sup>
Texas	14	14	2	2	14	6	No	Yes <sup>rr</sup>
Utah	7-14	14	7	14 <sup>tt</sup>	7	14 <sup>tt</sup>	No	No
Vermont	7	14-21	7-10	10	7-10	...	Yes <sup>uu</sup>	Yes <sup>j</sup>
Virginia	3-5	3-5	5	2-4	5	5-7	No	No
Virgin Islands	...	...	...	...	...	...	...	No
Washington	5-42	14	5-10	7	5-10	7	No	Yes <sup>vv</sup>
West Virginia	3-10	14	3-4	3	3-4	10 <sup>ww</sup>	No	No
Wisconsin	2-3	29	14	...	14	...	No	Yes
Wyoming	7	10	7	5-7	7	5-7	No	No

Note: Numbers have been rounded to the nearest whole number. ... Not available.  
 The data in the columns for 1989 is taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal History Information Systems* (March 1991), Table 12. NA Not applicable.

## Explanatory Notes for Table 12

The notes below expand on the data in Table 12. The explanatory information was provided by the respondents.

<sup>a</sup>Workload has increased and personnel has decreased resulting in longer amount of time to enter data.

<sup>b</sup>The repository is not the usual data entry point for arrest information into the criminal history database. Arresting agencies enter the data directly; therefore, arrest data is in the criminal history database prior to the receipt of the fingerprint cards. Arrest data is entered in approximately two days but is not fingerprint-supported until approximately 15 days.

<sup>c</sup>Data reported is for 1991. No data is available for 1992.

<sup>d</sup>Master name index entries and criminal history file entries occur simultaneously. Data reported is for 1991. No data is available for 1992.

<sup>e</sup>Normal processing time would be three to four days up to one week.

<sup>f</sup>The backlog has consistently averaged about one month.

<sup>g</sup>Increase in turnaround of arrest data and fingerprint submissions from the local agency is due to lack of staff at the local agency. Both state and local agencies have experienced economic reductions.

<sup>h</sup>Increase in time is due to lack of staff and backlogs.

<sup>i</sup>The current processing time of 15-20 days is slower than preferred, but with the present staff and workload, this is not considered a backlog.

<sup>j</sup>Backlog is primarily due to a personnel shortage.

<sup>k</sup>Information is entered upon request only, unless the offense is a serious felony. This procedure is being followed pending the elimination of an automated fingerprint identification system (AFIS) backlog. When the backlog is eliminated, posting should occur within 72 hours.

<sup>l</sup>An increase in crime has resulted in greater workloads; at the same time, there is also a lack of personnel.

<sup>m</sup>Arrest data on repeat offenders is entered weekly. Due to a lack of personnel, new arrest data is entered in about 60 days.

<sup>n</sup>Fingerprinting is performed at the repository. It takes approximately two weeks to microfiche the arrest data.

<sup>o</sup>Currently there is a two-week backlog on repeat offender cases only.

<sup>p</sup>Respondent indicated that 30 days is the optimum processing time. Currently, the repository has approximately 30,000 cards which have been name searched and are ready for entry into the criminal history database, and approximately 15,000 cards which have not been either name searched or entered into the database.

<sup>q</sup>There are approximately 19,000 cards at various stages of entry.

<sup>r</sup>Response is based on a recently completed data quality audit.

<sup>s</sup>As of December 31, 1992, there was a backlog of 32,966 fingerprint arrest cards for second and subsequent arrests.

<sup>t</sup>As a result of conducting local agency audits since 1989, the average time between arrest and receipt of fingerprint cards and arrest data at the repository has been determined to be 10 days.

<sup>u</sup>Respondent anticipates that the sizeable backlog that currently exists will be resolved in 1993.

<sup>v</sup>The present backlog is due to implementation of an automated fingerprint identification system (AFIS) and will be worked out within a few months.

<sup>w</sup>Figure is for first arrests. The increase since 1989 in the average days to enter arrest data into the criminal history database is due to loss of personnel, especially fingerprint technicians, and to an increase in the number of fingerprint cards received.

<sup>x</sup>A change in the "unable to classify" fingerprint policy, the increased number of fingerprints received and the lack of resources, specifically fingerprint technicians, have caused the backlog.

<sup>y</sup>More accurate information is now known.

<sup>z</sup>The increase in time to enter arrest data into the database is due to the enormous growth of the backlog.

<sup>aa</sup>Normal processing time would be one week.

<sup>bb</sup>The backlog has been caused by an increased workload due to growth in the statutorily required applicant background processing.

<sup>cc</sup>Arrest data is not currently entered into the court-based criminal history file.

<sup>dd</sup>Normal processing time would be one week or less.

<sup>ee</sup>There is a backlog; however, newly received cards are processed as a priority.

<sup>ff</sup>A more thorough analysis of the maximum processing time has been conducted resulting in a more accurate estimate for 1992.

<sup>gg</sup>Response is based on the result of a baseline audit.

<sup>hh</sup>Figure represents receipt time for 1991 arrests.

<sup>ii</sup>Due to the obtaining of an AFIS, no data entry was done from August 1 to December 31, 1992. The backlog is being reduced rapidly and should be completed by September 1993.

<sup>jj</sup>The target processing time is three days.

<sup>kk</sup>Arrest data received in the form of arrest fingerprint cards is entered into the automated, temporary criminal history record file within two days of receipt. The names and aliases are placed in the master name index at that time. The fingerprint cards are then placed in a backlog for fingerprint search/identification processing. As of December 31, 1992, approximately 35,000 fingerprint cards were awaiting processing.

<sup>ll</sup>Arrest fingerprints for purposes of bail hearings are sent by facsimile and have priority; they are entered within two hours.

<sup>mm</sup>The repository supports a statewide facsimile network for the transmission of arrest fingerprints for persons awaiting arraignment. The network handles about half of the statewide arrest fingerprint volume and are typically processed and the rap sheet updated or created within two hours. Priority work is handled within seven days of receipt.

<sup>nn</sup>Increase in time is due to heavy submissions and less personnel to accomplish the task.

<sup>oo</sup>First offenders are current; processing time is two to three days. The processing time for offenders with prior records takes about two weeks because there are more repeat offenders and more coding is required.

<sup>pp</sup>Increase in time is the result of a personnel shortage.

<sup>qq</sup>A backlog of 5,000-7,000 cards per month exists. Respondent anticipates that the AFIS implementation will reduce processing time to three days.

<sup>rr</sup>A backlog of approximately one month currently exists.

<sup>ss</sup>Increase is due to personnel cutbacks and added workload.

<sup>tt</sup>The increased time is due to a backlog resulting from the increased submission of applicant cards that the repository is now required to process.

<sup>uu</sup>Normal processing time would be one to two days.

<sup>vv</sup>A backlog of approximately 31,400 misdemeanor upgrade cards exists.

<sup>ww</sup>Increase is due to an increase in submission of data.

**Appendix 17**

“Average number of days to process disposition data submitted  
to State criminal history repository, 1989 and 1992”

Table 13 from  
*Survey of Criminal History Information Systems, 1992*

**Table 13. Average number of days to process disposition data submitted to State criminal history repository, 1989 and 1992**

State	Average number of days between final trial court disposition and receipt of data		Average number of days between receipt of final trial court disposition and entry of data into database		Backlog of entering data into criminal history database	
	1989	1992	1989	1992	1989	1992
Alabama	7	90 <sup>a</sup>	3	5 <sup>b</sup>	No	No
Alaska	14	35 <sup>c</sup>	2	21 <sup>c</sup>	No	Yes <sup>d</sup>
Arizona	57	24	45	24	No <sup>e</sup>	No
Arkansas	60	40	60	2	Yes <sup>f</sup>	No
California	30	0-120 <sup>g</sup>	40	80 <sup>h</sup>	No <sup>i</sup>	Yes <sup>j</sup>
Colorado	42	... <sup>k</sup>	1	... <sup>k</sup>	No	Yes <sup>j</sup>
Connecticut	14-28	14-28	42-84	42-84	...	Yes <sup>j</sup>
Delaware	14	14	NA <sup>l</sup>	NA <sup>l</sup>	No <sup>m</sup>	Yes <sup>n</sup>
District of Columbia	NA	...	21	5-7	...	Yes <sup>j</sup>
Florida	180	45	180	... <sup>o</sup>	Yes <sup>p</sup>	Yes <sup>o</sup>
Georgia	30	10	952	1	Yes	Yes <sup>q</sup>
Hawaii	...	30	NA	10	No	Yes <sup>j</sup>
Idaho	35	148 <sup>r</sup>	730	...	Yes	Yes <sup>s</sup>
Illinois	...	40-45	1	...	No	Yes <sup>t</sup>
Indiana	30	30-60 <sup>u</sup>	42	60-90	Yes <sup>v</sup>	Yes <sup>j</sup>
Iowa	...	20	14	20 <sup>w</sup>	No	Yes <sup>j</sup>
Kansas	7-14	90 <sup>x</sup>	2	30 <sup>y</sup>	No	Yes <sup>j</sup>
Kentucky	60-90	90	10-14	30 <sup>z</sup>	No	Yes
Louisiana	30	...	365	... <sup>bb</sup>	Yes <sup>aa</sup>	Yes
Maine	14	10	1	1 <sup>bb</sup>	No	No
Maryland	14	14	0 <sup>cc</sup>	0 <sup>cc</sup>	No	No
Massachusetts	2	2	7-10	0 <sup>dd</sup>	No	No
Michigan	1-7	...	5	0-5	No	No
Minnesota	28	31 <sup>ee</sup>	56	365 <sup>ff</sup>	Yes <sup>j</sup>	Yes <sup>j</sup>
Mississippi <sup>gg</sup>	42-56		7-180		Yes	
Missouri	...	88 <sup>hh</sup>	2-3	4-5	No	No
Montana	...	...	2	...	No	Yes <sup>ii</sup>
Nebraska	365	30-60	14	30 <sup>jj</sup>	No	Yes <sup>j</sup>
Nevada	30	30	90	5	Yes <sup>kk</sup>	No
New Hampshire	7	30 <sup>ll</sup>	1	2	No	No
New Jersey	7	7	60-90	5	Yes <sup>mmm</sup>	Yes <sup>nn</sup>
New Mexico	60	30	1	10 <sup>oo</sup>	No	No
New York	NA	0-180	0 <sup>l</sup>	0-180 <sup>pp</sup>	No	Yes <sup>qq</sup>
North Carolina	15	1	15	0	No <sup>aa</sup>	No
North Dakota	30	30	<1	0-1	No	No
Ohio	21-60	...	0 <sup>rr</sup>	3	No	No
Oklahoma	14	30 <sup>ss</sup>	14	30 <sup>ss</sup>	No	No
Oregon	...	7	30-90	0	Yes <sup>tt</sup>	Yes <sup>uu</sup>
Pennsylvania	180	180	2	0	No	Yes <sup>vv</sup>
Puerto Rico	...	4	...	6	...	No
Rhode Island	...	...	2	...	No	Yes <sup>ww</sup>
South Carolina	14	10	30	10	Yes <sup>kk</sup>	No
South Dakota	30	30	2-3	14 <sup>xx</sup>	No	No
Tennessee	28-42	...	2	...	No	Yes <sup>j</sup>
Texas	28	28	730	30	Yes <sup>yy</sup>	Yes <sup>zz</sup>
Utah	180	30-60	14	7	No	No
Vermont	10	10	3	5	Yes <sup>aaa</sup>	No
Virginia	90-120	90-120	5	5	No	No
Virgin Islands	...	7-90	...	2	...	No
Washington	60	60	28	30	No	Yes <sup>j</sup>
West Virginia	20-30	30	10-15	42	No <sup>bbb</sup>	Yes
Wisconsin	14	56	60-90	...	Yes <sup>ccc</sup>	Yes <sup>ddd</sup>
Wyoming	7	20	3	7-10 <sup>eee</sup>	No	Yes <sup>fff</sup>

Note: Numbers have been rounded to the nearest whole number.

... Not available.

The data in the columns for 1989 is taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal History Information Systems* (March 1991), Tables 12 and 13.

NA Not applicable.

### Explanatory Notes for Table 13

The notes below expand on the data in Table 13. The explanatory information was provided by the respondents.

<sup>a</sup>Increased time is the result of court backlogs.

<sup>b</sup>Workload has increased and personnel has decreased resulting in a longer period of time to enter data.

<sup>c</sup>The 1992 estimate is based on more accurate information as a result of a baseline data quality assessment.

<sup>d</sup>A backlog of one week exists for misdemeanor dispositions.

<sup>e</sup>Disposition information is held for 30 days to ensure that the arrest card is received at the State criminal history repository (SCR).

<sup>f</sup>Normal processing time would be two weeks; with the commencement of automation in July 1990, the backlog will be eliminated.

<sup>g</sup>Increase in time is due to lack of staff at the local agencies.

<sup>h</sup>Increase in time is due to lack of staff.

<sup>i</sup>The SCR operates under a court order to process dispositions within 90 days. Respondent indicated that with the present and foreseeable staff levels and the volume of documents the SCR handles, 40 days is normal processing time.

<sup>j</sup>Backlog is due primarily to a personnel shortage at the repository and/or at contributing agencies.

<sup>k</sup>Final trial court dispositions are currently not received by the repository. This is scheduled to occur electronically in 1993. Dispositions will be received weekly and posted within 72 hours.

<sup>l</sup>Dispositions are entered directly by the courts.

<sup>m</sup>Disposition data is current since 1988; there does exist a pre-1988 backlog.

<sup>n</sup>Court does not enter all dispositions.

<sup>o</sup>Repository is in the process of developing software and automation upgrades that will allow entry of historical and current dispositions. All available dispositions will be entered at that time.

<sup>p</sup>Respondent indicated that a backlog of approximately 100,000 transactions exists; in 1991, with the completion of automation of the courts in Florida, processing time could be reduced to four to six weeks.

<sup>q</sup>Current dispositions are entered within 24 hours of receipt by the repository. A backlog of 1986 dispositions is also being processed and will be eliminated by June 30, 1993.

<sup>r</sup>Figure is based on results of a data quality audit.

<sup>s</sup>As of December 31, 1992, there was a backlog of approximately 43,300 dispositions.

<sup>t</sup>Respondent anticipates that the sizeable backlog that currently exists will be resolved in 1993.

<sup>u</sup>Due to changes in personnel, timeliness of court reporting has decreased. The State repository is working on an educational approach to decrease the time for receipt of court dispositions.

<sup>v</sup>The backlog is due to AFIS implementation; the normal processing time is two weeks.

<sup>w</sup>The increase since 1989 in the average number of days between receipt of final trial court dispositions and entry of data into the database is due to the loss of personnel, the increase in the number of dispositions and the increase in the number of dispositions which were returned due to insufficient information.

<sup>x</sup>More accurate information is now known.

<sup>y</sup>The increase in time is due to backlogs and lack of staff.

<sup>z</sup>Increase in time is due to the reduction in data entry personnel.

<sup>aa</sup>Ten days would be normal processing time.

<sup>bb</sup>Information is maintained in a holding file; it is merged with the criminal record when an inquiry is received.

<sup>cc</sup>Dispositions are by tape entry upon receipt.

<sup>dd</sup>Disposition data is entered directly into the criminal history file from court terminals.

<sup>ee</sup>Response is based on the result of a baseline audit.

<sup>ff</sup>Response is based on the result of a baseline audit. Increased workloads and personnel decrease have resulted in the increase in time.

<sup>gg</sup>Courts rarely submit disposition data to the repository.

<sup>hh</sup>Figure is for 1991 dispositions.

<sup>ii</sup>Due to the obtaining of an automated fingerprint identification system (AFIS), no data entry was done from August 1 to December 31, 1992. The backlog is being reduced rapidly and should be completed by September 1993.

<sup>jj</sup>The greater length of time is due to a backlog of court dispositions and an overall increase in records.

<sup>kk</sup>Normal processing time would be one week.

<sup>ll</sup>Increase in time is due to the increased volume in the courts and the reduction in their staff.

<sup>mm</sup>Normal processing time would be one to two weeks.

<sup>nn</sup>A current backlog of approximately 100,000 dispositions exists.

<sup>oo</sup>A sampling of dispositions showed the increase in time; priorities placed on work received have also contributed to the increase.

<sup>pp</sup>The State repository is updated daily by the State Office of Court Administration for courts in large metropolitan areas; town and village courts remain a paper-based process.

<sup>qq</sup>Backlog is due to manual records and processing of town and village court dispositions which was taken over by the repository from the State Office of Court Administration in 1992.

<sup>rr</sup>Data is entered the same day it is received.

<sup>ss</sup>Increase in time is due to a personnel shortage.

<sup>tt</sup>Respondent indicated that a backlog of about 35,000 dispositions currently exists; normal processing time would be one to two days.

<sup>uu</sup>Backlog is due to manually submitted dispositions that require research and verification.

<sup>vv</sup>Backlog is due to rejected data from the magnetic tape that must be manually entered.

<sup>ww</sup>A one month backlog currently exists.

<sup>xx</sup>Increase in time is due to a change in procedure for receiving disposition data from the Unified Judicial System.

<sup>yy</sup>Respondent indicated that significant additional funding has been received to eliminate the backlog within next year.

<sup>zz</sup>This backlog has been significantly reduced over the past year.

<sup>aaa</sup>There may be a backlog of 500-1,000 dispositions; normal processing time would be the same day.

<sup>bbb</sup>Disposition reports are held for 10-12 days to ensure that the fingerprint cards have been received and processed.

<sup>ccc</sup>There is a 20,000 document backlog; optimum processing time would be one week.

<sup>ddd</sup>Funds are currently being expended to decrease the backlog.

<sup>eee</sup>Reduction in personnel resulted in processing delays.

<sup>fff</sup>Some dispositions require clarification which creates a backlog.



**Appendix 18**

“Procedures employed by State criminal history repository  
to encourage complete arrest and disposition reporting, 1992”

Table 15 from  
*Survey of Criminal History Information Systems, 1992*

**Table 15. Procedures employed by State criminal history repository to encourage complete arrest and disposition reporting, 1992**

State	Lists of arrests with no dispositions generated to monitor disposition reporting	Field visits	Form letters	Telephone calls
Alabama	X	X	X	X
Alaska		X	X	X
Arizona <sup>a</sup>			X	X
Arkansas	X	X	X	X
California		X	X	
Colorado	X	X	X	X
Connecticut			X	X
Delaware			X	X
District of Columbia <sup>b</sup>				
Florida <sup>c</sup>		X	X	X
Georgia <sup>d</sup>				
Hawaii	X			
Idaho				X
Illinois	X	X	X	X
Indiana			X	
Iowa	X		X	
Kansas <sup>e</sup>		X	X	X
Kentucky		X	X	
Louisiana			X	X
Maine <sup>f</sup>		X	X	X
Maryland <sup>g</sup>				
Massachusetts				X
Michigan <sup>h</sup>	X			
Minnesota		X	X	X
Mississippi				
Missouri		X		X
Montana <sup>i</sup>				X
Nebraska		X	X	X
Nevada <sup>j</sup>		X	X	X
New Hampshire			X	X
New Jersey	X	X		X
New Mexico			X	X
New York	X	X	X	X
North Carolina	X	X	X	X
North Dakota <sup>k</sup>	X	X		X
Ohio <sup>l</sup>		X	X	X
Oklahoma <sup>m</sup>		X	X	X
Oregon <sup>n</sup>		X		X
Pennsylvania <sup>o</sup>	X		X	X
Puerto Rico	X			X
Rhode Island	X		X	
South Carolina		X	X	X
South Dakota			X	X
Tennessee				
Texas		X	X	X
Utah		X	X	X
Vermont <sup>p</sup>			X	X
Virginia <sup>q</sup>			X	X
Virgin Islands				X
Washington	X	X	X	X
West Virginia <sup>m</sup>		X	X	X
Wisconsin		X		
Wyoming	X	X	X	X

### Explanatory Notes for Table 15

The notes below expand on the data in Table 15. The explanatory information was provided by the respondents.

<sup>a</sup>Previously used field visits have been eliminated due to funding reductions.

<sup>b</sup>The practice of using telephone calls has been changed; everything must now be in written form.

<sup>c</sup>The repository also uses microfilm and microfiche. Re-instituting a procedure of generating lists of arrests for which final dispositions have not been received is under consideration.

<sup>d</sup>The repository also employs training, publishes operational bulletins, and publishes requirements in the Georgia Crime Information Council Rules and Superior Court Clerks' Rules. Field visits, which were previously employed to encourage complete arrest and disposition reporting, have been discontinued due to lack of funding.

<sup>e</sup>The module to generate lists of arrests for which final dispositions have not been recorded was activated July 1, 1993. The repository also uses audits and communications requests to encourage complete reporting.

<sup>f</sup>The repository also participates in the training of all new recruits at the Criminal Justice Academy.

<sup>g</sup>The repository also conducts work sessions with contributors and seeks their cooperative efforts in establishing better reporting procedures.

<sup>h</sup>The practice of field visits was in place from 1987 through the spring of 1992; at that time personnel who were performing the task were no longer available, and the field visits were stopped.

<sup>i</sup>A new rule will be going into effect that will change the procedures employed.

<sup>j</sup>The practice of generating lists of arrests with no dispositions was discontinued because the procedure was taking too much computer time to generate the report, and users experienced response time problems when the report was prepared from the criminal history record database.

<sup>k</sup>Previously used form letters have been replaced by personal contact.

<sup>l</sup>The repository also conducts seminars with court officials and requests their cooperation in submitting dispositions to the repository.

<sup>m</sup>The repository also employs training.

<sup>n</sup>Generating lists of arrests for which dispositions were not recorded and the use of form letters were discontinued due to the backlog in entering disposition data at the repository.

<sup>o</sup>The repository will also be using audits that will include surveys and field visits in the future.

<sup>p</sup>Field visits have been discontinued due to lack of staff.

<sup>q</sup>The repository is currently developing the capability to generate computer lists of missing dispositions.

**Appendix 19**

“Methods used to link disposition information to arrest/charge  
information on criminal history record, 1992”

Table 16 from  
*Survey of Criminal History Information Systems, 1992*

**Table 16. Methods used to link disposition information to arrest/charge information on criminal history record, 1992**

State	Unique tracking number for individual subject	Unique arrest event identifier	Unique charge identifier	Arrest date	Subject name	Name and reporting agency case number	Other
Alabama*		X	X	X	X	X	
Alaska	X	X		X	X		X <sup>a</sup>
Arizona*	X	X	X	X	X	X	
Arkansas*	X			X	X	X	
California	X	X	X	X	X	X	
Colorado*		X <sup>b</sup>		X <sup>a</sup>			
Connecticut*				X	X	X	
Delaware*	X	X	X	X	X	X	X <sup>c</sup>
District of Columbia*	X	X	X	X	X	X <sup>d</sup>	X <sup>c</sup>
Florida*	X	X	X	X	X	X	
Georgia*	X	X					
Hawaii*	X	X	X	X	X		
Idaho*	X	X			X		
Illinois		X					X <sup>a</sup>
Indiana*	X	X	X	X	X	X	X <sup>d</sup>
Iowa <sup>c</sup>				X	X	X	
Kansas*	X	X		X	X	X	
Kentucky*	X	X	X	X	X	X	
Louisiana				X	X	X	
Maine*	X	X		X	X	X	
Maryland*	X		X				X <sup>f</sup>
Massachusetts* <sup>g</sup>							
Michigan	X						
Minnesota			X		X	X	
Mississippi*				X	X	X	X <sup>h</sup>
Missouri*	X	X	X	X	X		
Montana*		X <sup>l</sup>		X	X	X	
Nebraska*	X	X	X	X	X	X	X <sup>j</sup>
Nevada*		X	X				
New Hampshire*	X			X	X		
New Jersey*	X	X	X	X	X	X	
New Mexico	X		X	X	X	X	
New York*	X	X	X	X	X	X	
North Carolina	X	X		X	X		
North Dakota	X	X		X	X	X	
Ohio*	X	X	X	X	X	X	X <sup>a</sup>
Oklahoma	X						
Oregon* <sup>k</sup>	X	X	X	X	X	X	
Pennsylvania*	X	X	X		X		
Puerto Rico*	X	X	X		X	X	
Rhode Island*	X				X		
South Carolina*	X	X		X	X	X	
South Dakota		X		X	X <sup>l</sup>		
Tennessee	X			X	X	X	
Texas* <sup>m</sup>	X <sup>m</sup>	X <sup>m</sup>	X <sup>m</sup>	X	X		
Utah*	X						
Vermont*	X	X	X	X	X	X	
Virginia*	X	X					
Virgin Islands*					X		X <sup>n</sup>
Washington*	X	X	X	X	X	X	
West Virginia	X	X					
Wisconsin*		X		X	X	X	
Wyoming*	X	X	X	X	X	X	

Note: Repositories were asked to list all methods which may be utilized to link disposition information. Matching of several items of information may be used to confirm that the appropriate link is being made. Also if information of one type is missing, repositories may look to other types of information contained on the disposition report.

\*Method(s) utilized by the repository for linking disposition information and arrest/charge information also permit the linking of dispositions to particular charges and/or specific counts.

### Explanatory Notes for Table 16

The notes below expand on the data in Table 16. The explanatory information was provided by the respondents.

<sup>a</sup>Court case number.

<sup>b</sup>The repository uses a number constructed of the unique arrest-event identifier, the arrest date and the originating agency identifier (ORI). This replaced the computer-assigned unique tracking number previously used.

<sup>c</sup>Criminal Justice Information System (CJIS) case number.

<sup>d</sup>Fingerprint verification.

<sup>e</sup>The former method used for linking disposition data was discontinued in 1992; effective January 1, 1993, a new disposition tracking number was instituted.

<sup>f</sup>Case numbers.

<sup>g</sup>Present plans call for a unique tracking number.

<sup>h</sup>Date of birth and social security number.

<sup>i</sup>Pending.

<sup>j</sup>Agency ORI.

<sup>k</sup>The method for linking dispositions to particular charges applies only when there is a single count; it is not applicable for multiple counts.

<sup>l</sup>The unified court system has allowed the repository's process control number that is unique to the arrest event to be placed on its automated system. In the majority of cases, this tracking number works; the name serves as the backup to query for state identification (SID) number, date of arrest and ORI to make the link.

<sup>m</sup>Planned system enhancement.

<sup>n</sup>Date of birth, place of birth and social security number pending.

**Appendix 20**

“Data quality audits of State criminal history repository, 1992”

Table 20 from  
*Survey of Criminal History Information Systems, 1992*

**Table 20. Data quality audits of State criminal history repository, 1992**

State	State criminal history repository database audited for accuracy and completeness within last 5 years	Agency which performed audit	Changes to improve data quality were made as a result of audit <sup>†</sup>	Data quality audits are planned or scheduled for next 3 years	Initiatives are underway to improve data quality <sup>†</sup>
Alabama				X	X
Alaska	X	Other Agency	4, 6, 9, 10	X	2, 3, 6, 7, 8, 10
Arizona	X	Other Agency	1, 2, 11	X	1, 11
Arkansas				X	1, 7, 11
California				X	1, 2
Colorado	X	Repository		X	5
Connecticut					2, 5
Delaware	X <sup>a</sup>	Other Agency		X	2, 5, 6
District of Columbia	X	Other Agency	2, 11	X	2, 5, 6, 10
Florida				X	2, 11
Georgia	X	Other Agency	X	X	X
Hawaii	X	Other Agency	1, 2	X	1, 12 <sup>b</sup>
Idaho	X	Other Agency	8		8, 9
Illinois	X	Other Agency	1,3	X	11
Indiana	X	Other Agency			
Iowa	X	Other Agency	1, 2, 3, 4, 5, 11	X	3, 4, 5, 6, 10
Kansas				X	1, 2, 3, 4, 6, 8, 9, 10
Kentucky				X	X
Louisiana				X	X
Maine <sup>c</sup>				X	11
Maryland	X	Other Agency	8	X	8
Massachusetts					5 <sup>d</sup>
Michigan				X	
Minnesota	X	Other Agency			2, 6, 9, 12 <sup>e</sup>
Mississippi				X	1, 2, 5
Missouri				X <sup>f</sup>	1
Montana	X	Other Agency	1		10
Nebraska				X	2
Nevada				X	1
New Hampshire				X	1, 10
New Jersey	X	Other Agency	1, 2	X	1, 7, 11
New Mexico				X	2
New York	X	Other Agency, Repository	2, 6	X	1, 9, 11
North Carolina	X	Repository			
North Dakota				X	2
Ohio					
Oklahoma				X	2
Oregon <sup>g</sup>				X	1
Pennsylvania				X	1
Puerto Rico	X	Repository	X	X	1, 3, 8, 9
Rhode Island	X	Repository	2	X	2
South Carolina				...	3
South Dakota					3, 10, 11
Tennessee	X	Other Agency, Repository		X	3, 9
Texas	X	Other Agency	2, 7	X	1
Utah	X	Other Agency	X	X	X
Vermont	X	Other Agency			
Virginia	X	Other Agency	3, 11, 12 <sup>h</sup>		3
Virgin Islands					
Washington	X	Other Agency, Repository		X	X
West Virginia					2
Wisconsin				X	1
Wyoming					2, 3

... Not available.

- † 1 Audit/audit functions/procedures
- 2 Automation conversion/redesign/enhancements
- 3 Disposition/arrest reporting procedures/enhancements
- 4 Felony flagging
- 5 Fingerprint card/system conversion/enhancements
- 6 Inter-agency/local agency interface

- 7 Legislation
- 8 Plan/strategy development
- 9 Task force/advisory group establishment
- 10 Tracking number implementation/improvement
- 11 Training seminars/policy and procedures manuals
- 12 Other



### Explanatory Notes for Table 20

The notes below expand on the data in Table 20. The explanatory information was provided by the respondents.

<sup>a</sup>Audit has not been finalized.

<sup>b</sup>Establishment of the Data Quality Unit.

<sup>c</sup>No formal audit has been conducted; however, all information is reviewed by specialists to ensure accuracy and completeness as part of a daily function.

<sup>d</sup>The Massachusetts criminal record improvement plan calls for the development of fingerprint-supported criminal records.

<sup>e</sup>Use of noncriminal justice record check fees to improve the criminal history system.

<sup>f</sup>A comprehensive outside audit of the central repository and its associated reporting agencies is being planned for 1994. In-house auditing at the central repository to improve data quality is being incorporated.

<sup>g</sup>Repository is currently in the process of selecting a vendor to conduct an audit of the repository.

<sup>h</sup>Helpline implemented.

**Appendix 21**

Interstate and Federal-State Compact  
on the Exchange of  
Criminal History Records for  
Noncriminal Justice Purposes

# Interstate and Federal-State Compact on the Exchange of Criminal History Records for Noncriminal Justice Purposes

The contracting parties solemnly agree:

## ARTICLE I — FINDINGS AND PURPOSES

(a) **Findings.** The parties find that:

Both the Federal Bureau of Investigation (FBI) and criminal history record repositories in the states maintain fingerprint-based records of criminal offenders. Through a Federal/state program known as the Interstate Identification Index (III), these criminal history records are shared and exchanged for criminal justice purposes.

This interstate and Federal-state compact is necessary to facilitate criminal history record exchanges for noncriminal justice purposes authorized by state and Federal laws. It will allow state and Federal records to be provided to Federal agencies and other state agencies that will use the records according to Federal and the receiving states' laws.

(b) **Purposes.** The purposes of this compact are to:

(1) Insure that this compact shall not, in any manner, interfere with the management and control of the Director of the FBI over the National Crime Information Center (NCIC) and the FBI's collection and dissemination of criminal history records and the advisory function of the NCIC Advisory Policy Board;

(2) Provide the legal frame work for the establishment of a cooperative Federal-state system for the interstate and Federal-state exchange of criminal history records for noncriminal justice use;

(3) Bind the FBI to permit the use of the National Identification Index and the National Fingerprint File in accordance with the terms of this compact and with established system rules and procedures and to provide, in a timely fashion, Federal offender records and records of state offenders in states that are not participating as record providers in the III System;

(4) Bind the party states to a commitment to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to authorized requestors from other states and the Federal government for noncriminal justice purposes;

(5) Provide for the establishment of a Compact Council to monitor system operations and to promulgate system rules and procedures necessary to ensure the effective operation of the III System for noncriminal justice purposes; and

(6) Bind the compact parties to adhere to system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards.

## ARTICLE II — DEFINITIONS

As used in this compact:

(a) "Attorney General" means the Attorney General of the United States;

(b) "compact officer" means the official designated by the Director of the FBI and the official designated by a party state to administer the provisions of this compact;

(c) "criminal history records" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system;

(d) "criminal history record repository" means the executive agency in a state designated by the governor or other appropriate executive official or the legislature to perform the centralized record-keeping functions for criminal history records and services in the state;

(e) "criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history records. State and Federal Inspector General Offices are included;

(f) "criminal justice agency" means (1) courts; (2) state and Federal Inspector General officers; and (3) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice;

(g) “criminal justice services” means services authorized by executive order, Federal law, or the Attorney General whereby an authorized agency is notified when there is either a request or information received that corresponds to a particular record;

(h) “criterion offense” means any felony crime, or a misdemeanor crime that is not included on the list of nonserious offenses published periodically by the FBI;

(i) “direct access” means access to the National Identification Index by computer terminal or other automated means without the assistance of or intervention by any other party or agency;

(j) “executive order” means an order of the President of the United States or the chief executive official of a state which has the force of law and which is published in a manner permitting regular public access thereto;

(k) “FBI” means the Federal Bureau of Investigation;

(l) “Federal offender file” means a criminal history record file maintained by the FBI relating to persons arrested for or charged with offenses under the laws of the United States;

(m) “Interstate Identification Index System” or “III System” means the cooperative Federal-state system for the exchange of criminal history records including the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI;

(n) “National Fingerprint File” means a system of fingerprints or other uniquely personal identifying information furnished on adult criminal offenders or juvenile offenders maintained by the FBI to provide positive identification of record subjects indexed in the III System;

(o) “National Identification Index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects whose criminal history records are available for dissemination by means of the III system;

(p) “national indices” means the National Identification Index and the National Fingerprint File;

(q) “noncompact state” means a state that is participating in the III System as a record-providing state but has not executed the compact;

(r) “noncriminal justice” means the authorized use according to Federal or state law of criminal history records for other than criminal justice purposes to include but not be limited to employment suitability or licensing determinations, immigration and naturalization matters, and national security clearances;

(s) “party state” means a state that has executed this compact;

(t) “positive identification” means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a prior criminal history record or records indexed in the III System;

(u) “sealed” record information means that portion of a record which by court order or by operation of a Federal or state statute applicable to particular offenders or classes of offenders, may not be disseminated for particular purposes except as specified in a court order or by statute; and

(v) “state” means the United States, any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

### **ARTICLE III — ADMINISTRATION OF COMPACT PROVISIONS**

#### **(a) FBI Responsibilities**

(1) In response to requests made for authorized noncriminal justice purposes, and subject to applicable privileges, the FBI will provide criminal history records of Federal offenders maintained in the Federal offender file and of state offenders in states not participating as record providers in the III System, to the extent that such information is maintained in FBI files and its provision is otherwise in accordance with law.

(2) The FBI NCIC telecommunications network shall provide the facilities for the exchange of criminal history records for both criminal justice purposes and noncriminal justice purposes. The FBI shall insure that the exchange of these records for criminal justice purposes has priority over the exchange for noncriminal justice purposes.

(3) Nothing in this compact shall obligate the FBI to expend funds beyond its congressional appropriations.

**(b) State Responsibilities**

(1) The criminal history record repository in each party state (referred to hereafter as the “state repository” or “repository”) will have the responsibility for administering the provisions of this compact within the state. The repository will provide the state’s III-indexed criminal history records for interstate noncriminal justice exchange purposes; will ensure that compact provisions and duly established system standards and procedures are complied with in the state; and will regulate the in-state use of records received by means of the III System from the FBI or from other party states. The chief administrator of the repository (or a designee who is employed full-time to act in this capacity) will be the compact officer for the state.

(2) Each party state will participate in the National Fingerprint File.

(3) Each party state will provide and maintain the necessary telecommunications links and related equipment necessary to the services set forth in this compact.

**(c) Compliance with System Standards**

Party states and the FBI will comply with duly established system standards and procedures concerning record dissemination and use, response times, data quality, system security, and other aspects of system operation.

**(d) Maintenance of Record Services**

(1) Use of the III System for noncriminal justice purposes authorized in this compact shall be managed so as not to diminish the level of criminal justice services or services available for criminal justice purposes.

(2) Administration of compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

**ARTICLE IV —  
AUTHORIZED RECORD  
USERS**

(a) Criminal justice agencies and other governmental or nongovernmental agencies will be provided criminal history records for noncriminal justice purposes authorized by Federal statute or executive order, or by state statutes authorizing national record checks which have been approved by the Attorney General. When such a statute or executive order authorizes an agency to have access to FBI criminal history records, it shall be construed by party states as authorization to obtain state criminal history records.

(b) In response to authorized noncriminal justice requests, the FBI and party states will provide all unsealed criminal history record information relating to criterion offenses for record subjects indexed in the III System.

(c) Records obtained under this compact may be used only for the purpose for which they were requested and only by the requesting agency or other authorized agency that obtains the record(s) for an official purpose. Compact officers shall establish intrastate procedures and measures consistent with applicable system policies and standards, to ensure that records are used only by authorized officials for authorized purposes and to require that subsequent record requests are made to obtain more current records for subsequent purposes.

**ARTICLE V — RECORD  
REQUEST PROCEDURES**

(a) Governmental or nongovernmental agencies authorized by approved state statutes to obtain criminal history records for noncriminal justice purposes shall submit requests through the criminal history record repository in the state in which they are located. Federal officials and other organizations or officials authorized by Federal statute or executive order to obtain records for noncriminal justice purposes shall submit requests through the FBI or through the repository in the state in which they are located, if the repository consents to process fingerprint submissions. Noncriminal justice agencies shall not be permitted to have direct access to the National Identification Index and shall not be entitled to obtain criminal history records directly from repositories in the other states.

(b) Nothing provided herein shall interfere in any manner with access to records by direct access when permitted by the Security Clearance Information Act.

(c) Applicant fingerprints or other approved forms of positive identification will be submitted with all requests for criminal history records for noncriminal justice purposes.

(d) State repositories and the FBI may charge fees for processing applications and searching their files for noncriminal justice purposes. If such a file search positively identifies the record subject, additional III-indexed information relating to the record subject may be obtained at no cost from other compact parties. The FBI and party state repositories will honor positive identifications made by other compact parties.

(e) If a state repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information will be forwarded to the FBI for a search of the national indices. The FBI may charge a fee for such a file search. If the FBI positively identifies the subject as having a III-indexed record or records, the FBI will so advise the state repository that submitted the request. The repository will then be entitled to obtain the additional criminal history record information from the FBI or other state repositories at no cost. State repositories may collect and account for FBI file-search fees, pursuant to agreements consistent with system standards and FBI policies.

(f) Compact officers will establish necessary procedures and measures to ensure that out-of-state records obtained for noncriminal justice purposes are disseminated and used only for purposes authorized by law in the receiving state. These procedures must ensure that record entries that may not legally be used for a particular noncriminal justice purpose will be deleted and, if no authorized information remains, an appropriate “no record” response will be communicated to the requesting official. The FBI will establish procedures requiring state criminal history record repositories in noncompact states to execute user agreements requiring them to establish procedures to comply with the provisions of this subsection.

#### **ARTICLE VI — ESTABLISHMENT OF COMPACT COUNCIL**

(a) Nothing in this compact shall obligate the FBI to expend funds beyond its congressional appropriations.

(b) There is established a Compact Council which shall have the authority to establish rules and procedures governing the use of the III System for noncriminal justice purposes, not in conflict with FBI administration of III for criminal justice purposes. The Council shall continue in existence so long as the compact remains in effect. The Council shall be located for administrative, budgetary, and staffing purposes within the FBI. For purposes of annual budget requests, the Council shall be included within the budget of the United States Department of Justice. The Council shall be organized and its first meeting shall be held as soon as practicable after the effective date of the compact.

(c) The Council shall consist of 15 members whose appointment by the Attorney General shall be in accordance with the below criteria:

(1) Nine members, each to serve for two-year terms, selected from the duly designated compact officers of party states, based upon the collective recommendation of the compact officers of all party states. In the absence of the requisite number of compact officers available to serve, the chief administrators of the central criminal history repositories of noncompact states shall be eligible to serve on an interim basis. Persons who are not compact officers shall be appointed to the Council only to the extent that there are not sufficient compact officers who are willing to serve;

(2) Two at-large members; one to represent Federal criminal justice agencies, and one to represent Federal noncriminal justice agencies, nominated by the Director of the FBI;

(3) Two at-large members; one to represent local criminal justice agencies, and one to represent local/state noncriminal justice agencies, based on the recommendation of the Compact Council Chairman;

(4) One member who is a current member of the Advisory Policy Board of the National Crime Information Center, based upon the recommendation of the membership of the Advisory Policy Board; and

(5) One member who is a current employee of the FBI, nominated by the Director of the FBI.

(d) The Chairman of the Council shall be a member of and elected by the members of the Council. The Chairman shall be a compact officer unless there is no compact officer on the Council who is willing to serve, in which case, the Chairman may be an at-large member. The Chairman shall serve a term of two years and may be re-elected to only one additional consecutive two-year term.

(e) The Council shall meet at least once each year. The meetings shall be open to the public and appropriate public notice shall be given to ensure that all interested persons are notified of such meetings prior thereto. Staff support for Council meetings and other support services for the Council shall be provided by the FBI.

(f) The Council shall have the authority to request from staff members assigned to the Council or from other officials of the FBI any reports, studies, statistics, or other information or materials permitted by law necessary to enable it to perform its duties under this compact, and such assistance or information shall be provided within a reasonable time.

(g) The Chairman may establish technical or other committees as necessary and may prescribe the membership, responsibilities and duration of such committees.

(h) Members of the Council (other than a member from the FBI or any at-large member who may be a Federal official or employee) shall not, by virtue of such membership, be deemed to be, for any purpose other than to effect this compact, officers or employees of the United States as defined at Title 5, United States Code, Sections 2104-2105, or to become entitled by reason of Council membership to any compensation or benefit payable or made available by the United States solely and directly to its officers or employees.

#### **ARTICLE VII — EXECUTION OF COMPACT**

This compact shall become effective immediately upon its execution by two or more states as between those states. Upon the subsequent execution of the compact by additional states, it shall become effective as between these states and states that have previously executed it. When executed, the compact shall have the full force and effect of law within the executing jurisdictions. The form of execution shall be in accordance with the laws of the respective jurisdiction.

#### **ARTICLE VIII — RENUNCIATION**

This compact shall continue in force and remain binding upon each party state until renounced by it. Renunciation from this compact shall be by the same authority which executed the compact. Renunciation by a party state is to become effective six months after written notice of renunciation from the compact is communicated to all other compact parties.

#### **ARTICLE IX — SEVERABILITY**

The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state, or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

#### **ARTICLE X — ADJUDICATION OF DISPUTES**

The Council shall have original jurisdiction concerning this compact regarding interpretations of the compact, system policy or standards, and disputes or controversies between party states. The Council shall hold a hearing concerning the above at any regularly scheduled meeting and will only render a decision based upon a majority vote of its members. The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, and to prevent abuses, until the Council shall hold a hearing on such matters. Party states may appeal the decisions of the Council to the Attorney General, and finally to the appropriate United States District Court, which shall have original jurisdiction of all cases or controversies arising under this compact. Any appeal so arising initiated in a state court shall be removed to the appropriate United States District Court in the manner provided by Section 1446, Title 28 of the United States Code or other statutory authority.