



Bureau of Justice Statistics

Use and Management of Criminal History Record Information: A Comprehensive Report, 2001 Update

Law and policies

Evolution of information technology

Interstate Identification Index

Federal initiatives and legislation

Criminal Justice Information Policy

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U.S. Department of Justice
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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, 2001 Update*. The report is an update of a report first published in 1993 that was the first descriptive review of the Nation's criminal history information systems. The report 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 2001 update reflects changes in the handling of criminal history records that occurred in the 1990s following policy developments, societal changes, technological advances, and other factors.

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 are readily available for operational and research purposes. We hope that the report will be of value to policymakers and practitioners who are addressing the critical issues relating to criminal history record information that will accompany expanded development of systems for the interstate exchange of this information.

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Section 3: The current status of the Nation's criminal history record systems	30 Background 30 Number of records 30 — State records 31 — Federal records 31 Extent of automation 31 — State criminal history files 32 — State criminal fingerprint files 32 — Federal files 32 Reporting of information to the repositories 35 — Types of information reported 35 — Reporting requirements 35 — Time frame within which reporting takes place 36 Access methods for authorized requestors 36 — Criminal justice inquiries 36 — Noncriminal justice inquiries 37 — Computer searches 37 Response times	Section 3: Two key issues — data quality and dissemination	47 Federal data quality regulations 48 — Completeness provisions 48 — Accuracy provisions 48 State data quality laws and strategies 48 — Mandatory reporting requirements 49 — Transaction log requirements 49 — Other requirements 50 — Data quality strategies 50 Dissemination of criminal history record information 50 — Dissemination for criminal justice purposes 50 — Dissemination for noncriminal justice purposes 52 — Dissemination trends 55 — Statutory dissemination policies in the 21 st century
Section 4: The product of the repositories — the criminal history record	38 Accuracy and completeness 39 Linking of arrest and disposition data 39 — Current practice 40 — Case-tracking systems 40 — Charge-tracking systems 41 Content and format 41 — Differences in content 41 — Differences in format and terminology 42 — Problems in deciphering records 42 — Calls for reform 43 — Transmission specifications	Chapter IV: The evolution of information technology	58 Background
Chapter III: Overview of laws regulating criminal history record systems	45	Section 1: Automated reporting to repositories	60 Automated arrest reporting 60 — Problems with manual reporting 60 — Automation aids in arrest reporting 60 — Benefits 60 Automated disposition reporting 60 — Reporting by local prosecutors, courts 61 — Reporting by State courts systems 61 — Reporting by State corrections 61 — Benefits
Section 1: Constitutional and common law doctrines	45 Constitutional doctrines 45 Common law doctrines	Section 2: Advances in fingerprint technology	61 Automated fingerprint processing 62 — Livescan 62 The benefits of automated fingerprint systems for criminal history repositories 63 The scope of automated fingerprint identification system implementation
Section 2: Statutory and regulatory requirements	46 Federal statutes and regulations 46 — Statutes 46 — Regulations 47 State statutes and regulations		

Section 3: Justice system integration	64	The technology of integration	Section 2: The Interstate Identification Index system	76	Interstate Identification Index system approach
	64	The benefits of integration for criminal history repositories		77	Interstate Identification Index system implementation status
	65	The integration of criminal justice information and benefits achieved		77	— System availability status
	66	Integration's future and its potential impact on criminal history repositories		77	— Criminal justice searches
Section 4: Data warehousing tools	67	The data warehousing process	79	— Noncriminal justice searches	
	67	The benefits of data warehousing	81	— Decentralization implementation status	
	68	The scope of data warehousing in justice agencies	81	— Interstate Identification Index record responses for criminal justice purposes	
Section 5: Data exchange standards	69	How standards are developed	84	— Interstate Identification Index record responses for noncriminal justice purposes	
	69	What standards govern	84	— Discontinuance of Federal Bureau of Investigation records of State offenders	
Section 6: Internet security strategies	70	Kansas' use of the Internet to exchange criminal history records	Section 3: Interstate Identification Index system impact	88	Benefits of Interstate Identification Index participation
	71	The Internet's potential for small justice agencies, and how increased access will benefit criminal history repositories		88	— Improved record quality
Section 7: Policy innovations	71	How policies are formulated		88	— Cost savings
	72	Policies governing integrated justice information systems		88	— Increased system security
Chapter V: National criminal history record checks and the Interstate Identification Index	73	Background	88	Benefits of National Fingerprint File participation	
			88	— Duplicate files eliminated	
Section 1: Maintenance and use of current Federal Bureau of Investigation files	74	Current record maintenance practices	88	— Uniform dissemination standard	
	75	Authorized users of data	89	— Faster response times	
			89	Burdens of Interstate Identification Index participation	
			Section 4: The <i>National Crime Prevention and Privacy Compact</i>	89	Background
				90	Compact provisions
			Chapter VI: Federal initiatives and criminal history records	91	Background

Section 1: Federal Bureau of Investigation system upgrades	92 Integrated Automated Fingerprint Identification System 92 Criminal Justice Information Services Division relocation 92 National Crime Information Center 2000	Appendix 4	113 Statutes providing for upgraded charges for offenders with prior convictions
Section 2: The <i>Brady Act</i> and its impact	93 Background 93 The National Instant Criminal Background Check System 94 Other <i>Brady Act</i> provisions	Appendix 5	117 Statutes providing for enhanced sentences for offenders with prior convictions
Section 3: Federal grant programs and related initiatives	94 The National Criminal History Improvement Program 94 — Background 95 — Creation of the program 96 — Purposes for using grants 96 — Data quality, system improvement strategies 97 — Status of the program 97 Bureau of Justice Assistance block grant set- aside program 97 — Fund guidelines 98 The National Technical Assistance and Evaluation Program 98 Reporting alien convictions to the Immigration and Naturalization Service 99 Sex Offender Registry Assistance 99 Federal Bureau of Investigation/Bureau of Justice Statistics voluntary reporting standards	Appendix 6	121 Statutes authorizing consideration of criminal history in correctional classification and supervision
Appendix 1	101 Statutes making possession of a firearm by a convicted felon a criminal offense	Appendix 7	125 Statutes providing that parole eligibility shall or may be affected by prior convictions
Appendix 2	105 Statutes requiring or permitting prior criminal records to be considered in bail decisions	Appendix 8	129 Arrest records with fingerprints, 1989 and 1992
Appendix 3	109 Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals	Appendix 9	133 Overview of State criminal history record systems, December 31, 1999
		Appendix 10	137 Automation of master name index and criminal history file, 1989, 1993, 1997 and 1999
		Appendix 11	141 Number of subjects (individual offenders) in State criminal history file, 1995, 1997 and 1999
		Appendix 12	145 Number of final dispositions reported to State criminal history repository, 1993, 1995, 1997 and 1999
		Appendix 13	149 Arrest records with fingerprints, 1989, 1993, 1997 and 1999
		Appendix 14	153 Notice to State criminal history repository of release of arrested persons without charging, 1989, 1993, 1997 and 1999

Appendix 15	157	Average number of days to process arrest data submitted to State criminal history repository and current status of backlog, 1999
Appendix 16	161	Average number of days to process disposition data submitted to State criminal history [repository] and current status of backlog, 1999
Appendix 17	165	Methods to link disposition information to arrest/charge information on criminal history record, 1999
Appendix 18	169	Data quality audits of State criminal history repository, 1999
Appendix 19	173	Model interstate criminal history record
Appendix 20	183	Federal Bureau of Investigation/Bureau of Justice Statistics Recommended Voluntary Reporting Standards for Improving the Quality of Criminal Record Information
Appendix 21	185	<i>National Crime Prevention and Privacy Compact</i> and Section-by-Section Analysis

Glossary

Automated Fingerprint Identification System

(AFIS): An automated system for storing, searching, and transmitting digitized fingerprint images. (See pages 32, 48-49, and 61-63.)

Brady Handgun Violence Prevention Act (Brady Act):

The *Brady Act* amended the *1968 Gun Control Act* to mandate background checks for potential gun buyers before a firearm purchase can be completed. (See pages 54, and 93-94.)

Criminal History Record Improvement (CHRI)

Program: Administered by the Bureau of Justice Statistics, U.S. Department of Justice, this was the first grant program in a long-term and multifaceted effort by the U.S. Department of Justice (DOJ) to help States improve the quality of their criminal history records. (See pages 94-97.)

Central Repository: The database, or agency housing the database, that maintains criminal history records on all State offenders. Records include fingerprint files and files containing identification segments, arrest notations, and dispositions. (See pages 2, and 23-24.)

Criminal History Record Information (CHRI) or Criminal History Record Information System:

A record, or system for maintaining records, that includes individual identifiers and that describes an individual's arrests and subsequent dispositions. (See chapter II.)

Criminal Justice Information Services (CJIS) Advisory Policy Board (APB):

Successor to the National Crime Information Center (NCIC) APB, the CJIS APB is comprised of 30 criminal justice officials who provide policy input to guide the Federal Bureau of Investigation (FBI) in the administration of its CJIS Division. The CJIS Division administers the NCIC, the Uniform Crime Reporting (UCR) Program, the Integrated Automated Fingerprint Identification System (IAFIS), and other information system programs determined by the FBI director to have some relationship with these programs. (See page 27.)

Data Quality: The extent to which criminal history records are complete, accurate, and timely. (See pages 3, 37-39, 47-50, and 88.)

Data Warehousing: A term used to describe a data management process that permits the collection of data from different and often-disparate electronic sources in a single database for use in queries, detailed analysis, and report preparation. (See pages 5, and 67-68.)

Felony or Serious

Misdemeanor: The offense categories for which fingerprints and criminal history information are accepted by the FBI and entered in the Bureau's files, including the III. "Serious misdemeanor" is defined to exclude certain minor offenses, such as drunkenness or minor traffic offenses. (See pages 12, 27, 31, and 74.)

Integration: A process by which a computerized information system maintained by one entity is programmed to electronically interact and share data with a computerized information system maintained by another entity. (See pages 63-67.)

Interstate Identification Index (III): An “index-pointer” system maintained by the FBI for the interstate exchange of criminal history records. (For complete information, see chapter V.)

Juvenile Justice Records: Official records of juvenile justice adjudications. (See pages 27-29.)

Livescan and Cardscan: Automated devices for generating and transmitting digitized fingerprint images. Livescan devices capture fingerprint images directly from subjects’ fingers, which are rolled onto glass scanning plates. Cardscan devices scan and digitize standard inked fingerprint cards and can transmit electronic images with related textual data to remote sites for printout or direct use. (See page 62.)

Master Name Index (MNI): A subject identification index maintained by criminal record repositories that includes names and other identifiers for all persons about whom records are held. (See pages 29-30.)

National Child Protection Act of 1993: A Federal law whose provisions include the establishment of a national criminal background check system to which a designated criminal justice agency in each State must report or index child abuse crime information for child-care provider background checks. (See page 54.)

National Crime Information Center (NCIC): An automated, nationally accessible database of criminal justice and justice-related records maintained by the FBI that includes “hot files” of wanted and missing persons, stolen vehicles, and identifiable stolen property, including firearms. (See pages 26-27 and chapter V.)

National Crime Information Center 2000: The new generation of the automated NCIC system. NCIC 2000, which electronically compiles, disseminates, and exchanges timely criminal justice information; pertinent graphic images, including mug shots, tattoos, and signatures; and records of wanted and missing persons and of identifiable stolen property, became operational on July 11, 1999. (See page 92.)

National Crime Information Center Advisory Policy Board (APB): An advisory committee comprised of criminal justice officials, representatives of criminal justice associations, and user representatives that provided policy input to guide the FBI in the administration of the NCIC system. The NCIC APB was reorganized as the Criminal Justice Information Services (CJIS) APB in 1994. (See page 27.)

National Crime Prevention and Privacy Compact: An interstate and Federal/State compact designed to facilitate use of the III to exchange criminal history data among States and the Federal government for noncriminal justice purposes. (See pages 89-90.)

National Criminal History Improvement Program (NCHIP): An umbrella funding program administered by the Bureau of Justice Statistics, U.S. DOJ, designed to assist States in meeting evolving Federal and State requirements concerning criminal history and related records, such as protective orders and sexual offender registry records. (See pages 43, 94-97.)

National Fingerprint File (NFF): A database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System. (See pages 24, 77, 84-89.)

National Instant Criminal Background Check System (NICS): An automated system established in accordance with the *Brady Handgun Violence Prevention Act* to check the eligibility of prospective gun purchasers. (See pages 93-94.)

National Law Enforcement Telecommunications System (NLETS): A computerized, high-speed message-switching system maintained by the States that provides for the interstate exchange of criminal justice-related information among local, State, and Federal criminal justice agencies. (Referenced throughout report.)

National Sex Offender Registry Assistance Program (NSOR-AP): Instituted in FY 1998 to help States respond to Federal mandates to establish sex offender registries and to contribute data to a national sex offender registry. Funded under the National Criminal History Improvement Program (NCHIP) beginning in FY 1999. (See page 99.)

Positive Identification: Identification of an individual using unique biometric characteristics not subject to alteration. Positive identification is distinguished from identification using name, sex, birth date, and other nonbiometric identifiers typically displayed on documents subject to alteration or counterfeit, such as birth certificates, Social Security cards, or drivers' licenses. (See pages 12 and 25.)

Security Clearance Information Act (SCIA): Federal legislation requiring States to make criminal history records available to certain Federal agencies in connection with screening for security clearances. (See page 51.)

Sex Offender Registry: A registry established to help law enforcement agencies keep track of convicted sex offenders released into the community. (See page 99.)

Survey of State Criminal History Information Systems: A comprehensive survey of the States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands, funded by BJS, U.S. DOJ, that describes the status of their criminal history record systems. SEARCH, The National Consortium for Justice Information and Statistics, has conducted this biennial survey six times since 1989, most recently in 1999. (See pages 30-36.)

Introduction

Purpose of this report

In 1993, SEARCH, The National Consortium for Justice Information and Statistics, and the Bureau of Justice Statistics, U.S. Department of Justice, produced the first comprehensive examination of the Nation's criminal history record systems and the major issues and developments that affected them.

*Use and Management of Criminal History Record Information*¹ described in non-technical terms the complex and interrelated network of Federal, State,² and local information systems that provided criminal history records to criminal justice personnel and to authorized noncriminal justice users.

It also assessed the roles these systems played in the effective functioning of the criminal justice system, and reviewed the impact that new technologies and strategies

had on the completeness, accuracy, and availability of criminal history records.

The report served as a valuable reference tool through the mid- and late-1990s. Now, as the 21st century dawns, *Use and Management of Criminal History Record Information* has been revised to reflect changes in the handling of criminal history records that occurred in the 1990s following policy developments, societal changes, technological advances, and other factors.

This revised 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.

- An examination of the evolution of information technology and information system capabilities that affect criminal history record systems.
- A description of the Interstate Identification Index (III) system and the role it plays in the decentralization of the Nation's criminal history record information system.
- 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 these systems 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 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.

¹Robert R. Belair and Paul L. Woodard, *Use and Management of Criminal History Record Information: A Comprehensive Report*, Criminal Justice Information Policy series, NCJ 143501 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, November 1993).

²As used in this publication, the term "State" refers to all 50 U.S. States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

With this background, State and Federal legislators and other policymakers, as well as the general public, should better understand the critical importance of criminal record repositories, and also how data quality problems and other difficulties — 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 State and national criminal history record repositories that provide information about individuals' past criminal involvement to criminal justice practitioners and to non-criminal 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 from maintaining 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 State central repositories for information about case processing in other agencies.

State repositories also make criminal history records available to some noncriminal justice agencies, such as State agencies authorized by law to obtain the records for such purposes as employment screening and occupational licensing. Increasingly, local law enforcement agencies are being required by State and Federal law to conduct criminal history background checks on individuals pursuing employment in sensitive positions in child and elder care and security, and for certain license authorizations. State criminal history repository databases are among those searched during such background checks.

— 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 States voluntarily submit such information. The FBI has accepted and recorded State offender information for more than three-quarters of a century 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 noncriminal justice agencies authorized by Federal law to obtain such records.

Timely criminal history record information issues

This report, which describes 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, when *Use and Management of Criminal History Record Information* was published in 1993, records maintained by State and Federal repositories were not always accurate and up-to-date, primarily due to the failure of criminal justice agencies to report information accurately, completely, and regularly, but also in some cases due to a lack of adequate equipment and procedures at the repositories. While data quality has improved since then, in part because of the growing recognition of the value of accurate and up-to-date criminal history records and the increased Federal and State funding that resulted from this recognition, there is still room for improvement. Local justice agencies, for example, are providing State repositories with more final court dispositions for recent arrests than in the past, but not for older arrests previously reported to the repositories.

Recent surveys and audits have also shown the following:

- There is a wide disparity among the States in the time it takes final court dispositions to reach State repositories, and in the time it takes for the repositories to enter disposition data into their databases.

- More than half of the State criminal history repositories developed backlogs in entering arrest and disposition data into their databases.
- Most State criminal history repositories receive some final court dispositions that they are unable to link to arrest records.

As noted previously, a number of initiatives have been implemented to improve criminal history record data quality nationwide, including Federal grant assistance to the States and the promulgation of voluntary data quality standards. States may be required, in some instances, to provide matching funds or to institute appropriate information-reporting procedures before they are deemed eligible for some Federal grant programs. This may require legislative activity for funding to support technology purchases and increased staffing, or to institute or amend existing laws and regulations to facilitate broader information exchange.

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, State repositories and the FBI are engaged in a cooperative program 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 is being replaced by the III, 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 many States to modify record dissemination laws and policies, and to upgrade their repositories' technical capabilities to realize the long-term cost savings and potential for improved performance available through III participation.

— **New technologies**

Third, new technologies continue to emerge that offer great potential for significantly increasing the efficiency of the criminal history record repositories and the quality of the information they collect, maintain, and disseminate. The declining cost and impressive capabilities of state-of-the-art information technology are motivating many States to automate their information systems and to integrate them

with justice agencies in their States, in other States, and at the Federal level. However, these automation efforts raise new questions that must be addressed concerning privacy, confidentiality, data ownership, funding responsibilities, long-term maintenance, and other issues.

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 appendixes. 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 of terms used in this report, 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 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 that should be reflected, in 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 describes some of the technological innovations and information management strategies now in use or available to criminal record repositories to improve record quality and the ability to exchange information. Technologies, innovations, and strategies described include:

- Automated reporting of criminal history information to the repositories by law enforcement agencies, prosecutors, courts, and corrections agencies.
- Automated fingerprint identification technology,

its impact on the accuracy of the identification function, and the efficiency of inquiry and response procedures.

- Livescan fingerprint technology and its impact on the efficiency and accuracy of arrest subject processing, inquiry processing, and the transmission of fingerprint images to the repositories.
- Justice system integration that provides higher quality criminal history records by reducing redundant data entry, and that facilitates the transfer of information to agencies participating in the criminal justice process and, ultimately, to the criminal history repository.
- Data warehousing tools that program incoming data and transform existing data so the data can be used in detailed research, analysis, and planning.
- Data exchange standards that allow information sharing among justice agencies using equipment manufactured by different vendors.
- Internet security strategies that may allow the wide-scale transfer of criminal history information on the Internet, and which may ultimately reduce dependence on costly dedicated networks and improve data quality at the repository

level by providing cost-effective on-line access to smaller justice agencies.

- Policy innovations that allow justice entities to maximize the capabilities of emerging information technologies and systems and that increase trust in the systems by developing recognized policies and requirements for system operation, which attract more justice participants.

Chapter V describes the III, 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, the National Fingerprint File, the Master Name Index, and other information sources. 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 the *National Crime Prevention and Privacy Compact*, which formalizes III participation by the FBI and the State repositories for non-criminal justice purposes.

Chapter VI provides a brief overview of current Federal initiatives and activities that affect or are related to criminal history record systems, including:

- The FBI's Integrated Automated Fingerprint Identification System.
- The National Instant Criminal Background Check System, mandated by the *Brady Handgun Violence Prevention Act*.
- Federal grant programs to improve data quality.
- The National Sex Offender Registry Assistance Program.
- The *Crime Identification Technology Act of 1998*.
- The *National Crime Prevention and Privacy Compact*.

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 justice personnel utilize criminal history records.

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

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

- criminal codes and procedures
- police agencies
- local detention facilities
- prosecution agencies
- courts
- 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 murder, robbery, burglary, 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 Congress³ has enacted a Federal criminal code defining Federal crimes and a code of Federal criminal procedure setting out applicable rules for 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. These roles are sometimes 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 State law violations are investigated by local police, and crime suspects are arrested and charged at the local level. In

addition, other police units — such as State troopers, Federal Drug Enforcement Administration officers, or Federal Bureau of Investigation (FBI) agents — may be involved with local police in the investigation, arrest, and prosecution of certain cases.

Local detention facilities

Jails, which are also 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 State “prison-ready” inmates — convicted and sentenced persons whose transfer to State prison is delayed by overcrowding or other reasons. In most such cases, State or Federal governments pay fees to the local communities that 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 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 responsible for prosecuting local offenses, and also virtually all offenses defined under State law. For many of them, prosecuting State crimes is their primary, and often their exclusive, function.

Courts

Courts exist at the local, State, and Federal levels. Most States have “integrated” court systems that, as a result of reform and modernization, have a more or less uniform statewide structure that combines 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 court administration office.

There are magistrates' courts, lower-level trial courts, felony trial courts, and intermediate and final appellate courts in a typical State judicial system. Magistrates, or Commissioners in some States, conduct initial appearances in criminal cases. They may set bail, but usually have no trial jurisdiction. Lower-level trial courts, often called Municipal Courts, County Courts, or District Courts, are

³In this report, “the Congress” refers to the United States Congress.

usually 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 appealed from the lower trial courts. About one-half of the States have intermediate appellate courts, usually called the Court of Appeals. The State Supreme Court tops the structure as 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, Federal courts can review State court decisions.

Corrections agencies

“Corrections” is 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. A prisoner may sometimes serve concurrent State and Federal or State and local sentences.

Section 2: Typical State criminal justice process

Although there may be unique aspects of every State’s criminal justice system, the essential steps or functions of practically each State’s system are similar. The following discussion describes how these essential steps function in a typical State system, and points out some shortcomings in the process that may detract from the creation of adequate criminal case records.

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
- correctional supervision.

(See figure 1, which illustrates the sequence of events in the criminal justice system.)⁴

⁴The flowchart in figure 1, which illustrates the sequence of events in the criminal justice system, updates the original chart prepared by the President’s Commission on Law Enforcement and Administration of Justice in 1967, and which appeared in the Commission’s report, *The Challenge of Crime in a Free Society*. The chart summarizes the most common events in the criminal and juvenile justice systems, including entry into the criminal justice system, prosecution and pretrial services, adjudication, sentence and sanctions, and corrections. Downloadable electronic files of both full-color and black-and-white versions of the chart, as well as instructions for ordering full-color posters of the chart, appear on the Bureau of Justice Statistics’ Web site at <http://www.ojp.usdoj.gov/bjs/flowchart.htm>.

Investigation

Police conduct most criminal investigations, but grand juries or other special bodies, such as crime commissions or legislative committees, may also undertake investigations. Most information utilized by criminal investigators is commonly referred to as “intelligence” information (compiled in an effort to anticipate, prevent, or monitor possible criminal activity) or “investigative” information (obtained in the course of an investigation into 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. Consequently, it 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 an arrest warrant is not generally 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 that 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 States have laws or regulations requiring arresting agencies to report certain arrests to the central repository.⁵ (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.

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

Citations are paper forms 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

⁵Robert R. Belair and Paul L. Woodard, *Data Quality of Criminal History Records*, Criminal Justice Information Policy series, NCJ 98079 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, October 1985). Hereafter, Data Quality Report.

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. 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 a criminal case's information flow. Booking typically involves an entry into a chronological arrest log or arrest register, the filing of an arrest report by an arresting officer, and the preparation of a statement of charges as the arresting officer sees them.

Personal information about an 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, is obtained and recorded during the booking process.

As noted previously, the subject is fingerprinted if the arrest is for a felony or a serious misdemeanor. Typically, three sets of fingerprints are obtained — 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 queries available criminal history record systems to determine whether the subject has a record of prior or pending cases that may affect how he or she is processed. These record

systems include the agency's own files, files maintained by the criminal history record repository in the State where the agency is located, and files included in the Interstate Identification Index (III), if positive identification is not established during the local and State inquiries. (III is 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 "Triple I," is discussed in detail in chapter V.)

The booking stage is another point at which an arrestee may be released without prosecution — an event that could cause problems for criminal history record reporting purposes if the subject was fingerprinted before release and the fingerprints were already sent to the repository. A notice of the release must also be sent to avoid the creation of an open-arrest record without a notation that the case was officially terminated. A recent survey of State repositories revealed that around 60% of the States have laws or regulations that require law enforcement agencies to send such notices to the repository,⁶ and audits have shown

⁶Sheila J. Barton, *Survey of State Criminal History Information Systems, 1999*, Criminal Justice Information Policy series, NCJ 184793 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, October 2000) p. 4 and table 7. Hereafter, 1999 Survey.

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

A number of things can happen at the initial appearance:

- 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.
- 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 this information, with the exception of the handling of the nonserious case, is typically 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, which may not be required in all jurisdictions, particularly in cases in which a grand jury must issue an indictment. Simply put, the preliminary hearing determines 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 also may 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. It may be reviewed and changed, possibly several times, at later stages of the case proceedings.

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

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

Selected tables from the 1999 Survey are set out in this report as appendixes 9-18.

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 offense circumstances, 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 the prosecutor may decline to prosecute some or all of the charges. The prosecutor may also add or modify charges.

If the prosecutor decides to go ahead with the proceedings, the prosecutor may initiate prosecution in some cases by filing an "information" with the appropriate court.⁷ The prosecutor may also 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.

⁷An "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.

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 is typically larger than a regular trial jury, which usually consists of 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 evidence presented by the prosecutor, and decide whether there should be a trial. If a grand 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, the accused is advised of the charges filed and of his or her rights under the law. For example, if the accused person does not already have legal counsel, he or she is advised of right to counsel, including the right to court-appointed counsel if the accused is indigent. If the accused person has counsel or waives legal representation, he or she 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 whether the accused is competent to understand the proceedings and to assist counsel in his or her defense.

The defendant may enter a plea as a result of charge or sentence negotiations with the prosecutor. The judge may reject a guilty plea if the judge finds that the defendant was coerced or does not understand the charges or the consequences of his or her plea. If the judge accepts a guilty or a no-contest plea,

the judge normally enters a judgment of conviction on the record. The judge may also impose sentence if the charges are not serious. Sentencing is usually set for a later date in cases involving felonies or serious misdemeanors, 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 other trial outcomes that can result in confusing criminal history records, such as “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 designated 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 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 a higher 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; in other cases, the convicted person may have a right to appeal if he or she chooses. In certain cases, however, appeal may be at 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 by 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.⁸ The presentence report

⁸Paul L. Woodard, *Statutes Requiring the Use of Criminal History Record Information*, Criminal Justice Information Policy series, NCJ

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
- confinement in a mental health facility
- 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

129896 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, June 1991) p. 15. Hereafter, Statutes Report. Selected tables from the Statutes Report are set out in this report as appendixes 1-7.

“three Ps”: probation, prison, and parole.

Incarceration in a State prison is usually for persons who are convicted of felonies and receive sentences of 1 year or more. Sentences of less than a year are usually served in local jails or other local facilities. A person may receive a “split sentence”; that is, the person 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
- corrections uses.

This section 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.⁹ 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.
- Prior offenders might not be able to legally purchase firearms, which would enable them to commit more crimes.

⁹Ibid., p. 1.

- 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.
- 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, 49 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.¹⁰

A suspect's status as an escapee or failure to comply with the conditions of his or her current status as a probationer, parolee, or bailee can also be determined from the suspect's 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

¹⁰Ibid. at table 10 lists the 43 States that had implemented such laws when the Statutes Report was issued in 1991. Six States — Georgia, Idaho, Indiana, Massachusetts, Michigan, and South Dakota — have since banned those convicted of or charged with, but not yet tried for, felonies from possessing firearms. Vermont was the only State in mid-2001 not to have such laws. Table 10 is included in this report as appendix 1.

magistrate deciding whether and under what conditions to release a person on bail pending trial. Indeed, all 50 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.¹¹

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 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

¹¹Ibid. at table 2 lists the 47 States that had implemented such laws when the Statutes Report was issued in 1991. Idaho, New Hampshire, and Oklahoma have since implemented similar laws. An excerpt from table 2 is included in this report as appendix 2.

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
- parole board hearings.

All 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.¹² 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.¹³ 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 judges may not be aware in some cases that the information before them comes primarily from repository-supplied criminal history records.

¹²Ibid., pp. 13-14 and table 5. An excerpt from table 5 is included in this report as appendix 3.

¹³Ibid., p. 11 and table 3. An excerpt from table 3 is included in this report as appendix 4.

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 previously, 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 may also be admissible to attack the credibility of the defendant, if the defendant testifies, or of other witnesses.

— For sentencing decisions

The most frequent use of criminal history records by courts, however, is in con-

nection 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 life sentences without parole for certain habitual offenders in some cases.

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.¹⁴ 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.¹⁵

In lieu of, or in addition to, specific upgrade or enhancement laws, some jurisdictions have established sentencing guidelines or presumptive or determinate sentencing structures based in part on prior convictions as aggravating factors, or on sentence computation formulas that include prior convictions as factors in the computation.¹⁶

— For probation and parole decisions

Courts also take criminal history record information

¹⁴Ibid., p. 14 and table 4. An excerpt from table 4 is included in this report as appendix 5.

¹⁵Ibid., p. 14.

¹⁶Ibid., p. 13.

into account when 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 repeat offender, habitual offender, and sentence enhancement laws noted previously provide for mandatory prison terms, foreclosing probation as a possible sentence. Many of them also 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.¹⁷

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,¹⁸ and in making decisions about eligibility for good time credits, early release, work furlough, or release on parole.¹⁹

¹⁷Ibid., p. 14.

¹⁸Ibid., p. 51 and table 8. Table 8 is included in this report as appendix 6.

¹⁹Ibid., pp. 55-56 and table 9. An excerpt from table 9 is included in this report as appendix 7.

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 decisionmaking 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.
- Whether new and prior incidents of criminal involvement were separated by specified periods during which the individual was free of criminal involvement. 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, usually because there is no legal requirement to obtain fingerprints in such cases.²⁰

²⁰SEARCH Group, Inc., *Report of the National Task Force on Criminal History Record Disposition Reporting*, Criminal Justice Information Policy series, NCJ 135836

Finally, it should be re-emphasized that virtually all laws that require or permit criminal justice decisions 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 noted previously, 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 for making bail recommendations.

A growing number of States have procedures, facilities, and automated information systems for making fingerprint-verified criminal history record responses available within such short time frames. Some jurisdictions have bail agencies or other agencies charged with the

(Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, June 1992) p. 3. Hereafter, National Task Force Report.

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 many 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.

Because 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 to investigate and compile 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.

Chapter II: Overview of existing criminal history record systems

This chapter describes the Nation's existing criminal history record systems at 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 types of information maintained by 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.
- 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

State-level criminal history records are collected, maintained, and disseminated by "State central repositories," which are agencies or bureaus within State governments. These repositories are 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 criminal history records.
- Establishing an efficient and timely record retrieval system.
- Ensuring accurate and up-to-date records.
- Establishing rules and regulations governing the dissemination of criminal history records to criminal justice and noncriminal justice users. Today, all 50 States, Puerto Rico, and the District of Columbia have established

central repositories for criminal history records.²¹

Federal-level systems

At the Federal level, the Federal Bureau of Investigation (FBI) functions as a criminal history information repository for both Federal offender information and for records of arrests and dispositions under State law. As discussed in this chapter, the FBI's criminal history record information role is changing at the beginning of the 21st century.

In the past, the FBI operated as a centralized criminal history file that served as the primary source for national record searches and interstate record exchanges. Actions are under way that will transform the Bureau's role to that of a "51st State repository" that will maintain and make available information on Federal offenders primarily. States will send only first-arrest information to the FBI, which will use the data to keep current the Interstate Identification Index (III), a listing of offenders and the States that maintain their criminal history records. States will collect any subse-

quent criminal history information that accrues on the offenders, and will make offenders' entire criminal histories and related information available for queries from other States or from authorized Federal entities. This process will spare State repositories and the FBI from maintaining costly duplicate records, and will provide greater access to State-level criminal history information, which is generally more accurate than that maintained at the Federal level.

Under this process, the FBI will maintain these systems:

- The III, which will permit authorized requestors to determine whether any State or Federal repository maintains a criminal history record about a particular subject.
- 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.
- Efforts to establish State and Federal criminal history record systems.

Establishment of early police departments

At the beginning of the 20th 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. New York followed suit in 1844.

State governments took on the role of establishing organized police forces in less populated areas of the country. 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

²¹Paul L. Woodard and Eric C. Johnson, *Compendium of State Privacy and Security Legislation: 1999 Overview*, NCJ 182294 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, July 2000) p. 5. Hereafter, 1999 Compendium.

major urban area and all regional and State areas had established law enforcement agencies.²²

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, in 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.²³

²²Robert R. Belair, *Intelligence and Investigative Records*, Criminal Justice Information Policy series, NCJ 95787 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, February 1985) p. 14. Hereafter, *Intelligence and Investigative Records*. See also, James N. Gilbert, *Criminal Investigation* (Columbus, Oh.: Charles Merrill and Company, 1980) chapter 3. Hereafter, Gilbert.

²³Robert R. Belair, *Original Records of Entry*, Criminal Justice Information Policy series, NCJ 125626 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, November 1990) pp. 6-7. See also, Michael J. Petrick, “The Press, the Police Blotter and

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, famed detective Allan Pinkerton launched his own crude criminal history record system with respect to persistent criminals. Pinkerton called for the establishment of a national system to collect and maintain records, including photographs, of active criminals.²⁴

The first systematic attempts to develop criminal identification systems included name-based registers of habitual criminals combined with photographs, and an anthropometric system for taking exact measurements of physical features which was developed in the mid-19th century by Alfonse Bertillon of France. In 1896, the International Association of Chiefs of Police (IACP) established the first “national” criminal identification system in Chicago.²⁵

At about the same time, the “Henry Classification System” emerged as the first ef-

Public Policy,” 46 *Journalism Quarterly* 475 (Autumn 1969) n.1.

²⁴*Intelligence and Investigative Records*, p. 18. See also, Gilbert, p. 17.

²⁵Gilbert, p. 17.

fective method for the use of fingerprints to positively identify previous offenders and to search identification files.²⁶ In 1908, the U.S. Department of Justice (DOJ) formed the Identification Bureau (the forerunner of the FBI), whose responsibilities included the establishment of a fingerprint-based criminal history record information system.²⁷ 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.²⁸

Efforts to establish criminal history record systems

Fingerprinting and related recordkeeping received an important impetus in 1924 when the U.S. Congress directed the FBI to create an “Identification Division” to acquire, maintain, and use fingerprint information for criminal identification and for certain other purposes.²⁹

²⁶Clarence G. Collins, *Fingerprint Science: How to Roll, Classify, File and Use Fingerprints* (Placerville, Ca.: Copperhouse (formerly Custom) Publishing Company, 1985) p. 1. Hereafter, Collins.

²⁷*Ibid.*

²⁸F.A. Reed, “The Finger Mark, the Prime Piece of Scientific Evidence,” *Journal of Forensic Sciences* (January 1981) p. 9.

²⁹Collins, p. 2.

The Identification Division started with slightly more than 800,000 fingerprints, which represented contributions from the files of the IACP; the Federal penitentiary at Leavenworth, Kansas; and the DOJ's own Identification Bureau records.³⁰

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.³¹ The report called for, among other things, a significant Federal effort to establish and automate a national criminal history record system.

³⁰ Ibid.

³¹ 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).

— Law Enforcement Assistance Administration efforts to establish State systems

In 1969, the U.S. DOJ's Law Enforcement Assistance Administration (LEAA), established in response to the Commission's recommendations, initiated Project SEARCH, a consortium of the States charged with developing and demonstrating 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.³² 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. These States and others had established central State repositories charged with maintaining statewide criminal history record systems.³³

³² CCH Project Committee, *Technical Report No. 14: The American Criminal History Record: Present Status and Future Requirements* (Sacramento: SEARCH Group, Inc., September 1976) p. 6.

³³ Ibid.

— Federal Bureau of Investigation efforts to establish Federal systems

As noted earlier, the FBI has collected and maintained criminal history records since the early part of the 20th 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 so-called "hot files" containing information about wanted and missing persons, stolen vehicles, license plates, guns, boats, securities, and articles of personal property, and certain other types of files.³⁴

³⁴ Paul L. Woodard and Robert R. Belair, *Criminal Justice "Hot" Files*, Criminal Justice Information Policy series, NCJ 101850 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, November 1986) pp. 11-14. Information on the NCIC "hot files" was

NCIC maintains its own nationwide telecommunications system and operates as a cooperative Federal-State venture. Policy input is provided through the FBI's Criminal Justice Information Services Advisory Policy Board (CJIS APB), which also reviews and makes recommendations on the Uniform Crime Reporting Program (UCR), the Integrated Automated Fingerprint Identification System (IAFIS), and other information systems determined to have some relationship with these programs.

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 the decentralized III national criminal history record system. (See chapter V.)

obtained from the *NCIC Operating Manual* and other documents published by the FBI, and from NCIC officials and staff.

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
- criminal histories
- juvenile records
- other information (such as pretrial release information and felony conviction flags)
- 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.
- 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).³⁵ The repository

³⁵The 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 no-

ries 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.³⁶

Generally, State criminal history record repositories did not accept or maintain records of juvenile offenses, except for cases in which juveniles were tried as adults. However, a dramatic increase in the juvenile crime rate in the early 1990s, combined with a series of highly publicized crimes committed by juvenile offenders, some with extensive criminal histories, prompted Congress and many State legislatures to consider changing this practice as the 1990s came to a close. Among the changes being considered were maintaining

tations 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.

³⁶1999 Compendium, *supra* note 21, p. 4.

State repository files for juveniles whose crimes would be considered felonies if committed by adults; supporting juvenile files with identifiers such as photographs and fingerprints; and merging an individual's juvenile and adult criminal records. (Both houses of Congress, in fact, considered significant changes in 2000 to the methods used to maintain and disseminate juvenile criminal history records, although no new Federal laws had been enacted in this area as of mid-2001.)

Identification information

An individual's criminal history record typically includes the following 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 information. The number of States reporting 100% fingerprint support for their criminal history files has fluctuated since SEARCH conducted its first survey of criminal history information systems in 1989. Thirty-eight States responding to that survey, which covered the status of the States' criminal history repositories through year-end 1989, reported that 100% of their criminal history files were fingerprint-supported.³⁷ By 1992, that number had grown to 41 States, the District of Columbia, and the U.S. Virgin Islands.³⁸ The most recent figures, which cover the repositories' status through year-end 1999, show that 37 States reported 100% fingerprint support for their criminal history files. More than 8.8 million fingerprint cards or electronic substitutes were submitted to State criminal history repositories in 1999.³⁹

³⁷Sheila J. Barton, *Survey of Criminal History Information Systems*, Criminal Justice Information Policy series, NCJ 125620 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, March 1991) table 6. Hereafter, Survey Report.

³⁸Sheila J. Barton, *Survey of Criminal History Information Systems, 1992*, Criminal Justice Information Policy series, NCJ 143500 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, November 1993) table 6. Hereafter, 1992 Survey. Table 6 is included in this report as appendix 8.

³⁹1999 Survey, *supra* note 6, p. 3.

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 trial 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

As noted previously, the FBI, like most State repositories, did not maintain juvenile record information, except with respect to juveniles tried as adults.⁴⁰ However, dramatic increases in juvenile crime that occurred in the early 1990s, when juveniles were involved in 14% of arrests for violent crime (compared to around 10% of such arrests in the early- to mid-1980s), prompted a re-evaluation of the nearly century-long practice of adjudicating juvenile

⁴⁰Testimony of Lawrence K. York, Assistant Director, Identification Division, FBI, before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, March 20, 1992.

offenders differently than adult offenders.⁴¹ On July 15, 1992, the Attorney General adopted a rule authorizing the FBI to accept State-reported records of serious offenses by juveniles.⁴² 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.⁴³

While juvenile crime began to decline following its statistical peak in 1994, public interest in more punitive treatment of juvenile offenders continued, motivated in large part by a series of highly publicized and emotionally wrenching school shootings by students that occurred in the latter half of the 1990s. Both houses of Congress passed legislation in 2000 that weakened or eliminated many of the previous protections provided to juvenile offenders. Included in both bills were provisions that would change the way juvenile criminal history records were disseminated; that would allow the fingerprinting of juvenile offenders who

committed crimes that would be considered felonies if committed by adults; that would create grant programs for States interested in improving the accuracy and accessibility of their juvenile criminal history records; and other provisions related to these records. Neither bill was enacted, however, and a House and Senate conference formed to iron out differences between the two bills had not reached a consensus as of mid-2001.

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.

— Felony flags

Forty-two States currently “flag” some or all felony convictions in their criminal history databases, and an additional 20 States collect sufficient data to flag at least some felonies.⁴⁴ Such information can be essential for users of criminal history re-

ords. For example, because the *Gun Control Act of 1968* prohibits the purchase or possession of firearms by persons convicted of felonies or domestic violence misdemeanors, systems that flag these types of 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.⁴⁵ 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.⁴⁶

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 (MNI) is a key element of the criminal history system of the National Instant

⁴¹See, “The juvenile share of the crime problem decreased in 1997,” Office of Juvenile Justice and Delinquency Prevention, available at http://www.ojjdp.ncjrs.org/jjbulletin/9812_2/crime.html.

⁴²U.S. Department of Justice, “Juvenile Records,” 56 *Federal Register* 25642 (June 5, 1991).

⁴³Amending 28 C.F.R. § 20.32(a)(b).

⁴⁴1999 Survey, *supra* note 6, table 1. Table 1 is included in this report as appendix 9.

⁴⁵National Task Force Report, *supra* note 20, page 3.

⁴⁶For example, complete misdemeanor information sometimes is helpful in assisting courts in distinguishing chronic offenders from first or infrequent offenders. See, *ibid.*

Criminal Background Check System (known as “NICS”) used for point-of-sale background checks of potential gun purchasers because it permits the user to identify a felony flag on a record of a named offender.

— *Contents, usage*

The MNI is simply an index of names and identifiers for every offender for which the repository has a partial or complete criminal history file. The MNI 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 MNI 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 MNI 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 MNI with about 38.5 million entries, to which it adds more than 149,000 new entries per month.⁴⁷ All

⁴⁷FBI CJIS Division memorandum, August 20, 1999, citing

States and the District of Columbia have automated some or all of their master name indexes. All but six States have 100% of their records in an automated MNI.⁴⁸

Section 3: The current status of the Nation’s criminal history record systems

Background

The Bureau of Justice Statistics (BJS), U.S. DOJ, has completed its latest survey in a series 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. The survey covered the status of all State record systems through 1999.⁴⁹ Information in this section that describes the status of State criminal history record systems is drawn from this 1999 survey.

Identification Automated Services Volume Statistics Report.

⁴⁸1999 Survey, *supra* note 6, table 4. Table 4 is included in this report as appendix 10.

⁴⁹See, 1999 Survey, *supra* note 6. The survey was the sixth such survey SEARCH has prepared for BJS. Previous surveys in the series covered 1989, 1992, 1993, 1995, and 1997.

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.
- Response times.

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 1999 survey, which SEARCH conducted for BJS, more than 59 million individual offenders were in the criminal history files of the State central repositories as of December 31, 1999.⁵⁰ In comparison, the repositories held only 30.3

⁵⁰*Ibid.*, table 2. Table 2 is included in this report as appendix 11.

million subjects in their criminal history files in 1984, and 42.4 million in 1989.⁵¹ Thus, the number of criminal history files maintained by State repositories has almost doubled from 1984 to 1999. More than 7.6 million dispositions were reported to 48 State repositories in 1999.⁵² In comparison, 4.7 million dispositions were reported in 1992 to 33 State repositories that provided disposition data for the 1992 survey, and 3.5 million dispositions were reported by the 34 States that provided data to a similar survey in 1989.

— **Federal records**

At the Federal level, the FBI's Criminal Justice Information Services (CJIS) Division maintains automated, fingerprint-based criminal history record information with respect to more than 43 million individuals in III.⁵³ The records represent all people with an FBI record who were born in 1956 or later; all persons born prior to 1956 whose first arrest fingerprint card was submitted to the FBI on July 1, 1974, or later; and numerous older records converted to the automated system in the CJIS Division's Manual

⁵¹1992 Survey, *supra* note 38, table 2.

⁵²1999 Survey, p. 2 and table 3. Table 3 is included in this report as appendix 12.

⁵³Source: Mr. Robert Mudd, Management Analyst, CJIS Division, FBI.

Conversion Project, as well as certain fugitives and repeat offenders. They include records relating to Federal offenders, as well as records of State offenders voluntarily reported to the FBI by State agencies. Not included are some 5 million older records that the FBI will keep in manual format. The CJIS 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 drunken 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 im-

properly accessed or modified.

- 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 far more effective overall. And, of course, automation makes it possible for a system to interface with the national criminal history record system.

— **State criminal history files**

State repositories have been making rapid progress in the last decade in automating their criminal history files. Eighteen respondents to SEARCH's survey assessing the state of State criminal history repositories in 1995 reported that 100% of their criminal history records were automated.⁵⁴ That figure had grown to 20 States when SEARCH conducted its survey two years later.⁵⁵ By 1999, 40 States reported that more than 75% of their criminal history records were automated,⁵⁶ compared to 26 States in 1992.⁵⁷

⁵⁴1999 Survey, *supra* note 6, table 2. See, appendix 11.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷1992 Survey, *supra* note 38, table 2.

By 1999, only 5 jurisdictions had automated less than 50% of their files (compared to 13 in 1992), and only 2 States lacked any automated criminal history records (as opposed to entries in the MNI).⁵⁸

Twenty-two States indicated that they were steadily automating their manual criminal history records each time an offender with a prior manual record was arrested.⁵⁹ Overall, about 52.8 million of the estimated 59 million criminal history records maintained by the State repositories nationwide were automated as of year-end 1999.⁶⁰

— 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 one-half of the States were operating statewide criminal justice automated fingerprint identification systems (AFIS).⁶¹ At the beginning of the 21st century, every State operates or has access to

automated fingerprint technology.⁶²

As described in more detail in chapter IV, an AFIS is a computer-based identification system that 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 that can be matched against digital codes assigned to other fingerprints that have been similarly scanned. The States are also actively implementing livescan and cardscan fingerprinting and other “paperless” technologies, which also are described in more detail in chapter IV.

— Federal files

At the Federal level, more than 43 million files maintained by the FBI in the III are fully automated, including numerous older records converted to the automated system during the CJIS Division’s Manual Conversion Project.⁶³ Approximately 5 million older records are maintained in manual form and there are no plans to automate them.⁶⁴

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 a growing number of cases, the reporting agency transmits the arrest or disposition information via electronic mail (email) through a State’s dedicated law enforcement telecommunications network that links justice agencies throughout the State to a central criminal history repository. All States have been linked to the FBI CJIS Wide-Area Network (WAN), allowing them to electronically transmit criminal history information and accompanying graphic data such as fingerprint images to

⁵⁸1999 Survey, *supra* note 6, table 2. See, appendix 11.

⁵⁹*Ibid.*, table 4. See, appendix 10.

⁶⁰*Ibid.*, table 2. See appendix 11.

⁶¹Robert R. Belair and Robert L. Marx, *Legal and Policy Issues Relating to Biometric Identification Technologies* (Sacramento: SEARCH Group, Inc., April 1990) appendix I.

⁶²Source: Mr. Thomas J. Roberts, Assistant Program Manager, IAFIS, FBI.

⁶³Source: Mr. Robert Mudd, Management Analyst, CJIS Division, FBI.

⁶⁴*Interstate Identification Index (III) National Fingerprint File (NFF) Program: A Summary*, CJIS Division, FBI, revised December 1999.

the CJIS Division's headquarters in Clarksburg, West Virginia.⁶⁵ Some justice agencies may still use the mail to transmit criminal history information and fingerprint images to their State's repository, which may also mail the information to the FBI. However, justice officials at both the State and Federal levels are working toward the eventual completion of a nationwide telecommunications system that will permit the electronic exchange of criminal history information and related graphics throughout the country in a paper-free, "lights-out" environment.

(See figure 2, which shows the flow of information to State central criminal record repositories.)

⁶⁵The CJIS WAN was installed to facilitate information transfers for the FBI's IAFIS, which began operations in July 1999. Ten States were technically capable of IAFIS participation when it went on-line: California, Florida, Georgia, Mississippi, New Mexico, North Carolina, South Carolina, Texas, West Virginia, and Wisconsin. Twenty-two States were transmitting fingerprint images to IAFIS as of February 2000, although only a handful was sending significant numbers.

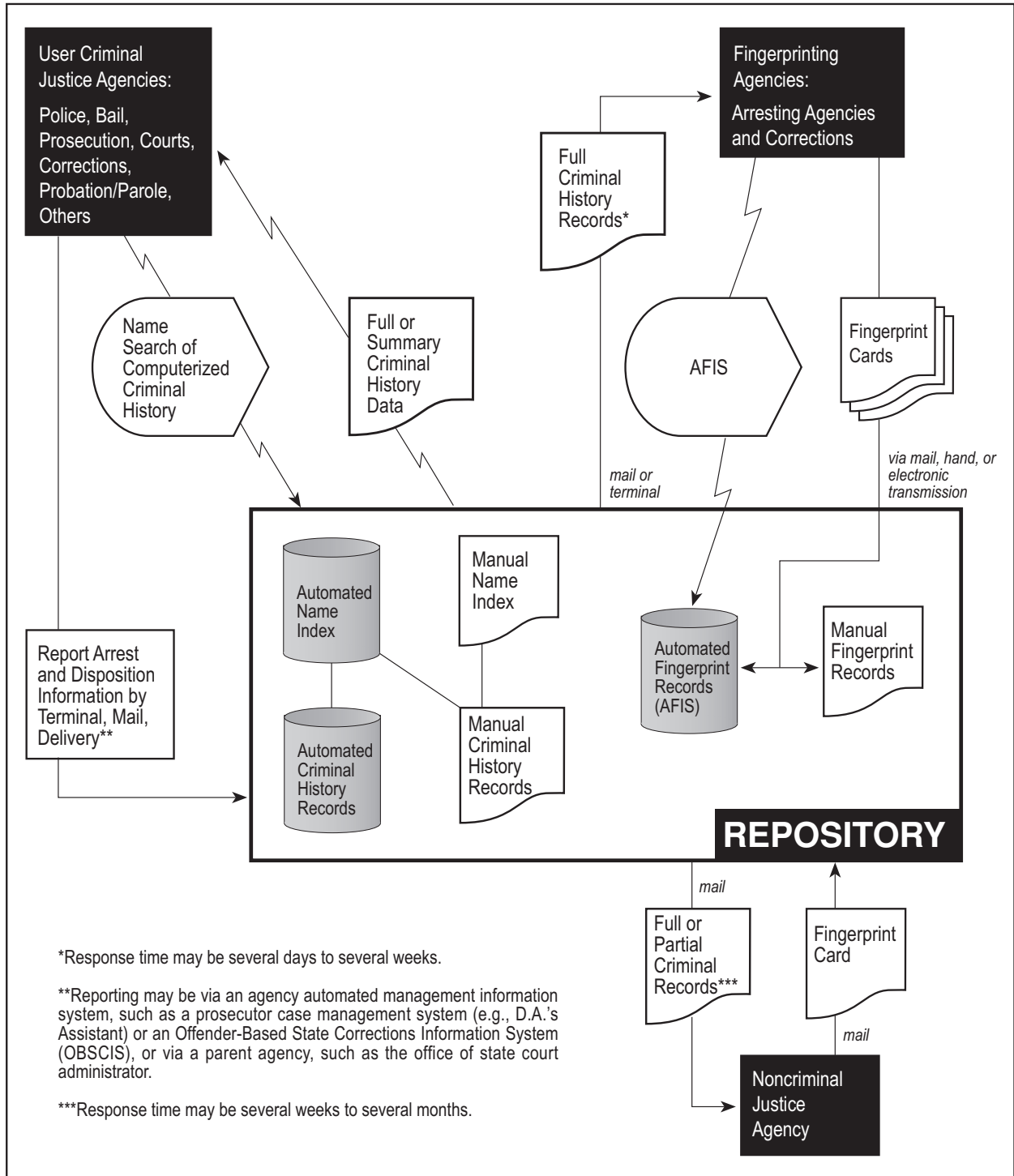


Figure 2: Flow of information to State central criminal record repositories

— **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, birth date, and Social Security number.
- Address (both home and business).
- Auto registration or driver's license information.
- Any pertinent physical characteristics (weight, height, eye and hair color, and tattoos or other distinctive physical characteristics).

The agency also reports the charges for which the individual was arrested. In most cases, the arresting agency must also submit a full set of fingerprints to the State central repository for all felony arrests. Most States also re-

quire that fingerprints be forwarded for at least some misdemeanor arrests.⁶⁶

Other agencies provide disposition data as the arrested individual proceeds to subsequent phases of the criminal justice process. 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.

⁶⁶1999 Survey, *supra* note 6, table 6, included in this report as appendix 13. Only three jurisdictions — Delaware, the District of Columbia, and New Hampshire — do not require arresting agencies to submit fingerprints to the State central repository for felony arrests.

For example, 35 States have statutes or regulations requiring prosecutors to report decisions to decline prosecution in criminal cases to the State repository,⁶⁷ while 47 States, Puerto Rico, and the U.S. Virgin Islands have laws or regulations requiring courts to report dispositions in felony cases.⁶⁸

However, there is still substantial variation among disposition reporting requirements. Thirty-two 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 19 jurisdictions have no such requirement. In this regard, only North Carolina requires police departments to charge or release a suspect *prior* to sending fingerprints to the State repository.⁶⁹

— **Time frame within 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 1999 survey of State central

⁶⁷*Ibid.*, table 5, p. 23.

⁶⁸*Ibid.*

⁶⁹*Ibid.*, table 7, included in this report as appendix 14.

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 1 day in California (for information submitted electronically) and in the District of Columbia (where the Metropolitan Police Department is both the reporting agency and the State repository) to up to 93 days in the State of Mississippi.⁷⁰ The average time between receipt of fingerprints by the State repository and entry of names and identifying data into the master name index is 21 days, ranging from zero days in Delaware to up to 150 days in Texas.⁷¹

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 30 days, ranging from less than 1 day in Colorado, Delaware, the District of Columbia, and New Jersey to 110 days in Wisconsin.⁷² The average time between receipt of final trial court dispositions by the State repositories and entry of the dispositions into criminal

history databases is 39 days or less.⁷³

Access methods for authorized requestors

— Criminal justice inquiries

The 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 MNI for the purpose of performing searches and to the criminal history files for the purpose of obtaining records.⁷⁴

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

While most noncriminal justice inquiries are mailed to State repositories, a growing number are electronically transmitted because of the need for a quick response so an important position can be filled. In California, for example, background checks for school district employees must be completed before positions can be filled. The requirement was instituted following the 1997 on-campus murder of a high school student by a substitute janitor and ex-felon whose background check was not completed even though he had already been on the job for 10 days. California installed livescan automated fingerprint systems in law enforcement agencies throughout the State, in part to assist in mandated pre-employment background checks, whose results are returned in 72 hours or less.

⁷⁰ Ibid., p. 5 and table 12. Table 12 is included in this report as appendix 15.

⁷¹ Ibid., p. 6 and table 12.

⁷² Ibid., p. 6 and table 13. Table 13 is included in this report as appendix 16.

⁷³ Ibid., p. 6.

⁷⁴ “Characteristics and Operational Capabilities of State Criminal History Repositories to Supply Prompt and Accurate Criminal History Information,” an unpublished report provided to BJS, April 25, 1989, by Fisher-Orsagh Associates, Inc., p. 2. (This involved a survey and analysis of 20 State central repositories conducted in 1988-1989.)

— Computer searches

Computer searches for criminal history records are usually made using the subject's name, date of birth, sex and race. In certain cases, a search can be conducted using only a name and birth date. 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 1, 2, or more years.)
2. If there are multiple "hits" due to similarities in names and birth dates, 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 non-criminal 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.⁷⁵

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, online searches via remote terminals are the fastest. The goal of the FBI's IAFIS, for example, is to respond to identification verification requests within 2 hours when the requests originate from an AFIS. (AFIS and other jus-

⁷⁵1999 Compendium, *supra* note 21, p. 10.

tice technology innovations are discussed in detail in chapter IV.) The FBI seeks to respond to name-only III searches in under a minute.

Similarly, statewide automated fingerprint systems can usually respond to electronically transmitted requests in a matter of hours or less. Requests also have been submitted by using facsimile (fax) machines or the telephone (for name-only searches). Information verification requests submitted by mail require the longest response time. However, fingerprint images mailed on 10-print cards can now be digitized at the repositories by card scanners, which significantly reduces the amount of time necessary to classify the prints and to search for matches. Even mailed requests can be returned in a week or so using this process. Identification verification requests mailed to the FBI before automation required 2 months or longer for a response.

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.
- 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 earliest stages of the development of a national criminal history record program.⁷⁶ 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. 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 once posited that there is a "straight-line relationship" between high-quality criminal history record information and the effectiveness of the Nation's criminal justice system.⁷⁷

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 1999 survey found that in 32 States and the District of Columbia, representing 64% of the Nation's population and 66% of its criminal history records, 60% or more of arrests within the past 5 years had final dispositions recorded, there is still widespread variation among the States in the extent to which they maintain complete disposition data.⁷⁸ In the survey, 10 State repositories reported that for arrests logged within the past 5 years, 90% or more have final dispositions recorded, while in another 10 States, final dispositions are available for 50% or less of the arrests logged within the past 5 years. When all arrests in State criminal history files are taken into account, the

⁷⁶Project SEARCH, *Technical Report No. 2: Security and Privacy Considerations in Criminal History Information Systems* (Sacramento: California Crime Technological Research Foundation, July 1970).

⁷⁷"Keynote Address" in SEARCH Group, Inc., *National Conference on Improving the Quality of Criminal History Records: Proceedings of a BJS/SEARCH Conference*, NCJ 133532 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, January 1992) p. 6. Hereafter, Data Quality Conference.

⁷⁸1999 Survey, *supra* note 6, p. 2 and table 1. See, appendix 9.

number of State central repositories with final dispositions of 50% or less increases to 14.⁷⁹

For its part, about one-half of the State-reported criminal history records maintained by the FBI's CJIS 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 relatively few in-depth 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. 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 to 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 redesign data collection forms and to simplify and standardize reporting forms, reporting procedures,

⁷⁹ Ibid., table 1.

and reporting terminology have also been proven to have a favorable impact on data accuracy.⁸⁰

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 arrest⁸¹ and are associated with the fingerprints taken in connection with that arrest. The numbers are used thereafter to identify the indi-

⁸⁰ Data Quality Report, *supra* note 5, pp. 61-62.

⁸¹ 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.

vidual throughout his or her criminal career and to ensure that all criminal cases in which he or she 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 because of 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 disposi-

tions 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.⁸²

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

⁸²For 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).

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.

In cases that begin by citation or summons (without arrest), the tracking number may be assigned at the individual's first court appearance and the individual's fingerprints may be 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.⁸³ 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.

⁸³Ibid.

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.

Because many arrests result in multiple police charges, and because 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

States⁸⁴ 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, the action is reported to the repository by charge number and shown on the criminal history record. If the prosecutor or a grand jury adds new charges, the 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.

State and Federal repositories have been left to adopt their own record formats and 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 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.

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.

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 police reported the initial charges. And some formats show dispositions for all charges, while others may

⁸⁴Illinois is an example.

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 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, the FBI, utilizing its files of Federal and State offenders, has serviced most national searches. 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,⁸⁵ 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.

⁸⁵Data Quality Conference, *supra* note 77.

— **Calls for reform**

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

- The National Task Force on Increasing the Utility of the Criminal History Record published its report in December 1995 following a series of meetings during which it developed recommendations on improving the content of criminal history records that were exchanged among the States.⁸⁶ The task force also developed an easy-to-read, non-columnar model "rap sheet" format to facilitate the exchange of criminal history information.⁸⁷ During its deliberations, the task force determined that reforms were needed to respond to the variety of formats, content, and terminology that made it difficult for out-of-State users, and particularly noncriminal justice users, to decipher the criminal history records they received.

⁸⁶SEARCH Group, Inc., *Increasing the Utility of the Criminal History Record: Report of the National Task Force*, NCJ 156922 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, December 1995). Hereafter, Rap Sheet Task Force Report.

⁸⁷*Ibid.*, p. 23. The Task Force's recommended model rap sheet is included as appendix 19.

- Recognizing the need for improving the value of criminal history records, the Bureau of Justice Statistics, U.S. Department of Justice, initiated the National Criminal History Improvement Program (NCHIP) in 1995 to improve the quality, timeliness, and immediate accessibility of criminal histories and related records. Every State had received an award under this program by the end of Fiscal Year 1998. The program disbursed more than \$314 million in direct grants to States during Fiscal Years 1995 through 2000. The NCHIP appropriation for Fiscal Year 2000 was \$45 million.
- The *Compendium of State Privacy and Security Legislation: 1999 Overview*, prepared by SEARCH, The National Consortium for Justice Information and Statistics, and published by BJS in July 2000, reported continuing problems with data accuracy and completeness despite regulations in many States spelling out procedures for maintaining data quality.⁸⁸ The *Compendium* also found that III implementation was being hampered by the wide degree of formats used by States to record

criminal history information that other States and noncriminal justice users found difficult to decipher. The *Compendium* suggested that implementation of the *National Crime Prevention and Privacy Compact*, which incorporates a dissemination standard identical to the Federal standard applicable to the FBI's Identification Division, could lead to increased standardization of criminal history formats among the States.

- In 1999, then-U.S. Attorney General Janet Reno indicated that incomplete criminal history records at the State level, particularly the absence of dispositions, were responsible for the sale of firearms to approximately 1,700 individuals who were barred from owning or possessing weapons by the *Brady Act*.⁸⁹ Attorney General Reno said the lack of dispositions forced the FBI to contact State criminal history repositories to determine how a criminal charge listed on an individual's rap sheet was disposed. The sales occurred between November 1998, when the NICS

went on-line, and mid-June 1999.

- Finally, the FBI and BJS 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 20.

— Transmission specifications

Efforts have been under way since 1995 to develop a more readable and uniform rap sheet along with specifications to permit the rap sheet's electronic interstate transmission. Initially, the National Task Force of Increasing the Utility of the Criminal History Record, comprised of Federal, State, and local justice officials and related interest groups, drafted a sample transmission format and an interim rap sheet presentation format to facilitate this goal.⁹⁰

The Joint Task Force on Rap Sheet Standardization began in 1996 to transform the proposed formats into operational processes through which the interstate electronic transfer of a uniform

⁸⁸1999 *Compendium*, *supra* note 21.

⁸⁹Craig Whitlock, "Delays in FBI Checks Put 1,700 Guns in the Wrong Hands; System Failed to Detect Banned Buyers Within Time Limit" *Washington Post* (June 25, 1999) p. A01.

⁹⁰Rap Sheet Task Force Report, *supra* note 86.

rap sheet could be accomplished. The Joint Task Force has released several rap sheet transmission specifications for testing, the most recent of which — 2.01, based on eXtensible Markup Language (XML) — was in draft form in mid-2001.⁹¹ The Joint Task Force membership includes representative from the FBI; the FBI's CJIS APB; the National Law Enforcement Telecommunications System; SEARCH, The National Consortium of Justice Information and Statistics; and state and local law enforcement agencies.

⁹¹The Joint Task Force's "Interstate Criminal History Transmission Specification" is available at <http://www.search.org>.

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.

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 in detail these dominant criminal history record issues. As for data quality, how accurate and complete should criminal history record information be, and how can legal directives and other strategies help 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 a legitimate privacy interest in sensitive personal information.⁹² 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.⁹³

In a statutory context, the Court has recognized a privacy interest in an automated comprehensive criminal history record.⁹⁴ Most experts, however, think it is unlikely

⁹²*Whalen v. Roe*, 429 U.S. 589 (1977).

⁹³424 U.S. 693, 713 (1976).

⁹⁴*Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

that this principle will be applied in such a way as to permit the Constitution to pre-empt State statutes that make criminal history record information available to the public or to specified public users.

In a 1995 ruling with privacy implications, the Court rejected a violation of privacy rights claim based on a marijuana-possession arrest that was initiated when a Phoenix, Arizona, police officer accessed inaccurate criminal history information through the laptop computer in his patrol car.⁹⁵ The Court ruled 7-2 that the arresting officer acted in good faith, and that the defendant's constitutional right to fourth amendment "exclusionary rule" protection did not apply because the court employee responsible for the misinformation's presence had no stake in the criminal proceedings that followed.

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

⁹⁵*Arizona v. Evans*, 514 U.S. 1 (1995), 115 S.Ct. 1185.

show tangible harm arising from the alleged misuse of the criminal history records pose insurmountable obstacles to most common law actions by record subjects.⁹⁶

Section 2: Statutory and regulatory requirements

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

Federal statutes and regulations

At the Federal level, the Congress by law and the U.S. Department of Justice (DOJ) 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

⁹⁶Intergovernmental Relations Standing Committee, *Technical Memorandum No. 12: Criminal Justice Information: Perspectives on Liability* (Sacramento: SEARCH Group Inc., August 1977) pp. 5-20. Robert R. Belair and Paul L. Woodard, *Case Law Digest: Court Decisions on the Handling of Criminal History Records — Summaries and Analysis* (Sacramento: SEARCH Group Inc., July 1981).

public and other authorized users.

— Statutes

The Federal Bureau of Investigation's (FBI) 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."⁹⁷

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.

Although the Congress never enacted comprehensive legislation, it did enact a 1973 amendment to the *Omnibus Crime Control and Safe*

⁹⁷Other Federal laws and regulations authorizing the Attorney General to disseminate criminal history records are set out in chapter V, footnote 181.

Streets Act of 1968, the so-called Kennedy Amendment,⁹⁸ 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 U.S. DOJ's 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.⁹⁹

⁹⁸*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).

⁹⁹28 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.¹⁰⁰

Virtually all 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 LEAA 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 1 year old and are without recorded dispositions or that have dispositions favorable to the accused, such as when the police or prosecutor drop the charges or when the accused is acquitted at trial.

¹⁰⁰ 1999 Compendium, *supra* note 21, p. 4.

A majority of States now permit access to some criminal history records by at least some types of noncriminal justice agencies and private entities to screen applicants for security clearances, licensing, and for suitability for sensitive positions in security and child and elder care.

Each State permits subjects to review their records and to institute procedures to correct errors. Virtually all 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 non-criminal justice purposes; dissemination trends; and statutory dissemination policies at the beginning of the 21st century.

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 en-

sure that criminal history record information is complete and accurate.¹⁰¹

— **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.¹⁰²

— **Accuracy provisions**

The regulations address accuracy by defining the term literally to mean, “no record containing criminal history information shall contain erroneous information.”¹⁰³ To promote accuracy, two types of operational procedures are required:

¹⁰¹28 C.F.R. § 20.21(a).

¹⁰²28 C.F.R. § 20.21(a)(1). 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.

¹⁰³28 C.F.R. § 20.21(a)(2).

- A process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording or storing inaccurate information.
- 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.¹⁰⁴ Finally, the regulations require agencies to give subjects an opportunity to review their criminal history records and to establish procedures for correcting erroneous information.¹⁰⁵

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. Prior to adoption of the regulations in 1974, only 14 States had enacted any type of statutory data quality safeguards. Fifty-two States have now adopted laws that deal with some aspect of data

quality.¹⁰⁶ These laws and implementing regulations are discussed in the following sections.

— **Mandatory reporting requirements**

An important element of virtually all 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). Required information generally includes an arrest subject’s name and identification information; arrest event information (for example, date, place of arrest); arrest charges; and inked fingerprint impressions. Fingerprint cards with space for the required textual information were once the most common method for transmitting this information to State criminal history repositories, but a growing number of justice agencies are now utilizing automated fingerprint identification systems (AFIS) to supply State repositories with the required data. All 50 U.S. States had access to AFIS technology at the end of the 1990s. Some States relied

¹⁰⁶The 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.

almost exclusively on electronically transmitted data, while others installed automated systems in metropolitan areas while continuing to use fingerprint cards that were mailed by rural jurisdictions to State repositories.

— *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-five States have enacted statutes requiring criminal justice agencies to maintain logs identifying recipients of criminal history record information and the dates of the disseminations.¹⁰⁷ Twenty-three of the 35 States include detailed and specific transaction log requirements.¹⁰⁸

¹⁰⁷1999 Compendium, p. 43. These 35 States are: Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Vermont, Virginia, Washington, and Wyoming.

¹⁰⁸Ibid, p. 7.

— *Other requirements*

Many States have also adopted a variety of other statutory safeguards:

- 35 States require the State central repository to conduct some type of data quality audits.¹⁰⁹
- 28 States require the repositories to audit State and local criminal justice agencies that submit records to the repository.¹¹⁰
- 17 States require the repository to conduct an annual in-house audit.¹¹¹
- 15 States require both an in-house repository audit

¹⁰⁹Ibid. These 35 States are: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Virginia, Washington, and Wyoming.

¹¹⁰Ibid. These 28 States are: Alaska, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Texas, Vermont, Virginia, Washington, and Wyoming.

¹¹¹Ibid. These 17 States are: Alaska, Arizona, California, Illinois, Kentucky, Louisiana, Maryland, Missouri, New Hampshire, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, and Wyoming. (Alaska requires in-house audits every 2 years. Arizona's law requires periodic in-house audits.)

and audits of contributing agencies.¹¹²

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).¹¹³ Six States impose training requirements on personnel involved in entering data into criminal history record systems.¹¹⁴ Seven States have adopted statutory provisions that address the use of automated programs to provide systematic editing procedures for the purpose of detecting missing or nonconforming data.¹¹⁵

¹¹²Ibid. These 15 States are: Alaska, Arizona, Kentucky, Louisiana, Maryland, Missouri, New Hampshire, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, and Wyoming.

¹¹³Ibid. These 13 States are: Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Louisiana, Missouri, Montana, Nebraska, New Hampshire, and Washington.

¹¹⁴Ibid. These 6 States are: Alabama, Alaska, Georgia, Kentucky, Louisiana, and Wyoming.

¹¹⁵Ibid, pp. 7-8. These 7 States are: Alaska, Connecticut, Hawaii, Kentucky, Nebraska, South Carolina, and Virginia.

— 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, 26 State repositories and the District of Columbia report that they are currently using a delinquent disposition monitoring system that generates a list of arrests with no dispositions. Repositories in 31 States and the District of Columbia make field visits to contributing agencies. Twenty-nine State repositories send form letters indicating data quality problems, and repositories in 38 States, the District of Columbia, and the U.S. Virgin Islands telephone contributing agencies to discuss problems.¹¹⁶ Further, repositories in 38 jurisdictions are using some type of tracking number system to link disposition and charge information.¹¹⁷ In addition, 23 jurisdictions have undergone data quality audits in the past 5 years,¹¹⁸ and 32 States and the District of Columbia have conducted audits of agencies that contribute criminal history information to the repository or

¹¹⁶1999 Survey, *supra* note 6, pp. 7-8, and table 15.

¹¹⁷*Ibid.*, p. 7 and table 16. Table 16 is included in this report as appendix 17.

¹¹⁸*Ibid.*, p. 8 and table 20. Table 20 is included in this report as appendix 18.

obtain information from the repository.¹¹⁹

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

¹¹⁹*Ibid.*, p. 8 and table 19.

include using criminal history record information for:

- Bail and other pretrial determinations.
- Prosecution, including decisions about upgrading 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.
- 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.¹²⁰

— 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

¹²⁰Statutes Report, *supra* note 8, tables 1-10. Selected tables from the Statutes Report are set out in this report as appendixes 1-7.

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.¹²¹

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

¹²¹Pub. L. No. 99-169, codified in part at 5 U.S.C. § 9101.

and securities organizations.¹²²

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.¹²³ Along these lines, the *Housing Opportunity Program Extension Act of 1996* provided Public Housing Authorities with access to National Crime In-

¹²²15 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, Robert R. Belair, *Public Access to Criminal History Record Information*, Criminal Justice Information Policy series, NCJ 111458 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 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).

¹²³Robert R. Belair and Gary R. Cooper, *Privacy and the Private Employer*, Criminal Justice Information Policy series (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, December 1981) pp. 47-52.

formation Center records to conduct criminal history background checks on applicants for public housing.¹²⁴

An important step to providing better quality criminal history records for noncriminal justice purposes was achieved in 1998 when Congress passed the *Crime Identification Technology Act of 1998* (CITA) in which was embodied the *National Crime Prevention and Privacy Compact*.¹²⁵ The compact established for the first time a series of procedures and requirements for States to follow when accessing the criminal history records of other States for noncriminal justice checks. It eliminated the need to maintain duplicate criminal history records at the State and Federal levels. More importantly, it facilitated access to State-level criminal history records, which are typically more current, and therefore more accurate, than those maintained at the Federal level.

The compact may also help standardize the variety of formats States use to report criminal history information to one another. Previously, justice officials in one State found it difficult to decipher the presentation of codes and other information on another

¹²⁴Pub. L. No. 104-120.

¹²⁵42 U.S.C. § 14601. The Compact text and a section-by-section analysis is included as appendix 21.

State's rap sheet. This difficulty was even more pronounced for noncriminal justice agencies and organizations that obtained criminal history information to conduct background checks and to determine employment suitability.

Another tool to help improve the comprehension of criminal history records is the "Interstate Criminal History Transmission Specification," developed by a task force of Federal, State, and local law enforcement agency representatives and related interest groups. The transmission specification is designed to merge separate segments of a multi-State rap sheet into a single rap sheet in time sequence and absent redundant data. Several versions of the specification have been released for testing. The most recent version, numbered 2.01 and based on eXtensible Markup Language (XML), was still in draft form in mid-2001.¹²⁶

Also embodied in CITA was the *Volunteers for Children Act*, which amended the *National Child Protection Act of 1993*¹²⁷ to authorize organizations that deal with children, the elderly, and the disabled to request authorized State agencies to conduct national fingerprint-based checks of volunteers or em-

¹²⁶The draft transmission specification is available at <http://www.search.org>.

¹²⁷42 U.S.C. 5119a.

ployees even if the State had not implemented procedures to conduct such searches.

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, Iowa, Oklahoma, and Wisconsin, have adopted policies under which the public can obtain virtually all criminal history record information for almost any purpose. Initial studies indicate that these "open record" policies have not resulted in significant privacy violations or other concerns.¹²⁸

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,

¹²⁸Paul L. Woodard, *A Florida Case Study — Availability of Criminal History Records: The Effect of an Open Records Policy* (Sacramento: SEARCH Group, Inc., March 1990).

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 without a recorded disposition should be withheld in deference to the presumption of innocence.¹²⁹

— *Dissemination trends*

In the decade from the mid-1960s through the mid-1970s, most experts felt that dissemination trends had 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

¹²⁹*Technical Report No. 13: Standards for Security and Privacy of Criminal History Record Information*, third edition (Sacramento: SEARCH Group, Inc., July 1988) pp. 2-5.

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 access if “authorized by statute, ordinance, executive order, or court rule, decision or order as construed by appropriate State or local officials or agencies.”¹³⁰ 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.¹³¹

This trend reversed in the mid-1970s. Most observers cite the U.S. Supreme Court’s 1976 decision in *Paul v. Davis*¹³² as providing impetus for judicial and, in particular, statutory efforts to loosen restrictions on access to criminal history records. In that case, the 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.”¹³³

For the 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 started, there were signs that the pendulum was swinging again in the direction of privacy. Once again the bellwether was a U.S. Supreme Court decision. In 1989, in *Department of Justice v. Reporters Committee for Freedom of the Press*,¹³⁴ the 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 infor-

mation. 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 made it appropriate to extend privacy protections to the record.

At the start of the 1990s, polling data also indicated that privacy concerns were at historically high levels.¹³⁵ In addition, in the early 1990s, serious congressional consideration was given to several pieces of Federal legislation that restricted access to previously public record information, such as motor vehicle records held by State departments of motor vehicles and change-of-address information maintained by the U.S. Postal Service.

This trend toward privacy began to reverse course in the mid-1990s as greater access to criminal history records was provided at both the State and Federal levels. The *Brady Handgun Violence Prevention Act*,¹³⁶ approved by Congress in November 1993, facilitated national criminal history checks to determine whether a potential gun purchaser’s criminal

¹³⁰28 C.F.R. § 20.21(b)(2).

¹³¹1999 Compendium, *supra* note 21, p. 4.

¹³²424 U.S. 693 (1976).

¹³³*Ibid.*, at 713.

¹³⁴489 U.S. 749 (1989).

¹³⁵Louis Harris & Associates, Inc., and Alan F. Westin, *The Equifax Report on Consumers in the Information Age* (Atlanta, Ga.: Louis Harris & Associates, 1990) p. 5.

¹³⁶Pub. L. No. 103-159.

background prohibited the purchaser from owning or possessing a firearm. Also in 1993, Congress approved the *National Child Protection Act*,¹³⁷ which permits non-criminal organizations that serve children, the elderly, and the disabled to request State agencies to conduct national criminal history background checks of potential employees or volunteers.

As noted earlier, a U.S. Supreme Court ruling in 1995 allowed the use of evidence in a drug prosecution, even though the evidence was obtained through the use of inaccurate computerized criminal history information.¹³⁸ The U.S. Court of Appeals for the Sixth Circuit, based in Cincinnati, Ohio, ruled in 1996 in favor of broader dissemination of criminal history information in a privacy case involving the mug shots of eight individuals under indictment and awaiting trial on Federal charges.¹³⁹ In that case, a request by the *Detroit Free Press* to obtain the mug shots was denied by the U.S. DOJ's Marshals Service on the grounds that release of the photographs would violate the personal privacy interests of the criminal defendants. The *Free Press* successfully sued the DOJ under the *Freedom of Information Act*.

¹³⁷42 U.S.C. 5119a.

¹³⁸*Arizona v. Evans*, 514 U.S. 1 (1995).

¹³⁹73 F. 3d 93 (6th Cir.).

The *Topeka Capital-Journal* newspaper reported in 1998 that Kansas had implemented 25 new statutory provisions in the past decade requiring or allowing criminal history background checks for certain individuals.¹⁴⁰ According to the *Capital-Journal*, the number of criminal history background checks conducted in Kansas rose slightly from 496,669 in 1992 to 503,960 in 1997.¹⁴¹ Also noted previously, Congress approved the *National Crime Prevention and Privacy Compact*, embodied in the *Crime Identification Technology Act of 1998*,¹⁴² which provided a series of procedures and requirements to access State-level criminal history records for noncriminal justice purposes.

Still, the always-volatile nature of privacy expectations and the potential for another trend shift was demonstrated in March 1999 when the U.S. District Court for the Eastern District of Louisiana ruled against the Times-Picayune Publishing Corporation, publisher of the *New Orleans Times-Picayune* newspaper, which sought the mug shot of a prominent businessman who had pleaded guilty to charges filed in connection

¹⁴⁰Roger Myers, "Background inquiries by the State increasing," *Topeka Capital-Journal*, Copyright 1998. Available at http://www.cjon-line.com/stories/042398/cyb_background.shtml.

¹⁴¹*Ibid*.

¹⁴²42 U.S.C. § 14601.

with a highly publicized corruption scandal involving prominent individuals in Louisiana.¹⁴³ The Court ruled in favor of the U.S. Marshals Service, which cited a *Freedom of Information Act* exemption clause¹⁴⁴ in its refusal to provide the mug shot.

To further demonstrate the dichotomy in U.S. privacy expectations at the beginning of the 21st century, the U.S. Marshals Service provides mug shots in response to media requests only in the jurisdiction of the U.S. Court of Appeals for the Sixth Circuit, home of the *Detroit Free Press* ruling, which reviews appeals from Federal district courts in Kentucky, Michigan, Ohio, and Tennessee.¹⁴⁵ The Marshals Service routinely denies mug shot requests made by media organizations in all other circuit court jurisdictions in the United States.

In another decision with constitutional overtones, the U.S. Supreme Court on December 7, 1999, ruled 7-2 in favor of a California law that prohibited the dissemination of police record information solely for commercial purposes, reversing two lower court rulings that found the law invalid under the first amendment.

¹⁴³37 F. Supp. 2d 472.

¹⁴⁴5 U.S.C. § 552(b)(7)(C).

¹⁴⁵Source: Mr. Bill Dempsey, Staff Public Information Officer, U.S. Marshals Service.

In *Los Angeles Police Dept. v. United Reporting Publishing Corp.*,¹⁴⁶ the Court considered the validity of California Government Code § 6254, which was amended effective July 1, 1996, to limit public access to the addresses of individuals arrested for crimes and of crime victims.

While the amended law permitted dissemination of the addresses to those who declared, under penalty of perjury, that the information would be used for scholarly, journalistic, political, or governmental purposes, or by licensed private investigators, it could not be used directly or indirectly to sell a product or service.

United Reporting Service, a company that provided the names of recently arrested individuals to attorneys, insurance companies, drug and alcohol counselors, driving schools, and others for mass business solicitation mailings, challenged the constitutionality of the law prior to its effective date.

Both a Federal district court and a Federal appeals court agreed that the law violated United Reporting's commercial free speech rights. The Supreme Court heard arguments in October 1999.

¹⁴⁶ 120 S.Ct. 483; 145 L. Ed. 2d 451; 28 Media L.Rep. 1041.

The petitioner claimed that the lower courts applied the wrong analysis when examining the law under the Supreme Court's commercial speech doctrine, arguing that the statute was no more than an access restriction that did not restrict speech. The respondent countered that the law was designed to prohibit what the State considered unsavory solicitation.

The U.S. Court of Appeals for the Ninth Circuit had earlier agreed with the United Reporting Publishing Corp., ruling that the section of the California Government Code in question was, indeed, unconstitutional.¹⁴⁷ In doing so, the court concurred with Fifth and Eleventh circuit appeals courts, which struck down similar statutes in Texas and Georgia, and diverged from the supreme courts of Louisiana and South Carolina, which upheld similar statutes in those States.

— Statutory dissemination policies in the 21st century

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.¹⁴⁸

2. Most States continue to treat conviction records differently from nonconviction records.

Customarily, 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 1 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.¹⁴⁹ However, as noted previously, there are signs that this practice is also beginning to change.

¹⁴⁸ 1999 Compendium, *supra* note 21, p. 8.

¹⁴⁹ *Ibid.*, p. 9.

Chapter IV: The evolution of information technology

The evolution of information technology, the creation of key electronic information exchange standards, the development of security strategies that allow the Internet transfer of criminal history records, and policy innovations are among the factors that are significantly transforming the Nation's criminal history environment as the 21st century dawns.

This chapter briefly describes some of the technological innovations and information management strategies now in use or available to criminal history repositories to improve record quality and the ability to exchange information. They include:

Section 1: Automated reporting to the repositories, which speeds the processing of arrest and disposition information and its reporting to the criminal history repository.

Section 2: Advances in fingerprint technology, which allow criminal history repositories to obtain higher quality fingerprints and to respond to identification verification requests in a matter of hours while fulfilling responsibilities to share information with other justice entities.

Section 3: Justice system integration, which provides higher quality criminal history records by reducing redundant data entry. Integration facilitates the transfer of information to agencies participating in the criminal justice process and, ultimately, to the criminal history repository. It also allows information sharing with appropriate noncriminal justice entities such as social service agencies.

Section 4: Data warehousing tools, which program incoming data and transform existing data so they can be used in detailed research, analysis, and planning.

Section 5: Data exchange standards, which allow information sharing among justice agencies using equipment manufactured by different vendors.

Section 6: Internet security strategies, which may ultimately allow the wide-scale transfer of criminal history information on the Internet, reducing dependence on costly dedicated networks and improving data quality at the repository level by providing cost-effective on-line access to smaller justice agencies.

Section 7: Policy innovations, which allow justice entities to maximize the capabilities of emerging information technologies and systems by developing recognized policies and requirements for system operation. Policy compliance increases trust in a system, which attracts more justice participants.

Background

An observation on the evolution of computer memory chips first made by Intel Corporation founder Gordon Moore in 1965 has remained remarkably consistent. Moore noted that each new generation of chip or microprocessor that appeared on the market was released 18 to 24 months after its predecessor and contained twice as much memory. This observation has come to be known as Moore's Law.

The world's first commercial microprocessor — Intel's 4004, released in November 1971 — contained 2,300 transistors and could perform about 60,000 calculations per second.¹⁵⁰ Intel's Pentium II Processor, released in 1997, contained 7.5 million transistors and could perform hundreds of millions of calculations per second.¹⁵¹ Intel's 9.5 million-transistor Pentium III Processor, released in May 1999, was 53% to 108% faster than its predecessor, depending on the specifications used to test its performance.¹⁵² Intel's

Pentium 4 Processor, introduced in November 2000 and capable of performing up to a billion and a half calculations per second, delivered new levels of performance in processing audio, video, and graphics applications, and in utilizing Internet technologies.¹⁵³

These dramatic advances in computing power made possible not only the swift exchange of information, but also the use and transfer of multimedia applications such as sounds and intricate graphics. New technological capabilities, combined with declining computer prices prompted in part by competition among chip manufacturers and other factors, sparked tremendous interest in information technology throughout the United States in the 1990s.

A U.S. Commerce Department report found that, as of August 2000, more than 41% of all American homes were connected to the Internet, and more than one-half of all American homes contained a computer.¹⁵⁴ The report also found that there were 116.5 million Americans on-line in some location in August

2000, 31.9 million more than there were just 20 months earlier.¹⁵⁵ An earlier Commerce Department report found that the Internet passed the 50-million-user mark just 4 years after its introduction. Television was available for 13 years and radio for 38 years before they attracted that many users.¹⁵⁶

The U.S. business community rushed to incorporate new information technologies to provide on-line access to a variety of goods, such as books, software, compact disks, and airline tickets, and services, such as banking and bill paying. U.S. justice agencies were equally eager to join the information revolution to take advantage of the administrative benefits and opportunities for improved performance made possible by emerging technologies.

Many agencies automated information processing and services, and a growing number began efforts to integrate their information systems with those of other justice entities. Efforts also took place to define acceptable standards to break down the walls that prevented information exchanges among different vendors' systems,

¹⁵⁰Source:

<http://www.intel.com/education/teachtech/learning/mpuworks/index.htm>.

¹⁵¹Source:

<http://developer.intel.com/design/PentiumII/prodbref/>.

¹⁵²Source:

<http://www.intel.com/pressroom/archive/releases/dp051799.htm>.

¹⁵³Source:

<http://www.intel.com/pressroom/archive/releases/dp112000.htm>.

¹⁵⁴*Falling Through the Net: Toward Digital Inclusion* (Washington, D.C.: U.S. Department of Commerce, October 2000). Available at

<http://www.ntia.doc.gov/ntiahome/digitaldivide/>.

¹⁵⁵Ibid.

¹⁵⁶*Emerging Digital Economy* (Washington, D.C.: U.S. Department of Commerce, April 1998). available at <http://www.ecommerce.gov/viewhtml.htm>.

and to establish policies to govern the electronic transfer of criminal history data.

While information technology grew increasingly sophisticated, a series of high-profile sex offenses stoked public interest in programs to monitor convicted sex offenders released into the community and to check the backgrounds of individuals who were hired to work in sensitive positions, including security, and child and elder care. The Federal Bureau of Investigation (FBI) reported that more than one-half of the 12,826,933 10-print fingerprint cards submitted to the Bureau in 1997 were for non-criminal justice background checks.¹⁵⁷

The increased background-check duties strained the capacity of many repositories to meet their responsibilities. Agencies mailing fingerprint cards to the FBI in March 1998, for example, waited an average of 72 days for a response. Organizations submitting prints for background checks waited an average of 24 days for a response. Meanwhile, a growing backlog of unprocessed prints surpassed 750,000.¹⁵⁸

Increasingly, criminal history repositories looked to tech-

nology to meet the growing demand for their services. Ten States reported fully automated criminal history record files and master name indexes in 1989, and 47 States and the District of Columbia had automated some records in either the criminal history record file or master name index.¹⁵⁹ By 1999, 21 States had fully automated files and indexes, and all 50 States, the District of Columbia, and Puerto Rico had automated at least some records in their criminal history record files.¹⁶⁰

Meanwhile, growing public concerns over safety prompted the Federal government to fund a variety of programs to help justice agencies fight crime. Criminal history repositories benefited from programs such as the National Criminal History Improvement Program and the *Crime Identification Technology Act of 1998*, which were designed to increase the utility and accessibility of criminal history records.

The confluence of improved information technology, Federal funding, and the desire to meet increased expectations for public safety are combining to significantly change the criminal history environ-

ment as the 21st century begins. This chapter examines some of the technologies, standards, and policies that have been implemented in recent years to facilitate the accumulation and exchange of criminal history information.

Section 1: Automated reporting to the repositories

Although most criminal justice agencies have terminal access to their State repositories and to FBI files to conduct name searches and to obtain automated records, many agencies still use paper documents such as fingerprint cards and disposition forms to report case processing information to the repositories and to the FBI. Increasingly, however, computer technology is being used to speed the reporting process and save resources.

This section discusses methods for:

- Automated arrest reporting.
- Automated disposition reporting.

¹⁵⁷ *Integrated Automated Fingerprint Identification System (IAFIS) Program Overview*, Federal Bureau of Investigation, U.S. Department of Justice, March 24, 1998.

¹⁵⁸ *Ibid.*

¹⁵⁹ Survey Report, *supra* note 37, p. 1.

¹⁶⁰ 1999 Survey, *supra* note 6, tables 1 and 2. Tables 1 and 2 are included in this report as appendixes 9 and 11, respectively.

Automated arrest reporting

— Problems with manual reporting

Historically, arrest information¹⁶¹ has been reported to 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 arrests, while most 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 through-

¹⁶¹This includes subject identification information, as well as information specific to the arrest event and the arrest charges.

out the country have implemented automated information management systems, including automated booking components. Because information entered into these systems for local agency use typically includes all arrest information required by the State repository for its criminal history database, these systems are often utilized as the basis for automated arrest reporting by computer tape or by direct computer-to-computer transmission to the repositories.

— 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 ensure the entry of all required information. Redundant typing of arrest information by arresting agency personnel is eliminated, as is the necessity for data entry at the repository.

Fingerprint cards may sometimes still be mailed to the repository for identification, but, as explained in section 2 of this chapter, a growing

number of automated fingerprint identification systems are being installed in municipal, county-level, and regional law enforcement agencies in most States.

Automated disposition reporting

The mailing of paper disposition forms to repositories by prosecutors, courts, and correctional agencies is also being replaced in many jurisdictions by automated reporting. Many agencies have installed automated case management systems, which can generate case disposition information required by repositories. These data can be generated in magnetic tape form or directly entered into a repository database through an information system that is integrated with a State’s local justice agencies.

— 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 have also installed automated case management systems. A growing number of State repositories are implementing links with local prosecutor and court systems

to obtain disposition information in automated form.

— **Reporting by State courts systems**

Some 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 using paper forms or computer tape, and the State system then edits and combines this information and reports to the State criminal history repository by direct electronic link or computer tape.

— **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 can typically generate the correctional disposition information 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, because duplicate data entry processes are eliminated, and also result in faster, easier,

and more economical reporting.

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

- Have saved time and money for the agencies in performing their own recordkeeping functions.
- 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: Advances in fingerprint technology

American justice agencies first explored the potential of digitized fingerprint images in the mid-1960s, and the first automated fingerprint reading machines based on digitized images began to appear in the early 1970s. Subsequent advances and refinements improved fingerprint technology to such a degree that many State-level criminal history repositories and some justice agencies in larger metropolitan areas began to implement automated fingerprint identification systems (AFIS) in the mid- and late-1980s. Thirty-nine States utilized or were planning to procure

automated fingerprint systems in 1993. As of 1999, virtually all States had access to AFIS technology.¹⁶²

This section discusses:

- The production and transmission of digitized fingerprint images.
- The benefits of automated fingerprint systems for criminal history repositories.
- The scope of AFIS implementation.

Automated fingerprint processing

Prior to the invention of AFIS and for a period of time following its implementation, 10-print fingerprint cards were the primary vehicles for collecting and transmitting fingerprint images. A law enforcement officer would generally collect three sets of prints — one for the law enforcement agency's records, one for the State criminal history repository, and one for the FBI. The process was time-consuming and often resulted in poor-quality

¹⁶²Six States belonging to the Western Identification Network (WIN), a not-for-profit corporation formed in 1989 to facilitate the development of a multi-State AFIS network, share access to an AFIS, which is located in Sacramento, California. The states are Idaho, Montana, Nevada, Oregon, Utah, and Wyoming. Other WIN members are Alaska, California, and Washington. (Source: Mr. Thomas J. Roberts, Assistant Program Manager, Integrated Automated Fingerprint Identification System, FBI).

prints. The FBI rejected 2% of the criminal cards and 10% of the civil cards it received by mail because of smudging, smearing, and under- or over-inking.¹⁶³

The process was also time-consuming in that the captured fingerprints and accompanying personal and criminal history information were mailed to the State repository, which mailed the information to the FBI. The Bureau's response would be mailed to the State criminal history repository, which would then mail the information to the local law enforcement agency. Weeks passed before the law enforcement agency learned the true identity and warrant status of the subject individual. AFIS development reduced this time significantly.

— *Livescan*

AFIS has the capacity to use an optical scanner, or a "livescan" as they are called in the criminal justice community. The subject individual's fingers are placed one at a time on a glass plate and scanned. The device transforms the fingerprint images into unique bit maps consisting of rows and columns of dots, each with stored bits of data. The digitized images

can then be attached to an email for electronic transmission through a network to a criminal history repository.

The repository's AFIS quickly searches its stored digitized images for a match. Responses can be returned on-line in a matter of hours or less. AFIS eliminates the need to take multiple sets of prints, as the images can be easily copied. Technicians can also determine fingerprint quality on site and re-take inferior quality prints before sending them to the repository.

The benefits of automated fingerprint systems for criminal history repositories

Automated fingerprint systems provide the following benefits for criminal history repositories:

1. **Faster searches:**

Searching card-based fingerprint files for a match to a submitted print is a time-consuming task. The files are broken down into categories based on the Henry Fingerprint Classification System, which classifies fingerprints based on ridge formations and other unique patterns, termed "minutia."¹⁶⁴ De-

spite this breakdown, each classification category still contains thousands of cards in most State criminal history repositories. A technician searching for a match to a submitted fingerprint must retrieve a card from a file and then examine its image through a magnifying glass. Automated fingerprint systems can search through thousands of digitized print images in seconds. The FBI's powerful Integrated Automated Fingerprint Identification System (IAFIS) can examine 3 million fingerprints per second.¹⁶⁵

2. **Less storage space:**

Digitized fingerprint images require far less space for storage than do fingerprint cards. Whereas California's database of more than 9 million fingerprints would fill a warehouse full of print cards, the same sized database would fill an average room if digitized.

3. **Higher quality**

fingerprints: The use of livescan devices to capture fingerprints during

¹⁶³Peter T. Higgins, "Standards for the Electronic Submission of Fingerprint Cards to the FBI," *Journal of Forensic Identification*, Vol. 45, No. 4 (July/August 1995) pp. 409-418.

¹⁶⁴Sir Edward Henry, Assistant Commissioner of the Criminal Investigation Department at Scotland Yard, devised the Henry Fingerprint Classification System at the end of the 19th century.

¹⁶⁵Eric C. Johnson, "From the Inypad to the Mousepad: IAFIS and Fingerprint Technology at the Dawn of the 21st Century," *Technical Bulletin* series (Sacramento: SEARCH Group, Inc., December 1998). Published with funding from the Bureau of Justice Assistance, U.S. Department of Justice. Hereafter, IAFIS Technical Bulletin.

booking ensures that higher quality prints will ultimately be transmitted to the criminal history repository. Livescan technology allows a booking officer or technician to review prints as they are taken to ensure quality. Poor quality prints can be retaken immediately. Original prints can be copied, eliminating the potential for mistakes that may occur when multiple sets of prints are obtained. AFIS technology permits the replacement of one fingerprint image or an entire set of digitized prints stored in a repository if more recently submitted fingerprints are of higher quality.

4. **Faster filing:** While approximately two-thirds of all arrest subjects have been arrested previously, one-third have not, and therefore do not have arrest records on file at the repository. When their fingerprints are submitted to a repository and a match is not found, the prints must be classified before storage — another time-consuming process during which a technician with a magnifying glass pores over the images to categorize them. AFIS can accomplish this task in a small fraction of the time.
5. **Cost efficiencies:** While a State may spend several million dollars purchas-

ing an AFIS when hardware, software, and training costs are taken into account, the financial savings eventually realized make the purchase worthwhile. Storage costs are substantially lower for digitized fingerprint images. The more efficient processing, retrieval, and examination of fingerprints free personnel for more productive tasks and could ultimately lead to staff reductions. Less reliance on the mail to exchange fingerprint cards means less postal charges and more savings.

The scope of automated fingerprint identification system implementation

While virtually all State criminal history repositories have implemented automated fingerprint systems, there are significant variations as to how they use the technology. Some States have been electronically transmitting fingerprint images and accompanying personal and criminal history data to the FBI for several years, and 10 States were able to electronically transmit fingerprint and criminal history data to the FBI when the Bureau's IAFIS started service in July 1999.¹⁶⁶ Twenty-two States

¹⁶⁶The States were California, Florida, Georgia, Mississippi, New Mexico, North Carolina, South Carolina, Texas, West Virginia, and

were transmitting electronic fingerprint data to the FBI by February 2000, although only a handful was sending transmissions in any significant numbers.¹⁶⁷

Most State repositories are not yet capable of electronically transmitting data to the FBI, even though they have implemented AFIS internally. Some States are installing livescan devices in every county for transmitting data to the State criminal history repository. Others plan to install livescan devices in larger metropolitan areas, but law enforcement agencies in rural areas will continue to mail fingerprint cards to State repositories.

Section 3: Justice system integration

Integration occurs when a computerized information system maintained by one entity is programmed to electronically interact and share data with a computerized information system maintained by another entity. The potential benefits of integrated or interlinked information systems that would permit the unfettered electronic exchange of information between justice agencies attracted great interest in the late 1990s. However, many

Wisconsin. (Source: Mr. Thomas J. Roberts, Assistant Program Manager, IAFIS, FBI.)

¹⁶⁷*FBI State EFCON Submission Totals, 2-1-2000 to 2-29-2000.*

of the agencies that attempted integration projects found the planning, design, and implementation process to be more than they bargained for.

Funding for projects that extended beyond bureaucratic boundaries and long-established budgeting practices was a problem. Turf battles were common, as individual agencies fought to maintain what they perceived as “control” over the data they had collected. Technological innovations were necessary to connect legacy information systems manufactured by different vendors that shared no existing interfaces.

Still, many of the agencies whose persistence resulted in some form of information system integration achieved results that demonstrated the value of their efforts, and that have encouraged other justice agencies to follow suit. This section examines:

- The technology of integration.
- The benefits of integration for criminal history repositories.
- Criminal history repositories that have implemented some form of information system integration and the benefits they have achieved.
- Integration’s future and its potential impact on criminal history repositories.

The technology of integration

Information system integration is not a radical concept. However, justice agencies that established integrated networks in the past — the Western Identification Network is a good example — most often utilized equipment manufactured by the same vendor. One barrier to expanded integration was the inability of information systems manufactured by different vendors to share information electronically. This problem was addressed in the 1990s by the development of programming, termed “middleware,” that allowed two separate and already existing programs to work together. Middleware allowed the intermingling of data in separate systems maintained by different justice agencies on different hardware and software platforms.

Another development that contributed to increased integration efforts by justice agencies in the 1990s was the creation of commonly accepted standards that governed the composition of data transmitted between agencies. For example, standards governing the size, resolution, compression, and other components of fingerprint images allowed justice agencies to transmit data to the FBI’s IAFIS no matter what vendor’s equipment was used

to capture the images. Standards will be discussed in more detail in section 5.

The benefits of integration for criminal history repositories

While integration benefits all justice agencies participating in an integrated information system, criminal history repositories may be the prime beneficiaries. Criminal history records are accumulations of information submitted from a variety of sources during the criminal justice processing of the individuals who are the subjects of the records. In a truly integrated system, this information is of higher quality than that gathered by traditional means, in part because an integrated information system reduces the need for redundant data entry.

For example, an individual’s vital statistics entered into a police department’s computer system during booking can be automatically transmitted from agency to agency as an individual is processed through the criminal justice system. The potential for mistakes such as the transposition of numbers in an individual’s birth date or the misspelling of his or her name — incidents that, piece by piece, begin to erode the veracity of data — can be eliminated.

Integrated systems also allow the quick transfer of information, so records on file at a repository are more current when they are accessed by agencies seeking to verify an individual's identity or criminal history background. They permit local and regional court systems to easily transfer disposition data to the State repository following a trial's completion, again improving the quality of a State's criminal history records.

Further, repositories can respond more quickly to requests for service when they are transmitting data to requesting agencies through integrated systems. Such systems also allow simultaneous access to the same record from multiple locations around the clock.

The integration of criminal justice information and benefits achieved

While the benefits of information system integration are well known, there are significant challenges that must be met before integration can occur. Issues that arise when planning, funding, implementing, and maintaining an integrated system require innovative procurement procedures that generally transcend established practices. As of mid-2001, no State had implemented a truly integrated system that allowed the collection and transfer of data from the patrol car to the

State criminal history repository and to all points in between. However, the criminal justice community's interest in information system integration was increasing throughout the country, and a growing number of justice agencies were already beginning to enjoy its benefits. A few are identified here:

- **Colorado Crime Information Center:** The center, Colorado's criminal records repository, is directed by the Colorado Bureau of Investigation, which is one of five member agencies of the Colorado Integrated Criminal Justice Information System (CICJIS). CICJIS creates a single, virtual criminal justice information system by utilizing middleware tools to connect the five participating agencies' databases to a central machine that can be accessed by any of the five legacy systems' front-ends. The system has improved public safety by making higher quality information available to criminal justice agencies and to individual decisionmakers. It also aids decisionmaking by increasing the availability of statistical measures for evaluating public policy; makes workers more productive by reducing redundant data collection and input efforts; and provides access to more

timely, accurate, and complete information for both criminal justice agencies and the public.¹⁶⁸

- **Georgia Crime Information Center (GCIC):** Georgia's criminal records repository has benefited from the State's Criminal Justice Records Improvement Plan, which focuses on increased automation and integration between local and State justice agencies. Since the plan was approved in 1996, the number of counties submitting automated court dispositions to Georgia's criminal history repository has grown from four to 30. The number of felony arrests for which final dispositions are recorded grew from 60% in 1994 to 82% in 1999.¹⁶⁹
- **Los Angeles County Consolidated Criminal History Reporting System (CCHRS):** Before CCHRS implementation, judges, law enforcement officers, and prosecutors had to check eight disparate and incompatible

¹⁶⁸Source:

http://www.state.co.us/gov_dir_cicjis/index.html.

¹⁶⁹Source:

http://www.search.org/integration/state_profile.asp?KeyID=35.

legacy¹⁷⁰ databases¹⁷¹ in order to piece together a subject's most up-to-date criminal history; this process could take 45 to 90 minutes. CCHRS (nicknamed Cheers) presents an individual's criminal history record through a single query in less than 2.5 seconds. CCHRS 100-gigabyte, single-source data warehousing system contains criminal history information on more than 8 million subjects. It can alert judges to a defendant's special circumstances, such as risk of suicide or drug history, and can provide a list of potential suspects based only on incomplete information such as an individual's unique tattoo, nickname, or physical characteristics.¹⁷²

- **The Florida Integrated Criminal History Network:** The network uses state-of-the-art livescan fingerprint technology to capture, transmit, and share electronic finger-

¹⁷⁰ Legacy systems are mainframe or microcomputers in which companies or organizations have invested considerable time and money.

¹⁷¹ CCHRS combined information from systems maintained by Los Angeles County's jails, prosecutors, courts, the sheriff's, probation and juvenile departments, a countywide warrant system, and the State.

¹⁷² Source:

http://www.search.org/integration/local_profile.asp?KeyID=48.

print and arrest data. The network's AFIS component contains more than 1.8 million criminal offender fingerprints. Its computerized criminal history component includes identification, arrest, disposition, and custody segments.

- **Delaware Criminal Justice Information System:** The system instantly retrieves from a single-source, accurate, comprehensive, and understandable criminal history data on all individuals passing through the criminal justice system. The system has provided tremendous time and cost savings in obtaining information, has reduced staff workload, has provided faster policy analysis and more accurate identification, and has produced more effective sentencing and incarceration of criminals.
- **The Pennsylvania Justice Network (JNET):** Brings together 13 State public safety agencies in a common network to make criminal history files widely available to State and local police, as well as to prison and probation officials. JNET utilizes an Internet-browser-based system running on a State-operated intranet and a middleware solution to

integrate disparate agency systems throughout the State in a modular fashion.

Integration's future and its potential impact on criminal history repositories

A number of factors will most likely fuel the increased pace of integration and increase its impact in the coming years on justice agencies and criminal history repositories. Innovations in information technology will provide new and desirable capabilities. Pressures for the use of criminal history records for noncriminal justice background checks and other purposes are likely to grow, prompting repositories to explore technological methods to respond to increased public expectations. The successful implementation of integrated systems by justice agencies will provide useful best practices, standards, and other information that will spare other interested agencies from "reinventing the wheel" when they consider integration.

In addition to those mentioned above, a number of other justice agency integration projects with positive ramifications for collecting, updating, and disseminating criminal history records are already well into the planning, testing, or early implementation stage throughout

the country, including projects in Oregon, New Mexico, Nebraska, Kansas, Texas, Indiana, Kentucky, South Carolina, North Carolina, Virginia, Ohio, New Jersey, Pennsylvania, and Rhode Island. Previous integration successes have demonstrated the benefits these projects can achieve if properly pursued. Faster data collection, higher data quality, and the ability to electronically interact with other justice agencies are just a few.

Section 4: Data warehousing tools

The term “data warehousing” describes a process that allows data from different and often disparate electronic sources to be collected in a single database for use in queries, detailed analysis, and report preparation. The process builds a database of analytic data that is encoded upon collection to interact with similar data elements in a database. Traditional or transactional databases generally collect only raw data that are not easy to query or analyze. Commercial entities utilize data warehousing techniques to target segments of society for promotional campaigns. Justice agencies use data warehousing techniques to analyze crime statistics and related information to uncover activity patterns, to predict events, and to allo-

cate resources. This section examines:

- The data warehousing process.
- The benefits of data warehousing.
- The scope of data warehousing in justice agencies.

The data warehousing process

A data warehouse is a managed database in which the data are subject-oriented, integrated, time-variant (so they do not solely reflect the point of time in which they were collected), and non-volatile (in that the existing data are appended rather than replaced by new data).¹⁷³ A data warehouse separates a system’s analytical data from its operational data so it can be analyzed more quickly without slowing the performance of the operational system.

Data can be integrated from multiple sources, allowing users to cross-reference data from these applications. Time is the primary filter for data warehouse activity. An analyst may query a database seeking the number of times a certain activity occurred during a specific week, month or year, or the analyst

¹⁷³Toru Sakaguchi and Mark N. Frolick, “A Review of the Data Warehousing Literature,” *Journal of Data Warehousing*, 2(1), 1997, pp. 34-54. Available at <http://www.nku.edu/~sakaguch/dw-web.htm>.

may conduct a year-to-year comparison of the activity.

Data warehouses are expensive and challenging to establish, but decreasing hardware prices, increased computing power, and the development of powerful server operating systems and related programs have allowed a greater number of organizations to implement them.

The benefits of data warehousing

Data warehouses provide users with a number of benefits, including:

- Analytic capabilities that far exceed those of traditional transactional databases. Data are stored in relational tables so they can be examined in many different ways without prior knowledge of what similarities may exist between data elements. The process allows for more in-depth data analysis to extract buried or previously unknown pieces of information or patterns from large databases. (Transactional databases store information based on each transaction and do not easily provide for the comparison of data stored during one transaction with data stored during other transactions.)
- Greater storage capacity, which allows the maintenance of a larger number

of older records, thus permitting more detailed and precise analysis.

- Integration opportunities made possible by the availability of an effective platform for combining multiple-source applications.
- Easier access to data. Users can conduct queries on their own without having to seek help from information specialists.
- Larger databases, because data warehouses can pull information together from multiple sources.
- The ability to handle more users, transactions, queries, and messages than transactional systems without overtaxing the data warehouse.
- The ability to make well-informed decisions based on quantitative factors derived from historical data.

The scope of data warehousing in justice agencies

A growing number of justice agencies have incorporated data warehousing capabilities into their information management strategies, and others are planning and designing systems with such capabilities. They include:

- **The Los Angeles County Consolidated Criminal History Reporting System**, which collects data from eight

incompatible legacy systems to respond to identification queries in less than 2.5 seconds.

- **The Nebraska Criminal Justice Information System (CJIS)**. The CJIS data warehouse being assembled in mid-2001 will house information from the Nebraska State Patrol's criminal history system, probation, corrections, the sex offender registration system, and new detainee file.
- **Coplink Concept Space**. Developed by the University of Arizona's Artificial Intelligence Laboratory in association with the Tucson, Arizona, Police Department, Coplink allows investigators to access information and to research connections between six different types of data: people, locations, organizations, vehicles, crime types, and weapons.
- **Iowa Criminal Justice Information System**. Data warehousing solutions help the State project indigent defense needs and predict additional prison needs following the implementation of tougher criminal and truth-in-sentencing laws.

Section 5: Data exchange standards

Data exchange standards can be described as a "language" created by different participants in a system who wish to understand each other. They usually include agreed-upon definitions of terms and an understanding of how these terms will be used in a system.¹⁷⁴ Standards can also include an agreement on a format governing the size, resolution, compression, and other elements of a graphic image, or on the types of hardware and software that a system will employ.

The importance of standards was demonstrated during the creation of the FBI's IAFIS, when the American National Standards Institute (ANSI) published the *Data Format for the Interchange of Fingerprint Information* in November 1993.¹⁷⁵ The standard was developed during a series of workshops held by the FBI and the National Institute of Standards and Technology (NIST) and attended by representatives from Federal, State, and local criminal justice agencies. It dictated the

¹⁷⁴Center for Technology in Government, *Tying a Sensible Knot: A Practical Guide to State-Local Information Systems* (Albany, N.Y.: State University of New York, June 1997). Available at <http://www.ctg.albany.edu/resources/pdfrwp/iis1.pdf>.

¹⁷⁵ANSI/NIST-CSL 1-1993.

content, format, and measurements necessary for exchanging fingerprint data with the Bureau. For the first time, automated fingerprint systems manufactured by different vendors could exchange information electronically, paving the way for a national fingerprint network.

Standards are also important when States are interested in electronically exchanging information within their own borders, and are often among the first components developed when an integrated information system is designed. Agencies considering participation in an integrated system may have years of data stored on legacy systems and, therefore, may be reluctant to migrate to new and unfamiliar technology in order to integrate with other agencies.

Standards can facilitate the exchange of information between legacy systems manufactured by different vendors so each agency can participate in an integrated system while continuing to use the system with which it is most comfortable. Standards may also define the types of information that will be exchanged between agencies, as well as the format by which it will be exchanged, the resolution and compression of exchanged images, and even the levels of security that will be applied to information exchanges. This section will examine:

- How standards are developed.
- What standards govern.

How standards are developed

The creation of standards is a time-consuming but necessary process in the development of an information system. Generally, standards are decided upon when the operational users of a planned system are brought together to discuss their needs and the types of information they will need to exchange. For example, the *Criminal Justice Data Element Dictionary* was created for Florida's Offender-Based Transaction System with the assistance of hundreds of members from the State's criminal justice community who submitted both oral and written comments. In Michigan, the Court Data Standards Task Force, comprised of judges, clerks, and court administrators from different types of courts throughout the State, held three meetings in 1997, during which time it developed standards to integrate the operations of 39 independent computer systems that previously served the State's courts.

What standards govern

Standards govern every conceivable aspect of electronic information exchange between justice agencies. They may dictate the way a justice agency enters a license plate

number, date of birth, a suspect's descriptive data, or the address of a crime into an information system. Standards may define the format of a transmitted mug shot or fingerprint image, including the image's size, resolution, grayscale, compression, and other factors. They may dictate what types of information are required when a file is created, and the levels of security that must be supplied to various types of information.

An ongoing national effort began in the mid-1990s to devise a set of standards to enable the automated transmission of a model criminal history record or "rap sheet." The first "Interstate Criminal History Transmission Specification" was released for testing in 1998. The most recent version of the transmission specification, numbered 2.01 and based on eXtensible Markup Language (XML), was still in draft form in mid-2001.¹⁷⁶

In Florida, standards are being developed for the Criminal and Juvenile Justice Information System to govern telecommunications and networking, data elements, image transmission, and hardware and software compatibility. In Kansas, standards have been created to govern applications, data,

¹⁷⁶The draft specification is available at <http://www.search.org>.

imaging, networks, messaging, and hardware for the State's Criminal Justice Information System. In North Carolina, the Criminal Justice Information Network Data Sharing Standard Development Project began in 1998 to document common data definitions; standardize common offense code identifiers; and create standards for programming interfaces and common database views.

Section 6: Internet security strategies

Hundreds of justice agencies throughout the country use the Internet to inform the public about pertinent issues by establishing World Wide Web sites, but only one State is using the Internet as its primary network for exchanging criminal history information and transmitting it to the State repository: Kansas.

Kansas' groundbreaking use of the Internet in this fashion may dramatically increase the number of justice agencies that are able to integrate their information services. Prior to Kansas' breakthrough, the prevailing school of thought taught that costly dedicated networks with limited access were the only electronic transmission methods safe enough to protect the privacy and confidentiality rights of those whose criminal histories were exchanged. Moving to the Internet meant making

the information accessible to hackers and others who were not authorized to view it.

However, recent dramatic developments in security and encryption methods have prompted justice agencies to view the Internet transmission of criminal history records in a new light. Use of existing information exchange networks may spare smaller justice agencies from having to fund the creation of their own networks. This section examines:

- The "Kansas model" for use of the Internet to exchange criminal history records.
- The Internet's potential for smaller justice agencies, and how increased access will benefit criminal history repositories.

Kansas' use of the Internet to exchange criminal history records

Kansas justice officials faced a dilemma when work began on the State's Criminal Justice Information System in 1996. The State could install a dedicated high-speed network for information and graphics exchanges, or it could provide the services by piggybacking on the existing Kansas Wide-Area Information Network (KANWIN) for a cost savings of \$2.5 million. To use KANWIN, Kansas officials would have to create a security strategy to protect the highly sensitive criminal history information

they would be transmitting that would also meet the exacting standards required for participation in the National Crime Information Center and the National Law Enforcement Telecommunications System.

Kansas officials decided to use KANWIN by creating a virtual private network (VPN), which allows one information system to interact with another information system over the Internet using security features previously available only to private networks. This is accomplished through security tools such as firewalls, encryption, authentication, and other resources.

The Kansas Criminal Justice Information System (KCJIS) uses the following security components:

- **Firewalls**, which are systems designed to prevent unauthorized access to or from a private network by examining messages passing through the firewall and blocking those that do not meet specified criteria.
- **Secure identification tokens** to identify specific users. Tokens contain code numbers that change on a regular basis. A system user will enter his or her password plus the number displayed on the token to gain access to the system. Each password/number combination is used only once.

- **Certificates**, to identify specific devices used to transmit data. A certificate authority issues a “public key” to a system user, who uses the key for identification when encrypting a message. The individual who receives the message must use the public key plus his or her own private key to decrypt the message. The KCJIS became its own certificate authority to facilitate the system’s implementation.
- **Encryption**, to protect unauthorized access to information transmitted over KANWIN.
- **Intrusion detection**, which monitors information packets moving through the network to identify patterns that indicate hostile activity or misuse.
- **Internet scanner**, to continuously monitor the system to identify vulnerabilities.

The FBI’s Criminal Justice Information Services Advisory Policy Board approved Kansas’ security strategy in December 1998.

The Internet’s potential for smaller justice agencies, and how increased access will benefit criminal history repositories

Kansas’ successful implementation of a VPN to permit Internet use for the transfer of

criminal history records is a significant development for smaller justice agencies. These agencies may now be incorporated into integrated justice networks that were previously too costly to join because of the necessity for private, dedicated networks.

Naturally, the participation of a greater number of agencies will increase data quality at the State criminal history repository, and will benefit agencies from throughout the country that may access the data.

Section 7: Policy innovations

Dramatic increases in the use of state-of-the-art communication technologies by justice agencies have necessitated the formulation of new policies to govern the exchange of criminal history information in the electronic realm. Issues such as privacy, confidentiality, accessibility, and accountability must be addressed on the national, State, and local levels to ensure that individual rights and long-recognized protections are not casualties of the rush by justice agencies to automate and integrate information systems.

Policies are also necessary to govern the responsible use of shared criminal history information so justice agencies are confident that records they contribute to integrated

systems will not be misused. The creation and implementation of effective policies will improve the quality of available criminal history information by encouraging a greater number of justice agencies to participate in and contribute to integrated information systems.

This section will examine:

- How policies are formulated.
- Policies governing integrated justice information systems.

How policies are formulated

Ideally, policies governing the electronic exchange and use of criminal history records are formulated when the system is being designed, although they may also be developed and instituted when the need for such policies becomes apparent. Policies may also come about as the result of legislative activity. Justice-related organizations may examine issues of concern and propose model policies that can be tailored and instituted by interested governmental entities.

In Ohio, for example, the Criminal Justice Information Services Policy Board meets regularly to address such topics as improving criminal justice data quality, monitoring system development, determining State and local training needs, and developing policies and procedures

regarding the accessibility to and interfacing among local, State, and national criminal justice information systems. The board is comprised of representatives from the Buckeye State Sheriffs' Association, the State Bureau of Criminal Identification and Investigation, the State Bureau of Motor Vehicles, the Clerks of Court Association, the County Commissioners Association, the departments of Administrative Services, Rehabilitation and Correction, and Youth Services, the Judicial Conference, the offices of Criminal Justice Services and the Governor, the Ohio Association of Chiefs of Police, the Ohio Prosecuting Attorneys' Association, the Ohio State Highway Patrol, the Supreme Court of Ohio, and regional crime information centers.

In Florida, The Policies and Standards Work Group of the Criminal and Juvenile Justice Information System developed a set of guiding principles for the efficient and effective sharing of criminal and juvenile justice information among users and providers throughout the State. The Florida Legislature codified the guiding principles into law in 1996.

Policies governing integrated justice information systems

The most comprehensive and far-reaching policy governing the electronic exchange of criminal history records is the

National Crime Prevention and Privacy Compact, which was embodied in the *Crime Identification Technology Act of 1998* approved by the U.S. Congress.¹⁷⁷ The compact provides a formal legal basis for justice agencies to follow when referencing the Interstate Identification Index (III) for authorized noncriminal justice purposes, such as for background checks conducted for security clearances, licenses, and applicants for employment in sensitive occupations such as child and senior care.

It established a council of State and Federal officials to formulate policies governing noncriminal use of State criminal history records. The compact created a true national partnership between Federal and State representatives to oversee the use of III information for noncriminal purposes. Approval by two State legislatures was required for the compact's provisions to become effective. Georgia became the second State to ratify the compact on April 28, 1999. Montana was the first State to ratify the compact (April 8, 1999). Other States that have ratified the Compact are: Nevada (May 14, 1999), Florida (June 8, 1999), Colorado (March 10, 2000), Iowa (April 7, 2000), Connecticut

(June 1, 2000), South Carolina (June 22, 2000), Arkansas (February 21, 2001), Kansas (April 10, 2001), Alaska (May 7, 2001), Oklahoma (May 17, 2001), and Maine (June 8, 2001). (See chapter 5, section 4.)

¹⁷⁷42 U.S.C. § 14601. See, appendix 21.

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

This chapter describes procedures for conducting national criminal record checks for criminal and noncriminal justice purposes and provides an in-depth look at the Interstate Identification Index (III) system and the *National Crime Prevention and Privacy Compact*.

Section 1: Maintenance and use of current Federal Bureau of Investigation files, addresses the use of Bureau files to conduct national criminal history checks, including current file maintenance and use practices; authorized categories of file users; and file access for criminal justice and non-criminal justice inquiries.

Section 2: The Interstate Identification Index system, describes the III concept and explains how the III processes search inquiries and record responses.

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

Section 4: The *National Crime Prevention and Privacy Compact*, explains the major provisions of the Compact and how it relates to the fully implemented III system.

Background

Most persons arrested for criminal offenses have prior arrest records, and many have arrest records in more than one State. Federal Bureau of Investigation (FBI) officials estimate that of all Federal and State arrest fingerprint cards processed by the Bureau, which includes submissions for most of the country's serious-offense arrests, 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% are "multi-State" offenders; that is, they have both Federal and State records or arrests in more than one State.¹⁷⁸

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

Prior to 1971, the means of obtaining access to a national search was by application to

the FBI, which, under congressional authorization dating back to 1924, maintained 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 and State offenders from participating States were maintained in the FBI's centralized database. The system was used for both criminal justice and non-criminal justice purposes. Access for criminal justice purposes was by name search or by Federal or State offender identification numbers submitted through terminals connected to the nationwide NCIC network. Applications for searches for authorized noncriminal justice purposes required either a State or Federal offender identification number for an on-line record or the submission of fingerprint cards by mail to the FBI.

¹⁷⁸ Statutes Report, *supra* note 8, p. 1.

The CCH system continued to operate throughout the 1970s even though State participation 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 the Bureau began automating them in 1974.

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 State offender records, but that instead would undertake to strengthen the State repositories and provide the means of tying them together into a viable interstate system relying on State-maintained records.

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 to effectively participate 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 to create a decentralized national criminal

history program based on shared responsibilities and mutual commitments.

Recognizing this progress, the U.S. Department of Justice and State officials approved the Interstate Identification Index (III) concept in 1978. The FBI and selected States began phased testing and implementation of the concept in 1980. At present, 43 State repositories are participating as record providers for criminal justice purposes (see section 2 of this chapter). Only four of those States are also providing records for noncriminal justice purposes, but the approval of the *National Crime Prevention and Privacy Compact* in October 1998 is making it easier for additional States to participate in this way (see section 4 of this chapter).

Section 1: Maintenance and use of current Federal Bureau of Investigation files

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

- Practices for submitting and storing fingerprint and criminal history data.
- Authorized users of FBI files for criminal justice or noncriminal justice purposes, and the data

they are entitled to receive.

Current record maintenance practices

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. The FBI also maintains State offender records that, to a great extent, duplicate the records contained in State repositories.

For their mutual benefit, State and local arresting agencies throughout the country are encouraged to submit arrest information to the FBI for all arrests for "criterion offenses," defined as all felonies and all misdemeanors except designated nonserious ones. Arrest information submitted to the FBI by those agencies includes fingerprints, subject identification information, and charge information.

For many years, this information was submitted to the FBI on standard 10-print cards that provided space for fingerprint images and textual information, such as the arrest subject's name, vital statistics, arrest offense, and other information. As described in chapter IV, the evolution of automated fingerprint technology began to bring about a change in this process in the mid-1980s, when the FBI and a growing number of States started to

implement automated fingerprint identification systems (AFIS).

In all except a few States, fingerprints and related arrest information are submitted to the FBI through the State criminal history record repository pursuant to the “single-source submission” program, under which the FBI does not accept fingerprint submissions directly from arresting agencies. This approach ensures that the State repositories are not bypassed at the critical arrest fingerprint reporting stage.

In the few States that have not implemented single-source submission, fingerprints and arrest information 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 quarter-century.

The FBI accepts and records final disposition and correctional information for these State arrests. Both arrest 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%.¹⁷⁹ By comparison, felony trial court disposition reporting to the State repositories is estimated to be significantly higher, with reporting in 14 States at 95% or higher.¹⁸⁰

As of mid-2001, the FBI was obtaining disposition information from 19 State repositories by machine-readable data computer tape, which results in more complete and timely reporting.

The FBI maintains more than 43 million automated criminal history records of Federal, State, and foreign subjects, including numerous older records converted to automated format during the Manual Conversion Project conducted by the FBI’s Criminal Justice Information Services (CJIS) Division. The FBI will maintain approximately 5 million older records in manual format.

Authorized users of data

Criminal history records maintained by the FBI are available for criminal justice

and noncriminal justice purposes. The FBI is authorized by law¹⁸¹ to provide criminal record services to the following major categories of users:

- Federal and State criminal justice agencies for criminal justice purposes, including the screening of applicants for criminal justice employment.
- 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.
- The Federal Aviation Administration for conducting criminal history background checks on individuals applying for positions that provide unescorted access to aircraft or to secured areas of an airport.
- Federally chartered or insured banks and authorized segments of the securities and com-

¹⁷⁹Source: Mr. Robert Mudd, Management Analyst, Criminal Justice Information Services Division, FBI.

¹⁸⁰1999 Survey, *supra* note 6, table 8.

¹⁸¹28 U.S.C. § 534; PL 99-169, as amended by PL 99-569 and PL 101-246, 5 U.S.C. § 9101; Exec. Orders 10450 and 12968; 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. 44936; 28 CFR 0.85(b); U.S. Dept. of Justice Order 556-73, 28 CFR 16.30-16.34; 5 CFR 732 & 736; PL 103-159; PL 103-209; PL 103-322.

modities industries, for employment screening.

- State and local governmental agencies for licensing and employment purposes, if authorized by a State statute approved by the U.S. Attorney General.
- States with appropriate statutes to access and review State and Federal criminal history records through the national criminal history background check system to determine whether care providers for the elderly, disabled, and children have criminal histories that impact their fitness to assume such responsibilities.
- Licensed firearms dealers to determine the eligibility of potential gun purchasers.

Authorized government 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 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.¹⁸²

Pursuant to these standards, 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.

Section 2: The Interstate Identification Index system

This section provides a detailed look at the III system and its use in conducting national criminal record searches for criminal justice and noncriminal justice purposes. It also explains how the III system differs from the national search system used prior to 1980, and how implementation of the system permits the FBI to discontinue maintaining records of State offenders.

¹⁸²When 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).

Interstate Identification Index system approach

The III system is an interstate/Federal-State computer network that currently provides the means of conducting national criminal history record searches to determine whether a person has a record anywhere in the country. It has replaced the centralized-database system described in section 1 of this chapter, which utilized a database of Federal and State offenders¹⁸³ maintained by the FBI for conducting national searches. In contrast, the III system is designed to tie the automated criminal history record databases of State central repositories and the FBI together into a national system by means of an "index-pointer" approach.

Under this approach, the FBI maintains an automated master name index, referred to as the National Identification Index (NII), which includes names and identifying data concerning all persons whose automated criminal history records are available by means of the III system.¹⁸⁴ If a search of this index indicates that the search subject has a III-indexed record, the

¹⁸³"State offenders" are persons arrested and prosecuted under State law.

¹⁸⁴Both the FBI and the State repositories have some records of older offenders that have not been automated because the persons have been criminally inactive. These manual records are not available via the III system.

index will “point” the inquiring agency to the FBI and/or to one or more of the State repositories from which the record or records may be obtained. The inquiring agency may then obtain the records directly from the indicated sources by means of the NCIC and the National Law Enforcement Telecommunications System (NLETS). The FBI also maintains the National Fingerprint File (NFF), a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

The major advantages of the III approach, when fully implemented, stem from its decentralization component; that is, the shift from reliance on FBI-maintained State offender records for national search purposes to reliance on State-maintained records for such purposes. The two main advantages are: (1) criminal history records maintained by the State repositories are more accurate and complete than State offender records maintained by the FBI¹⁸⁵ and (2) if State repositories provide record

¹⁸⁵This is primarily due to the fact that the submission of arrest and disposition information to the State repositories by State and local agencies is mandated by law in most States, whereas the submission of such information to the FBI by such agencies is voluntary.

responses for national search purposes, the FBI can discontinue the maintenance of its files of State offender records.

Interstate Identification Index system implementation status

— System availability status

From an availability standpoint, the III system is fully operational nationwide. The NCIC system and interfaced State telecommunication systems, together with the FBI’s Integrated Automated Fingerprint Identification System (IAFIS) and interfaced State AFIS systems, provide III system access to Federal, State, and local criminal justice agencies throughout the country. The system is used to conduct national searches, both name- and fingerprint-based, and to provide record responses from FBI and State repository sources for both criminal justice and noncriminal justice purposes. Procedures for conducting searches for criminal justice purposes differ from those for conducting searches for noncriminal justice purposes.

— Criminal justice searches

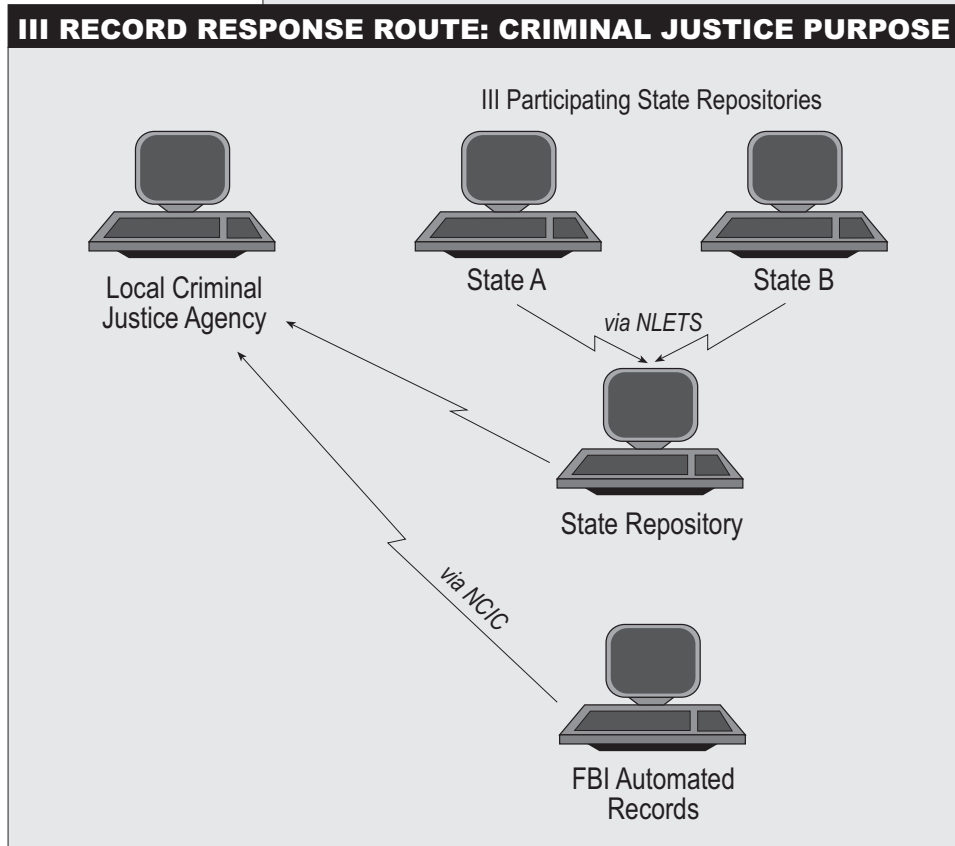
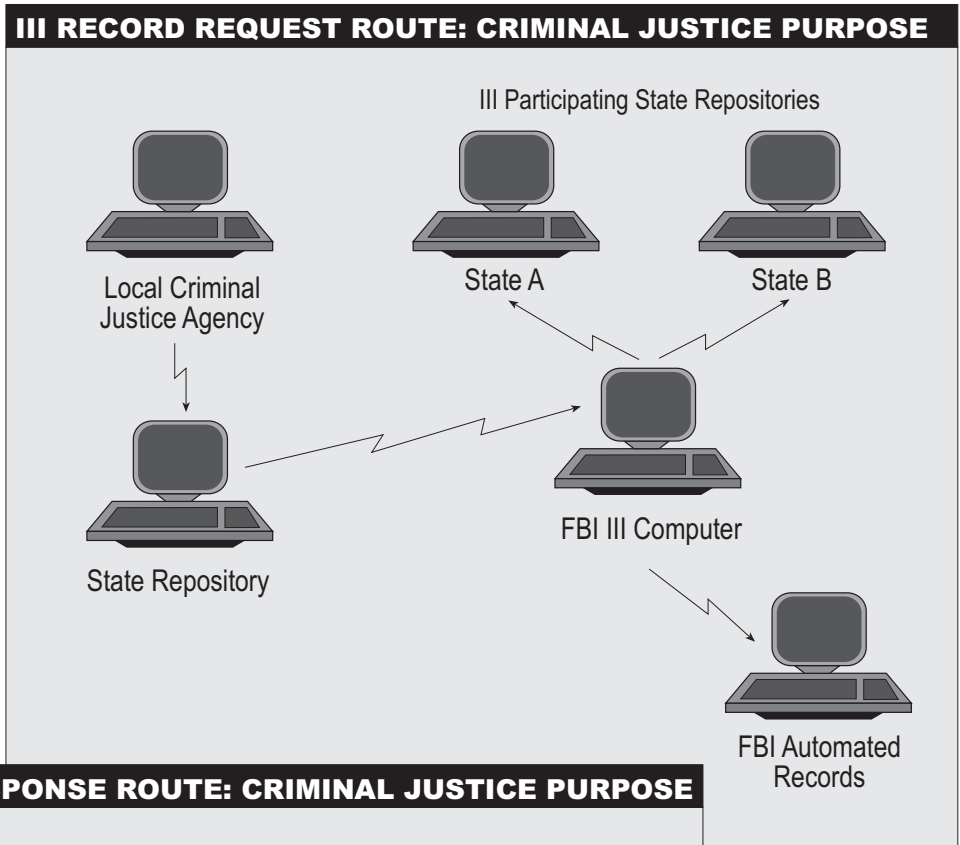
III searches for criminal justice purposes, such as for purposes related to criminal investigations and prosecutions, are conducted pursuant to Federal regulations.¹⁸⁶ For these purposes, criminal justice agencies may conduct name searches and offender-identification-number searches of the NII. If there is a hit, they may obtain the out-of-State record segments on-line via NLETS or NCIC.

Criminal justice agencies may also obtain national fingerprint-based searches for criminal justice purposes by transmitting search subjects’ fingerprints to the FBI by mail or by electronic means. This is often done to ensure that arrested persons do not prevent discovery of their prior records by using aliases.

III records provided by the FBI and the State repositories for criminal justice purposes include all criminal history record information relating to the record subjects, including favorable and unfavorable dispositions, as well as arrests without recorded dispositions regardless of how old the arrests are. Figure 3 shows how III record requests and record responses are routed for criminal justice purposes.

¹⁸⁶28 CFR Part 20, Subpart C.

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.



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 multi-State record components, if necessary, and transmits a response to the requesting agency. The entire process usually takes less than a minute.

Figure 3: III record request and response processing for criminal justice purposes

— Noncriminal justice searches

III searches for noncriminal justice purposes, such as for military recruiting, national security activities, State or Federal governmental employment, or occupational licensing or suitability, are conducted pursuant to the *National Crime Prevention and Privacy Compact* (see section 4). The compact permits such searches for any purpose specified in a Federal statute or executive order, or in a State statute approved by the U. S. Attorney General as authorizing III searches. Such searches must be fingerprint-based, and record requests must be based upon positive identification of record subjects by fingerprint comparison.¹⁸⁷

To obtain a national criminal history search under the compact provisions, a non-criminal justice agency authorized under State law is required to submit the search subject's fingerprints to the State repository in the State where the agency is located. The repository is required to first conduct a search of its State-level criminal history

¹⁸⁷There are some limited circumstances, based on Federal law, under which the III system may be used for conducting name searches for noncriminal justice purposes. An example is the *United States Housing Act*, pursuant to which the Attorney General has permitted III name searches for background screening of public housing tenants and applicants.

files. If this search results in a fingerprint-verified determination that the individual has a criminal history record in that State, the repository may access the NII to determine whether the individual has an out-of-State record and, if so, to be pointed to the FBI or to the State repository from which the records may be obtained.

If the State-level search is negative, the repository transmits the fingerprints to the FBI (in card or electronic form) for a search of its fingerprint files. If this search results in positive identification of the subject, the FBI will notify the State repository and the repository may use the NII to obtain the out-of-State record or records.

Federal noncriminal justice agencies and other organizations authorized to obtain national criminal record searches under Federal law submit search subjects' fingerprints directly to the FBI. If the FBI positively identifies a subject, it may use the NII to obtain any record segments available from State repositories.

Records exchanged by the FBI and the State repositories for noncriminal justice purposes under the compact must include all criminal history record information concerning record subjects, with the exception of information that has been

sealed.¹⁸⁸ Before responding to noncriminal justice agencies that have submitted III search requests, the State repositories screen records received from out of State, if necessary, and delete any information that cannot be released to particular agencies under their State dissemination laws. As explained in chapter III, criminal history record dissemination laws differ greatly from State to State concerning the types of noncriminal justice agencies that may obtain criminal history record information, the purposes for which such information may be used, and the types of information that may be released to particular agencies. Figure 4 shows how III record requests and record responses are routed for noncriminal justice purposes.

¹⁸⁸The Compact sets out a narrow definition of "sealed information." Compact, Art. I, Sec. 21.

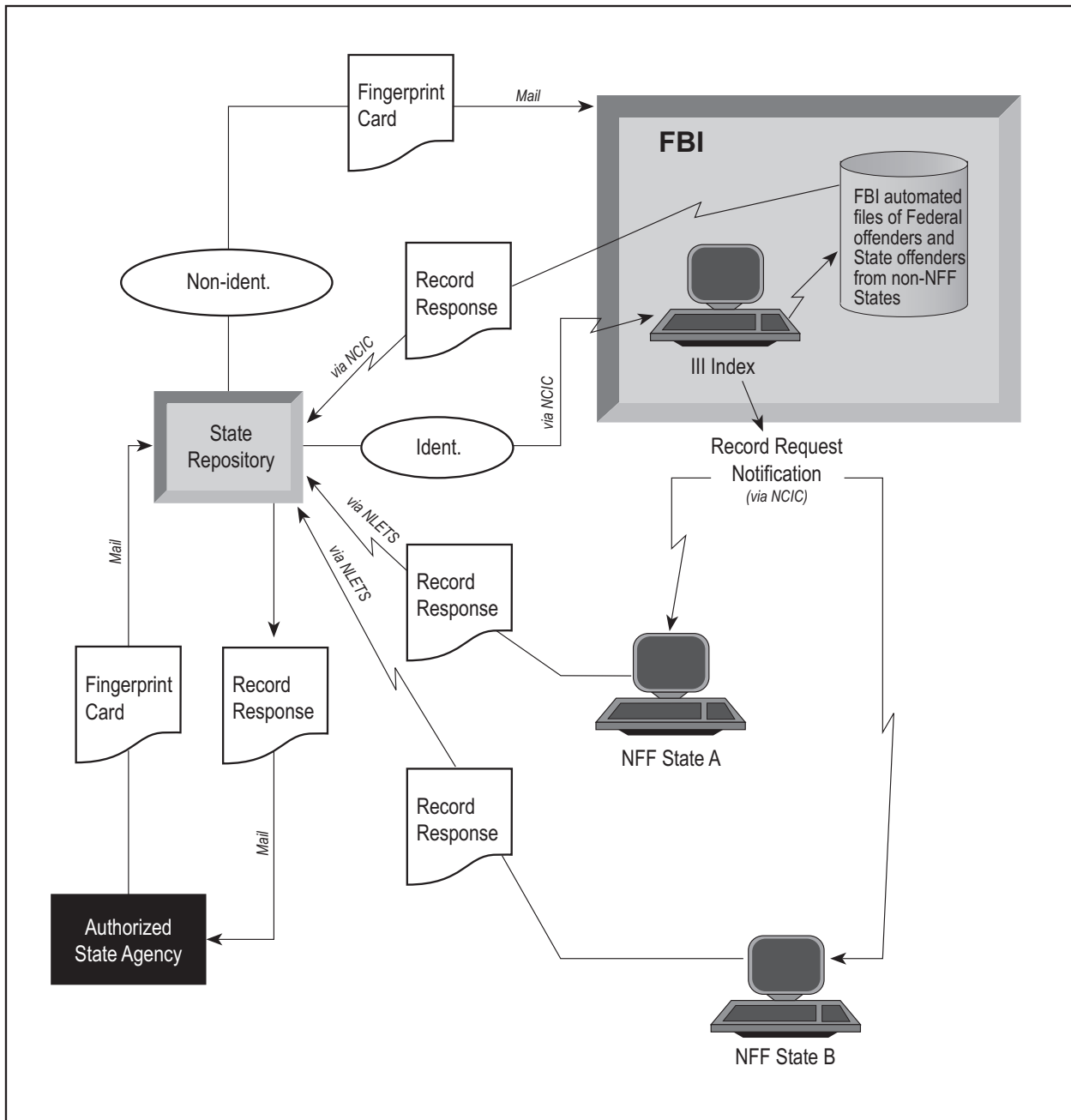


Figure 4: Ill record request and response processing for noncriminal justice purposes

Figure 4: III record request and responses 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 that 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 "multi-State" 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 State offender record for which the FBI has III responsibility. The NFF returns 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 — or, in increasing numbers, the digitized fingerprint images — 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.

— Decentralization implementation status

Although the III system is fully operational nationwide and is being used to conduct national searches and exchange records for both criminal justice and non-criminal justice purposes, the decentralization aspect of the system concept has not yet been fully implemented. This aspect of the system — the shift from reliance on FBI-maintained records of persons arrested and prosecuted under State law to a reliance on State-maintained records of State offenders — is being implemented on a State-by-State basis. Under this implementation approach, State repositories that are participating as record providers for III national search purposes have undertaken these responsibilities in two stages: first, they have assumed responsibility for providing records for criminal justice purposes only, and, at some later point, they have assumed responsibility for providing records for noncriminal justice purposes as well.

— Interstate Identification Index record responses for criminal justice purposes

In the first stage of III participation, a State repository assumes the responsibility of

providing designated criminal history records on-line in response to III record requests for criminal justice purposes only. Because all of the States' criminal record laws authorize interstate and Federal-State record exchanges for criminal justice purposes, there has been no legal impediment in any State to III participation at this level. However, participating State repositories need efficient automated criminal history record systems capable of interfacing with the III system and meeting system support requirements, such as response time standards.

As of mid-2001, repositories in 43 States were participating in the III system as record providers for criminal justice purposes.¹⁸⁹ These States are usually referred to as "III States" or "III participants." All of the other State repositories are in the process of upgrading their systems to enable III system participation in the near future. In the meantime, the FBI is providing III record responses for State offenders of States

¹⁸⁹The States are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

whose repositories are not III participants.

The FBI also continues to provide records of some State offenders in III States. Some III States have agreed to be responsible for providing only records of persons arrested and/or charged as first-time offenders in the State after the date when III participation began. Other repositories assumed responsibility for new first-time arrestee records as well as for some pre-existing records of in-State offenders if their automated State files contained at least as much information about those record subjects as the FBI's files contained.¹⁹⁰ The FBI continues to provide all State offender records for which III State repositories have not assumed responsibility.¹⁹¹

Table 1 shows totals and State-by-State breakdowns of the records indexed in the III system as of August 2, 2001, the latest available figures. At that time, the system provided access to 43,533,575

¹⁹⁰The FBI's files contain records of some arrests for State offenses that were not reported to the State repositories. This occurred primarily before the FBI instituted its "single-source submission" policy, discussed earlier. For the same reasons, the files of the State repositories include some arrests that were not reported to the FBI.

¹⁹¹The FBI also continues to provide some records of persons in III States whose records have not been automated at the State level (primarily older persons who have not recently been criminally active).

automated criminal history records. Of these, 25,614,711 records were available for criminal justice purposes from the 43 III State repositories and 17,918,864 records were available for such purposes from the FBI. Column 1 of the table ("State-supported Records") shows the numbers of records for which the repositories in III States have assumed responsibility for criminal justice response purposes. Column 2 ("FBI-supported Records") shows the numbers of records of State offenders of III States for which the FBI continues to be responsible. Column 3 ("Others") shows the number of III-indexed records of persons arrested and prosecuted in States (and territories) whose repositories are not participating in the III system, as well as the number of Federal offender records and foreign offender records indexed in the system. The FBI provides the records listed in Columns 2 and 3 in response to III record requests for criminal justice purposes.

Interstate Identification Index (III)
Total Subjects

August 3, 2001

State-supported Records (III Participants)		FBI-supported Records			
		(III Participants)		(Non-III, U.S. Territories, Federal and Foreign)	
STATE	RECORDS	STATE	RECORDS	NON-III STATE	RECORDS
Alabama	114,832	Alabama	428,405	District of Columbia	168,017
Alaska	56,939	Alaska	73,555	Hawaii	147,961
Arizona	201,911	Arizona	664,223	Kansas	401,414
Arkansas	179,442	Arkansas	155,163	Kentucky	367,574
California	4,800,352	California	792,048	Louisiana	707,064
Colorado	585,002	Colorado	182,438	Maine	70,541
Connecticut	188,754	Connecticut	149,509	Tennessee	729,688
Delaware	109,778	Delaware	70,491	Vermont	47,833
Florida	2,767,855	Florida	582,314		
Georgia	1,829,046	Georgia	188,657		
Idaho	136,070	Idaho	37,627	SUBTOTAL	2,640,092
Illinois	437,605	Illinois	1,484,134		
Indiana	129,666	Indiana	394,237	U.S. TERRITORY	RECORDS
Iowa	92,362	Iowa	271,357	American Samoa	618
Maryland	103,844	Maryland	739,943	Guam	16,879
Massachusetts	551	Massachusetts	298,054	Northern Mariana	4,594
Michigan	875,040	Michigan	151,122	Puerto Rico	95,903
Minnesota	311,157	Minnesota	48,205	Virgin Islands	11,983
Mississippi	24,954	Mississippi	185,076		
Missouri	450,454	Missouri	236,473	SUBTOTAL	129,977
Montana	76,789	Montana	53,697		
Nevada	180,430	Nevada	217,765	Federal	3,795,491
Nebraska	26,039	Nebraska	144,769	Foreign	71,540
New Hampshire	11,118	New Hampshire	104,490		
New Jersey	1,194,524	New Jersey	80,038		
New Mexico	51,581	New Mexico	251,959		
New York	2,450,366	New York	292,011		
North Carolina	768,725	North Carolina	68,573		
North Dakota	21,379	North Dakota	33,240		
Ohio	833,638	Ohio	242,795		
Oklahoma	166,466	Oklahoma	257,774		
Oregon	496,732	Oregon	90,517		
Pennsylvania	914,602	Pennsylvania	403,103		
Rhode Island	459	Rhode Island	109,062		
South Carolina	845,188	South Carolina	56,406		
South Dakota	61,559	South Dakota	87,528		
Texas	2,719,436	Texas	245,957		
Utah	235,721	Utah	53,541		
Virginia	736,974	Virginia	281,455		
Washington	289,211	Washington	462,461		
West Virginia	17,829	West Virginia	130,657		
Wisconsin	52,999	Wisconsin	460,140		
Wyoming	67,332	Wyoming	20,795		
TOTAL	25,614,711	TOTAL	11,281,764	TOTAL	6,637,100

Total Records 43,533,575*

*The number of total records exceeds total subjects due to multi-State offenders

Table 1: Records indexed in the III system as of August 3, 2001

— Interstate Identification Index record responses for noncriminal justice purposes

Four of the 43 III States (Florida, New Jersey, North Carolina, and Oregon) have assumed responsibility for providing their III-indexed criminal history records for noncriminal justice purposes as well as for criminal justice purposes. These States are usually referred to as “NFF States” because they submit offender fingerprints and charge/disposition information to the FBI pursuant to the National Fingerprint File concept (discussed below). NFF States must have legal authority to provide full criminal history records to the FBI and to other State repositories for any noncriminal justice purpose authorized by Federal law or by any other State’s law. As noted earlier, in responding to III record requests, they are required to provide all unsealed information relating to record subjects. The information is screened and edited, if necessary, under the laws of the receiving State repositories before it is made available to noncriminal justice agencies.

States in which the repositories lack the record dissemination authority to participate in the NFF may provide such authority by amending their criminal history record laws.

They may also do so by ratifying the *National Crime Prevention and Privacy Compact*. Among other things, the compact authorizes party State repositories to make records available to the FBI for Federally authorized noncriminal justice purposes, and to any State repository for any noncriminal justice purpose that is authorized by law in that State. Because a compact supersedes conflicting provisions of State law, the act of ratifying the compact has the effect of amending a State’s record dissemination law. Ratification of the compact also binds party State repositories to their roles in processing national searches for noncriminal justice purposes.

— Discontinuance of Federal Bureau of Investigation records of State offenders

Because NFF State repositories are obligated to provide their III-indexed State offender records (those for which they have assumed III responsibility) for both criminal justice and noncriminal justice purposes, the FBI no longer needs to maintain duplicates of these records for national search purposes. Hence, after a State begins NFF participation, the State repository and criminal justice agencies in the State no longer follow the practice of forwarding fingerprints

and charge/disposition information to the FBI for all persons arrested for or charged with criterion offenses in the State (as described in section 1 of this chapter). Instead, they forward criminal history record information to the FBI as follows:

1. Upon the arrest¹⁹² of a person who has never before been arrested in the State, the repository forwards to the FBI only the person’s fingerprints together with textual subject identification information.¹⁹³ The identification information is used to add the person to the NII, or to update the index, if necessary, if the person is already in the index, and to set a pointer indicating that the repository maintains a criminal history record concerning the individual that is available for authorized III purposes. The individual’s fingerprints are added to the NFF (see figure 5).
2. Upon the arrest of a person who has been arrested previously in the

¹⁹²This includes persons who are charged with criminal offenses by summons or citation without being arrested.

¹⁹³Standard fingerprint cards, which usually are forwarded by mail, contain spaces for both fingerprint images and textual subject identification information. Increasingly, both types of information are transmitted to the FBI by electronic means.

State and whose State offender record is the responsibility of the State repository for III purposes, no fingerprints or charge/disposition data are forwarded to the FBI.¹⁹⁴

3. Upon the arrest of a person who has been arrested previously in the State but whose State offender record remains the responsibility of the FBI for III purposes, the State repository forwards fingerprints and charge/disposition information as per pre-NFF practices so that the FBI can keep the record current.

Thus, an NFF State repository is relieved of the burden of submitting charge/disposition data to the FBI for first-time in-State offenders and of submitting fingerprints or charge/disposition data upon the arrest of persons whose prior in-State records are the repository's responsibility for III purposes. The FBI is relieved of the burden of processing these submissions

¹⁹⁴ NFF repositories do send electronic notices of such arrests to the FBI, which enables the FBI to provide notices to law enforcement agencies that have entered active "wanted person" notices concerning the arrested persons. The repositories also submit revised subject identification information, as necessary, to keep the NII updated and they may send better-quality fingerprints for the NFF if previously submitted fingerprints were of poor quality.

and maintaining duplicate records of these persons. Full criminal history records of these persons are maintained only at the State repository level.

At present, about 59% of the State offender records available by means of the III system for criminal justice purposes are the responsibility of the 43 III State repositories, and the other approximately 41% are the responsibility of the FBI. However, the FBI is responsible for approximately 86% of the State offender records provided by the system for noncriminal justice purposes, with the other 14% being the responsibility of the four NFF State repositories. In time, when all of the State repositories are participating in the III system and are NFF participants as well, and when the records of State offenders for which the FBI retains III system responsibility have been purged from the system because of the old age or death of the subjects, the FBI will maintain and provide no records of State offenders. It will maintain only Federal offender records and the records of a few foreign offenders. At that time, the decentralization component of the III system will have been fully implemented.

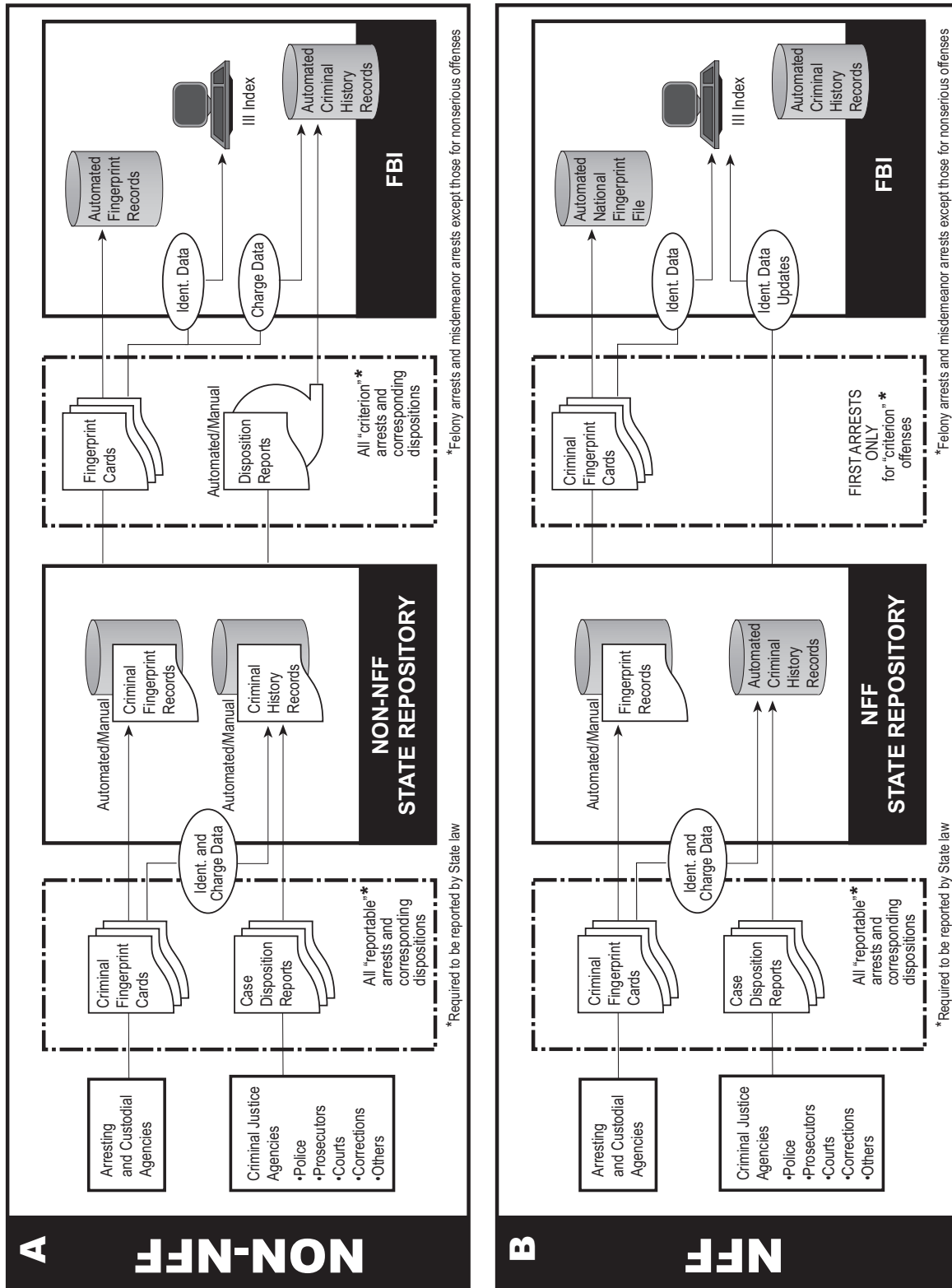


Figure 5: Reporting and maintenance of records in a decentralized III system

Figure 5: Reporting and maintenance of records in a decentralized III system

Figure 5a shows 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 non-criminal 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 5b shows how reporting and record maintenance works for State repositories that participate in the decentralization phase of III implementation (often referred to as implementation of the NFF). These repositories (referred to as NFF repositories) assume an obligation to provide interstate record services to all authorized III users for both criminal justice and noncriminal justice purposes. Thus, there is no need for these States to continue submitting fingerprints and criminal history data to the FBI for arrests of persons whose records are the States' responsibility for III purposes. They submit fingerprint and offender identification information only for the first arrest of an individual for a criterion offense within each State. This enables 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.

Section 3: Interstate Identification Index system impact

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.

Benefits of Interstate Identification Index participation

— Improved record quality

Full III implementation 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 are sometimes more complete and timely than comparable State offender records maintained by the FBI, the ability to obtain records directly from 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.

— Cost savings

III participation affords cost-saving benefits whether a State repository participates fully or only as a record provider for criminal justice purposes. The III computer interface automatically updates 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 are also able to set single-State/multi-State 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.

— Increased system security

In addition, an increase in system security results 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.
- Sanctions for noncompliance.

Benefits of National Fingerprint File participation

There will be additional benefits for repositories that participate in NFF (providing records in response to III requests for both criminal justice and noncriminal justice purposes) and for the FBI.

— Duplicate files eliminated

Maintenance of duplicate State and Federal files for offenders from these States will be discontinued. State repositories will be relieved of the burden of submitting second and subsequent arrest fingerprints and charge/disposition information to the FBI for offenders whose in-State records are the States' responsibility for III purposes. The FBI will be relieved of the burden of maintaining these State offender records. This will free personnel and resources that can be applied to other programs to further improve Federal and State criminal record files.

— Uniform dissemination standard

Full III implementation 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, which have severely restricted interstate dissemination of State repository records for noncriminal justice purposes. 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 because the repositories in their States will receive automated record responses from the FBI rather than the mailed responses that are now provided.

Burdens of Interstate Identification Index participation

There are some new burdens to the States associated with III participation. Most of the States that are not now participating will need to upgrade the technical capability of their repositories in order 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, because many criminal justice responses are already handled electronically, and because the volume of noncriminal justice record responses is low,¹⁹⁵ these new burdens should not be significant in States that have efficient systems.

Section 4: The National Crime Prevention and Privacy Compact

This section discusses the *National Crime Prevention and Privacy Compact*, which governs the use of the III system for noncriminal justice purposes.¹⁹⁶

Background

It was apparent to the State and Federal officials who developed the III concept that full participation in the indexer system would eventually require most States to modify their existing laws and policies governing the availability of criminal his-

tory records for noncriminal justice purposes in order to meet the proposed interstate standard on record availability. In addition, Federal and State officials recognized a need to formally commit the FBI and participating State repositories to long-term participation in a decentralized system.

These goals could possibly have been realized through the enactment of Federal legislation in combination with uniform State laws or independent State legislative action. However, there was a strong consensus from the emergence of the III concept that favored the use of an interstate/Federal-State compact to implement the system for the following reasons:

- A compact 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.
- Because compacts take precedence over conflicting State laws, and because the compact authorizes the State repositories to provide record responses for all authorized III purposes,

¹⁹⁵ Analysis has shown that the “hit rate” for noncriminal justice searches is 7-8% for all categories of subjects.

¹⁹⁶ The compact text, and section-by-section analysis, is included as appendix 21.

ratification of the compact would have the effect of providing the repositories with needed interstate record dissemination authority in those cases in which such authority is now lacking under State law.

The compact was approved by the Congress on October 8, 1998, and signed by the President on October 9, 1998.¹⁹⁷ It became effective, by its terms, on April 28, 1999, when ratified by the second State. As of mid-2001, 13 States — Connecticut, Colorado, Florida, Georgia, Iowa, Kansas, Montana, Nevada, South Carolina, Arkansas, Alaska, Oklahoma, and Maine — have ratified the compact. Based on representations of State officials, it appears likely that numerous other States will ratify the compact in the not-too-distant future.

Compact provisions

Major provisions of the *National Crime Prevention and Privacy Compact* are:¹⁹⁸

- The compact binds the FBI and ratifying States to participate in the non-criminal justice access

¹⁹⁷Public Law 105-251; 112 Statutes at Large 1870. Codified at 42 USCA § 14611 et seq.

¹⁹⁸Paul L. Woodard, *National Crime Prevention and Privacy Compact: Resource Materials*, NCJ 171671 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, January 1999).

program of III in accordance with the compact and established system policies.

- Authorized users are the same as those currently authorized to obtain records from the FBI's files.
- Participating State repositories are 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 is through the FBI and the State repositories and is based upon fingerprint identification of record subjects to ensure positive identification.
- Release and use of information obtained through the system for noncriminal justice purposes is governed by the laws of the receiving States, and the receiving repositories are required to screen record responses and delete any information that cannot legally be released within the State.
- The compact establishes 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.

Chapter VI: Federal initiatives and criminal history records

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

Section 1: Federal Bureau of Investigation system upgrades, discusses the Bureau's comprehensive program to upgrade its identification and information services.

Section 2: The *Brady Act* and its impact, discusses the *Brady Handgun Violence Prevention Act* and its impact on State and Federal criminal history record maintenance and improvement.

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.

Background

The Federal government plays a principal role in criminal history record information policies and practices. As described in chapter V, the Federal Bureau of Investigation's (FBI) fingerprint files 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, including the military services and Federal intelligence agencies, are among the largest consumers of criminal history record information.

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

In addition, 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. DOJ, 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 initiatives that also have 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: Federal Bureau of Investigation system upgrades

The FBI has made significant progress in a comprehensive program to upgrade and revitalize its identification and information services capabilities.

This section looks at these FBI initiatives:

- The Integrated Automated Fingerprint Identification System (IAFIS).
- Relocation of the Criminal Justice Information Services (CJIS) Division.
- National Crime Information Center (NCIC) 2000.

Integrated Automated Fingerprint Identification System

The completed IAFIS became operational on July 28, 1999. IAFIS includes 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. IAFIS can respond to identification requests submitted for criminal justice purposes within 2 hours for end-to-end electronic transmissions, and within 24 hours for noncriminal justice end-to-end electronic transmissions. The FBI estimates that the quick turn-around will prevent the release of an estimated 10,000 to 30,000 fugitives freed each year because of delays in establishing their true identities and warrant status.¹⁹⁹ All communication of fingerprint image data will be conducted using a national standard format, which can also be adopted by States to link

¹⁹⁹IAFIS Technical Bulletin, *su-pra* note 165.

State identification bureaus with local arrest booking agencies. At \$640 million, IAFIS was the U.S. DOJ's largest financial undertaking ever. In March 2001, of the nearly 45,000 fingerprints received by the FBI each day, close to 60% of civil prints and just over 50% of the criminal fingerprints were submitted electronically.²⁰⁰ Sixty-three percent of the criminal prints and 10% of the civil prints submitted were matched with prints on file.²⁰¹

Criminal Justice Information Services Division relocation

Another key part of the FBI's modernization program was the relocation of its CJIS Division from FBI headquarters in Washington, D.C., to expanded and improved facilities in Clarksburg, West Virginia, the largest relocation in the Bureau's history. The Clarksburg facility features approximately 500,000 square feet of workspace with room for 2,500 employees at the 986-acre site. FBI personnel began to move to the new CJIS facility in 1995.²⁰²

²⁰⁰Figures compiled by the FBI's CJIS Division.

²⁰¹Presentation by Mr. David R. Loesch, Assistant Director in Charge, CJIS Division, FBI, to the SEARCH Membership Group, July 28, 2000, Honolulu, Hawaii.

²⁰²Source: Federation of American Scientists' Intelligence Resource Program, available at http://www.fas.org/irp/facility/fbi_clarksburg.htm.

National Crime Information Center 2000

Another FBI initiative called NCIC 2000 upgraded NCIC's legacy telecommunications system and hardware to permit the paperless exchange of information. In addition, NCIC can now handle graphic information, including mugshots, tattoos, and signatures, in an electronic imaging format. NCIC 2000 enhancements include near-hit capabilities for birth date inquiries, and formulas for conducting sound-alike name searches, such as for Knowles and Nowles, and for name variations such as James, Jim, and Jimmy.²⁰³ The upgraded system provides investigators with access to 17 databases, including information on deported felons, missing persons, and stolen guns and vehicles, and can identify relationships between information in the databases, such as between a stolen car and a stolen gun.²⁰⁴ NCIC 2000 went on-line on July 11, 1999. As of May 1, 2000, NCIC averaged more than 2.3 million transactions per day.

²⁰³Federal Bureau of Investigation, *NCIC 2000: Improving Law Enforcement Nationwide*, revised April 1999.

²⁰⁴L. Scott Tillett, "FBI turns on new crime-fighting system," *Federal Computer Week*, July 15, 1999.

Section 2: The *Brady Act* and its impact

Background

On November 30, 1993, President Clinton signed into law the *Brady Handgun Violence Prevention Act* (Public Law 103-159), which facilitates background checks of firearm purchasers to identify persons who are prohibited by the *Gun Control Act of 1968* from owning or possessing firearms.²⁰⁵ The *Brady Act's* interim provisions imposed a 5-day waiting period on handgun purchases, during which the chief law enforcement officer of the handgun purchaser's place of residence was required to make a reasonable effort to determine whether the gun sale was in accordance with the law.²⁰⁶

²⁰⁵ 18 U.S.C. Chapter 44.

²⁰⁶ The *Brady Act* provision requiring local law enforcement officers to determine the legality of gun sales was ruled unconstitutional by the U.S. Supreme Court on June 27, 1997, in *Printz v. United States* (521 U.S. 898). The ruling resulted from lawsuits filed by two sheriffs (Jay Printz of Montana and Richard Mack of Arizona) who argued that the background check provision was unconstitutional based on 10th amendment protections given to the States. (The 10th amendment states that constitutional powers not given to the Federal government nor explicitly removed from the States' domain are reserved for the States and the people.) District courts hearing the cases ruled that the interim measures were unconstitutional but severable from the rest of the *Brady Act*. The Ninth Circuit Court of Appeals ruled the interim

The *Gun Control Act* prohibits the purchase or possession of firearms by individuals who are under indictment for or who have been convicted of crimes punishable by prison terms exceeding 1 year; fugitives from justice; unlawful users of certain controlled substances; persons adjudicated as mental defectives; illegal or unlawful aliens; persons discharged dishonorably from the armed forces; persons who have renounced their United States citizenship; persons who have been convicted of misdemeanor crimes of domestic violence; and certain persons who are subject to outstanding court protection orders.²⁰⁷

The *Brady Act's* permanent provisions required the Attorney General to establish within 5 years of its enactment a National Instant Criminal Background Check System (NICS) to expedite determinations of the suitability for ownership of all potential gun purchasers, at which time the Act's interim provisions would expire.

National Instant Criminal Background Check System

The NICS became operational on November 30, 1998. In most cases, NICS can pro-

measures were constitutional. The U.S. Supreme Court reversed that ruling 5-4, stating that "Congress cannot compel that States enact or enforce a Federal regulatory program."

²⁰⁷ Public Law 90-618.

vide a suitability determination within 30 seconds for firearm purchases, although the *Brady Act* provides for up to 3 days for a response.

States have the option of serving as Points of Contact (POC) to conduct their own criminal history background checks, or they can hand the responsibility for firearms checks over to the FBI. As of August 2001, 16 States served as POCs for all firearm-purchase background checks; 5 States that require individuals to obtain permits from criminal justice officials before purchasing firearms conducted the background checks for handgun permits, with the FBI handling long-gun-purchase background checks; 5 States conducted background checks for handguns purchased directly from dealers, with the FBI handling long-gun-purchase background checks; and the FBI conducted all background checks for 29 States.²⁰⁸ The 15 POC States represent some of the Nation's most populous, including California, Florida, Illinois, New Jersey, Pennsylvania, and Virginia, and these POC States conduct about one-half of all NICS background checks.²⁰⁹

²⁰⁸ Source: Ms. Lisa Vincent, Assistant Operations Manager, NICS.

²⁰⁹ *Gun Control: Options for Improving the National Instant Criminal Background Check System*, GAO/GGD-00-56 (Washington, D.C.: U.S. General Accounting Office, April 2000).

The FBI maintains two call centers to respond to inquiries from Federal Firearm Licenses (FFLs) in non-POC States seeking suitability determinations for prospective firearm purchasers. Delayed responses to such inquiries are forwarded to the FBI for further investigation. FFLs in POC States conduct the suitability inquiries through a designated state agency, which contacts the FBI for a search of III, NCIC and NICS.

The system's central database taps into Federal criminal history databases, including NCIC and the Interstate Identification Index (III), and into databases maintained by six other Federal agencies that provide information on military and immigration and naturalization status. Once a name is entered, the NICS check is made against III records (including Federal computerized criminal history records), the NCIC database (including wants and warrants), and the NICS database. Based on the results of the check, the dealer is advised that the sale may proceed, is denied or is delayed. Delayed sales are transferred to an FBI analysis center for further investigation, and FBI personnel call the dealer with the results of their investigation.

The FBI reported that, in the first 13 months of NICS operation, approximately 72% of the background checks it

conducted for States that declined to serve as POCs resulted in immediate clearance to transfer a weapon.²¹⁰ It is estimated that NICS conducts up to 30,000 Federally mandated criminal history background checks on potential gun buyers each day²¹¹ for a community of approximately 60,000 Federally licensed firearm dealers.²¹²

Other *Brady Act* provisions

The *Brady Act* also required the Attorney General to expedite the upgrade and index of State criminal history records in the Federal criminal history record system maintained by the FBI; the development of hardware and software to link State criminal history check systems to NICS; and the FBI's revitalization initiatives for technologically advanced fingerprint and criminal records identification. The *Act* also established a grant program, authorized at \$200 million.

²¹⁰*National Instant Criminal Background Check System Operations Report (November 30, 1998-December 31, 1999)*, CJIS Division, FBI.

²¹¹Science Applications International Corporation, *1999 Annual Report*, p. 39.

²¹²Science Applications International Corporation, "Criminal Justice Information Systems," available at <http://www.saic.com/justice/integrated.html>.

Section 3: Federal grant programs and related initiatives

This section looks at:

- The National Criminal History Improvement Program.
- The Edward Byrne Memorial State and Local Law Enforcement Assistance Program 5% set-aside.
- A law requiring States to report alien convictions to the Immigration and Naturalization Service.
- The National Sex Offender Registry Assistance Program.
- The National Technical Assistance and Evaluation Program.
- Voluntary reporting standards promulgated by the FBI and BJS.

The National Criminal History Improvement Program

— Background

The recognition of the role played by accurate and complete criminal history in effective law enforcement that resulted in the creation of the National Criminal History Improvement Program (NCHIP) was evident when its predecessor program, the Criminal History Record Improvement (CHRI) Program, was introduced in 1990.

At the time, a 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 attempted to purchase firearms.

The task force recognized, moreover, that incomplete and inaccurate criminal history records frustrated not only attempts to identify felons, but also the ability of judges to make informed bail and pretrial 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.

One of the major components of the Attorney General's efforts to develop a nationwide system to identify felons who attempted to purchase firearms was the announcement that discretionary grant funds authorized under the *Anti-Drug Abuse Act of 1988* would be allocated beginning in Fiscal Year 1990 for grants to the States for the specific purpose of improving and up-

dating their criminal history record information systems. The CHRI Program ultimately distributed more than \$27 million to all 50 States to enhance State criminal history records by improving quality and timeliness, to assist States in meeting new standards for voluntary criminal record information reporting to the FBI, and to overcome obstacles that hampered the identification of felons who attempted to purchase firearms. The CHRI Program was discontinued after Fiscal Year 1993. NCHIP, its successor program, was instituted 2 years later.

— **Creation of the program**

The *Brady Act* authorized a grant program to be administered by BJS to provide funds for all states to upgrade records and interface with the FBI. As a result of the authorization in 1995, BJS created the National Criminal History Improvement Program (NCHIP). NCHIP was designed to enhance the quality, completeness, and accessibility of the Nation's criminal history record system to facilitate the timely identification of individuals prohibited by the *Brady Act* from owning or possessing firearms; to ensure that individuals caring for children, elders, and the disabled did not have disqualifying criminal histories, as mandated by the *National Child Protection*

Act of 1993;²¹³ and to improve access to protection orders and records of individuals wanted for stalking and domestic violence, as required by the *Violent Crime Control and Law Enforcement Act of 1994*.²¹⁴

In 1998, NCHIP was extended to help States improve criminal history record accuracy and dissemination capabilities in response to Federal directives to develop or improve sex offender registries and to contribute data to a national sex offender registry.²¹⁵ Twenty-five million dollars were allocated for this purpose. States could use the money to automate registries or to enhance automation, to improve on-line access for law enforcement agencies throughout their States, to purchase automated fingerprint systems, and for a host of other improvements.

NCHIP is closely coordinated with the Edward Byrne Memorial Grant Program, a BJA

²¹³P.L. 103-209, 107 Stat. 1536 (1993).

²¹⁴P.L. 103-322, 108 Stat. 1796 (1994).

²¹⁵The *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act*, included in the *Violent Crime Control and Law Enforcement Act of 1994* (42 U.S.C. § 14071); the *Pam Lychner Sexual Offender Tracking and Identification Act of 1996* (42 U.S.C. § 14072); and the Federal version of "Megan's Law," enacted in 1996 to amend the *Violent Crime Control and Law Enforcement Act of 1994* (P.L. 104-145, 100 Stat. 1345).

program that requires that States must use at least 5% of their awards for the improvement of criminal history records. Every State has received an award from NCHIP, which has disbursed more than \$354 million in direct grants to the States during Fiscal Years 1995 through 2001.

— Purposes for using grants

In its program announcement, BJS identified the following goals for which Federal NCHIP grants to the States could be used:

- To establish programs and systems to facilitate full participation in the NCIC's III.
- To implement systems to facilitate full participation in any compact relating to NCIC's III.
- To develop systems to facilitate full NICS participation.
- To establish programs to support the availability of criminal record data for authorized noncriminal justice purposes, including background checks on persons with responsibility for children, the elderly, or the disabled.
- To ensure that noncriminal history record information systems relevant to firearms eligibility determinations become available and accessible to NICS.

- To improve the level of automation, accuracy, completeness, and flagging of adult and juvenile records, including arrest and disposition reporting.
- To implement and upgrade automated fingerprint identification systems (AFIS) and to purchase supporting livescan equipment.
- To support the development of accurate and complete State sex offender identification and registration systems that interface with the FBI's Sex Offender Registry and meet applicable Federal and State requirements.
- To identify, classify, collect, and maintain records of protection orders, warrants, arrests, and convictions of persons violating protection orders so as to protect victims of stalking and domestic violence.
- To identify (through interface with the National Incident-Based Reporting System (NIBRS) when necessary) records of crimes involving use of a handgun and/or abuse of children, the elderly, or disabled persons.
- To participate in system integration plans that permit interface of systems operated by different criminal justice components.
- To support court-based criminal justice informa-

tion systems that promote disposition reporting.

- To establish domestic violence offender identification and information systems.
- To ensure that States develop the capability to monitor and assess State progress in meeting legislative and programmatic goals.
- To ensure that criminal justice systems are designed, implemented, or upgraded to be compatible, where applicable, with NIBRS, NCIC 2000, NICS, IAFIS, and applicable statewide or regional criminal justice information sharing standards and plans.²¹⁶

— Data quality, system improvement strategies

BJS identified a number of proven data quality and system improvement strategies and authorized States to use NCHIP grant funds to implement these strategies. Specifically, the BJS guidelines authorized funds for the following types of programs:²¹⁷

- III participation.
- Database enhancement.
- Record flagging.
- NICS participation.

²¹⁶*National Criminal History Improvement Program Fiscal Year 1999 Program Announcement*, NCJ 175033 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, February 1999) pp. 3-4.

²¹⁷*Ibid.*

- Firearm permits.
- National Sex Offender Registry participation.
- To improve on-line law enforcement access to sex offender registry data.
- Protection order file participation.
- Interface between criminal history records, sex offender registry, and civil protection order files.
- Uniform rap sheet format.
- Year 2000 compliance.
- Record automation.
- AFIS/Livescan acquisition and upgrade.
- Establish mug shot identification capability.
- NIBRS interface.
- Research, evaluation, monitoring, and audits.
- Conversion of juvenile records to the adult system.
- Reduction of missing dispositions backlog.
- Equipment upgrades.
- Training and participation in seminars and meetings.
- Reducing cost of background checks.
- Coordinating activities under this program with the implementation of the Immigration and Naturalization Service's new criminal records reporting program.

— *Status of the program*

As noted previously, more than \$354 million has been distributed directly to the States in connection with NCHIP since 1995. In Fiscal Year 2001, almost \$40 million was awarded to States under the *Crime Identification Technology Act* to cover NCHIP activities. In FY 2001, 27 States received funds to acquire or upgrade AFIS and supporting livescan technology. Thirty-six States received funds to increase the number of criminal history records with dispositions in their repositories, either through automation, backlog reduction, or integration. In 28 of those States, funds were awarded directly to the courts. Other projects being pursued by States to improve the quality of their criminal history records include automation, technological upgrades, flagging, Internet/Intranet use, document imaging, case tracking, business plan development, training, increase in support personnel, and information auditing.²¹⁸

Bureau of Justice Assistance block grant set-aside program

The Congress also recognized the importance of improving the quality and completeness of State crimi-

²¹⁸Status information provided by the Bureau of Justice Statistics, U.S. Department of Justice, available at <http://www.ojp.usdoj.gov/bjs>.

nal history record systems by including a provision in the *Crime Control Act of 1990* that requires each State to set aside at least 5% of its Edward Byrne Memorial State and Local Law Enforcement block grant monies from BJA for the improvement of criminal justice records.²¹⁹ The improvements may include the following:

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

Section 106(a) of the *Brady Act* and Section 4(a) of the *National Child Protection Act* amended Section 509 of the *Crime Control Act of 1990* to make system improvements that are in furtherance of the acts' goals additional purposes of the criminal justice record improvement goals of the set-aside program.

— *Fund guidelines*

BJA, which administers the Byrne grant program, has issued guidelines for the expenditure of the 5% set-aside

²¹⁹Pub. L. No. 101-647, 104 Stat. 4850 (codified at 42 U.S.C. § 3759(a)).

funds.²²⁰ 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.
- Develop a records improvement plan, which must be approved by BJA.

The 5% minimum set-aside applied to funds appropriated beginning in Fiscal Year 1992 and all subsequent yearly formula grants awarded under the Byrne grant program.

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 5% set-aside upon a finding, supported by an independent audit, that the quality of the State's criminal

²²⁰ U.S. Department of Justice, Bureau of Justice Assistance, *Byrne Formula Grant Program Guidelines and Application Kit*, available at <http://www.ojp.usdoj.gov/BJA/html/bfguide.htm>.

history records meets standards set out in the guidelines.

The National Technical Assistance and Evaluation Program

Under this NCHIP component, BJS has funded a grant to SEARCH, The National Consortium for Justice Information and Statistics, to provide onsite and telephone assistance to States that have received funds to assist in upgrading record systems. Requests for such assistance must be originated by the agency receiving BJS funding, although it may be provided to an alternate agency designated by the grant recipient. NCHIP technical assistance has aided States' efforts to participate in III, reviewed and made recommendations on computerized criminal history systems, and provided advice on information audits and automated fingerprint system.

Reporting alien convictions to the Immigration and Naturalization Service

The *Immigration and Nationality Act of 1990* requires each State, as a condition of receiving formula funds under the Edward Byrne block grant program, to implement procedures to provide the Immigration and Naturalization Service (INS) with certified copies of criminal history records of aliens convicted of violating the State's

criminal laws.²²¹ The records had to be provided to INS within 30 days of the conviction date, and the State could not charge a fee for such records.

The reporting provision in the *Immigration Act* was designed to assist both INS and State and local governments in dealing with criminal aliens. For INS, the provision assists in the prompt identification of aliens who have committed offenses for which they can be deported. INS estimates that more than 10% 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 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, Congress further amended the *Immigration Act* to reduce the reporting burden on State and local law enforcement agencies imposed by the 1990 law. As amended, the law now permits the States to provide INS initially with a notice of the conviction of a suspected

²²¹ *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)).

alien and to provide a certified copy of the conviction record later, if requested by INS.²²² The amendment also permits 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.

Sex Offender Registry Assistance

A component of NCHIP, the National Sex Offender Registry Assistance Program (NSOR-AP), established in FY 1998, was designed to support the establishment and maintenance of an effective national sex offender registry. Funding for sex offender registry assistance has been provided under general NCHIP since FY 1999. Although all States have registries in place, many cannot share accurate information efficiently. Therefore, sex offender registry assistance was designed to help States ensure that:

- State sex offender registries identify, collect, and properly disseminate relevant information that is con-

sistent, accurate, complete, and up to date.

- States establish appropriate interfaces with the FBI's national system so that State registry information on sex offenders can be obtained and tracked from one jurisdiction to another.

Federal Bureau of Investigation/Bureau of Justice Statistics voluntary reporting standards

The Attorney General's recommendations to the Congress regarding the development of a system for the identification of felons who attempted to purchase firearms included an announcement that the FBI, in conjunction with BJS, 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 existed. In addition, many of the criminal history records maintained by law enforcement were either out-of-date or incomplete, or both. Finally, records often contained arrest information

without notification of a final disposition.²²³

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 Record Information" on February 13, 1991.²²⁴ The complete text of the standards is set out in appendix 20.

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.
- Provide for the flagging of felonies in criminal history databases and in disposition reports submitted to the repositories and to the FBI.

²²²H.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).

²²³Letter from Attorney General Richard Thornburgh to the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives, November 20, 1989.

²²⁴FBI and BJS, U.S. Department of Justice, 56 *Federal Register* 5849 (February 13, 1991).

- 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 stated that the intent was to emphasize enhanced recordkeeping for arrests and convictions occurring within the 5-year period prior to publication of the standards and in the future. The commentary noted that the standards were voluntary and that adoption by criminal history record systems nationwide should be viewed as a goal and not as a requirement. Nevertheless, the standards were 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.

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*
Criminal Justice Information Policy series, NCJ 129896, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, June 1991

Table 10
Statutes making possession of a firearm by a convicted felon a criminal offense

State	Citation	Prohibited weapons*	If previously convicted of	Penalty (or offense level)
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 ¹	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.

**Table 10 (cont.)
Statutes making possession of a firearm by a convicted felon a criminal offense**

State	Citation	Prohibited weapons*	If previously convicted of	Penalty (or offense level)
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

**Table 10 (cont.)
Statutes making possession of a firearm by a convicted felon a criminal offense**

State	Citation	Prohibited weapons*	If previously convicted of	Penalty (or offense level)
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	9A.10.040	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 of table 2 from *Statutes Requiring the Use of Criminal History Record Information*
Criminal Justice Information Policy series, NCJ 129896, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, June 1991

Table 2
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.)

State	Citation	Statutory provision <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.

Table 2 (cont.)
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.)

State	Citation	Statutory provision <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 of table 5 from *Statutes Requiring the Use of Criminal History Record Information*
Criminal Justice Information Policy series, NCJ 129896, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, June 1991

Table 5
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.)

State	Citation	Statutory provision <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.

**Table 5 (cont.)
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.)

State	Citation	Statutory provision <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 of table 3 from *Statutes Requiring the Use of Criminal History Record Information*

Criminal Justice Information Policy series, NCJ 129896, Washington, D.C.:

U.S. Department of Justice, Bureau of Justice Statistics, June 1991

Table 3
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.)

State	Citation	Statutory provision <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.

Table 3 (cont.)
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.)

State	Citation	Statutory provision <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 of table 4 from *Statutes Requiring the Use of Criminal History Record Information*

Criminal Justice Information Policy series, NCJ 129896, Washington, D.C.:

U.S. Department of Justice, Bureau of Justice Statistics, June 1991

Table 4
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.)

State	Citation	Statutory provision <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.

Table 4 (cont.)
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.)

State	Citation	Statutory provision <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*
Criminal Justice Information Policy series, NCJ 129896, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, June 1991

Table 8
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.)

State	Citation	Statutory provision <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.

**Table 8 (cont.)
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.)

State	Citation	Statutory provision <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.

Table 8 (cont.)
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.)

State	Citation	Statutory provision <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 of table 9 from *Statutes Requiring the Use of Criminal History Record Information*
Criminal Justice Information Policy series, NCJ 129896, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, June 1991

Table 9
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.)

State	Citation	Statutory provision <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.

Table 9 (cont.)
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.)

State	Citation	Statutory provision <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

“Arrest records with fingerprints, 1989 and 1992”

Table 6 from *Survey of Criminal History Information Systems, 1992*

Criminal Justice Information Policy series, NCJ 143500, Washington, D.C.:

U.S. Department of Justice, Bureau of Justice Statistics, November 1993

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
				1989	1992	1989	1992		
Total	6,012,400	6,255,800	4%						
Alabama	292,900	197,200	-33%	4%	3%	0%	0%	100%	99% ^a
Alaska ^b	15,900	12,000	-25	18-20	0 ^c	0	0	75 ^d	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 ^e
Colorado	137,000	130,700	-5% ^f	8-15%	3%	0%	0-1%	100%	100%
Connecticut	97,100	114,000	17	<1	1	0	0	75 ^g	100
Delaware	40,000	50,000	25	<1	0	0		95 ^h	90 ⁱ
District of Columbia ^j	10,000 ^k	42,700	327		1		0	95 ^l	100
Florida	585,400	507,000 ^m	-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 ⁿ	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 ^o	0-65
Kentucky	22,500	41,300	84	10-15	0 ^p	90-95		98	100
Louisiana	179,000	...	...	10	5 ^q	90	3 ^q	100	100
Maine	6,500	7,300	12	<1	0-1	50	50	30 ^r	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 ^t	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 ^u	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 ^v	50
New Jersey	145,700	123,300	-15% ^w	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 ^x	-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 ^b	...	...	...	...	...	...	...	...	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 ^y	<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 ^b	9,000	7,000	-22	35-45	30	20%	10	35-40 ^z	20 ^{aa}
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 were submitted, the data in the columns for 1989 are taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of Criminal History Information Systems* (March 1991), Table 6.

. . . Not available.

^a A change in procedure now allows the use of a court disposition as an arrest document when no arrest fingerprint card is received.

^b 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.

^c 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.

^d Arrest information is reported by fingerprint cards, terminal and court judgments.

^e 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.

^f 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.

^g Arrest information is reported on fingerprint cards and on uniform arrest reports which may not include fingerprints.

^h Arrest information is reported by fingerprint cards and criminal summonses.

ⁱ 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.

^j 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.

^k Figure is for fiscal year 1989 rather than calendar year 1989.

^l Arrest information is reported by hard copies of the arrest report.

^m Repository no longer receives fingerprint cards for nonserious charges.

ⁿ Arrest information is reported by terminal.

^o Arrest information is reported by fingerprint cards, terminal, final dispositions, FBI abstracts and other documents.

^p Approximately 50% of the fingerprints received are unacceptable; however, none are returned. Approximately 40% do get resubmitted.

^q 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.

^r 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 ongoing to bring the submission rate into compliance.

^s Resubmissions are rare.

^t Although arrests are fingerprint-supported, the arrests are not linked to the case cycle; therefore, the criminal history file is not fingerprint-supported.

^u The repository is no longer returning unacceptable fingerprints.

^v Arrest information is reported by fingerprint cards and court abstracts.

^w The decrease in fingerprint cards submitted was due to a decrease in criminal arrests.

^x The 1992 figure reflects a decrease in arrests.

^y Approximately 8% of the fingerprints submitted are unacceptable, but none are returned; a jacket is created to store the fingerprint card.

^z Arrest information is reported on an arrest/custody form which need not be accompanied by fingerprints.

^{aa} Response is based on the results of an audit.

Appendix 9

“Overview of State criminal history record systems, December 31, 1999”
Table 1 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 1: Overview of State criminal history record systems, December 31, 1999

State	Criminal history records automated in whole or in part	Number of subjects (individual offenders) in State criminal history file—		Percent of arrests in database that have final dispositions recorded—		System flags subjects with felony convictions*	System has information to identify unflagged felony convictions
		Total	Automated	All arrests	Arrests within past 5 years		
Total		59,065,600	52,814,000				
Alabama	Y	1,077,000	747,400	40%	65% ^a	All**	
Alaska	Y	251,100	221,300	86	85	All†	
Arizona	Y	915,100	915,100	50	...	All**	
Arkansas	Y	499,800	285,800	58	77	All†	
California	Y	6,166,000	5,287,000	75	85	Some†	All
Colorado	Y	886,300	886,300	12%	12%	Some**	Some
Connecticut	Y	825,600	595,400	90	90	All†	
Delaware	Y	713,300	665,600	81	92		All
District of Columbia	Y	532,000	425,500	46	84		All
Florida	Y	3,754,200	3,754,200	68 ^b	68 ^c	All**	
Georgia	Y	2,132,600	2,132,600	69	80	All†	
Hawaii	Y	379,400 ^d	379,400 ^d	89 ^e	81 ^e	All†	
Idaho	Y	180,600	150,300	70	75	All**	
Illinois	Y	3,280,000	3,080,000	61	67	All†	
Indiana	Y	900,000	850,000	6	5	All**	
Iowa	Y	401,900	370,700	91%	91% ^f	Some†	
Kansas	Y	821,000	380,600	46	57	Some**	Some
Kentucky	Y	850,900	734,700	69	59		Some
Louisiana	Y	1,654,000	980,000	40	55	Some†	Some
Maine	Y	359,500	153,300	90	90	Some†	
Maryland	Y	1,053,700	1,053,700	...	...		Some
Massachusetts	Y	2,530,000	1,825,000	100%	100%		All
Michigan	Y	1,259,500	1,259,500	76	76 ^g	Some†	
Minnesota	Y	384,000	326,500	72	63 ^h	Some†	Some
Mississippi	Y	250,000	250,000	40	40	All†	
Missouri	Y	914,500	748,800	64%	62% ^a	All†	
Montana	Y	141,800	141,800	85	85		Some
Nebraska	Y	197,600	197,600	55	29	All†	
Nevada	Y	305,600	305,600	38	27		All
New Hampshire	Y	409,900	409,900	80	90	Some**	Some
New Jersey	Y	1,304,300	1,304,300	85%	95%	All ⁱ	
New Mexico	Y	352,000	327,000	33	35	Some†	Some
New York	Y	4,765,700	4,721,400	85	84	All**	
North Carolina	Y	793,500	793,500	94	95	Some†	
North Dakota	Y	230,400	85,400	86	78		
Ohio	Y	1,600,000	1,500,000	56%	...	All**	
Oklahoma	Y	782,000	579,600	35	47%	Some†	Some
Oregon	Y	965,200	965,200	50	50	Some†	Some
Pennsylvania	Y	1,667,800	1,277,500	60	31	All**	
Puerto Rico							
Rhode Island	Y	240,000	240,000	60%	60%		
South Carolina	Y	1,002,600	948,600	72	85	Some†	All
South Dakota	Y	159,500	138,100	97	99	Some†	Some
Tennessee	Y	826,700	826,700	6	...	All ^{††}	
Texas	Y	6,157,100	6,157,100	55	...	Some**	
Utah	Y	392,800	392,800	60%	62%	All†	
Vermont	Y	164,900	85,500	...	96	All [†]	
Virgin Islands	N	...	0	50	15		All
Virginia	Y	1,245,900	1,073,300	83	82	All ^{†k}	
Washington	Y	974,800	974,800	79	70 ^a	All**	
West Virginia	Y	488,100	109,800	69 ^l	70 ^l	Some†	Some
Wisconsin	Y	828,100	702,500	76	67	All†	
Wyoming	Y	97,300	97,300	79	65	All†	

Explanatory Notes for Table 1

Percentages and numbers are results of estimates. Numbers have been rounded to the nearest 100. Percentages have been rounded to the nearest whole number. The "number of subjects (individual offenders)" in the State criminal history file for each year applies only to the criminal history file, including partially automated files and does *not* include release by police without charging, declinations to proceed by prosecutor, or final trial court dispositions.

... Not available.

*The flag is set:

- ** At both arrest and conviction.
- † When conviction information is entered.
- †† When arrest information is entered.

^a For the five year period of 1994-98.

^b Through 1997.

^c 1992-97 felonies and misdemeanors.

^d As of January 21, 2000.

^e As of January 24, 2000.

^f Iowa law requires that all open arrests without dispositions must be expunged after four years; therefore the percent of arrests in the database with final dispositions is the same for the last five years and for the entire database.

^g Response is for last four years.

^h Figure is for period of 1994-98 and does not include dispositions of "released without charging" or "decline to prosecute."

ⁱ Since 1993.

^j At arraignment and conviction.

^k Also when Department of Corrections entries are made.

^l Automated files only.

Appendix 10

“Automation of master name index and criminal history file,
1989, 1993, 1997 and 1999”

Table 4 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 4: Automation of master name index and criminal history file, 1989, 1993, 1997 and 1999

State	Master name index is automated				Criminal history file is automated				Prior manual record is automated if offender is re-arrested			
	1989	1993	1997	1999	1989	1993	1997	1999	1989	1993	1997	1999
Alabama	Y	Y	Y	Y	P	P	Y	P	Y	Y		...
Alaska	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Arizona	Y	Y	Y	Y	P	P	Y	Y	Y	Y		
Arkansas	P	P	Y	Y	N	P	P	P	N	Y		Y
California	Y	Y	Y	Y	P	P	P	P	N	N	Na	Na
Colorado	Y	Y			Y	Y	Y	Y				
Connecticut	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Delaware	P	Y	Y	Y	P	P	P	P	Na	Nb	...	Na
District of Columbia	P	Pc	Pc	P	N	P	P	P	...	Na	Na	Na
Florida	Y	Y	Y	Y	P	Y	Y	Y	Y			
Georgia	Y	Y	Y	Y	Y	Y	Y	Y				
Hawaii	Y	Y	Y	Y	Y	Y	Y	Y				
Idaho	Y	Y	Y	Y	Y	P	P	P		Y	Y	Y
Illinois	P	Yd	Y	Y	P	P	P	P	Y	Y	Y	Y
Indiana	Y	Y		P	P	Y	P	P	Y		...	Y
Iowa	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Kansas	Y	Y	Y	Y	P	P	P	P	N	Ne	Y	Y
Kentucky	P	Pf	Y	Y	P	P	Y	P	Y	Y	Y	Y
Louisiana	Y	Yg	Yg	Y	P	P	P	P	Y	Y	Y	Y
Maine	N	Pg	Pg	N	N	N	N	P				Nb
Maryland	Y	Y	Y	Y	P	Y	Y	Y	...			
Massachusetts	Y	Y	Y	Y	P	Y	P	P	Y		Y	Y
Michigan	Y	Y	Y	Y	Y	Y	Y	Y				
Minnesota	Y	Y	Y	Y	P	P	P	P	N	Y	Na	Na
Mississippi	N	P	P	Y	N	P	P	Y		N	N	
Missouri	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Montana	Y	Y	Y	Y	Y	Yh	Y	Y				
Nebraska	P	Y	Y	Y	P	Y	P	Y	Y	Y		
Nevada	Y	Y	Y	Y	Y	Y	Y	Y				
New Hampshire	Y	Y	Y	Y	P	Y	Y	Y	Y			
New Jersey	Y	Y	Y	Y	P	P	Y	Y	Y	Y		
New Mexico	Y	Y	Y	Y	N	N	Y	P				...
New York	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
North Carolina	Y	Y	Y	Y	P	P	P	Y	Y	Y	Y	
North Dakota	P	Pi	Pi	Pi	P	P	P	P	Y	Y	Y	Y
Ohio	P	Pj	P	Pk	P	P	P	P	N	N	Y	Y
Oklahoma	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Oregon	Y	Y	Y	Y	Y	Y	Y	Y				
Pennsylvania	Y	Y	Y	Y	P	P	P	P	Y	Nl	Y	Na
Puerto Rico	Y	Y			Y	Y						
Rhode Island	Y	Y	Y	Y	Y	Y	Y	Y				
South Carolina	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
South Dakota	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Tennessee	P	Y	Y	Y	N	P	P	Y		Nm		
Texas	Y	Y	Y	Y	P	Y	Y	Y	Y			
Utah	Y	Y	Y	Y	P	Y	Y	Y	Y			
Vermont	Y	Y	Y	Y	N	N	P	P			Y	Y
Virgin Islands	NA	NA	NA	N	...	N+	N+	N+				
Virginia	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Washington	Y	Y	Y	Y	Y	Y	Y	Y				
West Virginia	N	P	Y	Y	N	N	P	P			Y	Y
Wisconsin	Y	Y	Y	Y	P	P	P	P	Y	Y	Y	Y
Wyoming	Y	Y	Y	Y	P	Y	Y	Y	Y			

Explanatory Notes for Table 4

The notes below expand on the data in Table 4. The information was provided by the respondent.

Note: Except for Arkansas and Puerto Rico, for which additional information has been submitted, the data in the columns for 1989 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems* (March 1991), Table 4. The data for 1993 were taken from Bureau Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1993* (January 1995), Table 4. Except for South Carolina, for which corrected data were submitted, the data for 1997 were taken from Bureau Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1997* (April 1999), Table 4.

Y Yes

N No

P Partial

* State is fully manual.

... Not available.

NA Not applicable.

^aOnly the new information is automated.

^bThe new information is added to the manual file.

^cTraffic and misdemeanor cases are not included in the master name index (MNI).

^dAll subjects with dates of birth 1920 or later are automated.

^eOnly new arrest information since July 1, 1993 is automated at this time due to lack of personnel.

^fThe manual file is not in the automated MNI.

^gFingerprint-supported subjects are in an automated MNI; non-fingerprinted-supported records are completely manual.

^hAlthough the criminal history database that is utilized in Nebraska is fully automated, there are approximately 6,000 partially automated records that are in the process of being deleted.

ⁱOnly those subjects with dates of birth of 1940 or later are included in the automated MNI.

^jThe automated MNI contains all arrest subjects since 1972.

^kSubjects with dates of birth prior to 1940 are in the manual file. A conversion project is underway.

^lThe record is automated only upon a request for the record.

^mIf a subject's prior fingerprint record was of poor quality, it would not have been automated; upon receipt of AFIS (Automated Fingerprint Identification System) quality fingerprints, the record will be automated.

Appendix 11

“Number of subjects (individual offenders) in State criminal history file, 1995, 1997 and 1999”

Table 2 from *Survey of State Criminal History Information Systems, 1999*

Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:

U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 2: Number of subjects (individual offenders) in State criminal history file, 1995, 1997 and 1999

State	Number of subjects in manual and automated files		Number of subjects in manual and automated files, 1999			Percent of automated files			Percent change in total files	
	1995	1997	1999 total	Manual file	Automated file	1995	1997	1999	1995-97	1997-99
Total	49,697,000	54,059,400	59,065,600	6,251,600	52,814,000					
Alabama	1,800,000	1,091,000	1,077,000	329,600	747,400	100%	100%	69%	-39%	-1%
Alaska	195,100	201,900	251,100	29,800	221,300	77	85	88	3	24
Arizona	711,600 ^a	798,700	915,100	0	915,100	...	100	100	12	15
Arkansas	395,000	484,700	499,800	214,000	285,800	46	55	57	23	3
California	4,630,800	5,349,700	6,166,000	879,000	5,287,000	88	84	86	17	15
Colorado	...	900,000	886,300 ^b	0	886,300	100%	100%	100%	...	-2%
Connecticut	744,000	811,200	825,600	230,200	595,400	56	61	72	9%	2
Delaware	476,600	566,500	713,300	47,700	665,600	90	92	93	9	26
District of Columbia	507,000	507,000	532,000	106,500	425,500 ^c	30	30	80	0	5
Florida	3,172,700	3,369,500	3,754,200	0	3,754,200	100	100	100	6	11
Georgia	1,700,600	1,922,200	2,132,600	0	2,132,600	100%	100%	100%	13%	11%
Hawaii	338,300	359,700	379,400 ^d	0	379,400 ^d	100	100	100	6	5
Idaho	152,000	159,700	180,600	30,300	150,300	73	79	83	5	13
Illinois	2,613,600	3,042,600	3,280,000	200,000	3,080,000	92	93	94	16	8
Indiana	1,200,000	850,000	900,000	50,000	850,000	100	94	94	-29	6
Iowa	349,500	363,400	401,900	31,200	370,700	83%	91%	92%	4%	11%
Kansas	697,100	748,400	821,000	440,400	380,600	33	41	46	7	10
Kentucky	574,700	644,200	850,900	116,200	734,700	85	85	86	12	32
Louisiana	1,651,000	1,730,000	1,654,000 ^e	674,000	980,000	45	51	59	86	-4
Maine	350,000	350,000 ^f	359,500	206,200	153,300	0	0	43	0	3
Maryland	908,300	723,500 ^g	1,053,700	0	1,053,700	100%	100%	100%	-20%	46%
Massachusetts	2,100,000	2,344,800	2,530,000	705,000	1,825,000	75	69	72	12	8
Michigan	1,074,100	1,155,200	1,259,500	0	1,259,500	100	100	100	8	9
Minnesota	294,100	333,600	384,000	57,500	326,500	78	82	85	13	15
Mississippi	...	368,000	250,000	0	250,000	...	...	100	...	-32
Missouri	738,600	824,300	914,500	165,700	748,800	77%	80%	82%	12%	11%
Montana	133,900	152,700	141,800	0	141,800	100	100	100	14	-7
Nebraska	149,800	173,300	197,600	0	197,600	100	95	100	16	14
Nevada	204,500	245,500	305,600	0	305,600	100	100	100	14	24
New Hampshire	163,300	392,900	409,900	0	409,900	67	100	100	141	4
New Jersey	1,800,000	1,300,000	1,304,300	0	1,304,300	100%	100%	100%	-38%	<1%
New Mexico	260,000	310,000	352,000	25,000 ^h	327,000	100	100	93	19	14
New York	4,851,100	4,563,800 ⁱ	4,765,700	44,300	4,721,400	89	99	99	-6	4
North Carolina	623,000	697,400	793,500	0	793,500	95	99	100	12	14
North Dakota	227,200	223,900	230,400	145,000	85,400	30	34	37	-1	3
Ohio	909,700	1,483,000	1,600,000	100,000	1,500,000	88%	81%	94%	63%	8%
Oklahoma	656,700	710,000	782,000	202,400	579,600	63	70	74	8	10
Oregon	788,600	879,200	965,200	0	965,200	100	100	100	11	10
Pennsylvania	1,431,400	1,550,700	1,667,800	390,300	1,277,500	66	71	77	8	8
Puerto Rico										
Rhode Island	213,400	225,000	240,000	0	240,000	100%	100%	100%	5%	7%
South Carolina	843,700	902,400	1,002,600	54,000	948,600	93	100	95	7	11
South Dakota	130,800 ^j	138,600	159,500	21,400	138,100	74	82	87	6	15
Tennessee	655,400 ^k	727,700	826,700	0	826,700	100	61	100	11	14
Texas	4,912,100	5,556,200	6,157,100	0	6,157,100	100	100	100	13	11
Utah	311,400	346,400	392,800	0	392,800	86%	100%	100%	11%	13%
Vermont	133,500	150,900	164,900	79,400	85,500	0	36	52	13	9
Virgin Islands	13,700	...	...	...	0	0	0	0	...	...
Virginia	1,015,400	1,124,200	1,245,900	172,600	1,073,300	81	84	86	11	11
Washington	782,000	885,000	974,800	0	974,800	60	100	100	13	10
West Virginia	362,800	478,900	488,100	378,300	109,800	<1%	13%	22%	32%	2%
Wisconsin	666,200	752,400	828,100	125,600	702,500	76	81	85	13	10
Wyoming	82,700	89,500	97,300	0	97,300	100	100	100	8	9

Explanatory Notes for Table 2

Except for Utah, for which corrected data was submitted, the data in the columns for 1995 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1995* (May 1997), Table 2. Except for Nebraska and Kentucky, for which corrected data were submitted, the data in the columns for 1997 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Systems, 1997* (April 1999), Table 2.

Percentages and numbers are results of estimates. Numbers have been rounded to the nearest 100. Percentages have been rounded to the nearest whole number. The "number of subjects (individual offenders)" in the State criminal history file for each year applies only to the criminal history file, including partially automated files and does *not* include the master name index.

... Not available.

^a As of July 1, 1996.

^b The decrease in the total number of records is the result of a more accurate computer-generated number, as well as file maintenance, deletion of subjects over 80 years of age, and deletion of duplicate records.

^c The recidivism rate for the District of Columbia is 70%; therefore, as subjects with manual records are re-arrested, their files are partially automated and the manual file size decreases as the automated file size increases.

^d As of January 21, 2000.

^e The decrease in the total number of records is due to updating the file by the deletion of "wants," records of individuals presumed dead, records with multiple state identification numbers and incomplete records.

^f There is no change between 1995 and 1997 due to deleting files of deceased individuals.

^g Decrease is due to a re-evaluation of the criminal history system. The response for 1997 is based only on subjects for whom sufficient criminal history data is available to produce a rap sheet. This includes subjects for whom charge, disposition or supervision information is available. As a result of reviewing records on this basis, the number of subjects in the criminal history file has decreased from the responses of the previous years for which data were submitted.

^h This number reflects a current backlog, which will be automated upon processing.

ⁱ Decrease between 1995 and 1997 is due to a major purge of manual records completed by the Office of Operations.

^j Figure represents total as of July 1996.

^k Figure represents total as of August 7, 1996.

Appendix 12

“Number of final dispositions reported to State criminal history repository,
1993, 1995, 1997 and 1999”

Table 3 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 3: Number of final dispositions reported to State criminal history repository, 1993, 1995, 1997 and 1999

State	Number of dispositions				Percent change		
	1993	1995	1997	1999	1993-95	1995-97	1997-99
Alabama	...	107,000	121,700	115,900	...	14%	-5%
Alaska	31,300	38,200	41,200	43,000	22%	8	4
Arizona	117,500	140,800	170,100	190,500	20	21	12
Arkansas	21,000	32,000	40,100	93,700	52	25	134
California	1,100,000	1,100,000	1,134,500	1,381,000	0	3	22
Colorado	...	...	...	5,900	...	...	...
Connecticut	107,500	111,200	107,400	102,200	3%	-4%	-5%
Delaware	80,000	64,900	...	78,700	-19	...	...
District of Columbia	15,200 ^a	1,600	1,900	...	-89	18	...
Florida	162,000 ^b	174,300	...	259,800	8	...	...
Georgia	545,000	265,000 ^c	303,600	371,100	-51%	15%	22%
Hawaii	51,700	57,800	87,300	70,500	12	51	-19
Idaho	19,300	...	...	10,600	...	...	...
Illinois	95,600	115,000	98,700	393,700	20	-14	299
Indiana	23,500	26,500	...	40,000	13	...	...
Iowa	54,200	48,200	45,300	70,700	16%	-6%	56%
Kansas	34,300	...	...	40,000	...	...	...
Kentucky	...	...	18,000	6,200 ^d	...	...	-66
Louisiana	21,400	...	16,300	36,200 ^e	...	...	122
Maine	29,000	20,400	34,500	36,700	-30	69	6
Maryland	...	...	210,400	...	...	...	...
Massachusetts	300,000	...	...	417,700	...	...	...
Michigan	178,100 ^f	207,200 ^f	240,600 ^g	214,200 ^h	16%	16	-11
Minnesota	60,000	2,500	...	84,000 ⁱ	-96	...	...
Mississippi	...	...	...	10,000	...	...	...
Missouri	65,100	62,800	72,000 ^j	132,200 ^k	-4%	15%	84%
Montana	26,200	78,400	...	30,400	...	...	...
Nebraska	23,000	22,300	24,400	19,100 ^l	-3	9	-22
Nevada	...	32,500	79,000	31,900 ^m	...	143	-60
New Hampshire	31,000	...	...	...	...	...	...
New Jersey	260,000	280,000	285,000	287,500	8%	2%	1%
New Mexico	11,100	12,000	12,500	16,000	8	4	28
New York	383,500	399,900	523,900	698,900	4	31	33
North Carolina	...	...	...	106,000	...	...	...
North Dakota	6,500	3,200	4,600	6,000	-51	44	30
Ohio	...	...	...	100,000	...	...	...
Oklahoma	15,000	37,200	57,700	152,000	81%	53%	163%
Oregon	36,900	...	...	116,300	...	...	...
Pennsylvania	203,700	274,300	...	167,600	35	...	...
Puerto Rico	24,300	...	...	...	21	...	...
Rhode Island	10,000	...	...	18,000	...	...	...
South Carolina	212,600	194,100	282,400	211,200 ⁿ	-9%	45%	-25%
South Dakota	...	...	...	19,600	...	...	...
Tennessee	...	...	...	26,000	...	...	...
Texas	...	...	...	723,000	...	...	...
Utah	17,800	22,900	26,300	35,800	29%	15%	36%
Vermont	...	...	22,300	25,900	...	...	16
Virgin Islands	...	...	...	...	...	...	...
Virginia	211,500	231,500	211,100	272,400	9	-9	29
Washington	157,800	178,000	277,800	246,300 ^o	13	56	-11
West Virginia	...	...	...	24,500	...	...	...
Wisconsin	99,000	103,600	123,000	55,900 ^p	5%	19%	-55%
Wyoming	6,000	5,700	7,800	5,500 ^q	-14	37	-29

Explanatory Notes for Table 3

The notes below expand on the data in Table 3. The explanatory information was provided by the respondent.

Note: Final dispositions include release by police without charging, declination to proceed by prosecutor, or final trial court disposition. 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. Except for Connecticut, Oklahoma, Puerto Rico, South Carolina and Utah, for which corrected data were submitted, the data for 1993 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1993* (January 1995), Table 3. Except for Connecticut, for which corrected data were submitted, the data for 1995 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1995* (May 1997). Except for Connecticut, for which corrected data were submitted, the data for 1997 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1997* (April 1999).

... Not available.

^a This figure includes 155 [200] releases by police without charging and 15,000 prosecutor declinations; final court dispositions are not reported to the repository.

^b Figure represents the number received as of April 11, 1994.

^c The number of dispositions reported to the repository is measured by the number of dispositions processed. In 1993, the repository was in the process of eliminating a backlog of submitted disposition reports. This backlog elimination project accounts for the significant decrease from 1993 to 1996.

^d Kentucky no longer enters dispositions for the courts and prosecutors; they are entered by tape, so the repository does not have a count to include in the dispositions figure.

^e The Bureau of Identification previously was unable to process incoming dispositions due to lack of personnel. In 1998, disposition reporting was given priority, and since that time, many agencies have increased disposition reporting.

^f Police release and prosecutor declinations are reported on the arrest card.

^g The figure represents 190,600 processed dispositions and 50,000 backlogged dispositions.

^h Figure represents court dispositions. Although prosecutor declinations are reported, the number is unknown. The number of dispositions decreased from 1997 to 1999 because in 1997 the state repository was working on an NCHIP project to resolve missing dispositions. The count provided in 1997 includes the dispositions provided in this project during that year.

ⁱ Court dispositions only.

^j Final charge dispositions entered in 1997.

^k This was the result of a disposition backlog and an overtime project to assist in reducing the backlog.

^l The decrease in dispositions is due to lack of staffing. The focus of the Nebraska criminal history repository has been on automating the arrests being received and filing the dispositions being received. This allows Nebraska to at least establish identity. The dispositions are not being automated until a request is made. Although the disposition ratio continues to decrease relative to the number of arrests being received, the dispositions are available for quick automation. Nebraska also is working on automating the dispositions from the courts, so that they may be attached electronically, allowing Nebraska to increase the disposition ratio.

^m During 1997, the Las Vegas Metropolitan Police Department processed a backlog of dispositions, which were then passed on to the State repository for entry. This accounts for the larger number of dispositions received in 1997 than in 1999.

ⁿ In fiscal year 1997, in order to alleviate a backlog of current work, four additional temporary employees were hired to process delinquent dispositions; therefore, the number of dispositions in 1997 is greater than the number reported for 1999.

^o In 1997, the State repository worked with the Seattle Municipal Court (King County) to obtain disposition reports by downloading the information from the court's database. The initial download was 65,000 disposition reports. As a result, the number of dispositions received during 1999 shows a decrease from the 1997 figure.

^p Represents counts of 1999 *arrest* dispositions posted to the computerized criminal history. Previous years are counts of *charge* dispositions.

^q During the latter part of 1998 and 1999, personnel turnover and increased civil card processing created a backlog that resulted in reduced disposition form collections.

Appendix 13

“Arrest records with fingerprints, 1989, 1993, 1997 and 1999”

Table 6 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 6: Arrest records with fingerprints, 1989, 1993, 1997 and 1999

State	Number of arrest fingerprint cards and livescan images submitted to State criminal history repository				Percent change 1989-93	Percent change 1993-97	Percent change 1997-99	Percent of arrest events in State criminal history files that are fingerprint-supported			
	1989	1993	1997	1999				1989	1993	1997	1999
Total	6,012,400	6,255,800	7,625,900	8,852,400	4%	22%	16%				
Alabama	292,900	192,300	253,500	290,600	-34%	32%	15%	100%	100%	100%	100%
Alaska	15,900	14,000	18,700	25,100 ^a	-12	34	34	75 ^b	39	48 ^c	62 ^c
Arizona	101,900	114,800	192,500	209,000	13	68	9	100	100	100	100
Arkansas	23,000	36,000	82,000	68,800	57	128	-16	100	100	100	100
California	1,000,000	1,100,000	1,170,600 ^d	1,456,000	10	6	24	100	100	99 ^e	99 ^e
Colorado	137,000	129,000	...	...	-6%	...	...	100%	100%	100%	%
Connecticut	97,100	115,000	139,500	138,000	18	21%	-1%	75 ^f	100	70	90 ^g
Delaware	40,000	44,700	49,200	52,000	12	10	6	95 ^h	90 ^h	90 ⁿ	90 ^h
District of Columbia	10,000 ⁱ	41,800	38,900	33,200	318	-7	-15	95 ^j	100	80 ^k	80 ^k
Florida	585,400	500,600	637,500	831,700	-14	27	30	100	100	100	100
Georgia	330,000	350,000	397,500	441,300	6%	14%	11%	100%	100%	100%	100%
Hawaii	52,700	53,200	66,900	67,000 ^l	1	26	<1	98 ^m	<100 ⁿ	100	99 ⁿ
Idaho	27,300	34,300	59,200	54,800	26	73	-7	100	100	100	100
Illinois	200,300	336,700	448,700	530,000	75	33	18	100	100	100	100
Indiana	46,400	50,400	75,000	86,600	9	49	15	100	100	100	100
Iowa	30,000	53,100	61,800	66,600	77%	16%	8%	100%	100%	100%	100%
Kansas	46,800	64,500	79,900	84,000	38	24	5	70-75 ^o	80 ^p	85 ^q	85 ^q
Kentucky	22,500	...	...	46,600	...	...	...	98	...	48	...
Louisiana	135,900	154,700	206,400	307,800	14	33	49	100	100	100	100
Maine	6,500	5,500	4,800	7,200	15	-13	50	30 ^r	30 ^r	30 ^r	30 ^r
Maryland	103,000	162,400	228,700	115,100	58%	41%	-50%	100%	75% ^r	100%	100%
Massachusetts	50,000-55,000	65,000	85,000	87,500	38	31	3	0	0	0	0 ^s
Michigan	116,800	114,800	131,200	159,900 ^t	-2	14	22	100	100	100	100
Minnesota	26,500	40,000	48,500	60,000	51	21	24	100	100	100	100
Mississippi	9,000	9,000	12,000	43,600	0	33	263	100	100	0	100
Missouri	92,000	89,500	135,000	139,900 ^u	-3%	51%	4%	100%	100%	100%	100%
Montana	13,000	...	28,700	25,600	...	...	-11	100	100	100	100
Nebraska	13,700	16,500	44,400	21,600	20	169	-51	100	98 ^v	100	100
Nevada	36,300	49,600	50,300	78,500	37	1	56	100	100	100	100
New Hampshire	9,300	20,100	17,500	18,500	116	-13	6	25-35 ^w	100	65 ^e	75 ^e
New Jersey	145,700	110,900	129,400	150,400	-24%	17%	16%	100%	100%	100%	100%
New Mexico	26,200	34,800	38,000	46,000	33	9	21	98	100	100	100
New York	520,100	492,900	611,200	583,600	-5	24	-5	90	70 ^x	...	99 ^z
North Carolina	63,200	76,300	141,900	145,100	21	86	2	100	100	100	100
North Dakota	5,000	7,200	9,300	10,800	44	29	16	100	94 ^{aa}	90 ^e	100
Ohio	114,500	149,200	165,000	158,000	30%	11%	-4%	100%	100%	100%	100%
Oklahoma	60,000	46,000 ^{bb}	71,900	79,000	-23	56	10	100	100	100	100
Oregon	92,100	91,400	141,000	148,200	-1	54	5	100	100	100	100
Pennsylvania	166,700	143,700	191,500	305,900	-14	33	60	100	100	100	100
Puerto Rico	...	15,800	...	...	...	...	...	...	17	...	...
Rhode Island	30,000	25,000	...	33,000	17%	...	...	100%	100%	100%	100%
South Carolina	154,400	167,300	180,400	200,400	8	8%	11%	100	100	100	100
South Dakota	17,600	19,000-20,000	27,800	26,700	11	46	-4	100	100	100	100
Tennessee	75,000	83,200	...	198,300	11	...	...	100	100	...	100
Texas	398,400	581,400	575,800	588,000	46	<-1	2	100	100	100	100
Utah	35,200	44,400	...	61,800	26%	...	...	100%	100%	100%	100%
Vermont	9,000	5,000	7,800	11,300	-44	56%	45%	35-40 ^{cc}	25 ^{dd}	30 ⁱ	35 ^{ee}
Virgin Islands	...	NA ^{ff}	NA ^{ff}	NA ^{ff}	...	NA	NA	...	NA	NA	NA
Virginia	110,000	136,400	196,200	216,700	24	44	10	100	100	100	100
Washington	131,600	168,300	199,400	211,800	28	18	6	100	100	100	100
West Virginia	37,200	...	41,700	...	...	...	...	100%	100%	100%	100%
Wisconsin	78,600	100,000	125,400	119,900	27%	25%	-4%	100	100	100	100
Wyoming	11,100	9,800	8,300	11,000	-12	-15	33	100	100	100	100

Explanatory Notes for Table 6

The notes below expand on the data in Table 6. The explanatory information was provided by the respondent.

Note: Numbers and percentages reported are results of estimates. Numbers have been rounded to the nearest 100. Percentages have been rounded to the nearest whole number. The total number of arrest fingerprint cards submitted to State criminal history repositories in 1989 and in 1993 was calculated using the mid-point of the range where a range is indicated in the underlying data. Except as noted in the "Explanatory Notes for Table 6," arrest information is reported to all State criminal history repositories by arrest fingerprint cards only. Except for Louisiana, Maryland, Montana, Utah and Wisconsin, for which corrected data were submitted, the data in the columns for 1989 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems* (March 1991), Table 6. Except for Alabama, for which corrected data were submitted, the data in the columns for 1993 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1993* (January 1995), Table 6. The data in the columns for 1997 were taken from *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1997* (April 1999), Table 6.

... Not available.

NA Not applicable.

^a Figure is for fiscal year 1999.

^b Arrest information is reported by fingerprint cards, judgments and computers.

^c Arrests are reported by terminal, and arrest information is entered from final dispositions that are not fingerprint-supported.

^d Figure is for fiscal year 1997-98.

^e Arrest information is entered from final dispositions that are not fingerprint-supported.

^f Arrest information was reported by fingerprint cards and on uniform arrest reports that may not have included fingerprints.

^g Some arrest information is entered from final dispositions that are not fingerprint-supported.

^h Arrests are reported by terminal; State law and/or policy does not require arrest information to be supported by fingerprints; and arrest information is entered from final dispositions and from criminal summonses that are not supported by fingerprints.

ⁱ Figure is for fiscal year 1989.

^j Arrest information was reported by a hard copy of the arrest report.

^k State law and/or policy does not require arrest information to be supported by fingerprints.

^l Figure includes adult and juvenile records.

^m Arrest information is reported by computers.

ⁿ The small percentage of arrests that are not supported by fingerprints are assigned State identification numbers with a "U" (unknown) prefix. This allows for easy identification of these exceptions. Unsupported arrests sometimes occur when an offender is hospitalized, or refuses, or for some other reason is unable to be fingerprinted.

^o Arrest information was reported by fingerprint cards, terminal, final dispositions, FBI abstracts and other documents.

^p Arrest information is entered from final dispositions and criminal summonses which are not fingerprint-supported; also cases handled in other ways, such as diversion agreements, are unsupported by fingerprints.

^q Arrest information for older records was entered from final dispositions that were not fingerprint-supported.

^r Arrest information is entered from criminal summonses that are not fingerprint-supported.

^s Arrest information is entered from final dispositions and criminal summonses that are not fingerprint-supported.

^t The increase in volume is due to live scan and fingerprints submitted for identification purposes only.

^u Figure includes felony and most misdemeanor arrest cards.

^v Pre-1968 arrests are supported by FBI fingerprints.

^w Arrest information was reported by fingerprint cards and court abstracts.

^x New York law requires that fingerprints associated with sealed records must be purged.

^y With few exceptions, most unsealed arrest events are supported by fingerprints.

^z Reported case dispositions that can be linked to a record but not an arrest event are not fingerprint-supported.

^{aa} Arrests for "not sufficient funds" checks are entered with only an index fingerprint.

^{bb} Figure is lower than figure for 1989 because the figure for 1993 does not include applicant cards, as did the figure for 1989.

^{cc} Arrest information was reported on an arrest/custody form, which does not need to be accompanied by fingerprints.

^{dd} Arrest information is entered from final dispositions and citations that are not supported by fingerprints. The State regulations requiring fingerprints also are not enforced.

^{ee} In 1999, State law and/or policy did not require that arrest information be supported by fingerprints. Effective July 1, 2000, all felonies and most misdemeanors are required by law to be fingerprint-supported.

^{ff} Arrest information is entered from arrest forms submitted to the Records Bureau by the Police Department. Fingerprints are taken and retained in the Forensic Bureau.

Appendix 14

“Notice to State criminal history repository of release of arrested persons without charging,
1989, 1993, 1997 and 1999”

Table 7 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 7: Notice to State criminal history repository of release of arrested persons without charging, 1989, 1993, 1997 and 1999

State	If an arrestee is not charged after submission of fingerprints to State repository. State law requires notification of State repository				Number of cases
	1989	1993	1997	1999	1999
Alabama	Yes	Yes	Yes	Yes	...
Alaska	No	No	Yes	Yes ^a	...
Arizona	No	Yes	Yes	Yes	...
Arkansas	No	Yes	Yes	Yes	...
California	Yes	Yes	Yes	Yes	66,000
Colorado	Yes	Yes	Yes		
Connecticut	No	No	No	No	NA
Delaware	Yes	Yes	Yes	Yes	5-10
District of Columbia	...	Yes ^b	...	Yes	1,700
Florida	Yes	Yes	Yes	Yes	...
Georgia	Yes	Yes	Yes	Yes	...
Hawaii	Yes	Yes	Yes	Yes	10,800
Idaho	Yes	Yes	Yes	No	NA
Illinois	Yes	Yes	Yes	Yes	400
Indiana	Yes	Yes	No	No	NA
Iowa	Yes	Yes ^c	Yes	Yes	NA
Kansas	Yes	Yes	Yes	Yes	...
Kentucky	No	...	No	No	NA
Louisiana	Yes	No	No	No	NA
Maine	Yes	Yes	Yes	Yes	...
Maryland	Yes	Yes	Yes	Yes	...
Massachusetts	No	No	No	No	NA
Michigan	...	Yes	Yes	Yes	...
Minnesota	Yes	Yes	No	No	NA
Mississippi	No	No	Yes	Yes	...
Missouri	No	Yes	Yes	Yes	...
Montana	Yes	Yes	Yes	Yes	...
Nebraska	Yes	Yes	No	No	NA
Nevada	Yes	Yes	Yes	Yes	...
New Hampshire	No	No	Yes	Yes	...
New Jersey	No	No	No	No	NA
New Mexico	No	No	No	No	NA
New York	No	No	Yes	Yes	...
North Carolina	No	Yes ^d	Yes ^d	Yes ^d	...
North Dakota	Yes	Yes	Yes	Yes	...
Ohio	No	Yes ^e	Yes	No	NA
Oklahoma	No	No	No	Yes	...
Oregon	No	Yes	No	No	NA
Pennsylvania	No	No	Yes	No	NA
Puerto Rico	No	No	...		
Rhode Island	No	No ^f	No	No	NA
South Carolina	No	No	No	No	NA
South Dakota	Yes	Yes	Yes	Yes	...
Tennessee	No	No	...	No	NA
Texas	No	Yes ^a	Yes ^a	Yes ^a	...
Utah	Yes	Yes	Yes	Yes	...
Vermont	No	No	No	No	NA
Virgin Islands	...	NA	No	No	NA
Virginia	No	No	No	No	NA
Washington	No	Yes	Yes	Yes	...
West Virginia	Yes	No	No	Yes	...
Wisconsin	Yes	Yes	Yes	Yes	...
Wyoming	Yes	Yes	Yes	Yes	...

Explanatory Notes for Table 7

The notes below expand on the data in Table 7. The explanatory information was provided by the respondent.

Note: Numbers are results of estimates. Except for Delaware, Florida, Louisiana, Pennsylvania, Puerto Rico, Utah, Vermont and Washington, for which corrected data were submitted, the data in the column for 1989 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems* (March 1991), Table 7. Except for Louisiana, Pennsylvania and Texas, for which corrected data were submitted, the data in the column for 1993 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1993* (January 1995), Table 7. The data in the column for 1997 were taken from Bureau of Justice Statistics, *Criminal Justice Information Policy: Survey of State Criminal History Information Systems, 1997* (April 1999), Table 7.

... Not available.

NA Not applicable.

^a Decision is reported by the prosecutor, not the police.

^b Both the fingerprinting and filing of charges are performed at the same unit.

^c The law requires the total expungement of arrests that result in acquittals or dismissals. "No charges filed" are considered dismissals; therefore, no statistics are maintained.

^d Police must release or charge an individual *before* sending fingerprints to the repository.

^e Notification is accomplished by disposition forms.

^f Police departments report dispositions.

Appendix 15

“Average number of days to process arrest data submitted to State criminal history repository
and current status of backlog, 1999”

Table 12 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 12: Average number of days to process arrest data submitted to State criminal history repository and current status of backlog, 1999

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:		Number of arresting agencies reporting arrest data by automated means	Percentage of daily arrests in State represented by arresting agencies reporting by automated means	Backlog of entering data into criminal database exists	Number of unprocessed or partially processed fingerprint cards	Number of person-days needed to eliminate backlog
		Master name index	Criminal history database					
Alabama	7	7	7	2	15%	Yes	...	180
Alaska	...	...	...	1	25	...	...	...
Arizona	3	2	14	178	89	No	...	...
Arkansas	10-14	3-5	30	19	58	Yes	14,500	300
California	<1-30 ^a	1-30 ^b	1-30 ^b	367	80	No	...	...
Colorado	...	...	...	...	...	...	...	...
Connecticut	3-5	30	90	211 ^c	100%	No ^d	...	...
Delaware	3	0	0	65	100	No	...	...
District of Columbia	1	1	<1	23	100	No	...	...
Florida	<1-39 ^e	1-36 ^f	1-36 ^f	57 ^g	62	Yes	161,400	140
Georgia	1	<1-3 ^h	<1-3 ^h	150	60%	No	...	...
Hawaii	1-20 ⁱ	2	...	1	58	Yes	300	35
Idaho	14	3	3	1	17	No	...	...
Illinois	<1-5 ^j	75	75	141	>60	Yes	41,900	60
Indiana	7-30	30	30	1	2	Yes	10,000	5
Iowa	10	2	2	7	19%	No	...	...
Kansas	14	4	90	...	...	Yes	21,000	168
Kentucky	1-10 ^k	...	90	...	...	Yes	...	90
Louisiana	1-3	1-3	1-3	88	89	No	...	...
Maine	14	2	...	2	<1	No	...	...
Maryland	...	...	...	25	60%	Yes	28,900	96
Massachusetts	30	20	NA	13	8	No	...	...
Michigan	...	30	30	2	10	Yes	7,500	15
Minnesota	26	5	5	...	...	Yes	5,000	20
Mississippi	93	...	...	...	...	Yes	...	...
Missouri	...	30	30	...	...	Yes	19,400	50
Montana	3-5	2	21 ^l	...	...	Yes	1,500	20
Nebraska	30-60	30-60	30-60	...	...	Yes	2,500	80
Nevada	2	2	2	...	...	No	...	...
New Hampshire	30	7	7	15	...	Yes	50	1-2
New Jersey	1-10 ^m	1-2 ⁿ	1-2 ⁿ	21	42%	No	...	...
New Mexico	15	<1-60+ ^o	<1-60+ ^o	9	65	Yes	30,000	300
New York	>1 ^p	<1	<1	45	90	No	...	...
North Carolina	...	5	5	...	...	Yes	4,500	10
North Dakota	7-10	6-10	6-10	6	40	No	...	...
Ohio	15	5	5	135	85%	No	...	...
Oklahoma	5-7	38	38	1	15	Yes	12,500	90
Oregon	...	8	8	...	...	Yes	2,200	4
Pennsylvania	1 ^q	1 ^q	1 ^q	68	65	Yes	9,000	33
Puerto Rico	...	...	...	...	...	...	...	...
Rhode Island	21	7-10	7-10	10	50%	Yes	300	2
South Carolina	3	12	12	...	...	No	...	...
South Dakota	1-10	1	1	2	30	No	...	...
Tennessee	18	180	180	70	30	Yes	20,000	70
Texas	7	1-150 ^r	1-150 ^r	28	60	Yes	100,000	150
Utah	3-7	30	30	1	50%	Yes	1,000	5
Vermont	10	90	90	...	...	Yes	1,500	37
Virgin Islands	2	NA	5	...	...	No	...	...
Virginia	<1-3 ^s	<1-3 ^s	<1-3 ^s	60	60	No	...	...
Washington	25	65	65	...	...	Yes	84,000	3,600
West Virginia	...	3	7	...	...	Yes	...	...
Wisconsin	45	4	4	66	80%	Yes	18,800 ^t	90
Wyoming	10	...	...	...	...	Yes	13,400	210

Explanatory Notes for Table 12

The notes below expand on the data in Table 12. The explanatory information was provided by the respondent.

Note: Numbers and percentages have been rounded to the nearest whole number. Numbers of unprocessed or partially processed fingerprint cards have been rounded to the nearest 100.

... Not available.

NA Not applicable.

^a The average time for automated reporting is 4 hours. The average for manual reporting is 7 to 30 days.

^b The average time for entry of automated data is 1 day. The average time for manual data is 30 days.

^c Arresting agencies' reporting is automated via the arraignment procedure and through the court.

^d No backlog exists with respect to the processing of fingerprint cards; however, a backlog of 159,000 records exists in the resolution of pending criminal history records. The records are "pending" due to incomplete arrest data.

^e Fingerprint cards average 39 days; livescan is received from 30 minutes to 24 hours.

^f Livescan, 24 hours; felony cards, 3 days; misdemeanor cards, 36 days.

^g Booking agencies.

^h Livescan is entered within 30 minutes; manual cards are entered within 3 days.

ⁱ The average time for Honolulu Police Department and Honolulu Sheriff's Department, from which 67% of the arrests originate, fingerprint cards is 3 to 5 days; arrest data is received from Honolulu Police Department and Honolulu Sheriff's Department in 1 to 4 days. For the remaining arrests throughout the State, the average time for receipt of fingerprint cards is 20 days; for arrest data, the average time is 7 to 14 days.

^j Livescan is received the same day.

^k Livescan is received the same day; inked fingerprints are received between 3 and 10 days.

^l Current backlog is related to AFIS and the new criminal history system.

^m Automated cards are received within 1 day; manual cards are received within 10 days.

ⁿ Automated data is entered within 1 day; manual data is entered within 2 days.

^o Livescan data is entered immediately.

^p Approximately 55 percent of the arrests in New York City are received in less than 1 day. Approximately 5 percent of the arrests throughout the rest of the State are received in less than 1 day.

^q Livescan information is received and entered within 1 day.

^r Livescan is received and entered within 1 day; manual cards are entered within 150 days.

^s Livescan is received and entered within 2 minutes; mail-in cards are received and entered within 2-3 days.

^t All current data is entered; the backlog consists of old records sent in by a single agency in a single batch.

Appendix 16

“Average number of days to process disposition data submitted to State criminal history
[repository] and current status of backlog, 1999”

Table 13 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 13: Average number of days to process disposition data submitted to State criminal history and current status of backlog, 1999

State	Average number of days between occurrence of final felony court disposition and receipt of data	Average number of days between receipt of final felony court disposition and entry of data into criminal history database	Number of courts currently reporting by automated means	Percent of cases disposed of in State represented by courts reporting by automated means	Backlog of entering court data into criminal history database	Number of unprocessed or partially processed court disposition forms	Number of person-days needed to eliminate backlog
Alabama	...	...			Yes	...	180
Alaska	...	...			...	...	...
Arizona	...	30	1	>1%	No	...	...
Arkansas	30	100 ^a	30	...	Yes	14,750	60
California	75	70	145	45	No		
Colorado							
Connecticut	3-5	3-5	36	100%	No		
Delaware	1	1	29	100	No		
District of Columbia	1	1	1	75	No		
Florida	...	7	67	100	Yes	...	...
Georgia	45	30	100	20%	No		
Hawaii	14	1-14	14	80	Yes	114,000 ^b	2,200
Idaho	15	2	44	100	No		
Illinois	...	30	51	>60	No		
Indiana	14	30			Yes	...	180
Iowa	35	2			Yes	500	3
Kansas	21	...			Yes	300,000	800
Kentucky	...	30			Yes	...	60
Louisiana	...	...			Yes	30,000	300
Maine	14	2			No		
Maryland	...	...	...	100%	No		
Massachusetts	2	<1	83	100	No		
Michigan	...	30	109	30	No		
Minnesota	7	2	86	100	No		
Mississippi	160	...			Yes	5,000	20
Missouri	...	...	c		Yes	25,000	80
Montana	15	180			Yes	12,000	120
Nebraska	30	>180			Yes	163,000	400
Nevada	60	10			No		
New Hampshire	5	5			Yes	...	5
New Jersey	1	1	560	100%	No		
New Mexico	60	>90			Yes	35,000	200
New York	...	1	... ^d	...	Yes	5,000	30 ^e
North Carolina	...	1	100	100	Yes	21,800	90
North Dakota	30	60			No		
Ohio	21	365	30	47%	Yes	148,000	120
Oklahoma	30	30	1	10-15	Yes	15,000	90
Oregon	...	60	26 ^f	65	Yes	10,900	68
Pennsylvania	...	...		100	Yes	135,000	900
Puerto Rico							
Rhode Island	7-10	30			Yes	2,500	21
South Carolina	5	5	46	100%	No		
South Dakota	14	14	...	100	No		
Tennessee	63	5			No		
Texas	30	1-60 ^g	40	60	Yes	11,500	60
Utah	30	0	8	75%	Yes	200	5
Vermont	10	90			Yes	9,600	63
Virgin Islands	60	...			Yes	...	...
Virginia	10	3	81	50	No		
Washington	15	35			Yes	220,000	5,200
West Virginia	...	...			Yes	...	10
Wisconsin	110	4	61	63%	No		
Wyoming	...	...			Yes	800	10

Explanatory Notes for Table 13

The notes below expand on the data in Table 13. The explanatory information was provided by the repositories.

... Not available.

NA Not applicable—no legal requirement mandates the reporting of the information to the State criminal history repository.

^a Due to backlog.

^b The court disposition backlog reflects the number of delinquent court cases that are identified through ongoing delinquent monitoring programs; the repository does not receive court forms per se, for the purpose of ongoing data entry.

^c All courts, with the exception of Jackson County and the St. Louis area, send disposition information to the Office of State Courts Administrator, which in turn provides the information to the State repository. It is then printed and entered into the system. A new system is currently being designed that will replace this method.

^d Automated information is supplied through the State Office of Court Administration.

^e Town and village court dispositions are entered manually.

^f All disposition information is reported to the Administrative Office of the Courts, which in turn sends tapes to the State criminal history repository.

^g Dispositions received electronically are applied within 1 day of receipt; manually reported dispositions are applied within 60 days.

Appendix 17

“Methods to link disposition information to arrest/charge information on
criminal history record, 1999”

Table 16 from *Survey of State Criminal History Information Systems, 1999*
Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:
U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 16: Methods to link disposition information to arrest/charge information on criminal history record, 1999

State	Unique tracking number for individual subjects	Unique arrest event identifier	Unique charge identifier	Arrest date	Subject name	Name and reporting agency case number	Other
Alabama*	X	X		X	X		
Alaska*	X	X	X	X	X		
Arizona*	X	X	X	X	X	X	
Arkansas*	X	X	X	X	X	X	
California*	X	X	X	X	X	X	x ^a
Colorado		X					
Connecticut*		X					
Delaware*	X	X	X	X	X	X	x ^b
District of Columbia*	X	X	X	X	X	X	
Florida*	X	X	X	X	X	X	x ^c
Georgia		X		X			
Hawaii*	X	X	X	X	X		
Idaho	X	X		X	X	X	
Illinois	X	X	X	X	X	X	
Indiana*	X	X	X	X	X	X	
Iowa*	X			X	X	X	
Kansas*		X		X	X	X	
Kentucky*			X		X		
Louisiana*	X			X	X	X	x ^d
Maine*				X	X	X	
Maryland*	X	X	X	X	X	X	
Massachusetts*		X		X	X	X	x ^e
Michigan ^f	X						
Minnesota					X	X	x ^g
Mississippi*		X		X			
Missouri*	X	X	X	X	X		
Montana	X	X			X		
Nebraska*		X					
Nevada*	X	X	X				
New Hampshire	X				X		x ^h
New Jersey*	X	X	X	X	X	X	x ⁱ
New Mexico* ^j	X		X	X	X	X	
New York*	X	X		X			
North Carolina	X	X		X	X		
North Dakota*	X	X		X	X	X	
Ohio		X		X			
Oklahoma*	X	X		X	X	X	
Oregon		X					
Pennsylvania*		X					
Puerto Rico							
Rhode Island*	X				X		
South Carolina*							x ^k
South Dakota*	X	X	X	X	X	X	
Tennessee		X		X	X		
Texas*	X	X	X	X			
Utah	X	X		X	X		
Vermont*		X	X	X	X	X	
Virgin Islands*				X	X		
Virginia*			X				x ^l
Washington*	X	X	X	X	X	X	x ^m
West Virginia*		X					
Wisconsin		X		X	X	X	x ⁱ
Wyoming*	X	X	X	X	X	X	

Explanatory Notes for Table 16

The notes below expand on the data in Table 16. The explanatory information was provided by the respondent.

Note: State repositories were asked to list all methods that 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 State repository for linking disposition information and arrest/charge information also permit the linking of dispositions to particular charges and/or specific counts.

^a Arrest agency and booking number.

^b Criminal Justice Information System (CJIS) case number.

^c Originating agency number (ORI), Florida Department of Law Enforcement or FBI number, sex, race, date of birth.

^d Submission of fingerprints.

^e Probation control file (PCF) number.

^f The record reflects an authorized criminal case providing whatever charges are filed for the case by the arresting agency, prosecutor and court.

^g Date of birth and reporting agency's ORI number.

^h State Identification (SID) number.

ⁱ ORI number.

^j Not in all cases.

^k Warrant number arrest event identifier.

^l Thumbprints.

^m Arrest offenses and process control number.

Appendix 18

“Data quality audits of State criminal history repository, 1999”

Table 20 from *Survey of State Criminal History Information Systems, 1999*

Criminal Justice Information Policy series, NCJ 184793, Washington, D.C.:

U.S. Department of Justice, Bureau of Justice Statistics, October 2000

Table 20: Data quality audits of State criminal history repository, 1999

State	State criminal history repository database audited for completeness within last 5 years	Date of last audit	Period of time covered by audit	Agency that performed audit	Changes to improve data quality were made as a result of audit *	Data quality audits planned or scheduled for next 3 years	Initiatives underway to improve data quality*
Alabama	No					No	2,3,4,5,7,8,10,11
Alaska	No					Yes	1,2,3,5,6,8,10,11
Arizona	No					Yes	1,2,3,5,6,10,11
Arkansas	No					Yes	1,2,3,5,6
California	No					No	2,3,6,7,12 ^a
Colorado							
Connecticut	No					No	3,4,5,6,7,8,9,10
Delaware	Yes	1997	1986-97	Other agency	1,2,3,6,8,9	No	
District of Columbia	Yes	1996	1995	Other agency	2,3,5,6,8,11	Yes	1,2,3,4,5,6,8,9,11
Florida	Yes	1998; 2000	1988-97; 1989-99	Other agency; repository	2,3,7,8,11	Yes	1,2,3,4,5,6,7,8,9,10,11
Georgia	No					No	1,3
Hawaii	No ^b					No ^c	2,5,6,12 ^d
Idaho	No					No	1,2,3,5,6,7,8,10,11
Illinois	Yes	1997	1996	Other agency	2,3,4,5,6,7,8,9,11	Yes	1,2,3,6,8,9,10,11
Indiana	Yes	...	...	Other agency	2,3,5,6,10	No	2,3,5,6,8,10
Iowa	Yes	2000	1998-99	Other agency	1,2,3,4,5,6,7,11	Yes	1,2,3,4,5,6,11
Kansas	Yes	1994	random	Other agency	3,6,8,11	Yes	1,2,3,4,5,6,7,8,9,10,11
Kentucky	Yes			Other agency		...	
Louisiana	No					...	1,2,3,4,6,8,9,10,11
Maine	No					Yes	3,5,10,11
Maryland	No					Yes	2,3,5
Massachusetts	No					No	2,3,4,5,6,7,8,9,10,11
Michigan	No ^e					Yes	1,2,3,5,6,7,11
Minnesota	No					Yes	1,2,3,5,6,8,11
Mississippi	No						1,2,3,5,6,11
Missouri	Yes	1997-98	1991-96	Other agency	2,5	No	2,5,6,7,11
Montana	Yes	...	...	Other agency	12 ^f	No	1,2,3,4,5,6,8,9,11
Nebraska	No					No	1,3,4,7,11
Nevada	No					No	1,2,3,4,6,11
New Hampshire	Yes	1995	1 year	Other agency		No	3,4,5,6,10
New Jersey	No					No	1,2,3,4,5,6,8,9
New Mexico	Yes	1994	random	Other agency	4,6,8,9,10,11	Yes	1,3,4,6,7,8,9,10,11
New York	No					No	1,2,3,5,6,7,9,11,12 ^g
North Carolina	No					No	1,2,3,4,5,6
North Dakota	No					No	2,3,5,6,10
Ohio	Yes	1999	...	Repository	11	Yes	3,5,6
Oklahoma	Yes	1999	12/99	Other agency		Yes	1,2,3,4,5,6,7,8,9,10,11
Oregon	No					No	
Pennsylvania	Yes	1998	1997	Other agency	8,9	Yes	2,3,6,8,9,10,11
Puerto Rico							
Rhode Island	No						2,3,4,11
South Carolina	Yes	2000	1 year	Other agency	2,3,	No	2,3,5,6,7,11
South Dakota	Yes	2000	1935-99	Other agency	1,2,3,4,5,6,7,8,9,10, 11	Yes	1,2,3,4,5,6,7,8,9,10,11
Tennessee	No					...	1,2,3,7,8,9,10
Texas	Yes	...	...	Other agency	2,3,5,11	Yes	1,2,3,4,6,8,9
Utah	Yes	1999	All	Other agency		...	2,11
Vermont	No					Yes	1,2,3,4,5,6,7,8,9 ^h ,10, 11
Virgin Islands	No					No	2
Virginia	Yes	1999	9-10/99	Other agency	1,8	Yes	1,2,3,6,7,8,11,12 ⁱ
Washington	Yes	1997	1994-96	Other agency		No	2,3,5,6,7,8,9,10,11
West Virginia	Yes	1995	entire database	Other agency	2,4,8,9	No	2,5,9,10
Wisconsin	Yes	1999	1998	Other agency	j	Yes	2,3,5,6,8,9
Wyoming	No					No	3,4,11

Explanatory Notes for Table 20

The notes below expand on the data in Table 20. The explanatory information was provided by the respondent.

... 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/improvements
- 11 Training seminars/policy and procedures manuals
- 12 Other

^a Data standardization projects.

^b The last complete audit of the State repository's criminal history record information system was conducted in August 1992 by another agency. Although no subsequent audit has been done, the repository continues to incorporate many of the audit recommendations.

^c There are no immediate plans for data quality audits of the State repository's records within the next three years. The State has experienced severe budgetary cutbacks that resulted in reductions in the data processing resources available in the Hawaii Criminal Justice Data Center. The data quality audit program undertaken in 1994-95 will no longer be retained.

^d Missing disposition research.

^e The level of completeness is monitored by the annual system reports.

^f A new criminal history record system was developed and deployed in December 1999.

^g Standard practices and interagency legislative initiatives.

^h Continuation of task force/advisory group.

ⁱ Felony flagging.

^j Findings of the audit are pending publication.

Appendix 19

“Model interstate criminal history record”

From Increasing the Utility of the Criminal History Record: Report of the National Task Force

NCJ 156922, Washington, D.C.:

U.S. Department of Justice, Bureau of Justice Statistics, December 1995

Recommendation 3: A State transmitting a record to another State or to a Federal agency should structure the record in the following format:

— **Model interstate criminal history record**

STATE X CRIMINAL HISTORY RECORD

Date Transmitted: March 22, 1995

This record is provided in response to your request. Use of the information contained in this record is governed by State and Federal laws and regulations. Misuse of any information, including release to unauthorized agencies or individuals, may be subject to civil or criminal penalties.

The response is based upon a search using the fingerprints and/or identification data you supplied. You are cautioned that searches based solely on name and non-unique identifiers are not fully reliable. If based on identification data only, additional information may be obtained by submission of the request subject's fingerprints.

The response is based upon fingerprint-supported criminal history record information in the files of the State X Criminal Identification Bureau on this date. Since the Bureau's files are revised as new information is received, please request an updated record for any subsequent needs. If explanation of any information is needed, please contact the agency identified as the contributor.

Additional information, including sealed information, may be available in the files of State or local criminal justice agencies identified in this record or in the files of other agencies such as departments of motor vehicles. Some of this information may not be fingerprint-supported and should be used with caution.

Classification of offenses as felonies or misdemeanors is based upon offense classifications set out in the State X penal code, Title 28 of the Revised Statutes ("RS").

THIS IS A PORTION OF A MULTISTATE RECORD. ADDITIONAL CRIMINAL HISTORY RECORD INFORMATION IS INDEXED IN NCIC-III FOR OTHER STATE OR FEDERAL OFFENSES

IDENTIFICATION DATA

Name:

John M. Schultz

Aliases:

John Martin Smith
John Martin Schultz
John M. Smith, Jr.

Sex: Male **Race:** White **Date of Birth:** June 8, 1966
June 6, 1968 **Height:** 6 ft. 2 in.

Weight: 184 lbs. **Hair:** Brown **Eyes:** Blue **Scars, Marks, Tattoos, Amputations:**
Scar upper left arm. Tattoo right bicep:
"Born to Lose"

Place Born: Central City, State X **Citizenship:** US **Fingerprint Class:** NCIC
Toronto, Canada Canadian CO 12 10 PI 12
17 CO 12 17 16

State Ident. No.: SA123456J **FBI No.:** 1233543H **Soc. Sec. No.:** 212 36 7245
212 46 7245

Driver Lic. No.: SX-1234598AD6 **INS Reg. No.:** 86-3257PR **Misc. No.:** Plumbers Union 327256
SY-3212345AF7 USCG - 9876543R

Palm Print Avail: State X Dept. of Justice **Photo Avail:** State X Dept. of Justice **DNA Sample Avail:** State X Dept. of Justice
Central City PD, State X Central City PD ORI SA13685432
FBI CJIS, Clarksburg, WV

Occupation: Plumber (Feb. 14, 1992) **Employer:** City Heating, 123 Main St., Central City, State X
Electrician (Mar. 3, 1993) (Feb. 14, 1992)
Star Electrical Co., No. 7 City Ctr., Farmville, State Y
(Mar. 3, 1993)

Residence: 3021 W. Atlas St., Central City, State X (Feb. 14, 1992)
925 Cayuga Ave., Farmville, State Y (Mar. 3, 1993)

Miscellaneous Comments: AFIS fingerprints available, State X Dept. of Justice. Subject stutters, limps.

CRIMINAL JUSTICE SUMMARY DATA

Felony Convictions: 3
Total No. Arrests/Indictments: 6 (6 Felony, 0 Misdemeanor)
Total No. Convictions: 3 (3 Felony, 0 Misdemeanor)
Date of Last Arrest: March 3, 1993
Last Reported Event: Received June 14, 1993, State X State Prison, Central City,
25 yrs. without parole
Failure to Appear: 1
Violation of Release Conditions: 1
Bail Revocation: 1
Probation Revocation: 1
Parole Revocation: 1
Caution: Convicted of violent offenses; Convicted of firearms-related offenses

CRIMINAL HISTORY DATA

CYCLE NO. 1

ARREST/CHARGE DATA

Name Used: John M. Schultz
Date of Arrest: June 6, 1983
Arrest Type: Juvenile as Adult
Date of Offense: June 5, 1983
Case Tracking No.: 83-132674567
Arresting Agency: Central City PD ORI SA12343210
Arresting Agency Case No.: 83-12367J
Arresting Agency Offender Ident. No.: 367425C

Arrest Charges:

01	ARMED ROBBERY/FIREARM RS 28-12345(c)	NCIC 1204 Class A Felony
02	CARRYING CONCEALED WEAPON, HANDGUN RS 28-2367(b)	NCIC 5202 Class C Felony

COURT DATA

Court: Farm County Cir. Ct. ORI SA98764321
Court Case No.: 83CR3264
Failure to Appear/Bail Revoked: July 12, 1983
Bench Warrant Issued: July 13, 1983

Court: Farm County Cir. Ct. ORI SA98764321
Court Case No.: 83CR3264

Charges Disposed of:

01	ARMED ROBBERY/FIREARM RS 28-12345(C)	NCIC 1204 Class A Felony
----	---	-----------------------------

Disposition: Convicted on Guilty Plea
Disposition Date: Nov. 22, 1983
Sentence: 4 yrs. State Prison (suspended); 6 mos. Farm County Jail;
3 1/2 yrs. Probation. Restitution to victim \$750.
Sentence Date: Nov. 29, 1983

02 CARRYING CONCEALED WEAPON, HANDGUN
RS 28-2367(B)
Disposition: Dismissed
Disposition Date: Nov. 22, 1983

NCIC 5202
Class C Felony

CORRECTIONS DATA

Agency: Farm County Jail ORI SA32764328
Inmate Name: John M. Schultz
Inmate Ident. No.: FC 83-2246J
Received: Nov. 22, 1983
Term: 6 mos.
Released to Probation: May 21, 1984

Agency: Farm County Cir. Ct. Probation Dept. ORI SA32764233
Offender Name: John M. Schultz
Offender Ident No.: FCP 327-84-J
Received: May 22, 1984
Term: 3 1/2 yrs.
**Probation Revoked: Nov. 21, 1984. Failure to Pay Restitution;
Violation of Probation Conditions**

Agency: State X State Prison, Central City ORI SA33684293
Inmate Name: John M. Schultz
Inmate Ident. No.: SPM332624
Received: Dec. 2, 1984
Term: Remainder of 4 yrs. from Nov. 29, 1983
Released on Parole: July 6, 1987

Agency: State X Parole Bd., Central City ORI SA32678911
Offender Name: John M. Schultz
Agency Offender Ident. No.: PB 36294-87
Received: July 7, 1987
Term: Remainder of 4 yrs. from Nov. 29, 1983
Unconditionally Released: Nov. 29, 1987

CYCLE NO. 2

ARREST/CHARGE DATA

Name Used: John Martin Smith
Date of Arrest: Dec. 12, 1987
Arrest Type: Adult
Date of Offense: Dec. 12, 1987
Case Tracking No: 87-235764832
Arresting Agency: Central City PD ORI SA12343210
Arresting Agency Case No.: 87-2374
Arresting Agency Offender Ident. No.: 367425C
Arrest Charges:

01 AGGRAVATED ASSAULT, FIREARM	NCIC 1304
RS 28-324(C)	Class C Felony
02 CARRYING CONCEALED WEAPON, FIREARM	NCIC 5202
RS 28-2367(B)	Class C Felony

PROSECUTION DATA

Prosecuting Agency: Farm County Prosecutor ORI SA37674897
Prosecuting Agency Case No.: 87CR1367D
Date of Action: Jan. 13, 1988

Charge 02 Changed to:

Possession of Firearm By Felon
RS 28-2368(C)

NCIC 5203
Class B Felony

COURT DATA

Court: Farm County Cir. Ct. ORI SA98764321
Court Case No.: 87CR5782

Charges Disposed of:

01 AGGRAVATED ASSAULT, FIREARM
RS 28-324(c)
Changed to: Simple Assault
RS 28 324(a)

NCIC 1304
Class C Felony
NCIC 1313
Class D Felony

Disposition: Convicted on Guilty Plea

Disposition Date: May 13, 1988

Sentence: 1 to 3 yrs.

Sentence Date: May 22, 1988

02 POSSESSION OF FIREARM BY FELON
RS 28-2368(C)

NCIC 5203
Class B Felony
NCIC 5210
Class B Misdemeanor

Changed to: Possession of Unlicensed Firearm
RS 28-325(b)

Disposition: Convicted on Guilty Plea

Disposition Date: May 13, 1988

Sentence: \$100 fine

Sentence Date: May 22, 1988

CORRECTIONS DATA

Agency: State X Prison, Central City ORI SA33684293
Inmate Name: John Martin Smith
Inmate Ident. No.: SPM32624

Received: May 14, 1988

Term: 1-3 yrs.

Released on Parole: Oct. 15, 1989

Agency: State X Parole Board, Central City ORI SA32678911
Offender Name: John Martin Smith
Offender Ident. No.: PB36294-89

Received: Oct. 21, 1989

Term: Remainder of 1-3 yrs.

Parole Revoked: Jan. 3, 1990

Agency: State X State Prison, Central City ORI SA33684293
Inmate Name: John Martin Smith
Inmate Ident. No.: SPM32624

Received: Jan. 8, 1990

Term: Remainder of 1-3 yrs.

Released at Sentence Expiration: May 21, 1991

CYCLE NO. 3

ARREST/CHARGE DATA

Name: John Martin Schultz

Indicted: Farm County Cir. Ct. Grand Jury ORI SA32467321

Date of Indictment: July 31, 1991

Date of Offense: July 1, 1991

Case Tracking No.: 91-003265433

Summons Issued: July 31, 1991

Charges:

01 RAPE, FIREARM RS 28-723B	NCIC 1101 Class A Felony
02 POSSESSION FIREARM BY FELON RS 28-2368(C)	NCIC 5203 Class B Felony

COURT DATA

Court: Farm County Cir. Ct. ORI SA98764321

Court Case No.: 91 CR322

Charges Disposed of:

01 RAPE, FIREARM RS 28-723B Disposition: Found Not Guilty by Jury Disposition Date: Sept. 10, 1991	NCIC 1101 Class A Felony
02 POSSESSION OF FIREARM BY FELON RS 28-2368(C) Disposition: Found Not Guilty by Jury Disposition Date: Sept. 10, 1991	NCIC 5203 Class B Felony

CYCLE NO. 4

ARREST/CHARGE DATA

Name Used: John M. Schultz

Date of Arrest: Oct. 3, 1991

Arrest Type: Adult

Date of Offense: Oct. 2, 1991

Case Tracking No.: 91-12467524

Arresting Agency: Central City PD ORI SA12343210

Arresting Agency Case No.: 91-2467

Arresting Agency Offender Ident No.: 367425C

Arrest Charges:

01 BURGLARY/FORCED ENTRY RESIDENCE RS 28-468(D)	NCIC 220 Class B Felony
02 POSSESSION STOLEN PROPERTY RS 28-63(K)	NCIC 2804 Class A Misdemeanor

PROSECUTOR DATA

Prosecuting Agency: Farm County Pros. ORI SA37674897
Prosecuting Agency Case No.: 91-CR-4267
Disposition: Declined to Prosecute all Charges
Disposition Date: Oct. 5, 1991

CYCLE NO. 5

ARREST/CHARGE DATA

Name Used: John M. Smith, Jr.
Date of Arrest: Feb. 14, 1992
Arrest Type: Adult
Date of Offense: Feb. 12, 1992
Case Tracking No.: 91-12467325
Arresting Agency: Central City PD ORI SA12343210
Arresting Agency Case No.: 91-0032
Arresting Agency Offender Ident. No.: 36774250

Arrest Charges:

01	POSSESSION STOLEN VEHICLE	NCIC 2407
	RS 28-2264	Class D Felony
	Disposition: Released Without Prosecution	
	Disposition Date: Feb. 15, 1992	

CYCLE NO. 6

ARREST/CHARGE DATA

Name Used: John M. Schultz
Date of Arrest: Mar. 3, 1993
Arrest Type: Adult
Date of Offense: Mar. 3, 1993
Case Tracking No.: 93-367428967
Arresting Agency: Farmville PD ORI SA32642823
Arresting Agency Case No.: C93421
Arresting Agency Offender Ident. No.: C324274

Arrest Charges:

01	ARMED ROBBERY WITH FIREARM	NCIC 1204
	RS 28-12345(C)	Class A Felony
02	POSSESSION FIREARM BY FELON	NCIC 5203
	RS 28-2768(C)	Class B Felony
03	DAMAGE TO PRIVATE PROPERTY	NCIC 2902
	RS 28-313a	Class B Misdemeanor
04	TRESPASSING	NCIC 5707
	RS 28-103	Class D Misdemeanor

COURT DATA

Court: Farm County Dist. Ct. ORI SA98463224
Court Case No.: 2367-CR-93

Charges Disposed of:

- | | | |
|----|---|----------------------------------|
| 01 | ARMED ROBBERY WITH FIREARM
RS 28-1234(C)
Disposition: Bound Over to Cir. Ct.
Disposition Date: May 10, 1993 | NCIC 1204
Class A Felony |
| 02 | POSSESSION OF FIREARM BY FELON
RS 28-2768(C)
Disposition: Bound Over to Cir. Ct.
Disposition Date: May 10, 1993 | NCIC 5203
Class B Felony |
| 03 | DAMAGE TO PRIVATE PROPERTY
RS 28-313a
Disposition: Dismissed
Disposition: Mar. 10, 1993 | NCIC 2902
Class B Misdemeanor |
| 04 | TRESPASSING
RS 28-103
Disposition: Dismissed
Disposition: Mar. 10, 1993 | NCIC 5707
Class D Misdemeanor |

COURT DATA — CIRCUIT COURT DATA NOT REPORTED

CORRECTIONS DATA

Agency: State X State Prison, Central City ORI SA33684291

Inmate Name: John M. Schultz

Inmate Ident. No.: SPM32624

Received: June 14, 1993

Committing Court: Farm County Cir. Ct. ORI SA98764321

Committing Court Case No.: 93CR42732

Conviction Offenses: Armed robbery; possession of firearm by felon; repeat violent offender

Commitment Term: 25 yrs. without parole

APPELLATE COURT DATA

Court: State X Court of Appeals ORI SA 98665431

Court Case No: 93CR221

Decision: Judgment and Sentence as Repeat Violent Offender Confirmed

Date of Decision: Oct. 22, 1993

Appendix 20

Federal Bureau of Investigation/Bureau of Justice Statistics
Recommended Voluntary Reporting Standards
for Improving the Quality of Criminal 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.¹ 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.

¹ 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 21

“National Crime Prevention and Privacy Compact and Section-by-Section Analysis”

From National Crime Prevention and Privacy Compact: Resource Materials

NCJ 171671, Washington, D.C.:

U.S. Department of Justice, Bureau of Justice Statistics, January 1999

National Crime Prevention and Privacy Compact and Section-by-Section Analysis

Senate Bill 2022, which includes the Compact, was passed by Congress and signed into law by the president in October 1998.¹ The section-by-section analysis of the Compact is a statement of Sen. Mike DeWine (R-OH), which was read into the October 16, 1998, edition of the *Congressional Record*.²

TITLE II—NATIONAL CRIMINAL HISTORY ACCESS AND CHILD PROTECTION ACT

Section 201. Short Title.

This title may be cited as the “National Criminal History Access and Child Protection Act”.

Subtitle A—Exchange of Criminal History Records for Noncriminal Justice Purposes

Section 211. Short Title.

This subtitle may be cited as the “National Crime Prevention and Privacy Compact Act of 1998”.

Section 212. Findings.

Congress finds that—

- (1) both the Federal Bureau of Investigation and State criminal history record repositories maintain fingerprint-based criminal history records;
- (2) these criminal history records are shared and exchanged for criminal justice purposes through a Federal-State program known as the Interstate Identification Index System;
- (3) although these records are also exchanged for legally authorized, noncriminal justice uses, such as governmental licensing and employment background checks, the purposes for and procedures by which they are exchanged vary widely from State to State;
- (4) an interstate and Federal-State compact is necessary to facilitate authorized interstate criminal history record exchanges for noncriminal justice

purposes on a uniform basis, while permitting each State to effectuate its own dissemination policy within its own borders; and

(5) such a compact will allow Federal and State records to be provided expeditiously to governmental and nongovernmental agencies that use such records in accordance with pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

Section 213. Definitions.

In this subtitle:

- (1) ATTORNEY GENERAL.—The term “Attorney General” means the Attorney General of the United States.
- (2) COMPACT.—The term “Compact” means the National Crime Prevention and Privacy Compact set forth in section 217.
- (3) COUNCIL.—The term “Council” means the Compact Council established under Article VI of the Compact.
- (4) FBI.—The term “FBI” means the Federal Bureau of Investigation.
- (5) PARTY STATE.—The term “Party State” means a State that has ratified the Compact.
- (6) STATE.—The term “State” means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 214. Enactment and Consent of the United States.

The National Crime Prevention and Privacy Compact, as set forth in section 217, is enacted into law and entered into by the Federal Government. The consent of Congress is given to States to enter into the Compact.

Section 215. Effect on Other Laws.

(a) PRIVACY ACT OF 1974.—Nothing in the Compact shall affect the obligations and responsibilities of the FBI under section 552a of title

¹ Title II of Pub. L. 105-251.

² *Cong. Rec.* S12671-S12673 (daily ed. October 16, 1998) (statement of Sen. DeWine).

5, United States Code (commonly known as the “Privacy Act of 1974”).

(b) ACCESS TO CERTAIN RECORDS NOT AFFECTED.—Nothing in the Compact shall interfere in any manner with—

(1) access, direct or otherwise, to records pursuant to—

(A) section 9101 of title 5, United States Code;

(B) the National Child Protection Act;

(C) the Brady Handgun Violence Prevention Act (Public Law 103-159; 107 Stat. 1536);

(D) the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2074) or any amendment made by that Act;

(E) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or

(F) the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(2) any direct access to Federal criminal history records authorized by law.

(c) AUTHORITY OF FBI UNDER DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION ACT, 1973.—Nothing in the Compact shall be construed to affect the authority of the FBI under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544 (86 Stat. 1115)).

(d) FEDERAL ADVISORY COMMITTEE ACT.—The Council shall not be considered to be a Federal advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) MEMBERS OF COUNCIL NOT FEDERAL OFFICERS OR EMPLOYEES.—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—

(1) to be, for any purpose other than to effect the Compact, officers or employees of the United States (as defined in sections 2104 and 2105 of title 5, United States Code); or

(2) to become entitled by reason of Council membership to any compensation or benefit payable or made available by the Federal Government to its officers or employees.

Section 216. Enforcement and Implementation.

All departments, agencies, officers, and employees of the United States shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. For the Federal Government, the Attorney General shall make such rules, prescribe such instructions, and take such other actions as may be necessary to carry out the Compact and this subtitle.

Section 217. National Crime Prevention and Privacy Compact.

The Contracting Parties agree to the following:

OVERVIEW

(a) IN GENERAL.—This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

(b) OBLIGATIONS OF PARTIES.—Under this Compact, the FBI and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I—DEFINITIONS

In this Compact:

(1) ATTORNEY GENERAL.—The term “Attorney General” means the Attorney General of the United States.

(2) COMPACT OFFICER.—The term “Compact Officer” means—

(A) with respect to the Federal Government, an official so designated by the Director of the FBI; and

(B) with respect to a Party State, the chief administrator of the State’s criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) COUNCIL.—The term “Council” means the Compact Council established under Article VI.

(4) CRIMINAL HISTORY RECORDS.—The term “criminal history records”—

(A) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) CRIMINAL HISTORY RECORD REPOSITORY.—The term “criminal history record repository” means the State agency designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for criminal history records and services in the State.

(6) CRIMINAL JUSTICE.—The term “criminal justice” includes activities relating to the 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 includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) CRIMINAL JUSTICE AGENCY.—The term “criminal justice agency”—

(A) means—

(i) courts; and

(ii) a governmental agency or any subunit thereof that—

(I) performs the administration of criminal justice pursuant to a statute or Executive order; and

(II) allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) includes Federal and State inspectors general offices.

(8) CRIMINAL JUSTICE SERVICES.—The term “criminal justice services” means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) CRITERION OFFENSE.—The term “criterion offense” means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) DIRECT ACCESS.—The term “direct access” means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) EXECUTIVE ORDER.—The term “Executive order” means an order of the President of the United States or the chief executive officer of a State that has the force of law and that is promulgated in accordance with applicable law.

(12) FBI.—The term “FBI” means the Federal Bureau of Investigation.

(13) INTERSTATE IDENTIFICATION SYSTEM.—The term “Interstate Identification Index System” or “III System”—

(A) means the cooperative Federal-State system for the exchange of criminal history records; and

(B) includes 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.

(14) NATIONAL FINGERPRINT FILE.—The term “National Fingerprint File” means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) NATIONAL IDENTIFICATION INDEX.—The term “National Identification Index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) NATIONAL INDICES.—The term “National indices” means the National Identification Index and the National Fingerprint File.

(17) NONPARTY STATE.—The term “Nonparty State” means a State that has not ratified this Compact.

(18) NONCRIMINAL JUSTICE PURPOSES.—The term “noncriminal justice purposes” means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) PARTY STATE.—The term “Party State” means a State that has ratified this Compact.

(20) POSITIVE IDENTIFICATION.—The term “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 criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects’ names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) SEALED RECORD INFORMATION.—The term “sealed record information” means—

(A) with respect to adults, that portion of a record that is—

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

(22) STATE.—The term “State” means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II—PURPOSES

The purposes of this Compact are to—

(1) provide a legal framework for the establishment of a cooperative Federal-State system for the interstate and Federal-State exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(3) require Party States 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 criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(4) provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) require the FBI and each Party State to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III—RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI RESPONSIBILITIES.—The Director of the FBI shall—

(1) appoint an FBI Compact officer who shall—

(A) administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A); and

(C) regulate the use of records received by means of the III System from Party States when such records are supplied by the FBI directly to other Federal agencies;

(2) provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including—

(A) information from Nonparty States; and

(B) information from Party States that is available from the FBI through the III System, but is not available from the Party State through the III System;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with Nonparty State criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) STATE RESPONSIBILITIES.—Each Party State shall—

(1) appoint a Compact officer who shall—

(A) administer this Compact within that State;

(B) ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the State; and

(C) regulate the in-State use of records received by means of the III System from the FBI or from other Party States;

(2) establish and maintain a criminal history record repository, which shall provide—

(A) information and records for the National Identification Index and the National Fingerprint File; and

(B) the State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the National Fingerprint File; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) COMPLIANCE WITH III SYSTEM STANDARDS.—In carrying out their responsibilities under this Compact, the FBI and each Party State shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III 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 services provided in support of 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 DISCLOSURES

(a) **STATE CRIMINAL HISTORY RECORD REPOSITORIES.**—To the extent authorized by section 552a of title 5, United States Code (commonly known as the “Privacy Act of 1974”), the FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) **CRIMINAL JUSTICE AGENCIES AND OTHER GOVERNMENTAL OR NONGOVERNMENTAL AGENCIES.**—The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the “Privacy Act of 1974”), and State criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General, that authorizes national indices checks.

(c) **PROCEDURES.**—Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall—

(1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate “no record” response is communicated to the requesting official.

ARTICLE V—RECORD REQUEST PROCEDURES

(a) **POSITIVE IDENTIFICATION.**—Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) **SUBMISSION OF STATE REQUESTS.**—Each request for a criminal history record check utilizing the national indices made under any approved State statute shall be submitted through that State’s criminal history record repository. A State criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another State criminal history record repository or the FBI.

(c) **SUBMISSION OF FEDERAL REQUESTS.**—Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the State criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) **FEES.**—A State criminal history record repository or the FBI—

(1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) **ADDITIONAL SEARCH.**—

(1) If a State criminal history record 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, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records—

(A) the FBI shall so advise the State criminal history record repository; and

(B) the State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI—ESTABLISHMENT OF A COMPACT COUNCIL

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—There is established a council to be known as the “Compact Council”, which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) **ORGANIZATION.**—The Council shall—

(A) continue in existence as long as this Compact remains in effect;

(B) be located, for administrative purposes, within the FBI; and

(C) be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) **MEMBERSHIP.**—The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except

that, in the absence of the requisite number of Compact officers available to serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and

(B) 1 shall be a representative of the noncriminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of State or local criminal justice agencies; and

(B) 1 shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI’s advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

(c) **CHAIRMAN AND VICE CHAIRMAN.**—

(1) **IN GENERAL.**—From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council—

(A) 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; and

(B) shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) DUTIES OF VICE CHAIRMAN.—The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) MEETINGS.—

(1) IN GENERAL.—The Council shall meet at least once a year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) QUORUM.—A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) RULES, PROCEDURES, AND STANDARDS.—The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) ASSISTANCE FROM FBI.—The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) COMMITTEES.—The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII—RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

ARTICLE VIII—MISCELLANEOUS PROVISIONS

(a) RELATION OF COMPACT TO CERTAIN FBI ACTIVITIES.—Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) NO AUTHORITY FOR NONAPPROPRIATED EXPENDITURES.—Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) RELATING TO PUBLIC LAW 92-544.—Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544) or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX—RENUNCIATION

(a) IN GENERAL.—This Compact shall bind each Party State until renounced by the Party State.

(b) EFFECT.—Any renunciation of this Compact by a Party State shall—

(1) be effected in the same manner by which the Party State ratified this Compact; and

(2) become effective 180 days after written notice of renunciation is provided by the Party State to each other Party State and to the Federal Government.

ARTICLE X—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 to the Constitution 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 circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall remain in full force and effect as to the remaining Party States and in full force and effect as to the Party State affected, as to all other provisions.

ARTICLE XI—ADJUDICATION OF DISPUTES

(a) **IN GENERAL.**—The Council shall—

(1) have initial authority to make determinations with respect to any dispute regarding—

(A) interpretation of this Compact;

(B) any rule or standard established by the Council pursuant to Article V; and

(C) any dispute or controversy between any parties to this Compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) **DUTIES OF FBI.**—The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) **RIGHT OF APPEAL.**—The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT OF THE NATIONAL CRIMINAL HISTORY ACCESS AND CHILD PROTECTION ACT SECTION-BY-SECTION ANALYSIS

Section 211.—This section provides the short title of the Act.

Section 212.—This section sets forth the congressional findings upon which the Act is predicated. The section reflects congressional determinations that both the FBI and the states maintain fingerprint-based criminal history records and exchange them for criminal justice purposes and also, to the extent authorized by federal law and the laws of the various states, use the information contained in these records for certain noncriminal justice purposes. Although this system has operated for years on a reciprocal, voluntary basis, the exchange of records for noncriminal justice purposes has been hampered by the fact that the laws and policies of the states governing the noncriminal justice use of criminal history records and the procedures by which they are exchanged vary widely. A compact will establish a uniform standard for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes, while permitting each state to continue to enforce its own record dissemination laws within its own borders. A compact will also facilitate the interstate and federal-state exchange of information by clarifying the obligations and responsibilities of the respective parties, streamlining the processing of background search applications and eliminating record maintenance duplication at the federal and state levels. Finally, the compact will provide a mechanism for establishing and enforcing uniform standards governing record accuracy and protecting the confidentiality and privacy interests of record subjects.

Section 213.—This section sets out definitions of key terms used in this subtitle. Definitions of key terms used in the compact are set out in Article I of the compact.

Section 214.—This section formally enacts the compact into federal law, makes the United States a party, and consents to entry into the Compact by the States.

Section 215.—This section outlines the effect of the Compact’s enactment on certain other laws. First, subsection (a) provides that the Compact is deemed to have no effect on the FBI’s obligations and responsibilities under the Privacy Act. The Privacy Act became effective in 1975, and can generally be characterized as a federal code of fair information practices regarding individuals. The Privacy Act regulates the collection, maintenance, use, and dissemination of personal information by the federal government. This Section makes clear that the Compact will neither expand nor diminish the obligations imposed on the FBI by the Privacy Act. All requirements relating to collection, disclosure and administrative matters remain in effect, including standards relating to notice, accuracy and security measures.

Second, enactment of the Compact will neither expand nor diminish the responsibility of the FBI and the state criminal history record repositories to permit access, direct or otherwise, to criminal history records under the authority of certain other federal laws (enumerated in subsection (b)(1)). These laws include the following:

The Security Clearance Information Act (Section 9101 of Title 5, United States Code) requires state and local criminal justice agencies to release criminal history record information to certain federal agencies for national security background checks.

The Brady Handgun Violence Prevention Act prescribes a waiting period before the purchase of a handgun may be consummated in order for a criminal history records check on the purchaser to be completed, and also establishes a national instant background check system to facilitate criminal history checks of firearms purchasers. Under this system, licensed firearms dealers are authorized access to the national instant background check system for purposes of complying with the background check requirement.

The National Child Protection Act of 1993 (42 U.S.C. § 5119a) authorizes states with appropriate state statutes to access and review state and federal criminal history records through the national criminal history background check system for the purpose of determining whether care providers for children, the elderly and the disabled have criminal histories bearing upon their fitness to assume such responsibilities.

The Violent Crime Control and Law Enforcement Act of 1994 authorizes federal and state civil courts to have access to FBI databases containing criminal history records, missing person records and court protection orders for use in connection with stalking and domestic violence cases.

The United States Housing Act of 1937, as amended by the Housing Opportunity Program Extension Act of 1996, authorizes public housing authorities to obtain federal and state criminal conviction records relating to public housing applicants or tenants for purposes of applicant screening, lease enforcement and eviction.

The Native American Housing Assistance and Self-Determination Act authorizes Indian tribes or tribally designated housing entities to obtain federal and state conviction records relating to applicants for or tenants of federally assisted housing for purposes of applicant screening, lease enforcement and eviction. Nothing in the Compact would alter any rights of access provided under these laws.

Subsection (b)(2) provides that the compact shall not affect any direct access to federal criminal history records authorized by law. Under existing legal authority, the FBI has provided direct terminal access to certain federal agencies, including the Office of Management and Budget and the Immigration and Naturalization Service, to facilitate the processing of large numbers of background search requests by these agencies for such purposes as federal employment, immigration and naturalization matters, and the issuance of security clearances. This access will not be affected by the compact.

Subsection (c) provides that the Compact’s enactment will not affect the FBI’s authority to use its criminal history records for noncriminal justice purposes under Public Law 92-544—the State, Justice, Commerce Appropriations Act of 1973. This law restored the Bureau’s authority to exchange its identification records with the states and certain other organizations or entities, such as federally chartered or insured banking institutions, for employment and licensing purposes, after a federal district court had declared the FBI’s practice of doing so to be without foundation. (See *Menard v. Mitchell*, 328 F. Supp. 718 (D.D.C. 1971)).

Subsection (d) provides that the Council created by the Compact to facilitate its administration is deemed not to be a federal advisory committee as defined under the Federal Advisory Committee Act. This provision is necessary since nonfederal employees will sit on the Compact Council together with federal personnel and the Council may from time to time be called upon to provide the Director of the FBI or the Attorney General with collective advice on the administration of the Compact. Without this stipulation, such features might cause the Council to be considered an advisory committee within the meaning of the Federal Advisory Committee Act. Even though the Council will not be considered an advisory committee for purposes of the Act, it will hold public meetings.

Similarly, to avoid any question on the subject, Subsection (e) provides that members of the Compact Council will not be deemed to be federal employees or officers by virtue of their Council membership for any purpose other than to effect the Compact. Thus, state officials and other nonfederal personnel who are appointed to the Council will be considered federal officials only to the extent of their roles as Council members. They will not be entitled to compensation or benefits accruing to federal employees or officers, but they could receive reimbursement from federal funds for travel and subsistence expenses incurred in attending council meetings.

Section 216.—This Section admonishes all federal personnel to enforce the Compact and to cooperate in its implementation. It also directs the U.S. Attorney General to take such action as may be necessary to implement the Compact within the federal government, including the promulgation of regulations.

Section 217.—This is the core of the subtitle and sets forth the text of the Compact:

Overview. This briefly describes what the Compact is and how it is meant to work. Under the Compact, the FBI and the states agree to maintain their respective databases of criminal history records and to make them available to Compact parties for authorized purposes by means of an electronic information sharing system established cooperatively by the federal government and the states.

Article I—Definitions. This article sets out definitions for key terms used in the Compact. Most of the definitions are substantially identical to definitions commonly used in federal and state laws and regulations relating to criminal history records and need no explanation. However, the following definitions merit comment:

(20) Positive Identification. This term refers, in brief, to association of a person with his or her criminal history record through a comparison of fingerprints or other equally reliable biometric identification techniques. Such techniques eliminate or substantially reduce the risks of associating a person with someone else's record or failing to find a record of a person who uses a false name. At present, the method of establishing positive identification in use in criminal justice agencies throughout the United States is based upon comparison of fingerprint patterns, which are essentially unique and unchanging and thus provide a highly reliable basis for identification. It is anticipated that this method of positive identification will remain in use for many years to come, particularly since federal and state agencies are investing substantial amounts of money to acquire automated fingerprint identification equipment and related devices which facilitate the capturing and transmission of fingerprint images and provide searching and matching methods that are efficient and highly accurate. However, there are other biometric identification techniques, including retinal scanning, voice-print analysis and DNA typing, which might be adapted for criminal record identification purposes. The wording of the definition contemplates that at some future time the Compact Council might authorize the use of one or more of these techniques for establishing positive identification, if it determines that the reliability of such technique(s) is at least equal to the reliability of fingerprint comparison.

(21) Sealed Record Information. Article IV, paragraph (b), permits the FBI and state criminal history record repositories to delete sealed record information when responding to an interstate record request pursuant to the Compact. Thus, the definition of "sealed" becomes important, particularly since state sealing laws vary considerably, ranging from laws that are quite restrictive in their application to others that are very broad. The definition set out here is intended to be a narrow one in keeping with a basic tenet of the Compact—that state repositories shall

release as much information as possible for interstate exchange purposes, with issues concerning the use of particular information for particular purposes to be decided under the laws of the receiving states. Consistent with the definition, an adult record, or a portion of it, may be considered sealed only if its release for noncriminal justice purposes has been prohibited by a court order or by action of a designated official or board, such as a State Attorney General or a Criminal Record Privacy Board, acting pursuant to a federal or state law. Further, to qualify under the definition, a court order, whether issued in response to a petition or on the court's own motion, must apply only to a particular record subject or subjects referred to by name in the order. So-called "blanket" court orders applicable to multiple unnamed record subjects who fall into particular classifications or circumstances, such as first-time non-serious drug offenders, do not fit the definition. Similarly, sealing orders issued by designated officials or boards acting pursuant to statutory authority meet the definition only if such orders are issued in response to petitions filed by individual record subjects who are referred to by name in the orders. So-called "automatic" sealing laws, which restrict the noncriminal justice use of the records of certain defined classes of individuals, such as first-time offenders who successfully complete probation terms, do not satisfy the definition, because they do not require the filing of individual petitions and the issuance of individualized sealing orders.

Concerning juvenile records, each state is free to adopt whatever definition of sealing it prefers.

Article II—Purposes. Five purposes are listed: creation of a legal framework for establishment of the Compact; delineation of the FBI's obligations under the Compact; delineation of the obligations of party states; creation of a Compact Council to monitor system operations and promulgate necessary rules and procedures; and, establishment of an obligation by the parties to adhere to the Compact and its related rules and standards.

Article III—Responsibilities of Compact Parties. This article details FBI and state responsibilities under the Compact and provides for the appointment of Compact Officers by the FBI and by party states. Compact officers shall have primary responsibility for ensuring the proper administration of the Compact within their jurisdictions.

The FBI is required to provide criminal history records maintained in its automated database for noncriminal justice purposes described in Article IV of the Compact. These responses will include federal criminal history records and, to the extent that the FBI has such data in its files, information from non-Compact States and information from Compact States relating to records which such states cannot provide through the III System. The FBI is also responsible for providing and maintaining the centralized system and equipment necessary for the Compact's success and ensuring that requests made for criminal justice purposes will have priority over requests made for noncriminal justice purposes.

State responsibilities are similar. Each Party State must grant other states access to its III system-indexed criminal history records for authorized noncriminal justice purposes and must submit to the FBI fingerprint records and subject identification information that are necessary to maintain the national indices. Each state must comply with duly established system rules, procedures, and standards. Finally, each state is responsible for providing and maintaining the telecommunications links and equipment necessary to support system operations within that state.

Administration of Compact provisions will not be permitted to reduce the level of service available to authorized criminal justice and noncriminal justice users on the effective date of the Compact.

Article IV—Authorized Record Disclosures. This article requires the FBI, to the extent authorized by the Privacy Act, and the state criminal history record repositories to provide criminal history records to one another for use by governmental or nongovernmental agencies for noncriminal justice purposes that are authorized by federal statute, by federal executive order, or by a state statute that has been approved by the U.S. Attorney General. Compact parties will be required to provide criminal history records to other compact parties for noncriminal justice uses that are authorized by law in the requesting jurisdiction even though the law of the responding jurisdiction does not authorize such uses within its borders. Further, the responding party must provide all of the criminal history record information it holds on the individual who is the subject of the request (deleting only sealed record information) and the law of the requesting jurisdiction will determine how much of the

information will actually be released to the noncriminal justice agency on behalf of which the request was made. This approach provides a uniform dissemination standard for interstate exchanges, while permitting each compact party to enforce its own record dissemination laws within its borders.

To provide uniformity of interpretation, state laws authorizing noncriminal justice uses of criminal history records under this article must be reviewed by the U.S. Attorney General to ensure that the laws explicitly authorize searches of the national indices.

Records provided through the III System pursuant to the Compact may be used only by authorized officials for authorized purposes. Compact officers must establish procedures to ensure compliance with this limitation as well as procedures to ensure that criminal history record information provided for noncriminal justice purposes is current and accurate and is protected from unauthorized release. Further, procedures must be established to ensure that records received from other compact parties are screened to ensure that only legally authorized information is released. For example, if the law of the receiving jurisdiction provides that only conviction records may be released for a particular noncriminal justice purpose, all other entries, such as acquittal or dismissal notations or arrest notations with no accompanying disposition notation, must be deleted.

Article V—Record Request Procedures. This article provides that direct access to the National Identification Index and the National Fingerprint File for purposes of conducting criminal history record searches for noncriminal justice purposes shall be limited to the FBI and the state criminal history record repositories. A noncriminal justice agency authorized to obtain national searches pursuant to an approved state statute must submit the search application through the state repository in the state in which the agency is located. A state repository receiving a search application directly from a noncriminal justice agency in another state may process the application through its own criminal history record system, if it has legal authority to do so, but it may not conduct a search of the national indices on behalf of such an out-of-state agency nor may it obtain out-of-state or federal records for such an agency through the III System.

Noncriminal justice agencies authorized to obtain national record checks under federal law or federal executive order, including federal agencies, federally chartered or insured financial institutions and certain securities and commodities establishments, must submit search applications through the FBI or, if the repository consents to process the application, through the state repository in the state in which the agency is located.

All noncriminal justice search applications submitted to the FBI or to the state repositories must be accompanied by fingerprints or some other approved form of positive identification. If a state repository positively identifies the subject of such a search application as having a III System-indexed record maintained by another state repository or the FBI, the state repository shall be entitled to obtain such records from such other state repositories or the FBI. If a state repository cannot positively identify the subject of a noncriminal justice search application, the repository shall forward the application, together with fingerprints or other approved identifying information, to the FBI. If the FBI positively identifies the search application subject as having a III System-indexed record or records, it shall notify the state repository which submitted the application and that repository shall be entitled to obtain any III System-indexed record or records relating to the search subject maintained by any other state repository or the FBI.

The FBI and state repositories may charge fees for processing noncriminal justice search applications, but may not charge fees for providing criminal history records by electronic means in response to authorized III System record requests.

Article VI—Establishment of Compact Council.

This article establishes a Compact Council to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes. Such rules cannot conflict with the FBI's administration of the III System for criminal justice purposes. Issues concerning whether particular rules or procedures promulgated by the Council conflict with FBI authority under this article shall be adjudicated pursuant to Article XI.

The Council shall consist of 15 members from compact states and federal and local criminal justice and noncriminal justice agencies. All members shall be appointed by the U.S. Attorney General. Council members shall elect a Council Chairman and Vice Chairman, both of whom shall be compact officers unless there are no compact officers on the Council who are willing to serve, in which case at-large members may be elected to these offices.

The 15 Council members include nine members who must be state compact officers or state repository administrators, four at-large members representing federal, state and local criminal justice and noncriminal justice interests, one member from the FBI's advisory policy board on criminal justice information services and one member who is an FBI employee. Although, as noted, all members will be appointed by the U.S. Attorney General, they will be nominated by other persons, as specified in the Compact. If the Attorney General declines to appoint any person so nominated, the Attorney General shall request another nomination from the person or persons who nominated the rejected person. Similarly, if a Council membership vacancy occurs, for any reason, the Attorney General shall request a replacement nomination from the person or persons who made the original nomination.

Persons who are appointed to the Council who are not already federal officials or employees shall, by virtue of their appointment by the Attorney General, become federal officials to the extent of their duties and responsibilities as Council members. They shall, therefore, have authority to participate in the development and issuance of rules and procedures, and to participate in other actions within the scope of their duties as Council members, which may be binding upon federal officers and employees or otherwise affect federal interests.

The Council shall be located for administrative purposes within the FBI and shall have authority to request relevant assistance and information from the FBI. Although the Council will not be considered a Federal Advisory Committee (see Section 215(d)), it will hold public meetings and will publish its rules and procedures in the Federal Register and make them available for public inspection and copying at a Council office within the FBI.

Article VII—Ratification of Compact. This article states that the Compact will become effective immediately upon its execution by two or more states and the United States Government and will have the full force and effect of law within the ratifying jurisdictions. Each state will follow its own laws in effecting ratification.

Article VIII—Miscellaneous Provisions. This article makes clear that administration of the Compact shall not interfere with the authority of the FBI Director over the management and control of the FBI's collection and dissemination of criminal history records for any purpose other than noncriminal justice. Similarly, nothing in the Compact diminishes a state's obligations and authority under Public Law 92-544 regarding the dissemination or use of criminal history record information (see analysis of Section 214, above). The Compact does not require the FBI to obligate or expend funds beyond its appropriations.

Article IX—Renunciation. This article provides that a state wishing to end its obligations by renouncing the Compact shall do so in the same manner by which it ratified the Compact and shall provide six months' advance notice to other compact parties.

Article X—Severability. This article provides that the remaining provisions of the Compact shall not be affected if a particular provision is found to be in violation of the Federal Constitution or the constitution of a party state. Similarly, a finding in one state that a portion of the Compact is legally objectionable will have no effect on the viability of the Compact in other Party States.

Article XI—Adjudication of Disputes. This article vests initial authority in the Compact Council to interpret its own rules and standards and to resolve disputes among parties to the Compact. Decisions are to be rendered upon majority vote of Council members after a hearing on the issue. Any Compact party may appeal any such Council decision to the U.S. Attorney General and thereafter may file suit in the appropriate United States district court. Any suit concerning the compact filed in any state court shall be removed to the appropriate federal district court.