



Bureau of Justice Statistics

Report of the National Task Force on Federal Legislation Imposing Reporting Requirements and Expectations on the Criminal Justice System

Findings

Recommendations

Criminal Justice Information Policy



Report of the National Task Force on Federal Legislation Imposing Reporting Requirements and Expectations on the Criminal Justice System

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I. Introduction and executive summary

The Bureau of Justice Statistics (BJS), U.S. Department of Justice; SEARCH, The National Consortium for Justice Information and Statistics; and the National Center for State Courts established a national task force in response to the courts' expressed need to examine the extent to which and the manner in which Federal legislation imposes reporting requirements and expectations on the criminal justice system and, in particular, the courts.¹

This report of the National Task Force on Federal Legislation Imposing Reporting Requirements and Expectations on the Criminal Justice System² is focused on providing a response to the courts' request to review this issue. It is based on discussion and analysis by the Task Force at three meetings held as follows: in Sacramento, California, on January 14-15, 1998; in Baltimore, Maryland, on October 14-15, 1998; and in New Orleans, Louisiana, on March 11-12, 1999. The report is also based upon staff research of relevant case law, statutory law, secondary sources, and several surveys and interviews.

The Task Force identified a number of Federal statutes that contain information reporting requirements that directly or indirectly impose financial, administrative and technical demands on State and local courts and justice agencies. The Task Force recognizes that

such statutes are intended to serve important societal interests and that these statutes frequently result in or facilitate information benefits, including more complete records and integrated systems. The Task Force is concerned, however, that the need to evaluate the impact of these reporting demands on the criminal justice system is not being met. The Task Force is further concerned that, if current trends continue, Federal reporting mandates³ will place increasingly difficult demands on the criminal justice system, particularly the courts.

This Task Force report:

- Provides a "snapshot" of the State court and central repository systems and a review of legislative and judicial trends relating to Federal directives. See sections II and III.
- Includes a review of constitutional challenges to certain Federal mandates on State and local governments, as well as congressional efforts to address the issue of Federal requirements imposed without sufficient accompanying funding. See section IV.
- Examines three clusters of Federal statutes that create obligations or expectations that State and local courts and justice agencies will provide information: those establishing

the sex offender registry systems; those relating to court protection orders; and sections of the *Welfare Reform Act of 1996*. See section III.

Finally, the report includes the National Task Force's findings and recommendations relevant to the issue of Federal requirements and expectations that create demands upon State and local courts and justice agencies. Specifically, the National Task Force adopted the following findings and recommendations (commentary concerning each finding and recommendation appears in sections V and VI of this report).

National Task Force findings

1. The National Task Force finds that, in recent years, the Federal Government's need for information from State and local courts and justice agencies has increased in terms of the quantity and the complexity of data required, and in terms of the speed with which information must be provided.
2. The National Task Force finds that information needs arising from the implementation of Federal legislation increasingly require both civil and criminal justice information.
3. The National Task Force finds that, customarily, many State and local courts have not been actively involved in implementing Federal information initiatives, and have not received Federal assistance to meet the

¹A complete list of the task force members and staff, and their biographies, is set out at appendix 1.

²Hereafter, Task Force or National Task Force.

³ "Mandate" is used in a general context without implication of legal appropriation. See discussion in section III, *infra*.

information demands arising from the implementation of Federal legislation.

4. The National Task Force finds that the recognition of the courts as a partner in the design and implementation of criminal justice information systems and in meeting the information needs arising from Federal legislation is a positive and effective approach.
5. The National Task Force finds that the demands imposed by federally mandated reporting requirements are exacerbated when the requirements do not build upon existing information practices.
6. The National Task Force finds that some important Federal justice assistance programs have been structured in such a way that they have effectively excluded the courts from full participation.
7. The National Task Force finds that the response to information needs arising from Federal legislation has been most effective in those States that have adopted a statewide strategy and approach that includes the courts.
8. The National Task Force finds that disposition reporting requirements impose significant demands on courts, which, to be met effectively, require greater resources than currently available to many courts, as well as an effective statewide approach to meeting disposition reporting requirements.

***National Task Force
recommendations***

1. The National Task Force recommends and encourages the development and implementation of integrated information systems because these systems, among other benefits, enhance the capacity to comply with information needs arising from the implementation of Federal legislation.
 2. The National Task Force recommends that States include all affected parties, including the courts, in the process for the development and implementation of justice information systems and the implementation of information reporting requirements that arise from Federal legislation.
 3. The National Task Force recommends that courts and justice agencies explore and provide for the use of civil justice information for criminal justice purposes.
 4. The National Task Force recommends that in order to increase the efficiency and effectiveness of State and local courts and justice agencies, these organizations should work with Congress and relevant Federal departments and agencies to:
 - a) identify and evaluate the purposes of and need for imposing new reporting requirements and determine what information resources are currently available;
- b) define, with specificity, the information to be reported while retaining flexibility to take advantage of new technologies;
 - c) identify collateral consequences of imposing these requirements;
 - d) ensure that appropriate Federal financial resources reach all of the entities that are involved in fulfilling the information needs arising from Federal legislation, particularly the courts; and
 - e) evaluate whether proposed reporting requirements create conflicting or ambiguous demands on the State and local justice agencies required to implement them.
5. The National Task Force recommends that information needs arising from the implementation of Federal legislation or expectations should, where possible, leave States with substantial discretion to determine the manner in which the State will comply with the reporting requirement or expectation.
 6. The National Task Force recommends that State and local courts and justice agencies work together and with Congress and the appropriate Federal departments and agencies to design and implement necessary reporting mechanisms.

7. The National Task Force recommends that Congress provide funding to State and local courts and justice agencies sufficient to implement Federal information reporting requirements and expectations.

8. The National Task Force recommends the establishment of a catalogue of Federal programs and initiatives that impose or encourage information reporting requirements to be met by State and local courts and justice agencies.

II. Description of the State court systems and State criminal justice repositories

State court systems

State court systems are large and diverse, with more than 16,200 State trial courts, including more than 13,600 courts of limited jurisdiction (authorized to hear only certain types of cases) and more than 2,500 courts of general jurisdiction.⁴ The structure of State court systems varies widely. Thirteen States, for example, have adopted a unified trial court structure, meaning that courts are consolidated into a single general-jurisdiction court level with jurisdiction over all cases and procedures.⁵ The remaining 37 States retain nonunified trial court systems featuring a sometimes-baffling array of courts of general and limited jurisdiction.

As the June 1999 report of the National Task Force on Court Automation and Integration notes, the organizational and funding structures of State courts are widely varied. “In some [S]tates, all court staff work for a centralized unified [S]tate court administrative office. In others, the administrative office plays a very minor role in court operations. In some [S]tates, staff reports to an elected clerk of the court in the executive branch, which means the courts do not control resources related to their

operations.”⁶ The report continues, “Courts are not built with the hierarchical structure commonplace in either executive branch agencies or the private sector. Leadership is more fragmented than in justice agencies.”⁷ Independent, elected court clerks with control over their own budgets are common. Some States are funded almost entirely at the State level, and others at the local level; most receive mixed funding.⁸ When considering the impact of Federal reporting requirements and expectations on State and local courts, it is important to keep these distinctions in mind. The demand imposed on a highly centralized urban court by a particular mandate may be significantly different than the demand imposed by that same requirement or expectation on a small rural court in a State with a decentralized court system.

It is estimated that a staggering 87.5 million new cases were filed in State courts in 1996. These cases

⁶U.S. Department of Justice, Bureau of Justice Assistance, *Report of the National Task Force on Court Automation and Integration*, by SEARCH Group, Inc. (Washington, DC: Government Printing Office, June 1999) p. 9 (internal citations omitted) [hereafter, *Court Automation and Integration Task Force Report*].

⁷*Ibid.*, p. 7.

⁸*Ibid.*, p. 9. “About 10 [S]tates are almost totally [S]tate-funded, and 11 are mostly [S]tate-funded. Fifteen are almost totally locally funded, and another six are mostly locally funded. Eight have an equal mix of [S]tate and local funding.” *Ibid.*

included more than 20 million civil and domestic relations cases, more than 13 million criminal cases, 2 million juvenile cases and approximately 52 million traffic and ordinance violations.⁹ Between 1984 and 1996, the number of civil filings increased by 31 percent, criminal filings were up by 41 percent, juvenile filings by 64 percent and domestic relations filings by 74 percent, yet traffic filings fell by 15 percent.¹⁰ Not surprisingly, roughly two-thirds of the States were unable to keep up with the number of criminal and civil cases filed during the 1984-1996 period.¹¹ In 1996, there were more than 28,000 trial judges and quasi-judicial officers in the Nation’s State trial courts, with more than 1,200 (mostly quasi-judicial) officials added since 1995.

As these figures indicate, the domestic relations category — comprised of divorces, support/custody matters, domestic violence, paternity, interstate child support and adoption — was, by far, the fastest growing category during the 1984-1996 period. With the exception of interstate-support cases, caseloads grew in all of these categories during the covered period.¹²

Criminal caseloads are also growing, reaching an all-time high

⁹*Examining the Work of State Courts Report*, p. 7, *supra* note 3.

¹⁰*Ibid.*

¹¹*Ibid.*

¹²*Ibid.*, p. 37.

⁴Brian J. Ostrom and Neal B. Kauder, *Examining the Work of State Courts, 1996* (Williamsburg, VA: National Center for State Courts, 1997) p. 12 [hereafter, *Examining the Work of State Courts Report*].

⁵*Ibid.*

of 13.5 million State court filings in 1996, the most recent year for which statistics are available.¹³ Criminal caseloads increased by 50 percent in courts of general jurisdiction and by 43 percent in courts of limited jurisdiction during the 1984-1996 period.¹⁴ The number of filings, as would be expected based upon population differences, varied widely from State to State. Illinois, for example, reported approximately 563,000 criminal case filings in 1996, while Wyoming reported slightly fewer than 2,000 criminal filings during that period.¹⁵ Approximately one-third of the States — 16 — each reported more than 100,000 criminal filings in unified and general jurisdiction courts.¹⁶ It is estimated that there were more than 169,000 criminal trials in the United States in 1996.¹⁷

In addition to their traditional responsibility for the adjudication of cases, courts increasingly are being called upon to perform social service functions, consuming enormous time and effort.¹⁸ Furthermore, these functions require the courts to collect more information, develop new data management functions, and improve their ability to exchange information with other justice system agencies.¹⁹ To meet these challenges, new court information systems are in demand to facilitate the exchange of new kinds of data

and to balance conflicting needs for reporting statistical data while still meeting operational needs.²⁰

Mushrooming caseloads, new responsibilities, and limited resources combine to place a premium on improvements in efficiency. As the National Center for State Courts has noted: “Given that the resources necessary to process cases in a timely fashion, such as judges, court support staff, and automation, seldom keep pace [with increased caseloads], courts must constantly search for more efficient ways to conduct business. Moreover, [F]ederal and [S]tate governments have adopted or proposed significant changes in our criminal, juvenile, domestic, and civil justice systems over the past 5 to 10 years. In many instances, these changes are not adequately funded to cover any additional or unintended burden placed on [S]tate courts.”²¹

Increasingly, courts and other justice agencies are integrating their information systems to improve efficiency. In fact, the cost savings factor associated with increased efficiency is one of the main driving forces behind the move to integrate State court information systems.²² The need for additional resources has led the courts, in recent years, to seek Federal financial assistance to aid in their efforts to introduce new technologies and to assist them in meeting their increasing responsibilities and information reporting obligations.

This was not always the case. One Task Force Member recalled that a former Chief Justice in the early 1980s was very proud that his court did not accept any Federal funding. Although this is an extreme case, it illustrates the old view that the courts do not and should not participate in Federal criminal justice assistance programs. State and local courts, for example, customarily do not view themselves as “soldiers” in the “wars” on crime and drugs. Instead, the courts view themselves as neutral arbiters. Traditionally, this has led to a somewhat detached attitude toward Federal funding. Today, however, most court systems realize the importance that Federal financial assistance can play in meeting many of their goals for innovation. As a result, courts are reaching out to the Federal Government, as well as the legislatures and State executives, in order to secure increased funding to assist in paying for technological improvements and to assist in meeting Federal and State reporting requirements and other obligations.

Other “change drivers” that are promoting the development of integrated court information systems (and thereby further blurring the line that once existed between the civil and criminal court systems) are: Federal mandates (discussed in section III), advances in technology, public expectations that justice information will be made available, and the changing role of the courts to encompass not only adjudication, but also an increasing number of social service information reporting functions.²³

¹³Ibid., p. 51.

¹⁴Ibid.

¹⁵Ibid., p. 54.

¹⁶Ibid.

¹⁷Ibid., p. 57.

¹⁸Court Automation and Integration Task Force Report, p. 26, *supra* note 5.

¹⁹Ibid.

²⁰Ibid.

²¹Examining the Work of State Courts Report, p. 10, *supra* note 3.

²²Court Automation and Integration Task Force Report, p. 17, *supra* note 5.

²³Ibid., pp. 17-27.

State criminal justice repositories

The State courts are critical players in the State criminal justice information system. Other critical players, which supply the courts with information and also rely upon the courts to provide them with information, are the “State central repositories.” State central repositories — now established in every State — are responsible for the collection, maintenance and dissemination of criminal history records. The State repositories are agencies or bureaus within State governments, often housed within the State police or a cabinet-level agency with public safety and criminal justice responsibilities.²⁴ Typically, the repositories are charged under State law with establishing comprehensive files of criminal history records; establishing an efficient and timely system for retrieving the records; ensuring that the records are accurate and up to date; and establishing rules and regulations governing the dissemination of criminal justice and noncriminal justice users (State and Federal law also establish such standards).²⁵ Central repositories are often responsible for maintaining fingerprint and other identification records.

At the heart of the repositories’ mission is responsibility for maintaining comprehensive criminal history records, popularly

²⁴U.S. Department of Justice, Bureau of Justice Statistics, *Use and Management of Criminal History Record Information: A Comprehensive Report*, by Robert Belair and Paul Woodard, SEARCH Group, Inc. (Washington, DC: Government Printing Office, 1993) p. 19.

²⁵Ibid.

referred to as “rap sheets.” Criminal history records typically contain information identifying the subject of the record, including name and numeric identifiers, such as social security number, physical characteristics and fingerprints.²⁶ Criminal history records also include information about the record subject’s current and past involvement with the criminal justice system, including arrests or other formal criminal charges and dispositions resulting from these arrests or charges.²⁷ The repositories typically limit their collection of criminal history information to felonies or serious misdemeanors.²⁸ Other types of criminal justice information seldom included in criminal history files include “investigative information,” “intelligence information,” traffic offenses, and certain other petty offenses, all of which are excluded from the definition of “criminal history records” in Federal regulations governing federally funded record systems.²⁹

Criminal history information is reported to the State repositories by courts and criminal justice agencies at every level of government (Federal, State, and local) and at each stage in the criminal justice process (by police departments, prosecutors offices, courts and corrections agencies).³⁰ State and Federal statutes mandate that courts and criminal justice agencies report information to the central repositories. While the particulars of these requirements vary, they are

²⁶Ibid., p. 22.

²⁷Ibid.

²⁸Ibid., p. 23.

²⁹Ibid.

³⁰Ibid., p. 26.

designed to ensure that “downstream” agencies — such as prosecutor, courts, parole, and corrections agencies — provide prompt and accurate data to the State repositories.³¹

While criminal history records traditionally were used exclusively for criminal justice purposes, in recent years many public and private noncriminal justice agencies have argued, persuasively and successfully, for access to these records.³² Among the noncriminal justice users that have been successful in persuading policymakers to grant them access to criminal history records are the military, national security agencies, and State licensing boards, as well as private employers and nonprofit organizations that are hiring for sensitive positions (or volunteers in sensitive child-servicing positions) involving vulnerable populations, such as children and the elderly.

³¹Ibid., p. 28.

³²Ibid., p. 39.

III. Examples of Federal mandates

“Mandates” is a broad term that is used frequently as a catchall for five types of regulations:

1. Direct orders imposed by the Federal Government on State and local governments to carry out policies or programs.
2. Conditions tied to grants to States and localities, which, while technically voluntary, are unlikely to be declined by the States (for example, Medicaid and highway funds).
3. “Cross-cutting requirements,” which crosscut almost all federal grant programs, such as requirements that non-discrimination and environmental protections must be adhered to when the grant funds are spent by the State or local government entity.
4. “Cross-over sanctions,” which tie a State or local government’s compliance with a smaller program to their receipt of some larger pot of Federal money.
5. Preemption of State or local actions.³³

The Task Force uses the term in the broad sense, although the *Unfunded Mandate Reform Act of 1995* and the Supreme Court’s 10th amendment jurisprudence rely on more narrow definitions.

³³Paul Posner, *The Politics of Unfunded Mandates: Whither Federalism?* (Washington, DC: Georgetown University Press, 1998) p. 4.

In recent years, the Federal Government has increasingly required States to provide various noncriminal justice agencies and private sector entities with access to criminal justice records. These various mandates are designed to further important governmental interests, ranging from locating missing children to the regulation of sexual predators to gun control. This section of the report examines some of those requirements, particularly those related to establishing the sex offender registry systems, those relating to court protection orders, and sections of the *Welfare Reform Act of 1996*.

The demands these obligations impose upon State and local courts and justice agencies vary depending upon a number of factors. It is almost always more demanding, for instance, to implement and carry out a reporting requirement that requires the State or local court or agency to provide “interpretive data” (such as an assessment of whether a defendant “knowingly and intelligently” waived his or her right to a jury trial) than it is to simply forward facts, such as whether the defendant was arrested or convicted. Interpretive data are less reliable than factual data because they require court and justice agency personnel to make subjective judgments. Another factor that may result in a Federal requirement being difficult to implement is if it requires that data be collected or processed in a nontraditional way, rather than building upon preexisting

directives or customary information practices.

The mandates discussed in this section are intended to be illustrative and the discussion is designed to convey the nature of the reporting requirement, as well as its impact on affected State agencies (frequently State repositories and State courts).

National Child Protection Act of 1993

— Summary

Section 2(a) of the *National Child Protection Act of 1993* requires an authorized criminal justice agency in each State (in most cases, the State’s central criminal records repository) to report child abuse crime information (arrests, convictions, and so forth) to the Federal Bureau of Investigation (FBI) for inclusion in its criminal history files (the Interstate Identification Index system, also known as the III), or to index such information in such files.³⁴

The Act also authorizes the appropriation of funds to help the States meet established timetables for automating child abuse crime records, improving arrest and disposition reporting for such records, and making the records available on-line through the national criminal history background check system (the III system).

³⁴Pub. L. 103-209, codified at 42 U.S.C. §§ 5119, *et. seq.*

Subsequent amendments to the Act provided that States need identify child abuse crime records only to the extent that such records can be identified by reference to statutory citations or descriptive labels set out in their criminal record databases. Further, the mandatory reporting requirement applicable to child abuse crime records can be met by reporting or indexing all felony and serious misdemeanor arrests and dispositions, without accounting for child abuse crime records separately.

— Specific requirements imposed

The requirement of reporting child abuse crime information to the FBI is mandatory. However, the amendments seemed to modify the requirement so that it amounts to nothing more than what the State repositories were already supposedly doing voluntarily: (1) reporting all arrests and dispositions in felony and serious misdemeanor cases to the FBI; and (2) identifying child abuse crimes only if they could do so under existing criminal statutes and record maintenance procedures.

Brady Handgun Violence Prevention Act

— Summary

The “interim provision” of the *Brady Handgun Violence Prevention Act* established a 5-day waiting period applicable to the sale of handguns by federally licensed gun dealers.³⁵ It also required local law enforcement agencies to make reasonable efforts — including record searches in

³⁵Pub. L. 103-159, 107 Stat. 1536, codified at 18 U.S.C. § 922.

available State and national record systems — to ascertain during the 5-day period whether the sale of a handgun would violate the law.³⁶

The “permanent provision” of the *Brady Act* provides for point-of-sale background checks on purchasers of all firearms, using the National Instant Criminal Background Check System (NICS), which became operational on November 30, 1998. The Act also requires the Attorney General to establish timetables by which all of the States can provide criminal records on an on-line basis to the NICS, and provides for additional Federal funding to expedite the upgrading of State and Federal criminal history record systems, the indexing of records in these systems, and the linking of the systems together to form the NICS.

Because the NICS must be able to provide an immediate response as to whether a prospective sale of a firearm would violate Section 922 of the *1968 Gun Control Act*, an effective NICS must have access to information concerning all of the disqualification categories set out in that section. In addition to felons and fugitives, these categories include drug addicts and abusers, adjudicated “mental defectives,” persons subject to certain domestic relations protective orders, and persons who have been convicted of certain domestic violence misdemeanors.

³⁶This latter provision was declared to be unconstitutional by the Supreme Court in *Printz v. United States*, 117 S. Ct. 2365 (1997), which is discussed in section IV.

— Specific requirements imposed

The NICS required by the permanent provisions of the *Brady Act* is a Federal system established and operated by the FBI. The extent to which the States (and State and local justice agencies) participate actively in the system is voluntary. All States have set timetables for full participation in the III system, which will provide the essential framework of the NICS. However, compliance with those timetables is not mandatory, except to the extent that the States have accepted Federal funding to assist in preparing for III participation and to assist in establishing databases of prohibited classes of firearms purchasers. Also, participation in the NICS by conducting an initial State search is voluntary. Most States are participating, however, and have received Federal funding to support their efforts.

The Lautenberg Amendment

— Summary

The Lautenberg Amendment is a provision of the *1997 Omnibus Appropriations Act* that amends the *1968 Gun Control Act* to add a new category of persons prohibited from buying or possessing firearms: persons convicted of certain domestic violence misdemeanors.³⁷ The law applies to persons with misdemeanor convictions involving elements of domestic violence, as defined in the law, if there was an “intimate-partner” relationship between the offender and the victim and if the offender was

³⁷Pub. L. 104-208, codified at 18 U.S.C. § 922(g).

represented by counsel (or waived counsel) and had a jury trial, if entitled to one (or waived the right).

— Specific requirements imposed

The Lautenberg Amendment is a Federal law. The extent to which State and local justice agencies participate in screening gun purchasers for Lautenberg-type convictions is voluntary, except to the extent that obligations have been undertaken in connection with Federal funding, or where States have added a comparable prohibition to their State firearms law.

Whether undertaken by Federal or State officials, the Lautenberg Amendment will require the following decisions to be made concerning gun purchasers who have misdemeanor convictions that might trigger the prohibition:

1. Whether the conviction is for an offense that is classified as a misdemeanor or, if such classification is not in use, is an offense punishable by a prison term of 1 year or less.
2. Whether the offense involved an element of domestic violence (the use or attempted use of physical force).
3. Whether there was an “intimate-partner” relationship between the offender and the victim.
4. Whether the offender was represented by counsel or intelligently waived the right of representation.

5. Whether there was a jury trial, if the offender was entitled to one, or the right was intelligently waived.

There is no mandatory requirement that States report misdemeanor domestic violence crimes to the FBI, nor a requirement that such crimes, if reported, be flagged.

Sex offender registration statutes

The following Federal statutes relate to sex offender registration:

- *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (including *Megan's Law*).³⁸
- *Pam Lychner Sexual Offender Tracking and Identification Act of 1996*.³⁹
- Section 115 of General Provisions of the *1998 Appropriations Act for the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies*.

— Summary

The 1994 *Jacob Wetterling Act*, as amended by *Megan's Law*, sets minimum standards for State sex offender registration programs, including a requirement to register certain sex offenders for at least 10 years; to inform offenders of their registration obligations when they are released from custody; and to keep registration information up to date and release it as necessary for

public safety. The 1996 *Lychner Act* amended the *Wetterling Act* to add several new requirements, including a lifetime registration requirement for certain serious offenders and recidivists. Finally, the *1998 Appropriations Act* for the Departments of Commerce, Justice and State (CJSA) further amended the *Wetterling Act* to add new requirements relating to the registration of sexually violent predators, persons convicted of sex offenses by Federal courts or military courts martial, and nonresident offenders who have crossed into another State to work or attend school. The CJSA also requires States to participate in the National Sex Offender Registry maintained by the FBI.

States that fail to comply with these standards within the applicable timeframe are subject to a mandatory 10 percent reduction of Federal formula grant funding they receive from the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. The deadline for compliance with the *Wetterling Act*, as amended by *Megan's Law* and the 1997 CJSA, was September 12, 1997, subject to a possible 2-year extension to September 12, 1999, for States that demonstrated good-faith efforts to achieve compliance. The deadline for compliance with the *Lychner Act* was October 2, 1999, subject to a possible 2-year extension for States that made good-faith efforts.

³⁸Pub. L. 103-322, Section 170101, codified at 42 U.S.C. § 14071.

³⁹Pub. L. 104-236, codified at 42 U.S.C. § 14072.

— Specific requirements imposed

Establishment of registry

Each State must establish a sex offender registry conforming to the requirements of the *Wetterling Act*, as amended. The *Wetterling Act* does not specify where the registry must be located, nor how access is to be provided to appropriate officials. The registry must provide for:

- Registration for at least 10 years for persons convicted of (1) offenses involving sexual molestation or sexual exploitation of minors, or (2) sexually violent offenses.
- Lifetime registration for (1) persons who are subject to registration for a current offense and who have a prior offense that qualifies for registration, (2) persons convicted of aggravated sexual abuse, or (3) sexually violent predators.

States must also register resident offenders who were convicted in other States or by Federal courts or court martial, and nonresidents who come into the State to work or attend school.

Registration procedures

The *Wetterling Act* requires that whenever a person subject to the registration requirement is released from prison or placed on parole, probation or supervised release, the court, correctional official, or other appropriate official shall:

1. Obtain fingerprints and a photograph of the person.
2. Inform the person of his or her duty to register and obtain the information required for registration.

3. Inform the person of the need to keep registration information current, including changes of address and re-registration in other States to which the person may move or into which the person may cross to work or attend school.
4. Require the person to read and sign a form stating that the requirements have been explained.

Registration information, including changes of address, must be made available to local law enforcement agencies where registered persons will reside and to an appropriate State records system. In addition, fingerprints and conviction data for persons required to register must be promptly transmitted to the FBI, if not previously transmitted.

Law enforcement agencies are required to notify the public that registered persons will be released into the community, as necessary to protect the public.

Periodic address verification

Addresses of registrants must be verified at least annually through some means designed to effectively verify the location of registrants, impress upon them that they continue to be under observation, and make law enforcement agencies aware of the presence of registered sex offenders in their jurisdictions.

Special requirements for sexually violent predators

Persons who have been classified in this category are subject to these additional registration requirements:

- They are subject to lifetime registration, even if

subsequently determined to be rehabilitated.

- They must verify their addresses on a quarterly basis.
- In addition to their name, identifying information and address, their initial registration information must include offense history and documentation of any medical treatment received.

States must establish procedures for making sexually violent predator determinations. Such a determination must be made by a court after considering the recommendation of a board comprised of treatment experts, victims' rights advocates, and law enforcement officials, unless the U.S. Attorney General approves alternate procedures allowing the determination to be made by some other agency or board utilizing some other method of securing appropriate input to ensure fair determinations.

In lieu of the above registration requirements, the U.S. Attorney General may approve alternative State approaches that provide comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders.

Participation in the National Sex Offender Registry

The CJSA amendments to the *Wetterling Act* require each State to provide information to the FBI for inclusion in the National Sex Offender Registry (NSOR). This file will be established as part of the FBI's "National Crime Information Center (NCIC) 2000" program and will include — in addition to basic registration information — fingerprints and mugshots of registrants. Until the

NSOR is operational, States may participate in an interim national pointer system that flags FBI criminal records of persons registered in State sex offender registries.

Court protection orders

The following Federal statutes relate to court protection orders:

- National Protection Order File provision of the *1994 Violent Crime Control and Law Enforcement Act*.⁴⁰
- *Gun Control Act of 1968*.⁴¹

— Summary

A provision of the *1994 Violent Crime Control and Law Enforcement Act* provides that Federal and State justice agencies that submit information for inclusion in the FBI's national crime databases may also submit court orders for the protection of persons from stalking or domestic violence. Orders issued by both criminal and civil courts may be entered into the FBI's National Protection Order File, which operates as a part of the NCIC.

Another provision of the *1994 Violent Crime Control and Law Enforcement Act* amended the *1968 Gun Control Act* to make it unlawful for persons subject to certain domestic abuse restraining orders to purchase or possess firearms. In order to qualify as firearms disqualifiers, court protection orders must meet the following criteria:

- The order must be a “final” order issued after a hearing with appropriate notice to the subject of the order.
- There must be an “intimate partner” relationship between the parties to the order.
- The order must contain explicit findings or restraining language indicating clearly that the court intended the order to protect the victim from actual or threatened physical harm.

— Specific requirements imposed

Entry of protection orders into the FBI National Protection Order File is voluntary. However, due to the relevance of these orders to firearms sales, Federal funding is available from two bureaus within the U.S. Department of Justice, the Bureau of Justice Statistics (BJS) and the Bureau of Justice Assistance (BJA), to encourage States to establish State protection order files and to participate in the national file. Participation in State protection order files or in the FBI file will entail the following responsibilities for State and local justice agencies:

Entry of orders

In most cases, protection orders will be entered into the FBI file and comparable State files by local law enforcement agencies, which will receive such orders from issuing courts through the same procedures now applicable to arrest warrants issued by criminal courts. These law enforcement agencies will need to determine whether particular orders qualify for entry into the files and whether certain orders qualify for entry into the FBI file as so-called “Brady disqualifiers.” Most local jurisdictions will need to establish communications

between their law enforcement agencies and civil courts, similar to the arrangements that exist with criminal courts.

Hit confirmation and record validation

Protection orders entered into the FBI file will be subject to the same requirements regarding hit confirmation and periodic record validation that are applicable to other FBI “hot files.” Law enforcement agencies will be able to use existing procedures and arrangements with criminal courts to comply with these requirements. However, new arrangements will need to be made between law enforcement agencies and civil courts in their jurisdictions.

Revision of protection order forms

Most State courts in the country will need to revise the forms now in use for protection orders in domestic violence and stalking cases. Current forms frequently are deficient in two respects: (1) they do not contain the minimum mandatory identification information concerning the subject of the order to qualify for entry into the FBI file or any State file that will be accessible for name searches, and (2) the language of the orders makes it difficult or impossible for law enforcement officials to determine whether particular orders meet the requirements for entry as Brady disqualifiers or as firearms disqualifiers under comparable State firearms laws.

⁴⁰Pub. L. 103-322, amending 28 U.S.C. § 534.

⁴¹18 U.S.C. § 922(g)(8).

Federal grant programs

As noted above, several of the information needs arising from the statutes summarized in this section are tied to Federal funding. This means that in some cases, these obligations are established as conditions of Federal funding, and, in other cases, failure to implement particular requirements can cause a loss of existing grant entitlements. The two Federal grant programs to which most of the requirements are tied are: (1) the National Criminal History Improvement Program (NCHIP), administered by BJS and (2) the Five Percent Set-Aside Program, administered by BJA. A third Federal grant program, established by the *Crime Identification Technology Act of 1998* (CITA) is designed to provide funding for an especially wide array of criminal justice information identification and communications initiatives.⁴² Eligibility requirements for CITA funds are tied to assurances that the State “has the capability to contribute pertinent information” to NICS and assurances that a “statewide strategy for information sharing” using integrated systems is underway or will be initiated to improve the functioning of the criminal justice system.

— National Criminal History Improvement Program

The National Criminal History Improvement Program (NCHIP) implements grant provisions in the *Brady Act*, the *National Child Protection Act* and the *1994 Violent Crime Control Act* that pertain to the improvement of criminal

history record systems. The program is aimed primarily at increasing the accuracy and completeness of State criminal history records and the extent to which these records are maintained in automated systems, and appropriately flagged, so as to be immediately available to the NICS. Some NCHIP funds are also available to assist States in establishing databases and database links to facilitate the identification of persons other than felons — for example, drug addicts, mental defectives, and persons subject to court restraining orders — who are prohibited from purchasing firearms under the *1968 Gun Control Act*, as amended.

NCHIP builds upon an earlier grant program administered by BJS — the Criminal History Record Improvement Program (CHRI), which awarded \$27 million to the States in fiscal years 1990 through 1992, to improve criminal history record systems.

— Five Percent Set-Aside Program

The Five Percent Set-Aside Program basically supports the same objectives as the CHRI program and NCHIP and is closely coordinated with them. Under that program, each State is required to set aside 5 percent of the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant funds received in fiscal year 1992 and thereafter specifically for the improvement of criminal justice records. Under grant guidelines issued by BJA, each State is required to take the following actions before spending any set-aside funds:

- Establish a criminal justice records improvement task force.
- Conduct an assessment of the completeness and accuracy of criminal history records within the State.
- Identify the reasons why record quality is low.
- Develop a records improvement plan, which BJA must approve.

Although these grant programs were intended to help the States implement the requirements of the Federal statutes summarized earlier, in some ways they impose additional demands, such as the requirements to establish task forces and conduct record assessments. In addition, successful implementation of the Federal initiatives invariably involves the allocation of State funds. Finally, in some cases, funding does not reach all of the agencies that are required to undertake new obligations, or not in sufficient amounts to cover all of the new costs.

— Crime Identification Technology Act Program

Congress established the third program, CITA, in 1998 in recognition of the importance of criminal justice information, identification, and communication technologies.⁴³ CITA authorizes \$1.25 billion over 5 years for grants to the States to “establish or upgrade an integrated approach to develop information and identification technologies and systems” to:

⁴²Pub. L. No. 105-251, §§ 101-102 (Oct. 9, 1998), 112 Stat. 1871, codified at 42 U.S.C. § 14601.

⁴³42 U.S.C. § 14601.

- Upgrade criminal justice and criminal history record systems, including systems operated by law enforcement agencies and courts.
- Improve criminal justice identification.
- Promote the compatibility and integration of national, State, and local systems for criminal justice purposes, firearms eligibility determinations, identification of sex offenders, identification of domestic violence offenders, and for certain authorized background checks unrelated to criminal justice.
- Capture information for statistical and research purposes to improve the administration of criminal justice.⁴⁴

In support of these goals, CITA specifically authorizes 16 categories of projects for which grant funds made available under the Act can be used. Select examples include:

- Court-based criminal justice information systems that promote the reporting of dispositions to State central repositories and the FBI and also promote compatibility with, and integration of, court systems with other criminal justice information systems.⁴⁵
- Sexual offender and domestic violence offender identification and information systems.⁴⁶
- Systems to facilitate full participation in NICS (both

⁴⁴42 U.S.C. § 14601(a).

⁴⁵42 U.S.C. § 14601(b)(9).

⁴⁶42 U.S.C. § 14601(b)(12)-(13).

criminal justice and noncriminal justice information components).⁴⁷

- Programs and systems to facilitate full participation in the III or the III Compact.⁴⁸
- State centralized, automated, adult and juvenile criminal history record information systems, including arrest and disposition reporting.⁴⁹
- Automated fingerprint identification systems and finger imaging, livescan, and other automated systems to digitize and communicate fingerprints.⁵⁰
- Integrated criminal justice information systems to manage and communicate criminal justice information among law enforcement agencies, courts, prosecutors and corrections agencies.⁵¹

In order to be eligible for CITA funding, States must provide the Attorney General with a number of assurances, including that:

- A “statewide strategy for information sharing systems” is underway or will be initiated to improve the functioning of the criminal justice system, with an emphasis on integration. This plan must take into consideration the needs of “all branches of the State Government,” and those preparing the plan must have “specifically sought the advice

⁴⁷42 U.S.C. § 14601(b)(6), (8).

⁴⁸42 U.S.C. § 14601(b)(4)-(5).

⁴⁹42 U.S.C. § 14601(b)(1).

⁵⁰42 U.S.C. § 14601(b)(2)-(3).

⁵¹42 U.S.C. § 14601(b)(7).

of the chief of the highest court of the State.”⁵²

- The State “has the capability to contribute pertinent information” to the NICS.⁵³

CITA is designed to provide substantial funding, but not fund the total cost of particular programs or proposals from the States. CITA restricts Federal funding to a maximum of 90 percent of the cost of a program or proposal to be funded, unless a waiver is obtained from the Attorney General.⁵⁴

Other Federal statutes and proposals

Following are brief summaries of new laws or proposals pertaining to noncriminal justice programs that are outside the scope of the Task Force’s study, but which may impose demands on State and local courts and justice agencies.

— *Adoption and Safe Families Act of 1997*

The objective of the *Adoption and Safe Families Act of 1997* is to ensure that children live in safe and permanent homes through requirements for more timely decisions and stronger guarantees of safety for abused and neglected children.⁵⁵ The Act establishes Federal standards and timelines for foster care and adoption proceedings, and for related programs and activities. Courts are the primary source of information on foster care and adoption proceedings, and can be expected

⁵²42 U.S.C. § 14601(c)(2).

⁵³42 U.S.C. § 14601(c)(1).

⁵⁴42 U.S.C. § 14601(d).

⁵⁵Pub. L. 105-89.

to be involved in the tracking and reporting systems that support these initiatives.

The Act requires States to make “reasonable efforts” to preserve and reunify families, except in egregious situations where the parent has:

1. Subjected the child to aggravated circumstances (as defined by State law and which might include, but which are not limited to, abandonment, torture, chronic abuse, and sexual abuse);
2. Been convicted of certain crimes; or
3. Had his or her parental rights to a sibling of the child involuntarily terminated.

Court records and criminal histories will be the primary sources of the information needed to establish the existence of these egregious situations.

The new timelines established by the Act will require the tracking of foster care and adoption proceedings. Permanency hearings, for example, must be held within 12 months of a child entering foster care. Subsequent judicial “reasonable-efforts” determinations must be made every 12 months, as long as the child remains in State custody. The Act also requires that a petition to terminate parental rights be filed for any child in State custody for 15 of the prior 22 months, unless the circumstances satisfy one of the exceptions set forth in the Act. Additionally, the Act establishes other timelines for cases that do not meet the “reasonable-efforts” test for which the case plan is not reunification with the child’s family. To ensure compliance with the Act’s requirements, State courts must be

able to track these cases and activities.

Further, the Act expands the requirement for providing notice of hearings. States are required under the Act to provide notice of hearings and reviews to foster parents, pre-adoptive parents, and relative caregivers, and to provide them with an opportunity to be heard. The requirement for providing these additional notices typically falls primarily on court personnel.

The Act also requires States to establish procedures for criminal record checks of prospective foster and adoptive parents. Responsibility for this requirement will fall on local law enforcement agencies, court personnel, and the State repositories. The Act does not require that State background check procedures include fingerprinting of prospective foster or adoptive parents, and it does not preclude the charging of fees for criminal record checks.

— **Welfare Reform Act**

The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA), better known as the *Welfare Reform Act*, replaced Aid to Families with Dependent Children (AFDC), an open-ended entitlement program.⁵⁶ By contrast, PRWORA’s Temporary Assistance to Needy Families (TANF) program is a State block grant program. TANF funds must be administered by the State legislatures. In addition, the Governor of each State is required to submit a State plan before a State can receive funds. PRWORA also imposes child-support

⁵⁶Pub. L. 104-193 and 45 C.F.R. § 307.11.

enforcement requirements. These requirements, rather than the changes to the public assistance program, have had more of an impact on the courts. Because PRWORA requires implementation of specified support enforcement techniques and other programs, State legislative changes are required, which, in turn, affect State courts.

Most significantly related to the data-gathering and data-sharing requirements, PRWORA requires that each State establish an automated State case registry that contains abstract information on the administrative and judicial support orders relating to paternity and support. For all support orders related to “IV-D cases”⁵⁷ and for every support order related to a non-IV-D case established or modified after October 1, 1998, abstract data must be gathered by the State case registry and transmitted to the Federal Case Registry (FCR). Federal regulations specify the data elements that must be gathered by the State case registry and transmitted to the FCR.⁵⁸ The data needed to comply with this requirement reside with the courts. In fact, the courts are the only single source for the required data on the Non IV-D cases.

⁵⁷Section IV, Subtitle D of the Act, relating to restricting welfare and public benefits for aliens.

⁵⁸45 C.F.R. §§ 307.11(e)(3), (e)(4) and (f)(1).

In addition to the child support provisions, the Act denies some welfare eligibility if a family member is a fugitive felon or a probation or parole violator or has been convicted of a drug-use felony. State repositories and courts will be involved in supplying the information necessary to implement this provision.

Finally, the Act authorizes the Social Security Administration to enter into agreements with State and local correctional agencies to obtain information on incarcerated persons who are denied some or all benefits because of incarceration, and to study the feasibility of obtaining such information from other sources, including courts.

— **Federal confidentiality regulations for drug and alcohol treatment records**

Federal law and regulations intended to protect the confidentiality of drug and alcohol treatment records also have an impact on the State courts, particularly drug courts:⁵⁹

These laws and regulations apply to programs or agencies providing diagnosis of chemical dependency and referral to treatment for addicted offenders within the criminal justice system and substance abusing minors in the delinquency system as well as to actual rehabilitative services providers. Therefore when staff employed by the Drug Court performs the assessment (or diagnosis) of chemical dependency and/or the referral to treatment, the

Drug Court is a ‘treatment program’ for purposes of confidentiality regulations.⁶⁰

These regulations place detailed restrictions on the disclosure of protected records unless the patient has consented to the release or pursuant to one of the exceptions set forth in the regulations.⁶¹

Violations of the regulations are a criminal offense and violators are subject to fines of up to \$500 for the first offense and \$5,000 for each subsequent offense.⁶²

⁶⁰Rebecca Holland, “Confidentiality of the Substance Abuse Treatment Records of Drug Court Participants: An Overview of the Federal Laws and Regulations” (unpublished report, October 1997) p. 1 (citing 42 C.F.R. § 2.11).

⁶¹42 C.F.R. § 2.31.

⁶²42 C.F.R. § 2.4.

⁵⁹42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2.

IV. Constraints on Federal mandates: The Tenth amendment and the *Unfunded Mandate Reform Act of 1995*

Congressional imposition of mandates, such as those discussed in section III, has not gone without notice or controversy.⁶³ Federal directives that impose enforceable duties on State and local governments, as well as on Indian tribes and the private sector, have, in fact, received considerable attention in recent years from Congress, the courts, and State and local governments. Congress has used mandates⁶⁴ as a means to require State and local governments to comply with a wide array of legislation, ranging from information reporting requirements to environmental laws to labor and civil rights statutes; at the same time, Congress has taken notice that these requirements place demands on the resources of State and local governments. These Federal mandates have been frequently criticized, particularly by the State and local governments that are required to implement them.

While State and local governments and other critics acknowledge that Federal directives may produce societal benefits, they object to certain mandates on constitutional and/or fiscal grounds. Constitutional objections are based on the principle of federalism and the belief that the Constitution

(particularly the 10th amendment) creates a Federal Government of limited powers, with those powers not delegated to the Federal Government or prohibited to the States being reserved to the States or the people. Fiscal objections arise when the Federal Government imposes a required activity on State and local governments without also providing the funds to pay for the implementation of those mandates. These measures, commonly referred to as “unfunded mandates,” force State and local governments to either raise taxes or fund the federally mandated program at the expense of State and local programs. Both the constitutional and fiscal arguments against Federal requirements have resulted in congressional action and court decisions that place modest restrictions upon the ability of the Federal Government to impose mandates on State and local governments.

Constitutional challenges to Federal mandates on State and local governments

The 10th amendment,⁶⁵ once dismissed by Justice Stone as nothing “but a truism that all is retained which has not been

surrendered,”⁶⁶ has become an increasingly dynamic area of constitutional law.

States have challenged a number of Federal statutes in recent years, alleging that the challenged statutes unconstitutionally infringe on State authority by requiring State executive or legislative officials to participate in Federal legislative schemes governing such diverse areas as radioactive waste disposal, background checks for prospective firearms purchases, and the collection and disclosure of motor vehicle record information. Mississippi has even established a committee to evaluate whether Federal mandates encroach on State authority under the 10th amendment, presumably as a means of identifying possible directives to be legally challenged.⁶⁷

In recent years, several of these challenges have reached the Supreme Court, and it appears likely that 10th amendment constraints on Federal power will continue to evolve. Guidance from existing 10th amendment case law provides some guideposts — and leaves many open questions, as discussed in this section.

⁶³ As noted previously, the term “mandates” is used in a broad context in this report as a catchall for various types of regulations.

⁶⁴ For example, the previously referenced National Child Protection Act of 1993 (Pub. L. 103-209).

⁶⁵ “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Constitution, Amendment X.

⁶⁶ *United States v. Darby*, 312 U.S. 100, 124 (1941).

⁶⁷ Jeffrey A. Keithline and Daniel L. Skoler, “Unfunded Mandates: Headaches, Dilemmas and Myths for Government Lawyers at all Levels,” *The Public Lawyer* (Summer 1998) p. 16.

— **The Federal Government cannot co-opt the State legislative process**

In 1992, the Supreme Court, in *New York v. United States*,⁶⁸ invalidated a provision of the *Low-Level Radioactive Waste Policy Amendments Act of 1985*, which required the States to either enact legislation providing for the disposal of radioactive waste generated within their borders or take title to and possession of the waste. The Court concluded that the choice offered to the States under the Act was a false one because requiring the States to accept ownership responsibilities for the waste would “commandeer” the States for the implementation of Federal regulatory programs. On the other hand, requiring the States to enact legislation would also be unconstitutional. The Court concluded that the Federal Government “may not compel the States to enact or administer a Federal regulatory program.”⁶⁹

— **The Federal Government cannot require State officers to administer Federal programs**

Five years later, the Supreme Court, in *Printz v. United States*,⁷⁰ ruled 5-4 that portions of the *Brady Act*⁷¹ that imposed requirements on State and local chief law enforcement officers (CLEOs) on a temporary basis were unconstitutional. The *Brady Act*

required CLEOs, under certain circumstances, to accept a notice of proposed firearm transfer from a gun dealer and “make a reasonable effort to ascertain within 5 business days whether receipt or possession [by the prospective purchaser] would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.”⁷² The *Brady Act* imposed this background check obligation on a temporary basis, until the NICS — the method by which immediate on-line purchase checks would be accomplished — became operational.

The Supreme Court, noting that the text of the Constitution was silent on the precise issue involved, concluded: “The answer to the CLEOs challenge must be sought in historical understanding and practice, in the structure of the Constitution, and in the jurisprudence of this Court.”⁷³ The Court found that historical practice “tends to negate the existence of the congressional power asserted here”⁷⁴ but, in the end, was inconclusive.⁷⁵ Turning its attention

to the structure of the Constitution, the Court concluded that the Constitution envisioned a system of “dual sovereignty” with the State and Federal Government exercising concurrent power over the people, and that allowing the Federal Government to impress the police of the 50 States into service would “immeasurably and impermissibly” augment the power of the Federal Government and also threaten the balance of power among the branches of the Federal Government, permitting Congress to circumvent the executive branch and use State officials to implement its policies. Turning to its own prior rulings, including the previously referenced *New York*, the Court found the challenged provisions of the *Brady Act* to be an unconstitutional co-opting of State executive officers.⁷⁶

⁷²18 U.S.C. § 922s(2).

⁷³*Printz*, 521 U.S. 898, 905.

⁷⁴*Ibid.*, at 918.

⁷⁵The Court found that early congressional enactments “establish, at most, that the Constitution was originally understood to permit imposition of an obligation on state judges to enforce Federal prescriptions, insofar as those prescriptions related to matters appropriate for the judicial power.” *Ibid.*, at 907 (emphasis in original). The government pointed to a number of more recent statutes; however, the Court found them to be either inapposite or too recently enacted to be indicative of a constitutional tradition. *Ibid.*, at 918.

⁷⁶The government had argued in favor of a balancing test to weigh the Federal Governmental interest against a statute’s potential imposition on the States. The Court declined this invitation, concluding that while a balancing analysis would be permissible under “a federal law of general applicability [that] excessively interfered with the functioning of state governments” in cases, “where, as here, it is the whole *object* of the law to direct the functioning of the state executive, and hence to compromise the structural framework of dual sovereignty, such a “balancing” analysis is inappropriate.” *Ibid.*, at 932 (emphasis in original).

⁶⁸505 U.S. 144 (1992).

⁶⁹*Ibid.*, at 188.

⁷⁰521 U.S. 898 (1997).

⁷¹Pub. L. No. 103-159, as amended (codified at 18 U.S.C. § 922).

— **Can the Federal Government impose “purely ministerial reporting requirements” on the States pursuant to the Commerce Clause? An open question**

In *Printz*, the Supreme Court took notice of the issue of the Federal imposition of information reporting requirements on State and local governments, but reserved the issue for future consideration. The Court noted that statutes “which require only the provision of information to the Federal Government, do not involve the precise issue here, which is the forced participation of the States’ executive in the actual administration of a Federal program. We, of course, do not address these or other currently operative enactments that are not before us; it will be time enough to do so if and when their validity is challenged in a proper case.”⁷⁷

Justice O’Connor, in a concurring opinion, stated: “The Court appropriately refrains from deciding whether other purely ministerial reporting requirements imposed by Congress on State and local authorities pursuant to its Commerce Clause powers are similarly invalid. *See, e.g.*, 42 U.S.C. § 5779(a) (requiring State and local law enforcement agencies to report cases of missing children to the Department of Justice).”⁷⁸

“Purely ministerial reporting requirements,” as Justice O’Connor characterized them, are the type of mandate most frequently imposed on State and local courts and justice agencies. While the Court declined

⁷⁷*Ibid.*, at 918.

⁷⁸*Ibid.*, at 936 (Justice O’Connor, concurring).

to address the constitutionality of these measures in *Printz*, the Court recognized these types of reporting requirements as a distinct category of Federal mandate, increasing the likelihood that the constitutionality of one of these measures will be challenged in the future.

— **The Federal Government can regulate State disclosures of motor vehicle information into the stream of interstate commerce**

In *Reno v. Condon*,⁷⁹ the Supreme Court reversed the Fourth Circuit Court of Appeals, rejecting a 10th amendment challenge by the State of South Carolina to the constitutionality of the *Driver’s Privacy Protection Act of 1994* (DPPA).⁸⁰ The DPPA provides that State departments of motor vehicles (DMVs) “shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the

⁷⁹120 S. Ct. 666, 2000 U.S. LEXIS 503 (Jan. 12, 2000). The Fourth Circuit case was the first of four decisions issued by the Courts of Appeals on the constitutionality of the DPPA; two decisions upheld the constitutionality of the DPPA, two held it to be unconstitutional. *See, Condon v. Reno*, 155 F.3d 453 (4th Cir. 1998) (holding DPPA is unconstitutional); *Pryor v. Reno*, 171 F.3d 1281 (11th Cir. 1999) (holding DPPA is unconstitutional); *Travis v. Reno*, 160 F.3d. 1000 (7th Cir. 1998) (upholding DPPA); *Oklahoma v. United States*, 161 F.3d 1266 (10th Cir. 1998) (upholding DPPA). The DPPA has also been challenged on 1st amendment grounds; however, discussions of 1st amendment challenges are omitted here. *See, for example, Travis v. Reno* and *Oklahoma v. United States*.

⁸⁰18 U.S.C. § 2721, *et. seq.*

department in connection with a motor vehicle record.”⁸¹ The Act, designed to restrict public and commercial access to motor vehicle records in order to protect the privacy of licensees, contains a number of exceptions. DMVs, for example, are required to disclose information for certain purposes related to motor vehicle administration. In addition, the DPPA contains 14 exceptions pursuant to which States may elect to disclose DMV records in certain other instances, such as with the consent of the licensee.⁸² Violation of the DPPA may result in criminal fines and a civil cause of action against a person who knowingly violates the statute.⁸³

The Fourth Circuit, relying on its interpretation of *Printz* and *New York*, concluded that while the DPPA did not require the States to legislate, as was the case in *New York*, and did not require the State executive to enforce the DPPA against individuals, as was the case in *Printz*, the DPPA *did* require that States administer a Federal program applicable only to the States. Therefore, Congress lacked the power to enact DPPA under the Commerce Clause because “rather than enacting a law of general applicability that incidentally applies to the States, Congress passed a law that, for all intents and purposes, applies only to the States. Accordingly, the DPPA is simply not a valid exercise of Congress’s Commerce Clause power.”⁸⁴

⁸¹18 U.S.C. § 2721(a).

⁸²18 U.S.C. § 2721(b).

⁸³18 U.S.C. §§ 2723(a) and 2724(a).

⁸⁴155 F.3d 453, 456.

The Supreme Court, in a unanimous decision, reversed the Fourth Circuit and upheld the constitutionality of the DPPA. The Court concluded that “the DPPA does not require States in their sovereign capacity to regulate their own citizens. The DPPA regulates the States as the owners of databases. It does not require the South Carolina Legislature to enact any laws or regulations, and it does not require State officials to assist in the enforcement of Federal statutes regulating private individuals. We accordingly conclude that the DPPA is consistent with the constitutional principles enunciated in *New York* and *Printz*.”⁸⁵ In addition, the Court disagreed with the Fourth Circuit’s holding that the DPPA exclusively regulated the States, finding instead that the “DPPA regulates the universe of entities that participate as suppliers to the market for motor vehicle information — the States as initial suppliers of the information in interstate commerce and private resellers or redisclosers of that information in commerce.”⁸⁶ As a result, the Court did not address the “question whether general applicability is a constitutional requirement for Federal regulation of the States.”

The 10th amendment challenge to the DPPA did not raise the issue of “purely ministerial” reporting requirements, which was reserved in *Printz* and could affect many Federal reporting mandates. In addition, the *Condon* decision did not resolve the question of whether the general applicability of a law is a constitutional requirement for Federal regulation of the States. It

⁸⁵*Reno v. Condon*, 2000 U.S. LEXIS 503 at *17.

⁸⁶*Ibid.*

is clear from the Court’s decision in *Condon* that there are limits to the extent to which the Court is willing to use the 10th amendment to shield the States from regulation under Federal law. Given the brevity of the Court’s decision and its efforts to distinguish *Condon* from *New York* and *Printz*, however, the scope of the protections afforded to the States by the 10th amendment remains unclear.

— Other Tenth amendment challenges since *Printz*

Since *Printz*, in addition to the DPPA cases discussed above, both States and private parties have used the 10th amendment to challenge the constitutionality of a number of Federal statutes. In one case, a court even raised the issue on its own, although it subsequently concluded that the issue had been waived. A sample of the cases that have reached the Courts of Appeals demonstrate the wide range of Federal activities being challenged on 10th amendment grounds, albeit unsuccessfully, since the *Printz* decision in June 1997.

Unsuccessful Tenth amendment challenges

- The Lautenberg Amendment⁸⁷ was unsuccessfully challenged by a defendant convicted of possessing a gun in interstate commerce, alleging that it unconstitutionally interfered with the power of State courts to implement State domestic relations law.⁸⁸ In another unsuccessful challenge, the Fraternal Order of Police

⁸⁷18 U.S.C. § 922(g).

⁸⁸*United States v. Wilson*, 159 F.3d 280, 287-288 (7th Cir. 1998).

argued that the Amendment, which contains no special exemption for police officers, violated the 10th amendment because it interfered with the ability of State law enforcement agencies to arm those officers who had been convicted of domestic violence misdemeanors.⁸⁹

- A provision of the *Foreign Trade Zones Act*⁹⁰ was unsuccessfully challenged by a group of local school districts that alleged that the Act’s exemption of designated foreign trade zones from State and local taxes was a violation of the 10th amendment.⁹¹
- Massachusetts unsuccessfully used the 10th amendment to allege that a Federal court lacked the constitutional authority to enjoin a State law it had determined to be in conflict with the *Endangered Species Act*.⁹² While acknowledging that the Federal courts are bound by the 10th amendment, the Court of Appeals rejected the claim.⁹³
- The *Federal Labor Standards Act*⁹⁴ was challenged as unconstitutional by Anne Arundel County, Maryland.

⁸⁹*Fraternal Order of Police v. United States*, 173 F.3d 898 (DC Cir. 1999), cert. denied 120 S. Ct. 324, 145 L. ed. 2d. 253 (1999).

⁹⁰19 U.S.C. § 810(e).

⁹¹*Deer Park Independent School District v. Harris County Appraisal District*, 132 F.3d 1095 (5th Cir. 1998).

⁹²16 U.S.C. § 1531, *et seq.*

⁹³*Strahan v. Coxe*, 127 F.3d 155 (1st Cir. 1998).

⁹⁴29 U.S.C. §§ 201, *et seq.*

The Fourth Circuit declined to find the Act unconstitutional because the Supreme Court had upheld the constitutionality of the Act in the 1985 case of *Garcia v. San Antonio Metro Transit Authority*,⁹⁵ and had not explicitly overruled that decision in *Printz*.⁹⁶

- A defendant in a joint civil suit brought by the United States and Connecticut unsuccessfully challenged the constitutionality of the lawsuit as a violation of 10th amendment dual sovereignty principles. The Court reasoned that Connecticut’s participation in the suit was voluntary and therefore not in violation of the 10th amendment.⁹⁷

Tenth amendment issues raised but not resolved

- A provision of the *Telecommunications Act of 1996* governing the placement of wireless communications facilities⁹⁸ was challenged by the City of Virginia Beach as an unconstitutional violation of the 10th amendment because it interfered with local zoning authority. The Court of Appeals did not reach the constitutional question, finding for the city on statutory grounds.
- The Second Circuit raised the 10th amendment issue itself

⁹⁵469 U.S. 528 (1985).

⁹⁶*West v. Anne Arundel County*, 137 F.3d 752 (4th Cir. 1998).

⁹⁷*United States v. Vazquez*, 145 F.3d 74 (2nd Cir. 1998).

⁹⁸42 U.S.C. § 704(c)(7)(b).

regarding a provision of the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA).⁹⁹ The Court noted that the provision “appears to purport to change state law and is therefore of questionable constitutionality.”¹⁰⁰ The Court did not address the issue, however, concluding that it had not been raised on appeal and had therefore been waived.

Unfunded Federal mandates

— State and local governments demand reform

While State and local governments are frequently critical of Federal mandates, that criticism customarily becomes more vocal when the mandate imposed by the Federal Government is not accompanied by Federal funding sufficient to implement the mandate. By the early 1990s, these critics had become increasingly vocal.

On October 27, 1993, for example, State and local officials from across the country, including representatives from the National Conference of Mayors, the National Association of Counties, the National League of Cities, the National Conference of State Legislatures, and the National Governors Association, came to Washington, D.C., and declared the day “National Unfunded Mandates Day” in an effort to draw public and congressional attention to the

⁹⁹42 U.S.C. § 9658.

¹⁰⁰*ABB Industrial Systems v. Prime Technology Inc.*, 120 F.3d 351, 360 n. 5 (2nd Cir. 1997).

burdens that unfunded mandates were imposing on State and local governments.¹⁰¹ Congress subsequently held hearings on the issue, and heard State and local officials complain of the burdens that unfunded mandates were imposing on their governments. The 103rd Congress, however, did not pass unfunded-mandate legislation, despite bipartisan support.

Unfunded mandates received additional attention when the issue was included in the Republican “Contract with America” for the 1994 congressional elections. Following their victory in the 1994 elections, the “Unfunded Mandate Reform Act of 1995” (UMRA) was given the symbolic honor of being the first bill introduced in the Senate at the opening of the 104th Congress (and the fifth bill introduced in the House of Representatives). Hearings were again held on the issue; State and local officials again complained of the burdens imposed by unfunded mandates.

The mayor of Columbus, Ohio, explained the problem this way:

“Others have called [unfunded Federal mandates] spending without representation. Across this country, mayors and city councils and county commissioners have no vote on whether these mandated spending programs are appropriate for our cities. Yet, we are forced to cut other budget items or raise

¹⁰¹Theresa A. Gullo and Janet M. Kelly, “Federal Unfunded Mandate Reform: A First Year Retrospective,” *Public Administration Review* (September/October 1998) pp. 379, 380.

taxes or utility bills to pay for them because we must balance our budget at our level.¹⁰²

The mayor of Philadelphia was perhaps even more direct:

“What is happening is we are getting killed. In most instances, we can’t raise taxes. Many townships are at the virtual legal cap that their State government puts on them, or in my case in Philadelphia, I took over a city that had a \$500 million cumulative deficit that had raised four basic taxes 19 times in the 11 years prior to my becoming mayor. We have driven out 30 percent of our tax base in that time. I can’t raise taxes, not because I want to get re-elected or because it is politically feasible to say that, but because that would destroy what is left of our tax base, and our base isn’t good enough So when you pass a mandate down to us and we have to pay for it, the police force goes down, the firefighting force goes down. Recreation departments are in disrepair. Our [recreation] centers are in disrepair because our capital budget is being sopped up by Federal mandates, by the need to pay for Federal mandates.”¹⁰³

¹⁰²Report of the Committee on Governmental Affairs, United States Senate, “Unfunded Mandate Reform Act of 1995” (January 11, 1995) p. 2 (quoting Mayor Greg Lashutka of Columbus, Ohio) [hereafter, Senate Governmental Affairs Report].

¹⁰³Ibid., pp. 2-3 (quoting then-Mayor Edward Rendell of Philadelphia, Pennsylvania).

While not present at the hearings, then-Governor Fife Symington of Arizona coupled State and local concerns over Federal mandates with a simmering resentment at perceived Federal interference with State and local affairs. In a statement that the Goldwater Institute characterized as “like a complaint to King George III,” Symington declared, “the [S]tate and local governments around this [N]ation are losing their power to better the lives of our own people. The most vital decisions about our futures as [S]tates are being made for us by far-off unelected bureaucrats and handed down like summary orders from distant gods.”¹⁰⁴

During this period, Congress received a number of reports addressing the problem facing State and local governments. The Advisory Commission on Intergovernmental Relations issued detailed recommendations for Federal mandate relief.¹⁰⁵ Another report, produced by Price Waterhouse for the National Conference of Mayors, estimated that the cost of unfunded mandates for the period from 1994 to 1998 would total nearly \$54 billion for cities alone.¹⁰⁶ According to the

¹⁰⁴Douglas Munro, “Summary Orders from Distant Gods: The Unfinished Agenda Following the Unfunded Mandates Reform Act of 1995,” *Issue Analysis* series (Phoenix, AZ: The Goldwater Institute, February 1995) p. 1.

¹⁰⁵Advisory Commission on Intergovernmental Relations, “Federal Mandate Relief for State, Local, and Tribal Governments” (January 1995).

¹⁰⁶Report of the Committee on Rules, United States House of Representatives, “Unfunded Mandate Reform Act of 1995” (January 13, 1995) pp. 4-5.

Senate Report that accompanied UMRA, environmental mandates “headed the list of areas that State and local officials have claimed to be the most burdensome.”¹⁰⁷ Other Federal requirements that State and local officials cited as burdensome and costly included: “compliance with the *Americans with Disabilities Act* and the *Motor Voter Registration Act*; complying with the administrative requirements that go with implementing many Federal programs; and meeting Federal criminal justice and educational program requirements.”¹⁰⁸

The cost of unfunded mandates to State and local governments was not the only issue before Congress as it considered UMRA; the need for cooperation among the various levels of government was also a consideration. As the Senate committee report noted: “What is lost in the debate is the need for all levels of government to work together in a constructive fashion to provide the best possible delivery of services to the American people in the most cost-effective fashion.” The report went on to state:

State and local officials emphasized in the Committee’s hearings ... that over the last decade the Federal Government has not treated them as partners in the providing of effective governmental services to the American people, but rather as agents or extensions of the Federal bureaucracy. In their view, this lack of coordination and cooperation has not only affected the provision of services at a

¹⁰⁷Senate Governmental Affairs Report, *supra* note 99, p. 6.

¹⁰⁸Ibid., pp. 6-7.

local level but also carries with it the penalty of high costs, costs that they pass on to local citizens.¹⁰⁹

— Requirements of the *Unfunded Mandate Reform Act*

The 104th Congress passed UMRA and President Clinton signed it into law on March 22, 1995.¹¹⁰ UMRA does not prohibit Congress from enacting unfunded mandates. Instead, UMRA seeks to provide Congress with information about the cost of unfunded mandates in proposed legislation and provide a procedural mechanism for striking unfunded mandates from legislation if they would impose an annual direct burden of \$50 million or more on State, local, or tribal governments.¹¹¹

UMRA requires the Congressional Budget Office (CBO) to estimate, with certain exceptions, the cost of unfunded mandates in proposed legislation. CBO is required to make a detailed report on any covered bill that it estimates would result in an aggregate annual direct cost of \$50 million or more on State, local, or tribal governments, or \$100 million or more in aggregate annual direct cost on the private sector. With certain exceptions, a parliamentary point of order can be raised against bills that are not scored by the CBO or bills that impose unfunded intergovernmental mandates above the \$50 million threshold (mandates on the private sector currently are not subject to a point

of order). In the House, if a Member raises a point of order, the entire House must vote on whether to consider the entire bill regardless of whether there is a violation. “In the Senate, if a point of order is raised and sustained, the bill is essentially defeated.”¹¹² In addition, Title II of UMRA requires that Federal agencies assess the effects of new regulations on State, local, and tribal governments and the private sector to minimize burdens, when possible.

— Post-*Unfunded Mandate Reform Act* developments

The passage of UMRA, while a positive development, has not solved the unfunded mandate issue, particularly as it relates to State and local courts and justice agencies. Information reporting requirements, for example, may not meet the threshold of \$50 million in direct costs that is required to trigger the procedural protections of UMRA. Another drawback is that UMRA defines a “mandate” narrowly to include only that category that directly requires the compliance of the criminal justice agency, excluding mandates that are tied to Federal grant programs from UMRA’s protections.

Of course, UMRA is only a means of raising the unfunded mandates issue as Congress considers a particular piece of legislation. It does not prevent Congress, if it is so inclined, from imposing mandates.

UMRA, while beneficial, is not the answer to the mandate issue. As one commentator has noted, “Relying solely on [UMRA] to protect State and local governments from onerous and costly Federal mandates is expecting too much. State and local officials will need to remain vigilant in identifying impacts in proposed and final Federal legislation.”¹¹³ Toward that end and recognizing that UMRA does not actually prevent unfunded mandates from being imposed on the States, the Council of State Governments created a “Federalism Index” designed to “inform States about federalism activities in all three branches of the Federal Government.”¹¹⁴ The Federalism Index relies on information generated by a number of sources, including the CBO and agency estimates required by UMRA to track: (1) statutes enacted by Congress containing unfunded mandates or preemption provisions; (2) finalized Federal regulations having a serious impact on State economies; (3) Supreme Court federalism cases; and (4) pending bills or amendments that are costly to State and local governments.¹¹⁵

In addition, the National Conference of State Legislatures has called upon Congress to strengthen Title II of UMRA, which addresses rules by Federal agencies, accusing the agencies of “ignoring the spirit of [UMRA] and exploiting loose language in the

¹⁰⁹Ibid., p. 4.

¹¹⁰Pub. L. No. 104-4 (1995).

¹¹¹The monetary caps are in 1996 dollars and are adjusted annually for inflation.

¹¹²Congressional Budget Office, “An Assessment of the Unfunded Mandates Reform Act in 1997” (February 1998) at box 1.

¹¹³Mary Kay Falconer and Francis Berry, “Federal Mandates: Getting Beyond the Rhetoric,” *Spectrum* (Spring 1995) p. 21.

¹¹⁴Bert Waisanen, “A Watchdog for the States,” *State Government News* (March 1997) p. 12.

¹¹⁵Ibid., p. 13.

text of Title II ... to avoid any change in their behavior.”¹¹⁶

In Congress, however, the focus has shifted to unfunded mandates on the private sector. On February 10, 1999, the House, by a bipartisan vote of 274-149, passed H.R. 350, “The Mandates Information Act of 1999.” This bill would strengthen UMRA — which currently requires only that the CBO score mandates on the private sector in excess of \$100 million without subjecting such directives to a point of order — by allowing points of order against private sector mandates, as well as the intergovernmental mandates. As of April 2000, the measure was before the Senate. The House passed a similar measure during the 105th Congress; however, the Senate did not act. Opponents of the Mandates Information Act argued that the bill would make it easier to defeat health, environmental, and labor legislation. Supporters argued that neither the “Mandates Information Act of 1999” nor UMRA would prevent Congress from enacting an unfunded mandate if it were so inclined. Instead, both measures are designed to ensure that Congress is informed about unfunded mandates before it, and that Members be required to go on record in support of such mandates so that the voters can hold them accountable.

¹¹⁶National Conference of State Legislatures, “Mandate Watch,” *The States’ Advocate* (April 1998) p. 2.

V. National Task Force findings

Based on its discussions of issues and concerns related to Federal legislation that imposes reporting requirements and expectations on the criminal justice system, the Task Force adopted the following findings:

Finding 1: The National Task Force finds that, in recent years, the Federal Government’s need for information from State and local courts and justice agencies has increased in terms of the quantity and the complexity of data required and in terms of the speed with which information must be provided.

Commentary: The Federal Government’s need for information from State and local courts and justice agencies has increased in recent years to support important Federal policy initiatives. As illustrated by the statutes and regulations cited in section III of this report, the Federal Government customarily seeks information for countless Federal initiatives, ranging from gun control to adoption and welfare reform.

The information needs of the Federal Government have increased not only in number, but also in complexity. Early reporting

requirements tended to “harvest” event-driven facts, such as arrests and dispositions. Recent Federal legislation, however, requires interpretation, as well as event reporting. The Lautenberg Amendment, for example, requires courts to make determinations about whether an offender was represented by counsel or “intelligently” waived the right of representation.¹¹⁷ The same law also requires a determination of whether there was a jury trial, if the offender was entitled to one, or whether the right was intelligently waived.

Finally, there is an increasing premium on the speed with which information is made available. Under the Brady law, for example, background checks about individuals seeking to purchase firearms are completed almost instantly, or in some cases, in days.¹¹⁸ If information about potential disqualifiers, such as felony convictions, is not made available by the courts and the State repositories promptly, an improper firearms sale may be authorized.

Of course, these circumstances are not unique to the Federal Government. State governments, as well as courts and criminal justice agencies themselves, are increasingly using civil and criminal justice information to improve the efficiency and the effectiveness of the justice system.

¹¹⁷Pub. L. 104-208, codified at 18 U.S.C. § 922(g).

¹¹⁸Pub. L. 103-159, 107 Stat. 1536, codified at 18 U.S.C. § 922.

In Colorado, State officials attribute increased demands for timely, complete and accurate information by the State judiciary to the judiciary’s increased understanding of what is technologically possible as a result of the judiciary’s experiences with Federal reporting requirements.

Finding 2: The National Task Force finds that information needs arising from the implementation of Federal legislation increasingly require both civil and criminal justice information.

Commentary: Traditionally, Federal information reporting requirements focused primarily on criminal justice information, such as arrest and disposition reporting. Federal financial support was tailored to support the reporting of the required criminal justice information. Information from civil justice records was typically not required and, as a result, there was a scarcity of Federal financial support for the automation of civil justice records.

In recent years, there has been a considerable increase in reporting requirements drawing on civil justice information. Implementation of provisions of the *1994 Violent Crime Control and Law Enforcement Act* that restrict the ability of those subject to domestic abuse protection orders to purchase firearms, for example, requires information from

protection orders, which most frequently arise from civil court petitions.¹¹⁹ In another example, it will be necessary to track civil court proceedings involving covered foster care and adoption proceedings in order to monitor compliance with the timelines mandated by the *Adoption and Safe Families Act of 1997*.¹²⁰

Implementing these civil reporting requirements is difficult for many courts for a variety of reasons. First, in most courts, the automation of civil justice information lags behind automation of criminal justice information. Second, civil justice information has not always been reported, including identifiers, such as a date of birth or social security number. This information, of course, is necessary to match against other records.

Finding 3: The National Task Force finds that, customarily, many State and local courts have not been actively involved in implementing Federal information initiatives and have not received Federal assistance to meet the information demands arising from the implementation of Federal legislation.

Commentary: Unlike executive branch agencies, State and local courts customarily have not been involved in shaping the information reporting requirements that arise

¹¹⁹Pub. L. 103-322, amending 28 U.S.C. § 534.

¹²⁰Pub. L. 105-89.

from Federal legislation. Furthermore, courts frequently lack the infrastructure to respond to information reporting requirements, particularly where these requirements are not directly related to accomplishing the courts' mission.

Task Force discussions trace this lack of involvement by State and local courts in the decisionmaking processes and the failure of the courts to participate in a proportionate share of the funding that has accompanied many Federal initiatives to several factors (the weighting of which varies substantially from State to State). Some State and local courts, for example, have traditionally been reluctant to participate in Federal initiatives or accept Federal funds out of concern that such involvement would somehow be interpreted to mean that they were not neutral arbiters of justice. Other courts have sought to participate and obtain funding, but have been unsuccessful due to local political considerations. In other settings, the courts have not been viewed as intended participants or funding recipients of particular Federal initiatives.

This lack of involvement led to the creation of information reporting mechanisms that, from the perspective of the courts at least, are less than optimal. Law enforcement systems, for example, customarily feature the arrest as the key event, to which all subsequent data must be tied. The arrest event, however, is not featured in most court systems, creating the potential for mismatching and other problems when it becomes necessary to tie final court dispositions to the original arrest.

Despite the traditional lack of funding, infrastructure and involvement in the decisionmaking process, the courts increasingly recognize the importance of information for the courts' own internal needs, as well as for the needs of outside information users, such as the Federal Government and other branches of the State governments.

The courts view the *Crime Identification Technology Act of 1998* (CITA) as a positive development.¹²¹ CITA authorizes \$1.25 billion over 5 years for grants to the States to upgrade criminal justice and criminal history record systems, improve criminal justice identification, promote the compatibility and integration of national, State and local systems for a variety of purposes, and to capture information for statistical and research purposes to improve the administration of criminal justice.¹²² In doing so, CITA recognizes court-based criminal justice systems as a category of system eligible for CITA funds and requires States to provide "an assurance that the individuals who have developed the grant application took into consideration the needs of all branches of the State Government and specifically sought the advice of the chief of the highest court of the State with respect to the application."¹²³

¹²¹Pub. L. No. 105-251, 112 Stat. 1871.

¹²²Pub. L. No. 105-251, §§ 102(a), (e).

¹²³Pub. L. 105-251 § 102(c)(2)(D).

Federal initiatives, such as CITA, that include the courts in technological initiatives and information system planning, are seen as important trends in helping to ensure that the courts are able to play a role in the development and implementation of new information reporting requirements. These initiatives also help courts to modernize their own information systems.

Finding 4: The National Task Force finds that the recognition of the courts as a partner in the design and implementation of criminal justice information systems and in meeting the information needs arising from Federal legislation is a positive and effective approach.

Commentary: Some recent Federal initiatives require that States establish advisory bodies or task forces comprised of representatives of courts and criminal justice agencies to develop implementation plans. The Task Force finds that these bodies are effective when the approach taken is truly collegial in nature and when there is determined political leadership supporting a collegial approach.

The Task Force notes with approval that the courts have become active participants in some States, such as Colorado, through involvement and leadership from the Chief Justice, key legislators, judges, and State court administrators. Similarly, court officials in Maryland have become active participants in the efforts in

that State to modernize and integrate their information systems.

Finding 5: The National Task Force finds that the demands imposed by federally mandated reporting requirements are exacerbated when the requirements do not build upon existing information practices.

Commentary: Task Force deliberations highlighted the fact that federally mandated reporting requirements are more difficult to implement when they significantly depart from preexisting information collection practices.

For example, members of the Task Force reported that courts encounter significant difficulty in providing information necessary to implement the Lautenberg Amendment, such as, (1) whether an offender was represented by counsel or intelligently waived the right of representation, (2) whether there was an “intimate partner” relationship between the offender and the victim, and (3) whether there was a jury trial, if the offender was entitled to one, or the right was intelligently waived. These data elements, which require either a court finding or some value judgment as to “intelligent waiver” or “intimacy,” were not traditionally tracked by court clerks and administrators; therefore, making these assessments had proven more demanding than traditional, fact-based reporting requirements, such as disposition information.

Similarly, State repositories have reported difficulties in satisfying Immigration and Naturalization Service requirements that justice agencies report the arrest of aliens. Traditionally, the FBI and law enforcement officials collected the place of birth of arrestees on fingerprint cards, but not their self-reported citizenship status. Complying with the INS requirements forced a redesign of the fingerprint card and raised issues regarding the utility of self-reported citizenship information obtained at the time of arrest.

It is the sense of the Task Force that this is part of a growing trend. Task Force members cited examples ranging from welfare reform to initiatives by the Departments of Transportation and Health and Human Services, which increasingly require State and local agencies to collect information that had not previously been collected or tracked.

The Task Force recognizes that courts and law enforcement agencies are frequently in a unique position to capture information. The courts, for example, interact with individuals in controlled situations, which facilitate obtaining a considerable amount of information. Collection of new information, however, frequently requires new resources and the implementation of new systems and protocols.

Finding 6: The National Task Force finds that some important Federal justice assistance programs have been structured in such a way that they have effectively excluded the courts from full participation.

Commentary: The Five Percent Set-Aside Program, which requires States to set aside 5 percent of their Edward Byrne Memorial State and Local Law Enforcement Assistance Program formula grant funds for the improvement of criminal justice records, is a prominent example. The definition of “local unit of government” used to determine eligibility for pass-through funding has been interpreted to exclude most courts because they are not considered a unit of city or county government (municipal courts, as a part of city or county government, are an exception).

As another example, courts are expressly excluded from receiving funds for child support services, except in very particular circumstances. Other examples of the exclusion of the courts from funding initiatives can be found in the *Adoption and Safe Families Act of 1997*.

Predictably, these restrictions limit the ability of the courts to develop the internal systems they need to meet information requirements arising from Federal legislation.

Finding 7: The National Task Force finds that the response to information needs arising from Federal legislation has been most effective in those States that have adopted a statewide strategy and approach that includes the courts.

Commentary: Providing the information necessary to support Federal information needs that arise from Federal legislation and initiatives can involve numerous State and local entities, ranging from State social services agencies to the courts and criminal justice agencies. Given the wide range of State and local entities that are sometimes involved in complying with Federal information requirements, the Task Force believes that the most effective means of satisfying these requirements is through development and implementation of statewide strategies. Successful development and implementation of these statewide strategies depends upon the involvement of all of the entities, including the courts and criminal justice agencies.

Colorado, for example, has created an integrated criminal justice information system that standardizes data and communications technology throughout its criminal justice community, including State-funded courts. This integrated system is governed by an Executive Policy Board, comprised of the Executive Directors of the State Departments of Public Safety, Corrections, and Human Services, as well as the State Court Administrator and a representative of the Colorado

District Attorneys Council. Under the guidance of this inclusive coordinating body, Colorado courts and agencies have “substantially revised” their operations, forms, and systems to streamline operations. As the statewide system was being developed and the streamlining of operations was underway, system planners were able to integrate Federal information requirements into the new system.

Finding 8: The National Task Force finds that disposition reporting requirements impose significant demands on courts, which, to be met effectively, require greater resources than currently available to many courts, as well as an effective statewide approach to meeting disposition reporting requirements.

Commentary: Disposition reporting is a cornerstone of the criminal history record information system. Federal regulations require that covered criminal history records include, “to the maximum extent feasible,” dispositions for all arrests included in an individual’s criminal history record, within 120 days after the disposition has occurred.¹²⁴ Disposition reporting depends upon the State courts, which handle the vast majority of criminal cases in the United States — some 13 million in 1996.¹²⁵

¹²⁴28 C.F.R. § 20.37 (1999).

¹²⁵See, *supra* note 8 and accompanying text.

The Task Force finds that some courts have had trouble meeting their disposition reporting demands. In some cases, these difficulties have resulted from a lack of financial resources for staff or new technology, which would ease the courts' reporting burden. In other cases, these difficulties have resulted from the lack of a coordinated statewide disposition reporting plan designed to ensure that all of the appropriate dispositions are reported to the State criminal history repositories in a prompt and efficient manner.

VI. National Task Force recommendations

Based on the findings set out in section V, the Task Force approved the following recommendations:

Recommendation 1:

The National Task Force recommends and encourages the development and implementation of integrated information systems because these systems, among other benefits, enhance the capacity to comply with information needs arising from the implementation of Federal legislation.

Commentary: In recent years, there has been an important and appropriate emphasis on the development of integrated information systems. A recently completed report by the National Task Force on Court Automation and Integration, sponsored by BJS and coordinated by SEARCH, the National Center for State Courts, the National Association for Court Management, and the Conference of State Court Administrators, emphasizes the importance of establishing integrated information systems. That National Task Force Report defines integration as “the electronic sharing of information by two or more distinct justice entities within a system. The degree to which information systems are considered ‘integrated’ depends on who participates, what information is shared or exchanged, and how

data are shared or exchanged within the system.”¹²⁶

These systems not only improve the capacity to meet information needs arising from the implementation of Federal legislation, but also facilitate an integrated and shared reporting responsibility among components of the criminal justice system, as opposed to focusing reporting demands on a particular component of the system. In addition, integration can help all courts and justice agencies involved in the justice process achieve their mission in a more effective and efficient way through enhanced decisionmaking. The continued development of integrated criminal justice information systems and their enhanced ability to interface with new Federal information systems holds great promise for improving information reporting capabilities and reducing the demands associated with information reporting.

Integration efforts should focus not only on criminal history record information, but also on other criminal justice information and civil justice information. Frequently, the courts obtain and use criminal justice information arising from a variety of judicial actions and orders. Courts, for example, issue orders requiring electronic monitoring or restricting child sex offenders from places

¹²⁶Court Automation and Integration Task Force Report, p. 2, *supra* note 5. For a more detailed explanation of the definition of integration, *see, ibid.*, pp. 2-4.

frequented by children. Currently, these orders are not always readily available to law enforcement. In addition, as noted earlier, there is also a growing demand for access to civil justice information, such as protective orders, which could be more readily available if included in integrated systems.

Recommendation 2:

The National Task Force recommends that States include all affected parties, including the courts, in the development and implementation of justice information systems and in the implementation of information reporting requirements that arise from Federal legislation.

Commentary: The Task Force believes that the most effective means of creating integrated justice information systems — as well as the most effective means of meeting Federal information needs arising from Federal legislation — is through a collegial approach, which includes the opportunity for input and participation from representatives of all affected courts and agencies. Colorado, as discussed in the commentary to Task Force Finding 7, has had success in meeting Federal information reporting requirements and in integrating its criminal justice information systems, through such a collegial, statewide

approach for crafting strategies and implementing new systems.¹²⁷

The Task Force recognizes that the situation in every State is different, and what has worked for States such as Colorado may not necessarily work in another State. The Task Force believes, however, that the underlying principle at work in Colorado — an integrated statewide strategy devised with the input of all of the interested parties — is a strategy that could benefit all of the States as they work to comply with Federal information-reporting requirements.

Recommendation 3:

The National Task Force recommends that courts and justice agencies explore and provide for the use of civil justice information for criminal justice purposes.

Commentary: As noted in the Task Force’s findings, reporting requirements drawing on civil justice information have grown. This increasing use of civil justice information is a recognition that some civil justice information, including information from family courts, is useful to criminal justice agencies, particularly in instances in which the courts have issued restraining orders, home confinement orders, civil commitment orders, or other civil orders that implicate criminal justice concerns. The Task Force notes that additional groundwork

may be necessary, such as the creation of a common “data dictionary,” to facilitate the use of civil justice information.

The Task Force noted that the increased use of civil and criminal justice information should lead to a reevaluation of the way in which most courts and justice agencies organize their records. The Task Force noted that the program begun by the Conference of State Court Administrators and the National Association for Court Management to develop national functional standards for automated trial court management systems should provide a critical foundation for the exchange of information between civil and criminal dockets and with State and national databases. Task Force members observed that the advances in livescan and automated fingerprint information system technology will accelerate this trend. Many Task Force members believe that this technology will fuel a change in court recordkeeping practices from the current case or arrest cycle number system to a system that uses the individual, rather than a case number, as the basis for the recordkeeping system. If so, this could create a mechanism for the compilation of comprehensive records of an individual’s involvement with the justice system, be it through the system’s criminal or civil component.

Recommendation 4:

The National Task Force recommends that in order to increase the efficiency and effectiveness of State and local courts and justice agencies, these organizations should work with Congress

and relevant Federal departments and agencies to:

- a) identify and evaluate the purposes of and need for imposing new reporting requirements and determine what information resources are currently available;
- b) define, with specificity, the information to be reported while retaining flexibility to take advantage of new technologies;
- c) identify collateral consequences of imposing these requirements;
- d) ensure that appropriate Federal financial resources reach all of the entities that are involved in fulfilling the information needs arising from Federal legislation, particularly the courts; and
- e) evaluate whether proposed reporting requirements create conflicting or ambiguous demands on the State and local justice agencies required to implement them.

¹²⁷Appendix 2 describes how the court systems in three selected States — Colorado, Florida, and Louisiana — have dealt with the issues surrounding the implementation of Federal reporting requirements.

Commentary: The National Task Force urges the Congress and State and local courts and justice agencies to work together to identify all significant reporting requirements or expectations proposed in Federal legislation; to clearly identify which parts of the criminal justice system are being asked to participate in a reporting requirement or request; and to define the information elements that are involved in any information reporting requirement or request, prior to enacting a mandate. Consultations between Congress, relevant Federal departments and agencies, and representatives of the State and local courts and justice agencies that will be charged with carrying out the proposed mandates will promote greater efficiency and cost-effectiveness in the implementation of mandates.

The National Task Force believes that such consultations will not only help apprise the Congress of the best and most efficient ways to collect the desired information, but will also help remove any ambiguities over what information is required and who is to provide it. Obviously, vagueness creates uncertainty at the State and local levels; has the potential to create unnecessary costs for erroneous or incomplete reporting; and, of course, has the potential for failing to provide an intended or effective response to the Federal legislation.

The National Task Force recommends that Congress, relevant Federal departments and agencies, and State and local courts and justice agencies work together to evaluate the cost to State and local courts and justice agencies is based on the same rationale as the *Unfunded Mandate Reform Act*

(UMRA).¹²⁸ The more information that Congress has about the impact of the information reporting requirements imposed on State and local courts and justice agencies, the easier it will be for Congress to make an informed decision as to whether to proceed with the mandate and what form the mandate should take. UMRA is rarely applicable to information needs arising from the implementation of Federal legislation because these needs are infrequently likely to meet the \$50 million per year in direct costs required to trigger UMRA, or the reporting requirements that are tied to State eligibility for Federal grants, and are therefore outside of the UMRA definition of a “mandate.” While it is possible that one mandate will not cost much to implement, the cumulative demand of mandates on the courts and justice agencies can be substantial.

Recommendation 5: Information needs arising from the implementation of Federal legislation or expectations should, where possible, leave States with substantial discretion to determine the manner in which the State will comply with the reporting requirement or expectation.

Commentary: The National Task Force recognizes the importance for standardized reporting of information; however, the National Task Force recommends that Congress, to the greatest extent possible, set goals for the States,

allowing the State and local courts and justice agencies to determine how they can best meet that goal.

When establishing reporting responsibilities, the National Task Force recommends that Congress and relevant Federal departments and agencies tailor those requirements to track existing State data collection and usage practices to maximize the efficiency and effectiveness with which State and local courts and justice agencies will be able meet those information needs. To the extent that Federal information reporting requirements and expectations exceed preexisting local practice, Federal financial support should be made available to facilitate the collection and processing of the information requested.

The National Task Force recognizes that there is a degree of tension between this recommendation and Recommendation 4, which calls for a careful delineation of data elements to be reported and which agencies are to report the information. The goal of the National Task Force is to promote a cooperative relationship between the Federal Government and State and local courts and justice agencies. To assist the State and local courts and justice agencies in providing the information required, the National Task Force believes that giving State and local entities flexibility is essential, but that at the same time, Congress and Federal departments and agencies must provide as much guidance as possible to assist State and local courts and justice agencies to provide the type of information best suited to meet Federal information needs.

¹²⁸ Pub. L. No. 104-4 (1995).

Recommendation 6:

The National Task Force recommends that State and local courts and justice agencies work together and with Congress and the appropriate Federal departments and agencies to design and implement necessary reporting mechanisms.

Commentary: The National Task Force believes that State and local courts and justice agencies must be willing to work with one another and with the Federal Government to identify and resolve mandate implementation problems, and to assist the Federal Government in its efforts to address national problems. Specifically, State and local courts, repositories, law enforcement agencies, correctional agencies and prosecutors should work so that standards and implementation issues can be resolved in a collegial manner. The National Task Force believes that consultation with all relevant parties, particularly those State and local courts or justice agencies that would be responsible for meeting the information requirements, would maximize the efficient and effective collection of data to meet national information needs.

Recommendation 7:

The National Task Force recommends that Congress provide funding to State and local courts and justice agencies sufficient to implement Federal information reporting requirements and expectations.

Commentary: In order to ensure the effective implementation of Federal information requirements and expectations, the Federal Government should *provide* States with sufficient financial support, both in terms of the initiation costs of a new information reporting requirement, and in terms of recurring costs necessary to meet Federal information needs. State and local courts and justice agencies do not currently receive Federal funding sufficient to meet the costs of meeting the information demands arising from Federal legislation. In response to Task Force inquiries, for example, Louisiana officials reported substantial shortfalls, especially arising from startup costs. In addition, Louisiana reported that the annual operating costs of the Louisiana Protective Order Registry (LOPR), which amount to more than \$860,000 per year, are funded without direct Federal support.¹²⁹

Recommendation 8:

The National Task Force recommends the establishment of a catalogue of Federal programs and initiatives that impose information reporting requirements to be met by State and local courts and justice agencies.

Commentary: As State and local courts and justice agencies continue to work to automate their records and update their information systems and technology, it is the sense of the Task Force that State and local courts and justice agencies would find a catalogue of Federal information needs and expectations to be beneficial as they design new systems. Such a comprehensive catalogue, with periodic updates, would allow State and local courts and justice agencies to ensure that they are complying with all existing information reporting requirements imposed by Federal legislation or regulation. The information-reporting requirements identified by the National Task Force in section III of this report are examples of the types of provisions that might be included in such a catalogue. One way to establish such a catalogue would be for the Congress to establish a requirement that the Office of Management and Budget initiate such a catalogue and update it on an annual basis.

¹²⁹ See table 3, Annual Recurring Costs, in appendix 2.

Appendix 1:

Task Force participants

Task Force participants

- Chairman** **Honorable Robert M. Bell**
Chief Judge, Court of Appeals of Maryland
- Members**
- Jerry L. Benedict**
Director, Office of Court Administration, Texas
- Kenneth E. Bischoff**
Director, Administrative Services, Alaska Department of Public Safety
- Richard C. Carlson**
Deputy Director of Administration, Arizona Department of Corrections
- Dr. Hugh M. Collins**
Judicial Administrator, Supreme Court of Louisiana
- Sue K. Dosal**
State Court Administrator, Supreme Court of Minnesota
- Sheila Gonzalez**
Executive Officer and Clerk, Ventura County Superior Court,
California
- Dr. Robert C. Harrall**
State Court Administrator, Supreme Court of Rhode Island
- Jean Itzin***
Planning and Policy Administrator, Strategic Planning and Systems Integrity Section,
Criminal Justice Information Services, Florida Department of Law Enforcement
- Barbara C. King****
Director, Information Technology and Communications Division,
Department of Public Safety and Correctional Services, Maryland
- J. Denis Moran**
Director of State Courts, Wisconsin
- Edward L. Papps*****
Director of Computer Services, 16th District Judicial Court of Missouri
- Thomas Ralston**
Trial Court Administrator, Superior Court of Delaware
- Theron A. Schnure**
Assistant Director, Policy Development and Planning Division,
Connecticut Office of Policy and Management
- Cal Sieg**
Unit Chief, Access Integrity Unit, Programs Support Section,
Criminal Justice Information Services Division, Federal Bureau of Investigation
- Alan Slater**
Executive Officer, Orange County Superior Court, California
- Prof. George B. Trubow**
Director, Center for Information Technology and Privacy Law,
The John Marshall Law School, Chicago, Illinois
- Richelle “Chell” Uecker±**
Deputy Judicial District Administrator, Hennepin County District Court, Minnesota

Donna M. Uzzell
Director, Criminal Justice Information Services,
Florida Department of Law Enforcement

Lawrence P. Webster^{±±}
Director, Administrative Office of the Courts, Delaware

Robert Wessels
Court Manager, Harris County Criminal Courts at Law, Texas

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

Carol G. Kaplan
Chief, Criminal History Improvement Programs

National Center for State Courts

Kay Farley
Senior Policy Analyst II, Office of Government Relations

Dr. Thomas A. Henderson
Executive Director, Office of Government Relations

Edward H. O'Connell, Jr.
Senior Counsel

SEARCH, The National Consortium for Justice Information and Statistics

Sheila J. Barton
Deputy Executive Director

Robert R. Belair
General Counsel

Gary R. Cooper
Executive Director

Owen M. Greenspan
Justice Information Services Specialist

Paul L. Woodard
Senior Counsel

* Ms. Itzin served as an alternate for Donna Uzzell.

** Ms. King is now in private consulting.

*** Mr. Papps is now Senior Court Technology Associate with the National Center for State Courts.

± Ms. Uecker served as an alternate for Sue Dosal.

±± Mr. Webster is now Justice Information Systems Specialist with SEARCH.

Participants' biographies

Honorable Robert M. Bell

The Honorable Robert M. Bell is Chief Judge of the Court of Appeals of Maryland, the highest court in the State. Prior to serving in this position, Judge Bell served as a Judge for the Court of Special Appeals, 6th Appellate Circuit; Associate Judge, Baltimore City Circuit Court, 8th Judicial Circuit; and Judge of the District of Maryland, District 1, Baltimore City. He is the only active judge to have served at least 4 years on each of the four judicial levels in the State of Maryland.

Judge Bell has served as Chair of the Maryland Judicial Conference since 1996, and is a member of the Hall of Records Commission and the Library Committee of the State Law Library. He is also a member of the National, American, Maryland State, Baltimore City, and Monumental City Bar Associations.

In addition to his judicial duties, Judge Bell serves on the Board of Trustees of the Baltimore Museum of Art; the Board of Directors of Hope House, Inc.; the Board of Directors of Collington Square Non-Profit Corporation; the Board of Directors of The African-American Community Foundation, Inc.; the Board of Visitors of the University of Maryland Law School; and the Board of Trustees of the Chesapeake Foundation for Human Development, Inc.

Judge Bell received his A.B. from Morgan State University (Maryland) and his J.D. from Harvard University Law School.

Jerry L. Benedict

Jerry L. Benedict is Director of the Office of Court Administration for the State of Texas. He has served in this position since 1995. Prior to this position, he was an Assistant Attorney General in the General Counsel Division of the Texas Office of the Attorney General, where he served in several capacities throughout his tenure, including appropriations liaison to the Texas Legislature; Director of the Office of Administrative Counsel; Director of the Intergovernmental Relations Division; and as staff in the Energy Division.

Mr. Benedict also served as a State Representative from Brazoria County in the Texas Legislature for 6 years. During his legislative service, he was a member of the Judicial Affairs, Security Sanctions, and Natural Resources Committees. During and prior to this time, he also was engaged in the private practice of law.

Mr. Benedict is a graduate of the University of Texas at Austin with a bachelor's degree in business administration. He also received a J.D. from the University of Texas School of Law.

Kenneth E. Bischoff

Since 1987, Kenneth E. Bischoff has served as Director of the Division of Administrative Services for the Alaska Department of Public Safety. Mr. Bischoff's responsibilities include management for the State's criminal records repository; data processing, including the Alaska Public Safety Information Network (motor vehicles and law

enforcement); and general administration of the Department, including accounting, personnel, and contracting.

Prior to his current position, Mr. Bischoff was Director of Finance for the Alaska Department of Administration. He also has served as Audit Manager with the Division of Legislative Audit for the Alaska Legislature.

Mr. Bischoff is Alaska's representative to the Western Identification Network. He also serves as Chair of the SEARCH Board of Directors and Membership Group. He is the State's past member to the FBI's National Crime Information Center Advisory Policy Board.

Mr. Bischoff received his B.S. degree in accounting and quantitative methods from the University of Oregon and is a Certified Public Accountant.

Richard C. Carlson

Richard C. Carlson has been employed by the State of Arizona for the past 25 years. He is currently Deputy Director of Administration for the Arizona Department of Corrections. From 1978 to 1999, he served as Assistant Director of the Arizona Department of Public Safety (DPS).

Mr. Carlson previously served in various capacities with the State, including Data Processing Manager and Telecommunications Specialist for DPS, and Computer Operations Manager with the Department of Finance. He also held the positions of Computer Services

Administrator for the Phoenix Police Department and Mission Control Computer Operations Manager for the Manned Spacecraft Center of NASA in Houston.

Mr. Carlson is a past President of the National Law Enforcement Telecommunications System (NLETS) and is currently serving on the Drug Enforcement Administration's National Drug Pointer Index Steering Committee, the National Law Enforcement and Corrections Technology Center Advisory Board, and the NLETS Operating Procedures Committee.

Mr. Carlson attended the Arizona State University College of Business Administration and Advanced Business Administration Program, as well as Phoenix College. He has completed numerous technical training courses.

Dr. Hugh M. Collins

Dr. Hugh M. Collins has been the Judicial Administrator of Louisiana and the Chief Executive Officer of the Judiciary Commission of Louisiana since 1988. He has served in the Judicial Administrator's Office for more than 20 years, having previously held the positions of Acting Judicial Administrator, Acting Chief Executive Officer of the Judiciary, Deputy Chief Executive Officer, Deputy Chief Judicial Administrator, and Deputy Judicial Administrator for Systems Analysis and Planning. Dr. Collins also has taught mathematics for the Department of Psychiatry and Neurology at the Tulane University School of Medicine.

Dr. Collins is a member of numerous civic and professional organizations, including the Board of Directors of the National Center for State Courts (NCSC), past-President of the Conference of State Court Administrators, Chair of the Advisory Committee to the NCSC's Determining Judgeship Needs Project, and President of the Board of Directors of Alliance Franchise. He also is a member at-large of the SEARCH Membership Group and serves on the SEARCH Board of Directors.

Dr. Collins received his B.S. in mathematics from Boston College and his Ph.D. from Tulane University (Louisiana). He is also a graduate of the Institute for Court Management.

Sue K. Dosal

Minnesota State Court Administrator Sue K. Dosal took office in 1982. Prior to her current position, Ms. Dosal served as Senior Staff Attorney with the National Center for State Courts.

Ms. Dosal also has held the positions of Staff Director for the Florida Legislature's Joint Select Committee on Judicial Personnel; Deputy State Court Administrator of Florida; visiting faculty member of Florida State University College of Law; and staff member of the Institute for Court Management (ICM).

Ms. Dosal is a past President of the Conference of State Court Administrators. She is a member of the American, Minnesota, and Hennepin County (Minnesota) Bar Associations, and of the National Association for Court Management. She is also a current member and a past Fellow of the ICM.

Ms. Dosal holds a B.A. degree from the University of Minnesota, an M.S.J.A. from the University of Denver College of Law, and a J.D. from the William Mitchell College of Law.

Sheila Gonzalez

Sheila Gonzalez is Executive Officer and Clerk of the Ventura County (California) Superior Court. She is also on the Board of Directors of the National Center for State Courts (NCSC), serves on the Judicial Council of California as an advisory member, and is Vice President of the Coalition for Justice.

In 1995, Ms. Gonzalez received the Judicial Council's Distinguished Service Award for contributions to and leadership in the profession of judicial administration, and in 1993 she received the Warren E. Burger Award presented by NCSC for outstanding achievements in the field of court administration.

She is a past President of both the National Association for Court Management (NACM) and the Association of Municipal Court Clerks of California. She is a member of a number of statewide committees, including the Judicial Council Court Administrators Committee, which she chaired for 2 years, and the Attorney General's Advisory Committee on Criminal History and Identification Improvement. She formerly served as Co-Chair of the Judicial Council's Court Technology Task Force. She also was a member of the Judicial Council's Commission on the Future of the Courts, its Standing Committee on Technology, and an advisory member of the Trial Court Budgeting Commission.

Ms. Gonzalez also has been a member of the faculty at the National Judicial College, Reno, Nevada; the Institute for Court Management; the Center for Judicial Education and Research; NACM; and the California State Bar.

Dr. Robert C. Harrall

Dr. Robert C. Harrall is Administrator of the unified Rhode Island Court System. He was appointed to this position in 1993, having served in other positions in the Supreme Court since 1969. During his tenure in the system, he has served under four Chief Justices.

In his current position, Dr. Harrall is responsible for preparing and supervising the judicial budget of \$54 million; funding a system of 6 courts with approximately 700 employees; supervising judicial facilities; personnel management; judicial information systems supporting all courts statewide, including such related agencies as the Public Defender, Attorney General, and the Department of Corrections; judicial planning that is carried out by a full-time staff involved in both short-term projects and long-term planning activities; records management; and representing the court's positions on issues relevant to the executive and legislative branches, legal profession, and various community groups.

Beyond his immediate responsibilities at the Supreme Court, Dr. Harrall has served on a number of special study commissions and advisory groups addressing specific aspects of the justice system and/or government at large. He has taught at several colleges and universities; arranged and conducted international

seminars; and published a number of articles related to management in the public sector. He also has originated a national management newsletter, and served on the National Council of the American Society for Public Administration, and as an editor of *Public Administration Review*. He has consulted extensively with courts in jurisdictions throughout the United States and Canada.

Dr. Harrall received his Ph.D. in political science from the University of Connecticut. He also holds an M.P.A. from the University of Rhode Island and a B.A. from Drew University (New Jersey). Dr. Harrall was also a Ford Foundation Fellow at the University of Denver Law Center's Institute for Court Management.

Jean Itzin

Jean Itzin has worked in the Florida Department of Law Enforcement's (FDLE) Criminal Justice Information Services area since 1985. She has been instrumental in the design and implementation of many statewide information programs, including the 1988 incident-based Uniform Crime Reports (UCR) Program, the Offender-Based Transaction System, law enforcement notification forms for pawn transactions, the Florida point-of-sale record check program for firearm purchasers, and the system for sharing civil writs for child support enforcement, as well as the current major upgrade of the Florida Crime Information Center (FCIC) and criminal history repository.

Ms. Itzin currently supervises the FDLE's Strategic Planning and Systems Integrity Section, which includes the FCIC audit program, and coordinates activities for

Florida's Criminal and Juvenile Justice Information Systems Council, which provides advisory oversight for criminal justice data sharing in the State. She also manages the State's UCR Program, as well as the development of a new program for the tracking of domestic violence. She was previously an Inspector with the Federal Bureau of Alcohol, Tobacco and Firearms.

Ms. Itzin holds a B.S. degree from the University of Illinois and a M.S. in criminology from Florida State University.

Barbara King

Barbara King is the former Director of the Information Technology and Communications Division of the Maryland Department of Public Safety and Correctional Services. In that position, Ms. King managed more than 250 employees who were engaged in the identification of criminal offenders; the collection, storage, and dissemination of criminal history record information; the planning, development, maintenance, and operation of criminal justice information systems for use by all executive and judicial branch criminal justice agencies; and the planning, development, coordination, maintenance, and operation of automated information systems within the Department to assist with the apprehension, supervision, and incarceration of criminal offenders, and the overall promotion of public safety.

Ms. King was appointed by Gov. Parris N. Glendening to the Criminal Justice Advisory Board and was designated the board's Chair for the remainder of the 3-year term. She also formerly served as Maryland's governor-appointee

to the SEARCH Membership Group.

Ms. King has a B.S. degree in technological management from the University of Maryland, University College.

J. Denis Moran

J. Denis Moran assumed his duties as Director of Wisconsin's State Courts in 1978. Prior to his current position, Mr. Moran served as Chief Deputy Court Administrator of the Philadelphia County Court System following service as the Deputy Court Administrator for Operations and the Director of Bail Programs, also for the Philadelphia Courts. He also served in law enforcement in southern California before entering court administration.

Mr. Moran is a past President of the Conference of State Court Administrators and past Vice Chair of the National Center for State Courts. He is currently a member of the Wisconsin Judicial Council, Wisconsin Judicial Education Committee, American Bar Association, American Judicature Society, and the National Association for Court Management. He was a Fellow of the Institute for Court Management in 1972 and received certification in court administration from the National Judicial College.

Mr. Moran received a B.S. degree from California State University, San Diego. He earned his J.D. at Temple University School of Law.

Edward L. Papps

Edward L. Papps is a Senior Court Technology Associate with the National Center for State Courts (NCSC). From 1989 to 1999, Mr. Papps was Director of Computer

Services for the 16th Judicial Circuit Court of Missouri in Kansas City.

Mr. Papps has served as a member of the Advisory Committee on Technology for NCSC. He currently serves on the Board of Directors for the World Information Technology Congress, and is the founder of the Judicial National MIS Directors.

Mr. Papps received a B.S.B.A. in systems management from Rockhurst College (Missouri).

Thomas Ralston

Thomas Ralston has been Court Administrator for the Superior Court of Delaware since 1982. Superior Court is a statewide, general jurisdiction court with 19 judges, 4 commissioners/masters, and 295 employees with an annual budget of \$14.6 million.

Mr. Ralston previously served in administrative capacities in the public schools of New Castle County, Delaware. He has served on the Board of Directors of the National Association for Court Management (NACM) and was Editor of *The Court Manager*, NACM's quarterly journal. He currently is NACM's liaison to the American Bar Association's Task Force on Reduction of Litigation Cost and Delay. He is also currently serving a 3-year term on the Forum on the Advancement of Court Technology (FACT) and is a member of the NACM/Conference of State Court Administrators' Joint Technology Committee.

Mr. Ralston is a founding member and past President of the Mid-Atlantic Association for Court Management. He received NACM's Award for Merit in 1995

and the NCSC's 1997 Distinguished Service Award.

Mr. Ralston received a B.S. degree and an M.B.A from the University of Delaware.

Theron A. Schnure

Theron A. Schnure is directing the development of Connecticut's integrated Criminal Justice Information System (CJIS) among the criminal justice agencies in both the judicial and executive branches of the State.

The major initiative is the establishment of an Offender-Based Tracking System (OBTS), a \$23.6 million project that will link all offender information from the time of an incident and arrest to the release from supervision and beyond. Special programs in the Connecticut CJIS initiative include the National Incident-Based Reporting System (NIBRS); the National Instant Criminal Background Check System (NICS); a sex offender registry; a protective, restraining, and no-contact database; and the criminal history system. In addition, he is coordinating Federal and State funding programs to provide for the common support of the CJIS-OBTS in Connecticut.

Mr. Schnure has been responsible for planning and formulating policy for the development and conservation of Connecticut's physical resources and infrastructure, including the development of public safety programs and policies, as well as the management and utilization of census and other statistical data. He has organized and established intergovernmental agencies and has implemented programs at the State, regional, and local levels.

In addition to his 27 years with the State of Connecticut, Mr. Schnure served as an Air Intelligence Officer in the United States Naval Reserve during the Vietnam conflict. He is Connecticut's representative to the Membership Group of SEARCH, The National Consortium for Justice Information and Statistics.

Mr. Schnure received his B.S. degree from Pennsylvania State University and his M.S. from Florida State University.

Cal Sieg

Cal Sieg is the Unit Chief of the Access Integrity Unit, Programs Support Section, Criminal Justice Information Services Division, Federal Bureau of Investigation (FBI). He previously served as an FBI Special Agent since November 1978; he has held field assignments in Omaha, Nebraska; San Juan, Puerto Rico; Las Cruces, New Mexico; and Dallas, Texas.

While in the FBI, Mr. Sieg served on task forces involving violent crimes/fugitives and interstate property crime. He also worked in the areas of domestic and international terrorism, white-collar crimes, civil rights violations, and drugs. In addition, he served as a legal, police, SWAT, and defensive tactics instructor.

Mr. Sieg received his J.D. from Baylor University and his B.A. from Chapman College.

Alan Slater

Alan Slater has been Executive Officer of the Orange County (California) Superior Court since 1981. He served as the Assistant Executive Officer of that court from 1972 to 1980. Mr. Slater has primary responsibility for all the

administrative and nonjudicial functions of this metropolitan general jurisdiction court of 79 judicial positions, including serving as Jury Commissioner for the Superior and Municipal Courts of Orange County. In January 1994, he also assumed responsibility for all functions of the Clerk of the Superior Court.

Mr. Slater is serving or has served on numerous national, State, and local advisory boards and committees in the field of judicial administration and is a member of a number of professional organizations.

Mr. Slater holds a master's degree in judicial administration from the University of California; an M.B.A. in administrative management from the University of Southern California; and a B.S. in business administration from Rutgers University. He has either attended or served as a faculty resource or instructor for professional training programs presented by the University of Southern California, the Institute for Court Management, National Center for State Courts, American Bar Association, National Conference of State Bar Presidents, National Judicial College, California Judicial Council, California Center for Judicial Education and Research, and National Association for Court Management.

George B. Trubow

George B. Trubow is a Professor teaching Torts, Information Law and Policy, Right to Privacy, and Computers in the Law at The John Marshall Law School in Chicago. Prof. Trubow is also Director of the Center for Information Technology and Privacy Law at the law school.

After trial and appellate practice in Kansas and Missouri, Prof. Trubow was an Assistant Professor at John Marshall from 1961 to 1965, when he was appointed a Congressional Fellow. After the fellowship, he was appointed Deputy Counsel to the U.S. Senate Judiciary Committee, and thereafter served as Executive Director of the Maryland Commission on the Administration of Justice; Director of Planning, Law Enforcement Assistance Administration, U.S. Department of Justice; and General Counsel to the Committee on the Right to Privacy, Executive Office of the President, in the Ford Administration.

Since returning to John Marshall in 1976, Prof. Trubow has written a variety of publications, chaired numerous American Bar Association committees, and testified on information and privacy issues before congressional committees. He is also the editor of the three-volume work, *Privacy Law and Practice*, published in 1987. Prof. Trubow also served on a panel for the Office of Technology Assessment that examined the issues concerning DNA profiles for forensic purposes. He also is a member at-large of the SEARCH Membership Group and serves on the SEARCH Board of Directors.

Prof. Trubow is a graduate of the University of Michigan, where he received his A.B. and J.D. degrees.

Richelle "Chelle" Uecker

As Deputy District Administrator for the Fourth Judicial District in Hennepin County, Minnesota, Richelle Uecker has worked in courts for 25 years. For the past 6 years, Ms. Uecker has been active in developing Total Quality Management programs and is a

member of the district's Quality Steering Team, which oversees internal and external customer service programs for the court's quality improvement initiatives.

Ms. Uecker serves on many State and national advisory committees. She also acts as a liaison in the criminal justice community. She promoted and assisted in the establishment of a training program and new employee development within the court. She also was instrumental in the recent planning and development of the court's Public Service Level program, which provides litigants, the community, and bar association with improved customer service. Ms. Uecker has been a key element in the creation of the court's Community Speakers Bureau, which includes three work teams in the areas of neighborhoods, law enforcement, and schools and churches.

Ms. Uecker was appointed by the Hennepin County Board to represent the courts in review and selection of an integrated justice computer system and its new jail facility. She also serves as a member of the State's criminal and juvenile justice task forces.

Ms. Uecker is a Fellow of the Institute for Court Management (1995) and serves as a consultant and trainer on customer service and the quality process to court systems nationally.

Donna M. Uzzell

Donna M. Uzzell was appointed Director of Criminal Justice Information Services (CJIS) for the Florida Department of Law Enforcement (FDLE) in November 1996, after serving as Special Agent in Charge of the Investigative Support Bureau. The

CJIS program provides instant telecommunications capabilities for law enforcement throughout the State; criminal justice information storage and retrieval capabilities in Florida and throughout the entire Nation; criminal identification services; the ability to document and analyze criminal activity for the entire State; statistical and crime trend analysis; criminal record inquiry services for governmental, private, and public record requests; improved system integrity through biennial terminal audits; and a statewide training program for law enforcement. Prior to her appointment at FDLE, she was a sergeant with the Tallahassee Police Department and a member with that agency for 13 years.

In 1988, Ms. Uzzell was elected to the Leon County (Florida) School Board and completed her 8 years in office, serving 2 years as Board Chair. During the past 8 years, she has worked on safe school policy and procedures and has conducted training throughout the State on crisis intervention, safe school planning, interagency collaboration, and the Serious Habitual Offender Comprehensive Action Program (SHOCAP). She currently is an adjunct professor at Florida State University, teaching in the School of Criminology. She is also a consultant for Fox Valley Technical College in Wisconsin.

Ms. Uzzell is a certified crime prevention practitioner and former D.A.R.E. officer. She has received recognition for her work in the area of child safety, including a Law Enforcement Officer of the Year award. She has served on several statewide task forces on school and child safety and juvenile justice issues. In 1993, she completed a 4-month special assignment to the Commissioner of Education on law

enforcement and education collaborative relationships. In 1993, she spent 5 months on special assignment to the Florida Attorney General's Office developing and implementing the Florida Community Juvenile Justice Partnership Grant Program.

Lawrence P. Webster

Lawrence P. Webster is Director of the Delaware Administrative Office of the Courts. Mr. Webster has spent more than a decade working with court automation and just prior to serving in his present position, he was the Executive Director of Court Technology Programs at the National Center for State Courts (NCSC).

Before joining the NCSC, Mr. Webster was Director of Data Processing for the Utah courts, where he supervised the automation of the district and circuit courts, and the court of appeals, and was responsible for maintaining existing systems in the supreme and juvenile courts. He has also worked with the United States Attorney in Denver, Colorado, on the implementation of a case management system and office automation and assisted the Executive Office of United States Attorneys with implementation of the system at other locations.

Mr. Webster has been a member of the National Association for Court Management and the American Bar Association. He is currently a member of the Board of Directors of the National Association for Justice Information Systems. He was Contributing Editor for the *Court Management Quarterly* and also taught a course in computers and system analysis at the University of Denver College of Law for 4 years.

Mr. Webster holds an M.S. in judicial administration from the University of Denver College of Law and has done doctoral work at the University of Colorado at Denver.

Robert Wessels

Robert Wessels is Court Manager for the 14 County Criminal Courts at Law, Harris County, Texas, a position he has held since 1976. In this position, he is responsible for the areas of caseload management, budget, legislative/governmental liaison, management information systems, court support services, policy development, and evaluation. He has conducted court systems evaluations for the Governor's Office, Criminal Justice Division (1975-80); the Judicial Planning Committee (1981-82); and numerous county governments.

Mr. Wessels has taught in the areas of court management, judicial administration, and management information systems as an adjunct professor at the University of Houston, Clear Lake; Sam Houston State University; the Institute for Court Management (ICM); and the Texas College for New Judges.

Mr. Wessels is a founding and current member of the Texas Association for Court Administration. He has served on that organization's Board of Directors and chaired its Professional Development Committee. He is Director of the "Professional Development Program for Texas Court Administrators and Coordinators," a three-course program he authored with Judge Paul Ferguson and held under the auspices of the Texas Judicial College.

Mr. Wessels is the President of the National Association for Court

Management. He also is a member of the Institute for Judicial Association, the American Judicature Society, and several other professional organizations. He is the 1989 recipient of the Defensor Pacem Medal awarded annually by the Criminal Justice Center, Sam Houston State University. He also was honored by his court administrator colleagues for his contribution to Texas Trial Court Management when he was chosen to receive the first "Justice Charles W. Barrow Award."

Mr. Wessels received his B.A. degree from Sam Houston State University and his M.A. from the University of Houston, Clear Lake. In addition, he is a Fellow of the ICM.

Staff biographies

— U.S. Department of Justice

Carol G. Kaplan

Carol G. Kaplan is Chief of the Criminal History Improvement Programs for the Bureau of Justice Statistics (BJS), U.S. Department of Justice. In this capacity, she is responsible for directing and managing all BJS-funded programs that focus on improving the quality and accessibility of State and local criminal history records and support the development of the national criminal record system. Ms. Kaplan is also responsible for all BJS activity associated with the *Brady Handgun Violence Prevention Act* and the *National Child Protection Act*.

Prior to her current appointment, Ms. Kaplan served as the Assistant Deputy Director of BJS, overseeing programs relating to criminal justice information policy, record improvement, and Federal justice

statistics. In this position, she established the BJS publication series dealing with criminal history record issues and Federal justice statistics.

Ms. Kaplan has been involved in Federal efforts to support improvement of the Nation's criminal records since the inception of the program in BJS' predecessor agency. She participated in the drafting of initial landmark regulations governing accuracy, completeness, and confidentiality of criminal records and ensuring confidentiality of research data. She has served on numerous interagency task forces focusing on the development of policies and standards to support record usage. She was also a charter member of the Intelligence Systems Policy Review Board.

Ms. Kaplan was formerly an attorney with the Department of Health, Education and Welfare and the Federal Communications Commission. She is a graduate of Columbia University School of Law and Radcliffe College.

— National Center for State Courts

Kay Farley

Kay Farley is Senior Policy Analyst II in the Office of Government Relations of the National Center for State Courts (NCSC). She is responsible for monitoring and analyzing congressional and Federal government agency activity that would impact State court operations, with particular emphasis on funding and children and family-related issues. Ms. Farley is also responsible for informing State court leaders of national activities and assisting in the development and articulation of

policy for the leadership and committees of the NCSC, Conference of Chief Justices (CCJ), Conference of State Court Administrators (COSCA), National Association for Court Management (NACM), and the American Judges Association. Ms. Farley serves as liaison for the NCSC, CCJ, and COSCA with Congress and Federal government agencies related to funding and children and family policy. Additionally, Ms. Farley is responsible for coordinating government relations activities with other national organizations with common concerns

Prior to joining NCSC, Ms. Farley was Director with MAXIMUS, Inc. and Coordinator of Children and Family Programs for the Office of Judicial Administration, Kansas Supreme Court. Ms. Farley received her B. S. from Illinois State University and her M.P.A. from the University of Kansas.

Ms. Farley has extensive experience in court-related programs for children and families, particularly in the areas of child support enforcement, child welfare, and juvenile justice. Her experience includes both policy development and program implementation. Specifically, Ms. Farley has experience in developing programs, such as court trustee programs for the enforcement of child support, Court Appointed Special Advocate (CASA) programs, Foster Care Review Board programs, and Juvenile Intake and Assessment programs. Ms. Farley has also been trained as a mediator in parent-adolescent disputes. As a member of the Kansas Supreme Court Advisory Committee on Alternative Dispute Resolution (ADR), Ms. Farley assisted in the development of recommended training standards and program

certification requirements for court-related ADR programs.

Dr. Thomas A. Henderson

Dr. Thomas A. Henderson is Executive Director of the Office of Government Relations for the National Center for State Courts (NCSC). He directs the activities in support of the national policy initiatives in Congress, the executive branch and the Federal judiciary of the NCSC, the Conference of Chief Justices, the Conference of State Court Administrators, the National Association for Court Management (NACM), and other associations of State court leaders. He writes a regular column on national issues and events affecting State courts for the NCSC's *State Court Journal*, and for NACM's publication, *The Court Manager*.

Dr. Henderson has been involved in the improvement of judicial management and public administration for many years. He has directed projects on such subjects as court unification, child support guidelines, judicial recordkeeping systems, and caseload management. Among his publications are *Structuring Justice: The Implications of Court Unification Reforms* (co-author) and *Modifying and Updating Child Support Orders* (co-author), as well as many articles and reports. He has organized and participated in numerous workshops on public management. He is co-author of two teaching simulations of the budget process.

Dr. Henderson was formerly Executive Director of the Criminal Justice Statistics Association; co-founder of the Institute for Economic and Policy Studies, Inc.; Staff Associate with the Council of State Governments; and professor

of political science at the University of Florida and Georgia State University. He holds a B.A. from Haverford (Pennsylvania) and a Ph.D. from Columbia University.

Edward H. O'Connell, Jr.

Edward H. O'Connell, Jr. is a Senior Counsel in the Washington, D.C., office of the National Center for State Courts. Prior to working with the Center, Mr. O'Connell spent 19 years as congressional staff: he was Counsel for the House Judiciary, Energy and Commerce, and Government Operations Committees. He also was Program Director and Chief of staff for Sen. Charles Mathias (R-MD).

Before joining the legislative branch, Mr. O'Connell had spent 16 years with the U.S. Department of Justice, rising to become one of the youngest "supergrade" executives in the Department's history. He served as Counsel in the Legal and Legislative Office; a Trial Attorney in the Civil Rights Division; and as a Mediator, Regional Director and Executive Assistant to the Director in the Community Relations Service.

Mr. O'Connell also worked in the General Counsel's Office of the U.S. Air Force just after his graduation from the Indiana University School of Law. While in law school, he received a scholarship and was a member of the *Indiana Law Journal*. His undergraduate studies were at Purdue University, where he received a B.S. in engineering law.

— **SEARCH, The National Consortium for Justice Information and Statistics**

Sheila J. Barton

As a Deputy Director of SEARCH, Sheila J. Barton is responsible for the development and implementation of a multifaceted program of public policy analysis; documentation of State and Federal information policy development, education, and assistance to State and local policymakers; the conduct of national conferences and workshops on justice information policy issues; and the publication of timely studies on justice information policy. She is also In-house Counsel and staff to the SEARCH Law and Policy Program Advisory Committee and Board of Directors.

Prior to joining SEARCH, Ms. Barton was a Municipal Judge in Cheyenne, Wyoming, and also was engaged in the private practice of law. She also has held the positions of Public Defender for Cheyenne and Staff Attorney to the Wyoming Supreme Court. She previously served in the New York State Department of Correctional Services, Office of the Special Legal Assistant to the Commissioner, and as a Legal Specialist for the Department's Division of Health Services. Prior to her service in New York, she was Associate County Judge for Lincoln County, Nebraska.

She holds a B.A. from Augustana College (South Dakota) and a J.D. from the University of Nebraska College of Law.

Robert R. Belair

Robert R. Belair is a partner with the Washington, D.C., law firm of Mullenholz, Brimsek & Belair and is General Counsel to SEARCH. He also serves as CEO of Privacy and Legislative Associates, a legal and policy consulting firm. The principal emphasis of Mr. Belair's practice is privacy and information law involving administrative, legislative, and litigation activity. His practice includes counseling in all aspects of privacy and information law, including credit, financial, educational, criminal, juvenile, medical and employment records, and telecommunications; defamation; intellectual property, including software copyright; constitutional law; and criminal justice administration.

As General Counsel to SEARCH, Mr. Belair has participated in SEARCH's privacy and security programs and has authored many studies in the area of criminal justice information law and policy. He was actively involved in the development of SEARCH's revised standards of criminal history record information, *Technical Report No. 13: Standards for the Security and Privacy of Criminal History Record Information* (Third Edition).

Mr. Belair has served as consultant to numerous Federal agencies and commissions on information policy and law. He is former Deputy General Counsel and Acting Counsel of the Domestic Council Committee on the Right of Privacy, Office of the President.

Mr. Belair is a graduate of Kalamazoo College (Michigan) and Columbia University School of Law.

Owen M. Greenspan

Owen M. Greenspan has been a Criminal Justice Information Services Specialist with SEARCH since 1995. In this position, Mr. Greenspan provides technical assistance in support of the National Criminal History Improvement Program activities conducted by SEARCH. He also provides assistance involving other projects of both the Law and Policy and Systems and Technology Programs of SEARCH. Prior to joining the SEARCH staff, Mr. Greenspan was Deputy Commissioner, Office of Identification Services, New York State Division of Criminal Justice Services. As Deputy Commissioner, he was responsible for the maintenance and dissemination of the 4 million records of the State's computerized criminal history file. He also oversaw the processing of employment or licenser-related fingerprint submissions from client agencies, and planned and implemented the statewide Automated Fingerprint Identification System in New York. He also developed a legislative program to enhance the safety of children through strengthened criminal penalties, improved missing children investigative capabilities, and safety education.

Prior to his appointment as Deputy Commissioner in 1988, Mr. Greenspan served 20 years as a uniformed member of the New York City Police Department. His last assignment was Commanding Officer of the Identification Section, where he was responsible for the development, modification, and implementation of programs and practices spanning line and support operations and the supervision of professional, technical, and clerical staff.

Mr. Greenspan was New York's governor appointee to SEARCH and served as Vice Chair of the Membership Group and the Board of Directors. He has been a member of the National Task Force on Criminal History Record Disposition Reporting and served on several advisory groups dealing with the national criminal history and identification systems.

Mr. Greenspan holds an M.P.S. in criminal justice from Long Island University, C.W. Post College (New York), and a B.A. in social sciences from Fordham University (New York).

Paul L. Woodard

Paul L. Woodard is Senior Counsel in the Law and Policy Program at SEARCH and has been associated with SEARCH since 1974. As Senior Counsel, Mr. Woodard has been involved in providing technical assistance to State and local criminal justice agencies dealing with the development of policies and procedures and writing legislation for managing criminal history records. In addition, he has provided policy support to special studies focusing on the information practices of sealing and purging criminal history record information; media access to criminal justice information; and improving criminal history record disposition reporting. Mr. Woodard also was the project coordinator of a contract with the FBI and principal author of a report pursuant to that contract titled, "A Study of Non-Criminal Justice Access to and Use of the Interstate Identification Index."

Mr. Woodard has conducted projects to audit the security and privacy policies and procedures and data quality levels of major State repositories of criminal history

records. In addition, he has designed data quality audit programs to be conducted by State audit officials at both the State repository and local agency levels.

Prior to his association with SEARCH, Mr. Woodard served as President of Studies in Justice; Associate Deputy Attorney General for Legislation and Congressional Relations, U.S. Department of Justice; Assistant Administrator and General Counsel, Law Enforcement Assistance Administration; Chief Counsel and Staff Director, Subcommittee on Constitutional Rights, U.S. Senate; Chief Counsel and Staff Director, Subcommittee on Separation of Powers, U.S. Senate; Assistant Counsel, Subcommittee on Criminal Laws and Procedures, U.S. Senate; and an Associate with the law firm of Dechert, Price and Rhoads, in Philadelphia, Pennsylvania.

Mr. Woodard is a graduate of the University of North Carolina, Chapel Hill, and the University of Virginia Law School.

Appendix 2:

Implementation of Federal legislation imposing reporting requirements and expectations on selected State judicial systems

The National Task Force sought empirical data from the States of Colorado, Florida and Louisiana to illustrate how different State court systems have dealt with the issues surrounding the implementation of Federal reporting requirements. The Colorado data were compiled during a site visit, and the Florida and Louisiana data are based on written submissions. Summaries of those responses are as follows.

Colorado

The National Center for State Courts recommended Colorado as one of the case study sites because the jurisdiction has implemented a statewide integrated justice information system. Project staff coordinated the site visit with State Court Administrator Steven V. Berson and his staff. The site visit was completed on February 22, 1999. Prior to the visit, project staff provided Mr. Berson and his staff with a series of 10 questions and summaries of the applicable Federal statutes.¹³⁰

The Colorado Integrated Criminal Justice Information System (CICJIS) established an integrated computer information system that standardizes data and communications technology throughout the criminal justice community; that is, law enforcement, district attorneys, State-funded courts, and State-funded youth and adult corrections. CICJIS is governed by an Executive Policy Board comprised of the executive directors of the Department of Public Safety, Department of Corrections,

Department of Human Services, and the Colorado District Attorneys Council, as well as the State Court Administrator.¹³¹

CICJIS facilitates tracking the complete life cycle of a criminal case through its various stages involving all criminal justice agencies, without unnecessary duplication of data entry and data storage. CICJIS is a closed network, linking five host systems — law enforcement (CCIC), Department of Corrections (DOC), District Attorneys Council (CDAC), Division of Youth Corrections (DYC), and the Judiciary (ICON) — via Sybase middleware and a Central Index containing information on offenders, names, various identifiers, demographics, offender status, and events. CICJIS became operational in May 1998.

CICJIS and ICON, which, together with several minor applications, support 2,500 court and probation users, were designed to meet the operational needs of court and probation staff statewide. The systems were driven by operational imperatives confronting State and local users. This broader design and implementation effort enabled developers to seamlessly incorporate many of the reporting requirements of the Federal reporting initiatives contemplated in this research.

This research posed a series of specific questions, which are presented below, along with the

responses from Colorado State officials. Project staff met with Dr. Robert Roper, a member of the CICJIS Task Force, and several of his staff in the Integrated Information Services (IIS) Division, Colorado Judicial Branch, in February 1999 to review these issues.

1. What is the current status of the implementation of the reporting requirements in the State? What role does/did the judiciary play in meeting those requirements?

Before CICJIS, the judiciary sent information (for example, dispositions, sentences, and so on) to the Colorado Bureau of Investigation (CBI) in batch, where they were subsequently used to populate the registries for local and Federal reporting. With CICJIS, the information becomes real-time; as soon as it is entered into the court system (ICON), it automatically populates CJIS and is available to users throughout. The courts have implemented new fingerprinting procedures, which have resulted in 30 percent to 40 percent more fingerprints being captured.

To build CICJIS, the judiciary, together with the partner organizations identified above, substantially revised their operations, data collection forms, and information systems. These changes were implemented to streamline operations and build the integrated linkages envisioned in CICJIS. As these changes were being implemented,

¹³⁰The Colorado portion of this Appendix was prepared by David J. Roberts, SEARCH Deputy Executive Director.

¹³¹For more complete information regarding the CICJIS and ICON systems, *see* the Colorado profile on SEARCH's integration Web site at <http://www.search.org/integration> or on the Colorado State Web site at http://www.state.co.us/gov_dir/cicjis/.

developers simply incorporated the reporting requirements that are contemplated in the Federal initiatives that are the subject of study. Because CICJIS required significant planning, redesign, and business process reengineering, the technical development team leveraged that opportunity for change to incorporate the necessary Federal reporting requirements.

2. How much understanding is there among judicial officials of the requirements of the law?

There is very good understanding by the judiciary. Moreover, the Chief Justice is about to issue a directive on data quality that will underscore the importance of implementing procedures to ensure that entry of critical data into the judiciary's automated information system (ICON) is complete, accurate and timely.¹³² The directive will enable the Chief Justice to tie funding for courts to the quality of their data. The program is being implemented in three pilot courts, where teams are looking at how they are collecting data, checking computer reports, etc. They are set to be finished by June 1, 1999, and will begin actively monitoring data quality of courts by July 1, 1999. Data quality will be analyzed at both

the State and local levels on a continuous basis.

3. What were the major events that lead to the current status?

The primary event leading to the current status is the implementation of CICJIS, which went operational on May 4, 1998.

4. What strengths and what weaknesses did the State judiciary and trial courts bring to the problem of implementation?

Fingerprints for positive identification were the major weakness. The judiciary implemented a new fingerprinting form and automated the fingerprinting order to ensure that prints were taken on all eligible arrestees. They also created a fingerprint docket, which is produced together with the regular docket. The clerk then checks to ensure that everyone is appropriately fingerprinted.

Strengths are the judiciary's strong support of ICON and CICJIS. There is operational payoff in improved information, better quality, more timely data, and — as a consequence — better decisions.

5. At what point did the judiciary become involved/aware of the issues?

The judiciary really became aware of the issues within the past 5 years, as ICON and

CICJIS were planned and implemented.

6. What were the technical resources required to meet the requirements and how were they distributed within the judiciary?

The IIS Division is a 43-person team, including some technical staff who provide on-site, regional training. The State consolidated its computer operations to a mainframe from 14 regional AS-400 systems. They have real-time replication with off-site business recovery. They maintain one technical support staff per 350 users, which is extraordinarily small and speaks to the quality of their operations.

7. Who provided the leadership in meeting the requirements?

The Chief Justice provided very strong leadership throughout the planning and implementation of CICJIS. Strong leadership also came from the State Court Administrator, key State legislators, and key judges around the State.

8. Where did the financial, technical, management, and administrative resources come from in addressing the problem (Federal, State, local)?

ICON is fully funded by the State. CICJIS is funded 75 percent by the State; 25 percent by Federal funds (Byrne and CHRI funds).

¹³²Directive 99-02, *Coding Procedures Relating to Public Safety, Resource Utilization & Management*. Office of the Chief Justice, Supreme Court of Colorado.

9. How did the effort to meet these requirements shift the priorities of the judiciary?

The judiciary now has a significantly greater demand for data. The ready availability of timely, complete, and accurate information has shown the judiciary what is possible, and their appetite has grown for even more data.

10. Which local jurisdictions have had the greatest success and which the least, and why?

CICJIS and ICON are statewide applications. One of the approaches Colorado has taken is to build from centralized legacy systems, with middleware solutions. Consequently, there is not significant variation in the capabilities of local jurisdictions, as seen in decentralized approaches.

The single key to success is *leadership*. The Chief Justice, key legislators, judges, and the State Court Administrator had the authority, the vision, the willingness, and the ability to implement the necessary applications.

Florida

This section is based upon a written submission made to the Task Force by Kenneth R. Palmer, Florida State Courts Administrator, in February 2000. The responses are organized around the 10 questions submitted by project staff.

1. What is the current status of the implementation of the reporting requirements in the State? What role does/did the judiciary play in meeting those requirements?

In Florida, for the most part, the responsibility for implementation of Federal mandates in the areas of protective orders, sex offender registries, and welfare reform fall under the jurisdiction of various criminal justice or other executive branch entities, including the Florida Department of Law Enforcement (FDLE), Department of Corrections (DOC), Department of Revenue (DOR), and local sheriffs and clerks of court. Although the Florida Office of the State Courts Administrator (OSCA) does mandate the collection of statewide Offender-Based Transaction System (OBTS) data, these submissions do not include data related to court protection orders and sex offender registration.

Court Protection Orders

The State is currently meeting the reporting requirements of court protection orders through the entry of domestic violence injunction data into the Florida Crime Information Center (FCIC) database.

Sexual Offender Registry

On October 1, 1997, Florida’s *Public Safety Information Act* went into effect. This act responded to the Federal *Wetterling Act*. Additionally, the 1998 Legislature passed various revisions and additions to the *Florida Sexual Predator*

Act and the *Florida Public Safety Information Act* to conform to Federal requirements and further enhance the effectiveness of sexual predator and offender laws. These changes included:

- Mandatory registration requirements with the Department of Highway Safety and Motor Vehicles.
- Notification of the presence of a sexual predator by the sheriff of the county or the chief of police of the municipality to each licensed day care center, elementary school, middle school, and high school within a 1-mile radius of the predator’s residence.
- Clarification regarding the registration of out-of-State offenders and sexual predators/offenders as convicted felons.
- Clarification of residence and conviction terms.
- Clarification regarding registration of sexual predators/offenders who are under the custody of a local law enforcement facility or under Federal supervision.
- The *Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act*.
- Additional statute criteria for sexual predator status designations.

Welfare Reform Act of 1996

The Court role in meeting the reporting requirements of the State case registry was minimal. The Florida Supreme Court adopted a Notice of Social Security Number form to be filed in child support cases for use in IV-D child support enforcement. The clerks of court worked with the Florida Department of Revenue (the IV-D agency) to establish linkages for the transmission of data from the clerks' offices, through the statewide clerks association, to the Department of Revenue. This was accomplished via contract between the DOR and The Florida Association of Court Clerks and Comptrollers. The workload and cost impact was significant and compliance required several years of development work.

2. How much understanding is there among judicial officials of the requirements of the law?

Court Protection Orders

A clear understanding. In 1998, the Florida Supreme Court amended rule 12.610, Family Law Rules of Procedure, to require judges entering orders for protection to issue those orders on mandatory forms. The primary reason for creating mandatory injunction forms was to assist law enforcement in identifying and enforcing the orders. Consistent with the qualifications for the Federal firearm provisions to apply, these mandatory orders state that they are final and are issued after a hearing with notice; and they contain

explicit findings or restraining language indicating clearly that the court intends the order to protect the victim from physical harm.

Sexual Offender Registry

Based on information provided by the FDLE's Sexual Offender/Predator Unit, it would appear that there is a very clear understanding of the requirements of the law. In support of these issues, FDLE developed "Guidelines to Florida Sex Offender Laws," which outline the registry requirements, agency responsibilities, sexual predator/offender restrictions, and so on. Under the Guidelines, clerks of court are required to forward certified copies to the DOC and FDLE of any order entered by the court imposing any special condition or restriction on the sexual offender or predator which restricts or prohibits access to the victim, if the victim is a minor, or to other minors. If a sexual offender or predator is not sentenced to a term of imprisonment, the clerks of court are required to submit the individual's fingerprints to FDLE. The clerks of court must also, in certain circumstances, forward to FDLE a copy of any written order that includes a finding that an individual is a sexual predator.

Welfare Reform Act of 1996

OSCA sent an advisory to judges regarding the identification requirements of child support orders. The judiciary has also been exposed to the requirements through judicial education programs.

3. What were the major events that lead to the current status?

Court Protection Orders

During the 1994 legislative session, the Florida Legislature addressed issues regarding domestic violence and repeat violence injunctions. It was determined that a centralized statewide system for entering domestic violence injunctions was needed. House Bills 525 and 1949 were passed; they required the FDLE to create a Domestic and Repeat Violence Injunction Statewide Verification System by July 1, 1994.

Sexual Offender Registry

The cooperative efforts of all entities involved enabled Florida to reach the current status.

Welfare Reform Act of 1996

The Florida Legislature recognized the vital role that the clerks of court play in Florida in the child support system, and found there to be no viable alternative to the role of the clerks of court in the collection, safeguarding, and provision of child support information. As a result, legislation was passed under which the Department of Revenue contracted with the Florida Association of Court Clerks and Comptrollers, and each depository to perform duties with respect to the operation and maintenance of a State Disbursement Unit and the non-Title IV-D component of the State Case Registry, required by the *Welfare Reform Act*.

The Florida Supreme Court is currently considering a rule, proposed by the Family Court Steering Committee, that would address the override process for the family violence indicator on a record in the Federal case registry.

4. What strengths and what weaknesses did the State judiciary and trial courts bring to the problem of implementation?

Court Protection Orders

Because Florida has independent, locally elected clerks of court, neither the judiciary nor trial court administration were heavily involved in developing the statewide system. The clerks of court initially estimated a significant fiscal impact to automate and report on domestic violence protection orders. A less expensive, alternative process was ultimately adopted. Clerks of court are required to furnish copies of injunctions to the sheriff's office having jurisdiction over the petitioner. The clerks of court must also provide a copy of the injunction and related papers to the sheriff's office or law enforcement agency where the respondent can be found for service with the injunction. The sheriffs' offices are responsible for entering the order into the FCIC. Clerks of court must notify the sheriff's office when any changes are made to an injunction or when the injunction has been terminated, so that the

injunction can be updated in the FCIC as appropriate. In an attempt to obtain the necessary data, several jurisdictions created a form to be included with the domestic violence injunction petition.

Also, many agencies inquire into local records, FCIC files or driver license records in an attempt to gather the information so that the data can be entered into the FCIC system.

Sexual Offender Registry

OCSA was not actively involved in development of the system.

Welfare Reform Act of 1996

The State judiciary identified concerns about privacy issues related to use of social security numbers.

5. At what point did the judiciary become involved/aware of the issues?

Court Protection Orders

OCSA had no significant involvement with these issues.

Sexual Offender Registry

OCSA was not actively involved in development of the system.

Welfare Reform Act of 1996

The judiciary primarily became involved in the fall of 1998 when the clerks of court requested that the Court adopt a form to be used in placing a family violence indicator on State case registry files.

6. What were the technical resources required to meet the requirements and how were they distributed within the judiciary?

Court Protection Orders

The technical requirements and the associated technical resources for the FCIC fall under the jurisdiction of FDLE.

Sexual Offender Registry

The Sexual Offender Registry and the associated technical resources fall under the jurisdiction of FDLE.

Welfare Reform Act of 1996

Technical resources required by the clerks of court were extensive and were reviewed by the Florida Association of Court Clerks and Comptrollers, which provided assistance to local courts.

7. Who provided the leadership in meeting the requirements?

Court Protection Orders

FDLE has primary responsibility for the protective order system.

Sexual Offender Registry

It was a cooperative effort between various entities, including the courts, FDLE, the DOC, the clerks of court, local sheriff's offices, and so on.

Welfare Reform Act of 1996

It was a joint effort between the Florida Department of Revenue, the Florida Association of Court Clerks and Comptrollers, and 67 clerks of court offices.

8. Where did the financial, technical, management, and administrative resources come from in addressing the problem (Federal, State, local)?

Court Protection Orders

The clerks of court are responsible for sending a copy of the Domestic Violence or Repeat Violence Injunctions to the local sheriff’s office. At that point, the sheriff’s office enters the injunction into FCIC to update the system. Both the clerks and sheriffs absorb the costs for these functions. The FDLE, which houses the FCIC system, is State-funded.

Sexual Offender Registry

FDLE jurisdiction.

Welfare Reform Act of 1996

The Florida Association of Court Clerks and Comptrollers provides assistance.

9. How did the effort to meet these requirements shift the priorities of the judiciary?

Court Protection Orders

Not applicable.

Sexual Offender Registry

Not applicable.

Welfare Reform Act of 1996

Not applicable.

10. Which local jurisdictions have had the greatest success and which the least, and why?

This information is not available at the Court Administrator’s Office.

Louisiana

This section is based upon a written submission made to the Task Force by Timothy J. Palmatier, Chief Deputy Judicial Administrator, State of Louisiana, in November 1999. The responses are organized around the 10 questions submitted by project staff.

1. What is the current status of the implementation of the reporting requirements in the State? What role does/did the judiciary play in meeting those requirements?

Louisiana Protective Order Registry (LPOR)

Participation in the Federal NCIC Protection Order File (NCIC POF) is currently voluntary. However, 1997 State legislation mandated that the Judicial Administrator’s Office (JAO) of the Louisiana Supreme Court create and administer a statewide protective order registry and transmit these same orders to NCIC.¹³³ In addition, this legislation mandated that the JAO develop and make

¹³³ The Louisiana Protective Order Registry (LPOR) is a computerized database that serves as a repository for temporary restraining orders, protective orders, preliminary and permanent injunctions, court-approved consent agreements, peace bonds, bail restrictions, sentencing orders, and probation conditions issued for the purpose of preventing harassment, threats, or violence against an intimate partner or family member. See: LPOR Web site at <http://www.lajao.org/lpor.htm>.

available uniform order forms for use in all courts.

The State of Louisiana is in the process of revising the design of information systems that provide law enforcement officers, prosecutors, and judges with the accurate and timely records needed to make informed decisions. The JAO is the primary coordinator of this effort with substantial funding provided through the Louisiana Commission on Law Enforcement (LCLE).

As part of this effort, Congress, through the LCLE, awarded grant funds to the JAO to develop the Case Management Information System (CMIS). LPOR is a part of the CMIS project. In designing the LPOR database, the JAO has taken into account the specific criteria governing the entry of protection orders into the NCIC POF and the same requirements regarding hit confirmation and record validation that apply to other FBI “hot files.”

Once a judge has signed a protection order, the clerk of court sends a copy of the order to the registry as expeditiously as possible, but no later than the end of the next business day. The order may be sent by facsimile transmission, courier, or mail. Once received by the LPOR, each protective order is keyed into the database by a data entry operator, then verified. An image of the order is also captured and maintained in the database.

Law enforcement agencies, prosecutors, and civil and criminal courts will have

access to the data stored in the registry for use in stalking and domestic violence cases. Law enforcement currently has access to the LPOR via the Department of Public Safety (DPS) database. The judiciary and other agencies will have access via a Wide Area Network that is currently being implemented. The registry will also expedite record checks for firearm purchases and firearm permits.

Sex Offenders

The State Police are responsible for sending sex offender information to the National Sex Offender Registry. This is accomplished when the DPS receives notification from probation and parole agencies and sheriff's offices on the sex offender. Information is then sent to the National Registry. To date, there is no electronic database for tracking sex offenders in Louisiana. Paper files within State Police records are used for tracking and registering offenders. In the event a sex offender is not placed under probation or parole, the court will notify State Police. There are few, if any, of these cases.

The State Police have received a grant for automating their sex offender registry. Part of the grant requirements for the State Police is for the automated fingerprint identification system (AFIS) to have the ability to transfer fingerprint flats — a \$5.4 million cost. The State Police are attempting to get funding for AFIS to transmit these flats.

The CMIS used by the Louisiana Supreme Court is responsible for collecting electronic dispositions of all criminal cases, including those involving sex offenders. These dispositions will be forwarded to the State Police for inclusion in their Computerized Criminal History (CCH) database. Once the sex offender registry is automated, the State Police will have access to sex offender dispositions for their registry via CCH.

The Louisiana Supreme Court is working with clerks of court statewide to collect electronic criminal dispositions for their registry. Sex offenders are flagged and charge codes annotated within the database. When the State identifier (SID), Arrest Tracking Number (ATN), and personal identifiers are provided, records are matched with those in the CCH database.

CMIS is currently automating the process for transferring sex offender case dispositions received from the clerks of court to the State Police CCH database. Development of this software connection, known as the Law Enforcement Message Switch (LEMS) Metro Server, is complete. There is an ongoing problem of collecting complete information — for example, ATN, SID, personal identifiers — from those parishes that do not have integrated criminal justice information systems. This limits the ability to match sex offender records collected by CMIS with records currently in CCH.

Welfare Reform

The Department of Social Services (DSS) forwards information from its automated case registry directly to the Federal government, as required by the *Welfare Reform Act of 1996*; this includes information from the State's Temporary Assistance for Needy Families, Child Support, and Food Stamps programs.

The courts or respective agencies provide, via facsimile, information on judicial proceedings relating to: paternity and support cases in which welfare services are provided by a State agency; drug-use felons; or drug case probation and parole violators. A "prison match" is also made between DSS and the Department of Corrections (DOC) on incarcerated prisoners.

Child support is collected by the Courts, with information faxed to DSS.

2. How much understanding is there among judicial officials of the requirements of the law?

LPOR

In conjunction with the statewide implementation of the LPOR, educational seminars were provided in nine regional sites across the State during 1999. These seminars addressed both State and Federal statutes related to the use of Louisiana Uniform Abuse Prevention Order Forms and the criteria for entry of these orders into the registry. Another 10 educational

seminars are planned for calendar year 2000, with additional material presented on legislative changes made during the recent session. Additionally, training was recently given to judges attending the Louisiana Judicial College Summer School. The LPOR staff will provide more individual training sessions for the judiciary, law enforcement, probation and parole, district attorneys, and victims services in the future.

Sex Offenders

Ongoing judicial training is required for judicial officials to understand both Federal and State requirements for the registration of convicted sex offenders.¹³⁴

Welfare Reform

Ongoing training is required for judicial officials to understand both Federal and State requirements, and training is ongoing at various conferences both locally and nationally.

3. What were the major events that lead to the current status?

LPOR

a) **Legislation:** State legislation passed during the regular 1997 session mandated that (1) the JAO create the protective order registry and develop uniform order forms, and (2) all courts use these forms and transmit orders

to the registry in a timely manner.¹³⁵

- b) **LPOR uniform forms:** Over a period of 18 months, uniform order forms were drafted, tested, and revised.
- c) **Purchase of technology:** The necessary hardware and software have been purchased and customized for initial automation. Additional purchases have been made to complete the system’s connectivity to the majority of the district courts. Automation for the remaining district and city courts is ongoing.
- d) **Pilot courts:** Nine pilot courts were enlisted to test the uniform order forms and transmission procedures. Participants at these sites provided an ongoing source of project feedback.
- e) **Steering committee:** A statewide steering committee was selected to provide initial development and ongoing guidance and direction for the LPOR. This group — which meets quarterly — is comprised of representatives of a number of statewide associations, including the district judges, city court judges, clerks of court, court administrators, prosecutors, sheriffs, chiefs of police, and victim services.

- f) **Coordinating council.** Led by a State senator, the coordinating council is comprised of a Supreme Court justice and representatives of a number of statewide associations, joined together for the purpose of exploring and changing State laws related to domestic violence and the LPOR via the legislative process.
- g) **Linkage with other databases:** Connections among the LPOR, State Police CCH database, and the NCIC POF are nearly complete. Work is underway to develop software to batch transfer files to the NCIC POF database.

Sex Offenders

Statewide legislation was developed to meet Federal mandates for the *Jacob Wetterling* and *Pam Lychner* laws.¹³⁶

a) **Federal grant funding approved.** National Criminal History Improvement Program (NCHIP) funding was obtained for CMIS via the LCLE. This funding has allowed CMIS to purchase criminal case management systems for all of the district clerks of court. Additional monies are required to finish the purchases of computer systems for 49 city and 3 parish courts. At present, purchase costs of city and parish computer systems

¹³⁴La. Acts 1997, No. 1147.

¹³⁵LA. REV. STAT. ANN. tit. 46 § 2136.2.

¹³⁶*Supra* at note 129.

are unknown. Criminal case management systems allow clerks of court to forward electronic dispositions to CMIS for transmittal to the State Police, the sex offender registry (when automated) via CCH, and ultimately to the National Sex Offender Registry.

b) **Federal grant and State funding approved for the Law Enforcement Message Switch (LEMS).**

LEMS is a software connection between CMIS and DPS that will allow the electronic transmission of sex offender dispositions from CMIS to the State Police. State Police will also have the ability to query the CMIS registry. Total cost for the LEMS software was approximately \$300,000.

c) **Charge code project.**

Funded by CMIS. A current, standardized Revised Louisiana Statute electronic charge code file is being developed for CMIS and courts statewide to utilize in their databases for an accurate accounting of defendant charges, including sex offenders. Cost for this project was approximately \$10,000.

d) **Courts of Appeal Reporting System (CARS).**

CMIS is working with the appellate courts in the design of their new systems and the collection of common data elements for both the appellate courts and

CMIS, to include information about sex offenders. The first step in the new version of CARS — an agreement on the reporting of Case Types, Disposition, and Manner of Disposition — has been completed. CMIS will begin the next stage of this process shortly; it involves developing the common data elements and event triggers for the automation of CARS.

Welfare Reform

Authorization by law to employ hearing officers and staff have increased child support collections and the provision of related information.

4. What strengths and weaknesses did the State judiciary and trial courts bring to the problem of implementation?

LPOR

Strengths: (1) Clerks of court, prosecutors, law enforcement, judges and others have worked closely with the LPOR team in the development of standardized orders that are currently being placed in courts statewide; (2) Strong commitment to address the issue of domestic violence; (3) A legislature willing to enact legislation that would allow/mandate effective change; and 4) \$340,000 in annual State appropriations.

Weaknesses: Lack of funding, especially in the area of recurring expenses; for example, digital connections to the courts, computer maintenance, and increased manpower requirements in the clerks of court offices. In addition, present funding only supports implementing a wide area network for 43 of 64 district courts.

Sex Offenders

Weaknesses: Insufficient Federal and State funding to implement requirements for collection of dispositions for tracking sex offenders. Additionally, ongoing funding is necessary for the maintenance of information systems and a data analyst to review data quality.

Additionally, a lack of funding for ongoing training for the judiciary in Federal and State laws pertaining to sex offenders poses a problem. (It is anticipated that an additional \$1,168,902 will be required to automate the 58 city courts and 3 parish courts, based on an average of \$19,162 spent per district court.)

Welfare Reform

Strengths: Communication and the establishment of operating networks to facilitate the discussion of relevant issues and resolution.

Weaknesses: Need for increased communication between the Courts and DSS on matters of welfare reform.

5. At what point did the judiciary become involved/aware of the issues?

LPOR

The State judiciary was aware of the problem prior to inception of the project. Lack of funding has always been and continues to be a problem. Awareness of the issues regarding the Federal statutory requirements for participation in the national database for protection orders has increased substantially as the project has evolved.

Pilot trial courts have been more involved with day-to-day activities and are aware of the issues, but the judiciary as a whole has been aware of the need for this project for some time. This is rapidly changing as training seminars are given and implementation takes place across the State.

Sex Offenders

Passage of State law in August 1997.¹³⁷

Welfare Reform

Ongoing training and workshops are provided via seminars, judicial college training, and continuing legal education (CLE) to inform the judiciary (including juvenile and family court judges) of the *Welfare Reform Act of 1996*. It is an issue of which the judiciary has been informed.

6. What were the technical resources required to meet the requirements and how were they distributed within the judiciary?

LPOR

In order to create the registry and establish the necessary connections between LPOR, the State Police CCH database, and the NCIC POF, it was necessary for the JAO to purchase computer hardware and software. In addition, it was necessary to obtain technical assistance to design the database and establish the linkages between systems as follows:

- a) **Law Enforcement Message Switch (LEMS).** LEMS is a secure software connection between CMIS and the State Police database that gives the judiciary the ability to query the LPOR, NCIC POF, State Police CCH file, and Department of Motor Vehicles (DMV) files. It also gives both the State Police and NCIC the ability to query the LPOR. LEMS will also upload LPOR files via batch to NCIC (in progress). This required a significant effort on the part of the CMIS assistant director working with the vendor to design and implement the system. Additional State funding of \$250 million was provided to accomplish the development of this connectivity software.

- b) **Wide Area Network (WAN) hardware within CMIS.** This gives the judiciary the ability to enter the CMIS secure network via LEMS to query the LPOR, NCIC POF, CCH, and DMV databases, in addition to sex offender dispositions. Additional hardware and software are now being acquired to allow the courts to access these files via either dial-in or WAN connections. Additional funding is required for recurring expenses, such as modem maintenance, software maintenance, and upgrades.

- c) **Digital connections to allow access to CMIS and DPS.** These connections allow individual courthouses access to the above information in both CMIS and State Police databases. In addition to building a secure network infrastructure at the CMIS office, digital circuits and routers are required for the 64 district courts, 48 city courts, and 3 parish courts. Additional funding is required for modems and software maintenance and upgrades as recurring expenses.

- d) **Development of LPOR Oracle software.** The assistance of an Oracle consultant and two CMIS database programmers was required to design and develop LPOR software to capture protective orders. Additional consultation will be necessary, along with funding, as updates,

¹³⁷Ibid.

maintenance or law changes occur.

- e) **LPOR project management and development.** In addition to the LPOR director and supporting staff (data input supervisor and three data input operators), technical assistance for CMIS includes: CMIS director, CMIS assistant director, two CMIS database programmers, and a network specialist.

Sex Offenders

(See more detailed explanation and costs under LPOR.)

- a) **LEMS connection between CMIS and State Police.** (Cost was approximately \$300,000).
- b) **Criminal case management systems distributed to Louisiana clerks of court.**
- c) **WAN hardware within CMIS.** Gives judiciary the ability to enter a secure network to query CMIS for sex offender dispositions.
- d) **Digital connections to allow access to CMIS and DPS.** Allows individual courthouses access to sex offender dispositions in both the CMIS and State Police databases.

Welfare Reform

The project is ongoing and conducted in tandem with Family Assistance Aid to Needy Families requirements.¹³⁸ Resource assessments and funding primarily is undertaken at the local level, and no composite assessment is available.

7. Who provided the leadership in meeting the requirements?

LPOR

Supreme Court Justice Catherine D. Kimball, who is Chair of the CMIS project; Chief Justice Pascal F. Calogero, Jr.; Gov. Mike Foster; State Sen. John L. Dardenne, Jr.; the Clerks of Court; and the JAO have provided the leadership in meeting the Federal requirements with regard to protection orders entered into the registry. In addition, the Department of Public Safety/State Police Telecommunications Department has worked closely with the JAO/CMIS staff to move the project forward to statewide implementation.

Sex Offenders

- a) Louisiana Supreme Court and CMIS staff from the JAO.
- b) State Police for the Sex Offender Registry.

Welfare Reform

Madeline Bagneris, Secretary, and Gordon Hood, Director, DSS; and Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana.

8. Where did the financial, technical, management, and administrative resources come from in addressing the problem (Federal, State, local)?

LPOR

Tables 1, 2, and 3 illustrate the startup funding, one-time funding shortfalls and annual recurring costs of the LPOR.

¹³⁸ LA. REV. STAT. ANN. tit. 46A § 231.

| Table 1: LPOR Startup Funding | | |
|--|---|--------------------|
| Purpose | Source | Amount |
| Develop LPOR (salaries, travel, software, seminars, equipment, contractual, etc.) | NCHIP (Federal) | 698,605 |
| Develop LEMS interface software | Sex Offender – LCLE (Federal) | 94,401 |
| Purchase equipment for local and wide area network (includes 43 district courts) | <i>Violence Against Women Act</i> (VAWA, Federal) | 352,086 |
| Equipment purchases, contractual costs, and training seminars | VAWA | 78,777 |
| Training for LPOR implementation | VAWA | 32,562 |
| Develop LEMS interface software | State-appropriated | 250,000 |
| Cash match for Federal grants (VAWA) | CMIS* | 155,205 |
| CMIS Director (2 years @ 50% @ \$81,900/year; personnel benefits @ 17%) | CMIS* | 81,900 |
| CMIS Assistant Director (2 years @ 75% @ \$71,370/year; personnel benefits @ 17%) | CMIS* | 107,055 |
| CMIS Programmers (2 years @ 60% @ \$119,340/year; personnel benefits @ 17%) | CMIS* | 143,208 |
| CMIS Grant Management (1 year @ 25% @ \$42,000/year; personnel benefits @ 17%) | CMIS* | 12,285 |
| Purchase equipment for remaining 21 district courts, 49 city courts, and 3 parish courts (installation included) | Unknown funding source | 276,664 |
| *Court-assessed \$2 filing fees | Total: ¹³⁹ | \$2,282,748 |

| Table 2: Funding Shortfalls (One-time) | | |
|--|------------------------|------------------|
| Purpose | Source | Amount |
| Automate 21 district, 49 city, and 3 parish courts (purchase routers and install digital circuits) | Unknown funding source | 243,235 |
| | Total: | \$243,235 |

¹³⁹Does not include recurring unfunded items, such as digital connections, computer maintenance, software upgrades and clerk’s office staffing.

| Table 3: Annual Recurring Costs | | |
|---|-----------------------------------|------------------|
| Purpose | Source | Amount |
| LPOR Project (salaries, travel, office rent, etc.) | State-appropriated | 331,559 |
| Digital circuits (64 district courts, 49 city courts, 3 parish courts) | CMIS* and unknown funding sources | 203,062 |
| Local-area network maintenance (CMIS) | CMIS* and unknown funding sources | 19,051 |
| Wide-area network (CMIS) | CMIS* and unknown funding sources | 30,015 |
| Wide-area network equipment – Routers maintenance (district, city, and parish courts) | CMIS* and unknown funding sources | 64,233 |
| Managed wide-area network | CMIS* and unknown funding sources | 187,380 |
| Staff training | CMIS* and unknown funding sources | 25,000 |
| *Court-assessed \$2 filing fees | Total: | \$860,300 |

The annual recurring costs of \$860,300 shown in table 3 minus State-appropriated funding of \$331,559 equals the recurring costs *not* supported by a funding source of \$528,741.

The CMIS project is operating at a \$400,000-per-year deficit, with resources on hand to support the project, without considering the recurring costs shown in table 3. Additional sources of recurring funds are necessary to ensure the ongoing and future viability of this Louisiana Protective Order Registry.

Sex Offenders

The figures shown in table 4 are *in addition to* those required for the LPOR network. Both systems will use same network. Note: See table 3 for annual recurring costs not funded for the maintenance of the statewide network to district, city, and parish courts.

| Table 4: Criminal Disposition Startup Funding | | |
|---|------------------------------|--------------------|
| Purpose | Source | Amount |
| Purchase computer systems for Clerks of Court | NCHIP (Federal) | \$1,126,390 |
| Travel to visit clerks | CMIS* | 5,000 |
| CMIS Director (2 years @ 25% @ \$81,900/year; personnel benefits @ 17%) | CMIS* | 40,950 |
| CMIS Assistant Director (2 years @ 15% @ \$71,370/year; personnel benefits @ 17%) | CMIS* | 21,411 |
| CMIS Programmers (2 years @ 60% @ \$119,340/year; personnel benefits @ 17%) | CMIS* | 143,208 |
| CMIS Grant and Project Management (2 years @ 75% @ \$42,000/year; personnel benefits @ 17%) | CMIS* | 63,000 |
| *Court-assessed \$2 filing fees | Total: ¹⁴⁰ | \$1,399,959 |

Welfare Reform

DSS has received Federal support for establishment of its automated case registry. DSS from the State of Louisiana has also provided support. Local funds have been moved to those courts with reporting requirements.

9. How did the effort to meet these requirements shift the priorities of the judiciary?

LPOR

While a clearer assessment is more likely once total implementation is complete and follow-up with the courts is finished, the appropriation of Federal funds to the judiciary has clearly allowed it to act on concerns of which it was aware, but was unable to

address (including, but not limited to, implementation of the LPOR, collection of statistics, better training, employment of technical and managerial staff, and purchasing hardware and software).

Sex Offenders

A better assessment will be available once total implementation is complete. One unaddressed priority is the need for the Clerks of Court to have increased manpower resources to enter criminal dispositions in their database for forwarding to CMIS.

Welfare Reforms

The provision of local funds to local courts allow the transfer of the necessary data.

10. Which local jurisdictions have had the greatest success and which the least, and why?

LPOR

Again, while a better assessment is more likely once total implementation is complete and follow-up is done with the courts, it is clear that those local jurisdictions that have the greatest cooperation among the various components of the information system (that is, integrated systems between law enforcement, district attorneys, and clerks of court) have the greatest successes. This is because commitment and communications allow the transfer of the most complete and accurate information (for

¹⁴⁰Does not include recurring unfunded items, such as computer maintenance, software upgrades, and clerk’s office staffing.

example, Arrest Tracking Numbers, State IDs, and personal identifiers) throughout the system. Also, it is clear that a lack of funding in a local jurisdiction deems it to be among those least successful.

Federal funding has been crucial in allowing CMIS to deploy equipment and implement digital circuits to some courts. However, noted is that additional funding assistance will be necessary to deploy WAN equipment to the remaining courts, in addition to installing and maintaining digital circuits.

Sex Offenders

The automated system is in its very initial development and implementation stages and therefore no data are available upon which to base an assessment. Once the WAN for the State is in place, a better tool for gauging effectiveness of the database will be available.

Welfare Reform

While a better assessment is more likely once total implementation is complete, it appears those local jurisdictions with the greatest commitment of resources and the greatest amount of communication among the affected parties are the most successful. Those without such commitments are less successful.