



Bureau of Justice Statistics Bulletin

Survey of State Laws

Criminal Justice Information Policies

June 1982

Each of the 50 States, the District of Columbia, and the territories of Puerto Rico and the Virgin Islands now have laws or statewide regulations dealing with the security and privacy of criminal history records. A recently completed survey to update the Bureau of Justice Statistics (BJS) Compendium of State Legislation on criminal records confirmed that the States regard the subject as an important one.¹

This concern is shared by the public, as evidenced by the findings of a separate comprehensive nationwide survey conducted in 1979.² This survey found that the American people are greatly concerned about personal privacy and the negative impact on their lives that may result from pervasive applications of computer technology and the trend toward widespread collection and use of personal information. Three out of four Americans now believe that the right of privacy should be akin to the inalienable rights of life, liberty, and the pursuit of happiness.

State laws on criminal records clearly have an impact on personal privacy since these laws affect the completeness and accuracy of the information contained in the records and their availability to third parties. The laws also affect the actions of a variety of groups who have an interest in criminal history records, including not only law enforcement agencies but also such non-criminal-justice groups as employers, credit agencies, and the media. The important issue of interstate exchange of criminal records is also affected, since interstate movement of records can be facilitated by State law and can also be affected where there are conflicts in statutory requirements in different States. For these reasons, information on trends in State legislation on criminal records is important to decisionmakers at the policy and operational levels of law enforcement agencies as well as non-criminal-justice groups.

Survey results

The recent BJS-sponsored survey is an update of earlier surveys conducted in 1974,

¹The survey was conducted by SEARCH Group, Inc., during the first half of 1981.

²Harris Lewis and Dr. Alan F. Westin, *The Dimensions of Privacy*: A National Opinion Research

Over the past 10 years dramatic increases have occurred in the development and utilization of computerized systems for managing criminal justice information. Criminal justice intervention strategies have also been implemented that depend on the availability of accurate and timely criminal justice data.

These technological advances highlight the need to establish criminal justice information policies applicable to collecting, managing, and exchanging data. Such policies must ensure that appropriate balances are maintained between the needs of the law enforcement community for comprehensive criminal history data and the individual's right to ensure that his record is maintained in accurate and secure condition. Such policies must also facilitate the exchange of criminal history information so as to increase the utility of such data and to eliminate duplication of costs.

Congressional concern over these issues is defined in Section 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, now Section 818(b) of the Justice System Improvement Act of 1979. This legislation and implementing regulations issued by the predecessor of

the Bureau of Justice Statistics require that the States adopt procedures to ensure accuracy, security, and appropriate limitations on disclosure of criminal history data and that individuals be permitted to review and, where appropriate, challenge the accuracy of notations on their records. Since criminal justice activity is primarily a State and local responsibility, the legislation and regulations provide that specific procedures to achieve these objectives shall be developed by the individual States.

The progress made in State legislation bearing on criminal information policy is documented by the survey results presented in this bulletin; the timing of this progress suggests that the Department of Justice leadership provided through Federal regulations has had a salutary effect in the process. The Bureau of Justice Statistics intends to support efforts to maintain a proper balance between the need for criminal history information and the individual's right to assure the accuracy and security of such records.

Benjamin H. Renshaw III
Acting Director

1977, and 1979. In all of the surveys, State legislation and regulations were classified under subject matter categories dealing with specific aspects of security and privacy, such as limits on dissemination of criminal records, accuracy and completeness requirements, and civil and criminal penalties for mishandling criminal records. Table 1 shows the number of jurisdictions³ that had acted in 17 of the most important categories in each of the survey years. The dramatic increase in State legislative awareness of the security and

Survey of Attitudes toward Privacy, Sentry Insurance, Stevens Point, Wise, 1979.

³The survey covered the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands.

privacy issue in the last 5 years is clearly apparent from the table.

In 1974, few States had enacted legislation dealing with criminal records. As criminal history record systems improved significantly in the mid-1970's through increased use of automation, concerns about security and privacy heightened, and these concerns were reflected in increased State legislative activity. In 1975, pursuant to U.S. Department of Justice legislation (Section 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended), implementing regulations were issued requiring Federally funded criminal history record systems to take steps to ensure the security, confidentiality, and accuracy of identifiable criminal history

80836

records. In recognition of the fact that information policy development is primarily a State function, the regulations did not require the States to enact legislation to provide the necessary protection. It is apparent, however, that most States have preferred this approach.

By 1977, the legislation had more than doubled in most categories, and activity in all categories continued to increase through 1981.⁴ As the 1981 totals show, a majority of the jurisdictions have enacted laws dealing with virtually every category. All but a few have legislated in the especially important categories of limits on dissemination, right of individuals to review and challenge their records, and the accuracy and completeness of the record. Table 2 shows which jurisdictions have enacted legislation or issued regulations in seven of the most important categories of criminal information policy:

- (1) State regulatory authority,
- (2) limits on dissemination,
- (3) right of individuals to inspect their records,
- (4) completeness and accuracy of information,
- (5) security of data,
- (6) research access, and
- (7) criminal penalties.

As the table shows, a significant number of States have acted in all seven of these categories and a majority have acted in at least five of the seven.

Trends and conclusions

An analysis of the laws compiled in the survey suggests the following:

- Almost all jurisdictions favor broad legislation establishing a policy framework and leaving operational procedures to be promulgated by regulations.
- Most jurisdictions begin with the presumption that criminal records are public and carve out exceptions to limit access to more sensitive records. This approach is consistent with the approach embodied in most freedom of information laws.
- Twenty-four jurisdictions (45%) have enacted comprehensive privacy and security laws. Most of these laws deal with all aspects of record policy covered in the Department of Justice regulations, and many of them are stricter than the regulations.

• Most jurisdictions distinguish between original records (police blotters, court dockets, and other chronological entries) and summary criminal histories, which are compilations of information indexed to individuals by name or other identifiers. Even when information in criminal histories is restricted, the original records usually remain available—although in most cases it would be difficult to search for them. This seems to be a popular way to provide privacy protection while not completely restricting historical records.

• The concept that restrictions should be placed on the release of nonconviction

⁴The smaller totals in Table 1 for 1981 for "right of record subject to inspect" and "transaction logs" resulted from excluding some previously counted provisions from public record laws not specifically concerned with criminal records.

| Category | 1974 | 1977 | 1979 | 1981 |
|-------------------------------------------|------|------|------|------|
| Statewide or central regulatory authority | 7 | 38 | 42 | 46 |
| Privacy and security council | 2 | 10 | 13 | 22 |
| Regulation of dissemination | 24 | 40 | 44 | 51 |
| Right of record subject to inspect | 12 | 40 | 43 | 42 |
| Right to challenge accuracy | 10 | 30 | 36 | 36 |
| Judicial review of challenged information | 10 | 20 | 22 | 17 |
| Purging nonconviction information | 20 | 23 | 28 | 35 |
| Purging conviction information | 7 | 13 | 19 | 24 |
| Sealing nonconviction information | 8 | 15 | 16 | 20 |
| Sealing conviction information | 7 | 20 | 21 | 22 |
| Research access | 6 | 12 | 14 | 20 |
| Accuracy and completeness | 14 | 41 | 45 | 49 |
| Civil remedies | 6 | 22 | 25 | 33 |
| Criminal penalties | 18 | 35 | 39 | 39 |
| Public record laws | 9 | 43 | 42 | 53 |
| Security | 12 | 26 | 31 | 32 |
| Transaction logs | 6 | 11 | 27 | 28 |

information (acquittals, dismissals, and arrests without dispositions) is generally accepted. Although the Federal regulations allow States to disseminate such information pursuant to State law, many States choose not to make nonconviction information available outside the criminal justice system.

• Forty-two jurisdictions (81%) by statute allow record subjects to inspect their criminal history records, and 36 jurisdictions (68%) specifically provide for amendment or correction of challenged information. These measures are regarded as essential privacy rights because they permit record subjects to know what data are recorded and give them a role in monitoring the accuracy of their records.

• Twenty-nine jurisdictions (55%) require that dissemination logs be maintained to record the disclosure of criminal history information. Further, the jurisdictions usually require that corrected information be forwarded to agencies that have received erroneous or incomplete records.

• Forty-six jurisdictions (87%) have established or designated a State regulatory authority to provide general oversight of criminal history record management policy, and 21 jurisdictions (40%) have established privacy and security councils.

• Fifty-two jurisdictions (98%) have established central repositories. A central repository, mandatory disposition reporting, and a query prior to dissemination to verify completeness are the principal techniques to insure validity of criminal records. Most jurisdictions use all three.

• During the 8 years covered by surveys, the largest gain in record management regulation has been related to accuracy and completeness requirements. Now 49 jurisdictions (92%) have such provisions, although only 14 dealt with this matter as of 1974. Most jurisdictions specifically address accuracy and completeness of records; some merely require that criminal justice agencies establish procedures encouraging accuracy.

• Many jurisdictions (32 or 60%) have laws or regulations providing for information system security, and often such requirements are precise and strict. Laws on this

subject deal with computer security, physical security of data and facilities, and screening and supervision of employees with access to criminal records.

• Remedies and penalties for failure to comply with laws or regulations for privacy and security may include civil or criminal sanctions or both. The survey found that 33 jurisdictions (62%) provide civil remedies that may include punitive as well as compensatory damages and sometimes recovery of attorney fees. Civil penalties against agency personnel who have disregarded their duties may include job transfer, suspension, or dismissal. Thirty-nine jurisdictions (74%) provide criminal penalties for willful transgressions. These laws usually classify such conduct as a misdemeanor that could entail a fine or imprisonment.

Policies on dissemination

In the 1981 survey, the laws and regulations governing dissemination of criminal records were classified into subcategories so as to facilitate analysis of national dissemination trends based on specific types of records (conviction records, nonconviction records, and open arrest records) and specific classes of recipients (criminal justice agencies, government non-criminal-justice agencies, and the private sector). Government non-criminal-justice agencies include public agencies seeking criminal records for such purposes as employment, licensing, security clearances, and military recruitment. Private sector recipients include the media, employers, credit agencies, and private investigators. Table 3 shows the number of jurisdictions that expressly authorize or expressly prohibit access to the three types of records by the three classes of users.

Not surprisingly, the survey found that all types of criminal history records are freely disclosed in virtually every jurisdiction for purposes related to law enforcement and the administration of criminal justice. Fifty-one jurisdictions (96%) expressly authorize dissemination of conviction records to criminal justice agencies, and 49 jurisdictions (92%) authorize dissemination of nonconviction and arrest records to criminal

justice agencies. Further, no law expressly prohibits dissemination of any kind of criminal record within the criminal justice community. Private investigators or private security organizations are generally not accorded the same access rights as public criminal justice agencies; rather, they usually are held to have no greater rights than the general public unless special allowances are made by statute or regulation.

It is customary for State law to authorize disclosure of criminal history information to a variety of non-criminal-justice government agencies for employment purposes, security investigations, and other purposes, even though private-sector access for such purposes may not be specifically permitted by statute. The survey revealed that

- 43 jurisdictions (81%) permit disclosure of conviction information to government non-criminal-justice agencies,
- 35 jurisdictions (66%) permit disclosure of nonconviction information to such agencies, and
- 37 (70%) permit disclosure of arrest information to such agencies. On the other hand, relatively few States prohibit the release of criminal records to government non-criminal-justice agencies. Four States prohibit disclosure of conviction records, 10 States prohibit disclosure of nonconviction records, and 8 States prohibit disclosure of arrest information to government non-criminal-justice agencies.

With very few exceptions, the States are much more restrictive in their dissemination policies toward private-sector agencies and individuals, particularly with respect to nonconviction records and open arrest records. The laws of 32 jurisdictions (60%) may be construed as authorizing disclosure of conviction records to private persons. On the other hand, seven jurisdictions prohibit disclosure of conviction records to the private sector. With respect to other types of data, restrictions are even more common. Twenty-five jurisdictions (47%) specifically authorize dissemination of nonconviction records for specified private purposes, and 27 (51%) authorize disclosure of arrest records. However, 14 jurisdictions (26%) prohibit disclosure of nonconviction records for any purpose to the private sector, and 12 (23%) prohibit disclosure of arrest records to private persons.

Accuracy and completeness of data

Forty-nine jurisdictions (92%) have promulgated laws or regulations containing specific requirements for accuracy and completeness of records. This represents an increase of 8 over the number that had dealt with this subject in 1977 and a significant increase over the 14 (26%) that had such requirements in 1974. Some of these laws deal substantively with record accuracy through such requirements as procedures to insure accurate recording of information and to detect and correct errors. Other laws deal with such matters as disposition reporting, audits, transaction logs, and purging and sealing of records. The survey found that 46 jurisdictions (87%) have some statutory provision requiring reporting of dispositions, although not all of them set reporting deadlines, and relatively few of

| State | Regulatory authority | Limits on dissemination | Right of individual to inspect record | Completeness and accuracy of data | Security of data | Research access to data | Criminal penalties |
|----------------------|----------------------|-------------------------|---------------------------------------|-----------------------------------|------------------|-------------------------|--------------------|
| Alabama | X | X | X | X | X | | X |
| Alaska | X | X | X | X | X | X | X |
| Arizona | X | X | X | X | X | | X |
| Arkansas | X | X | X | X | X | | X |
| California | X | X | X | X | X | X | X |
| Colorado | X | X | X | X | X | | X |
| Connecticut | X | X | X | X | X | X | X |
| Delaware | X | X | X | X | X | | X |
| District of Columbia | | X | X | X | X | | X |
| Florida | X | X | X | X | X | X | X |
| Georgia | X | X | X | X | X | | X |
| Hawaii | X | X | X | X | X | X | X |
| Idaho | X | X | X | X | X | | X |
| Illinois | X | X | X | X | X | | X |
| Indiana | X | X | X | X | X | | X |
| Iowa | X | X | X | X | X | X | X |
| Kansas | X | X | X | X | X | | X |
| Kentucky | X | X | X | X | X | | X |
| Louisiana | X | X | X | X | X | | X |
| Maine | X | X | X | X | X | X | X |
| Maryland | X | X | X | X | X | X | X |
| Massachusetts | X | X | X | X | X | X | X |
| Michigan | X | X | X | X | X | | X |
| Minnesota | X | X | X | X | X | X | X |
| Mississippi | X | X | X | X | X | | X |
| Missouri | X | X | X | X | X | | X |
| Montana | X | X | X | X | X | X | X |
| Nebraska | X | X | X | X | X | | X |
| Nevada | X | X | X | X | X | X | X |
| New Hampshire | X | X | X | X | X | X | X |
| New Jersey | X | X | X | X | X | | X |
| New Mexico | X | X | X | X | X | X | X |
| New York | X | X | X | X | X | | X |
| North Carolina | X | X | X | X | X | X | X |
| North Dakota | X | X | X | X | X | | X |
| Ohio | X | X | X | X | X | | X |
| Oklahoma | X | X | X | X | X | | X |
| Oregon | X | X | X | X | X | X | X |
| Pennsylvania | X | X | X | X | X | | X |
| Puerto Rico | X | X | X | X | X | X | X |
| Rhode Island | X | X | X | X | X | | X |
| South Carolina | X | X | X | X | X | | X |
| South Dakota | X | X | X | X | X | | X |
| Tennessee | X | X | X | X | X | | X |
| Texas | X | X | X | X | X | | X |
| Utah | X | X | X | X | X | X | X |
| Vermont | X | X | X | X | X | | X |
| Virgin Islands | | | | | | | |
| Virginia | X | X | X | X | X | X | X |
| Washington | X | X | X | X | X | X | X |
| West Virginia | X | X | X | X | X | | X |
| Wisconsin | X | X | X | X | X | | X |
| Wyoming | X | X | X | X | X | | X |

these statutes contain sanctions to make them mandatory. Twenty-five jurisdictions (47%) have an audit provision in their statutes or regulations. The prevailing approach appears to be an annual audit of the central repository and periodic random audits of contributing agencies.

At present, 29 jurisdictions (55%) specifically require that logs be kept showing to whom particular records are disseminated. This represents a significant increase over the 11 jurisdictions with such a requirement in 1977 and the 6 with this requirement in 1974. In addition to facilitating audit, dissemination logs help ensure record quality by providing a means of correcting inaccurate information sent to third parties.

The survey and research revealed that 35 jurisdictions (66%) provide for purging (destroying) nonconviction information.

Twenty jurisdictions (38%) provide that such information may in certain circumstances be sealed (placed in special files with limited access requirements). With respect to conviction data, 24 jurisdictions (45%) provide for purging, while 22 jurisdictions (41%) have provisions for sealing such data.

Twenty-seven jurisdictions provide that sealing or purging a record shall remove the disqualifications that follow conviction for a crime (such as voting rights or employment in certain jobs). Twenty-two jurisdictions specifically authorize the record subject to deny the existence of an arrest or conviction that has been purged or sealed.

Access for research purposes

The results of the survey indicate that 20 jurisdictions specifically provide by statute

or regulation for the release of criminal history information for research or statistical purposes. All of these provide for the execution of confidentiality and nondisclosure agreements, and several jurisdictions provide that the criminal justice agency releasing the records shall have the authority to monitor the progress of the research to ensure that the nondisclosure agreement is complied with and to terminate access if violations are discovered.

Conclusion

The survey findings demonstrate the commitment made by States to criminal justice information policy development. The tables reflect a sustained treatment of the issue by large numbers of States and show the building body of law as it continues to grow and change. The extensive body of existing law in this area does not reflect the completion of policy development but rather illustrates that the process is firmly in place and that State policies are under continual legislative review as public concerns regarding criminal justice information policy change. As the process evolves, a driving

Bureau of Justice Statistics Bulletins are prepared principally by the staff of the bureau. Carol B. Kalish, chief of policy analysis, edits the bulletins. Marilyn Marbrook, head of the publications unit, administers their publication, assisted by Scott G. Alexander and Julie A. Ferguson. This bulletin was prepared by Paul Woodard and Gary Cooper of SEARCH Group, Inc., under the direction of Carol G. Kaplan of BJS.

NCJ-80836, June 1982

Table 3. Summary of statutes concerning dissemination of criminal history records

| Type of recipient | Record type | Number of jurisdictions that: | |
|--------------------------------------------------------------------------------------|----------------|-------------------------------|-----------------|
| | | authorize access | prohibit access |
| Criminal justice agencies (for employment and administration of criminal justice) | Conviction | 51 | 0 |
| | Non-conviction | 49 | 0 |
| | Arrest | 49 | 0 |
| Government non-criminal-justice agencies (including public employment and licensing) | Conviction | 43 | 4 |
| | Non-conviction | 35 | 10 |
| | Arrest | 37 | 8 |
| Private sector (including media, employers, credit agencies, private investigators) | Conviction | 32 | 7 |
| | Non-conviction | 25 | 14 |
| | Arrest | 27 | 12 |

and unifying force will derive from the continued leadership of the Bureau of Justice Statistics in national criminal justice information policy activity.

The practical outcome of these policy developments will affect the movement of highly sensitive information between criminal justice agencies, between the public and private sectors, between levels and branches of government, and even between the States themselves.

Additional legislation may have been enacted after the survey was completed in early 1981. If more detailed information is desired, the reader should consult the following Compendium volumes, which contain the complete text of all State laws and more detailed charts and analyses. These reports are available from the

- National Criminal Justice Reference Service, Box 6000, Rockville, Md. 20850.
- Compendium of State Laws Governing the Privacy and Security of Criminal Justice Information, 1974, NCJ-26894.
- Privacy and Security of Criminal History Information, Compendium of State Legislation, 1978, NCJ-48981.
- Privacy and Security of Criminal History Information, An Analysis of Privacy Issues, 1978, NCJ-49544.
- Privacy and Security of Criminal History Information, Compendium of State Legislation, 1979 Supplement, 1979, NCJ-59645.
- Privacy and Security of Criminal History Information, Compendium of State Legislation, 1981 Supplement, 1982, NCJ-79652.

U.S. Department of Justice
Bureau of Justice Statistics

Official Business
Penalty for Private Use \$300

Postage and Fees Paid
U.S. Department of Justice
Jus 436

THIRD CLASS
BULK RATE



Washington, D.C. 20531

Bulletin

END