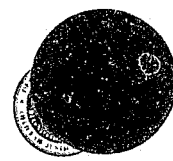


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**Report of the National Task Force
on Criminal History Record
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June 1992, NCJ-135836

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Foreword

The importance of complete and accurate criminal history records cannot be over-emphasized at this time. Within the criminal justice system, criminal history records are needed for decisions relating to pretrial release, offense charging, prosecution priorities, sentencing and correctional assignments. Similarly, such data are increasingly necessary for noncriminal justice purposes to meet requirements relating to licensing, security clearances and employment of individuals in sensitive positions. A Bureau of Justice Statistics (BJS) survey found that, as of October 1990, almost all states had enacted some legislation which required that criminal history record information be considered in connection with criminal justice decisions.

In recognition of these needs, BJS has supported major efforts to improve the quality of criminal history records across the Nation. Under the Attorney General's Criminal History Record Improvement (CHRI) program, BJS has made awards to almost every state to assist in improving the quality of data maintained or accessed through the state central repository. BJS expects that all states will be participating in the program by the end of this year.

In 1991, BJS sponsored the fourth "National Conference on Improving the Quality of Criminal History Records," at which the findings of the first comprehensive 50-state *Survey of Criminal History Information Systems* were released. BJS also has published a variety of documents, including *Strategies for Improving Data Quality, Forensic DNA Analysis: Issues* and the 1989 update to the *Compendium of State Privacy and Security Legislation*. The *Audit Guide: Assessing Completeness and Accuracy of Criminal History Record Systems*, was also recently published by BJS and a program is now being initiated to provide training for such audits. These activities highlight the priority given by the Department of Justice and BJS to improving criminal history record quality across the Nation.

A major goal of the CHRI program has been to increase the extent to which records include both arrest and disposition information. To further this goal, the National Task Force on Criminal History Record Disposition was created in 1990. The Task Force was developed and supported as a BJS program and jointly sponsored with SEARCH Group, Inc. and the National Center for State Courts. Its goal was to bring together, for the first time, representatives of the state judiciary and criminal justice systems to identify problems impeding the collection and flow of timely disposition data to central repositories. The Task Force promulgated recommendations for improvements.

The Honorable Robert C. Murphy, Chief Judge, Maryland Court of Appeals, served as Chairman of the Task Force. His capable leadership ensured that the complex issues presented for Task Force consideration were fully and rigorously explored.

The findings and recommendations of the Task Force are set forth in this document. The deliberations of the Task Force can serve as the start of a continuing dialogue between representatives of courts, court administrators, criminal justice repositories, prosecutors and other criminal justice personnel. Furthermore, this document can provide guidance and direction to those presently engaged in the critical activities designed to improve the completeness and utility of the Nation's criminal history record systems.

Steven D. Dillingham, Ph.D.
Director
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Executive Summary

Establishment of a National Task Force

In 1990, SEARCH, The National Consortium for Justice Information and Statistics, the National Center for State Courts, and the Bureau of Justice Statistics established a National Task Force comprised of senior and nationally recognized judges, court administrators, criminal history repository directors, a director of a pretrial services agency, a prosecutor and law enforcement officials to review disposition reporting problems and to make recommendations for improving disposition reporting of criminal history record information to state central repositories.

The Importance of Complete Criminal History Records

This Report presents the National Task Force's 10 strategies for improving disposition reporting and is based upon its 19 findings. Those findings center on this conclusion: statistical research establishes that the nation is faced with persistent and substantial recidivism. Because of the high and chronic rate of recidivism, criminal history record information is critical for numerous criminal justice and noncriminal justice decisions, including prosecution, pretrial release, sentencing, employment and licensing.

Despite the need for and the importance of complete criminal history record information, and despite significant progress in improving the completeness of that information, the National Task Force findings conclude that there remains a persistent and substantial disposition reporting shortfall. The extent of the shortfall varies greatly from state to state. The causes of the shortfall are many and varied and cannot be attributed to any one component of the criminal justice system.

Ten Strategies for Improving Criminal History Records

The National Task Force's 10 strategies for improving disposition reporting focus on the establishment in each state of a task force to review the state's particular problems and needs and to develop customized strategies for dealing with those problems and needs. The strategies, as set forth below, also direct the state task force's attention to improvements in disposition reporting that have been obtained from automation, electronic data interchange, disposition reporting statutes, fingerprinting, disposition monitoring, case tracking, training, auditing and funding.

1. In each state, appropriate court and executive branch officials should establish a high-level task force representing all components of the criminal justice system. The state task force should identify the needs of all legitimate users of criminal history record information within the state. In light of those needs, the state task force should adopt recommendations for a plan for a statewide, comprehensive criminal history record system. Issues to be addressed by the state task force include the role of the state central repository and the linkage of its databases to data maintained by the courts and other components of the criminal justice system, as well as timely and effective access to criminal history record information by the courts.
2. Each state should give high priority to encouraging further automation in its criminal justice system (including the information systems of the state central repository and the courts) and to establishing uniform, automated reporting procedures for the repository and the courts.
3. States should encourage the development of electronic data interchange technologies which can improve disposition reporting.
4. Statewide task forces should examine existing statutory and other reporting requirements and, where appropriate, adopt recommendations to address the following: the needs of all users of criminal history record information, the timeliness with which information is accessed, expansion of the criminal history data being reported to state central repositories, and improvements in the efficiency of criminal history disposition reporting.
5. State central repositories should work with appropriate components of the criminal justice system to implement procedures for monitoring missing arrests and/or missing dispositions and to establish procedures to obtain this information.
6. To ensure that fingerprints are obtained in all reportable cases, each state should develop procedures to ensure that fingerprints are taken and submitted to the state central repository in each case involving a reportable offense, whether such a case begins by arrest, by the issuance of a summons in lieu of an arrest, or by the filing of a new case against a person already in custody in connection with a prior case.
7. To ensure that all entries related to a particular case are linked, and to ensure that, in

turn, each case is properly linked to the individual's criminal history record, each state should assign a unique, fingerprint-supported number ("tracking number") to each case upon initiation of case processing.

8. Each state should establish a regular and systematic training program for improving the accuracy and completeness of criminal history record information.
9. Each state should perform routine, external audits based upon uniform guidelines to measure the reliability and completeness of criminal history record information in the state central repository. These audits should include the performance of all components of the criminal justice system in contributing to the reliability and completeness of the repository's criminal history record information.
10. Decisions about the apportionment of funding among the components of the criminal justice system for improvements in disposition reporting must be made on a state-by-state basis, taking into account the responsibilities and existing resources of the various components of the criminal justice system for ensuring an accurate and complete criminal history record information system.

Long-term Conclusions

Finally, in the course of looking at the disposition reporting problem, primarily from the courts' perspective, and in the course of developing strategies to address that problem, the National Task Force reached two conclusions with long-term and profound implications for the nation's criminal history record system.

- The present format and content of the criminal history record in many states, as well as the response time for providing criminal history record information, does not meet the needs of the courts and, perhaps, of other components of the criminal justice system, apart from law enforcement.
- Accordingly, each state is urged to take a close and comprehensive look at the format and content of the criminal history record and the role of the state central repository, and should do so from the standpoint of the legitimate needs of *all* users of the criminal history record.

Introduction

National Task Force Findings and Strategies

This Report presents the findings and recommendations of the National Task Force on Criminal History Record Disposition Reporting (National Task Force).¹ The Report is the culmination of a two-year effort by SEARCH, The National Consortium for Justice Information and Statistics (SEARCH),² the National Center for State Courts (National Center),³ and the Bureau of Justice Statistics (BJS).⁴

The National Task Force had a specific but critical goal — to develop recommendations for improving the reporting of

dispositions⁵ of criminal history record information⁶ to state central repositories.⁷ The National Task Force effort was successful. Over the course of a two-year study and several meetings, the National Task Force developed the 10 strategies recommended in this Report. As an immediate recommendation, the National Task Force urges the states to adopt these 10 strategies. This is viewed as a critical first step; and if the states implement the strategies recommended by the National Task Force, disposition reporting within the criminal justice system will improve.⁸

Criminal History Records' Content and Format Does Not Meet Courts' Needs

The National Task Force approached its goal primarily from the perspective of the courts and, in doing so, uncovered a systemic and fundamental issue. The National Task Force concluded that the format and content of the criminal history record does not meet the needs of the courts and, perhaps, of other components of the criminal justice system, apart from law enforcement. Accordingly, as a long-term recommendation, the National Task Force urges each state to take a comprehensive look at the content and format of the criminal history record and the role of the state central repository.

From the courts' standpoint, the criminal history record product, while useful, falls substantially short of meeting the courts' needs. For instance, courts need all misdemeanor arrest and conviction information. Although this information is collected and maintained by some state central repositories, most repositories collect and maintain information on only the most serious misdemeanor offense. Misdemeanor information is essential so that courts can distinguish chronic offenders from first or infrequent offenders.

In addition, courts need information about a record subject's failure to appear in court after a pretrial release or failure to pay a fine. This type of data is almost never included in existing criminal history records. The courts also need information about assaultive and violent behavior. Information about a subject's failure to appear, failure to pay a fine, or violent behavior is critical in order for courts to make well-informed pretrial release decisions.

Members also discussed the need to include citizenship data in a subject's record. This was viewed as the key to complying with federal law which now requires states to provide

¹The National Task Force was comprised of judges, directors of state central repositories, court administrative personnel, a prosecutor, a director of a pretrial services agency and an FBI agent. Members served in an individual capacity and not as representatives of the professions or organizations to which they belong. The National Task Force was chaired by the Honorable Robert C. Murphy, Chief Judge of Maryland's highest court and the administrative head of the Maryland judiciary. Biographies of National Task Force members are found at Appendix 1.

²SEARCH, The National Consortium for Justice Information and Statistics, is a nonprofit corporation comprised of governors' appointees from each state. SEARCH's mission is to provide technical and policy support to federal, state and local criminal justice agencies in the use of information technology.

³The National Center is a nonprofit organization dedicated to improving the ability of the nation's state and local courts to dispense justice fairly, quickly and efficiently.

⁴BJS is a statistical agency within the Office of Justice Programs, United States Department of Justice. Among other things, BJS conducts research with respect to the privacy and security of criminal history record information.

⁵The term "disposition," as used in this Report, means information disclosing the final outcome of a "reportable event." A "reportable event" is defined in Section 2 of the "Model Reporting Provisions for Criminal History Record Law," attached as Appendix 5.

⁶The term "criminal history record information" means information collected by criminal justice agencies about individuals, consisting of arrests or other formal criminal charges, and any disposition arising therefrom. This definition is consistent with the definition in the U.S. Department of Justice's "Criminal Justice Information Systems" regulations, 28 C.F.R. § 20.3(b).

⁷As used in this Report, the term "state central repository" means a state agency that maintains comprehensive files of criminal history record information.

⁸As used in this Report, the term "criminal justice system" means those government agencies which are authorized by law to perform any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. The term includes criminal identification activities and the collection, storage and dissemination of criminal history record information. Local, state and federal agencies are included.

“notice” of alien convictions to the Immigration and Naturalization Service (INS).⁹

Further, the courts have unmet needs with respect to the timeliness with which state central repositories respond to requests for criminal history record information. With respect to information used for pretrial release decisions, for example, the courts need criminal history record information on an extremely quick response basis, often within hours of the request.

National Task Force members noted that court officials tend to view state central repositories as operating archival, static databases oriented more toward meeting the needs of law enforcement agencies than meeting the needs of the entire criminal justice system. Members further noted that in many court administrative offices, terminals connecting courts to state central repositories go unmanned and unused — silent testimony to the courts’ view that the criminal history record product is not as useful as it should be. Courts need a dynamic, flexible database keyed to the needs of the whole criminal justice system and recognizing that the whole system, including courts, are clients and consumers for the state central repository.

Court officials find it frustrating to be asked to devote extraordinarily scarce resources to disposition reporting when the product that is produced from the disposition reporting effort, and partially funded at the court’s expense, is not nearly as useful to the courts as it could or should be. To make matters worse, in many jurisdictions the courts are viewed as the primary culprit in any disposition reporting shortfall. In fact, National Task Force findings hold that there is a multiplicity of causes

⁹H.R. 3049, The Miscellaneous and Technical Immigration and Naturalization Service Amendments Act of 1991, amending 503 (a)(11) of the Omnibus Crime Control and Safe Streets Act of 1968, as added by § 507 of the INS Act of 1990 (Dec. 18, 1991).

for disposition reporting shortfalls, and no one component of the criminal justice system is solely or particularly responsible for that shortfall. The National Task Force also concluded that feedback failures in the relationship between state central repositories and courts often mean that repositories do not inform courts of problems in the reporting process and, accordingly, courts are not put in a position in which they can readily correct or avoid those problems.

National Task Force members agreed that representatives of all components of the criminal justice system need to take a close and careful look at the role of state central repositories. In that process, consideration should be given to the “client-server model” in which repositories might function as clearinghouses or message-switchers for criminal history record information — the substantial portion of which is maintained by the repository but some of which may be kept by other components of the criminal justice system.

One National Task Force member remarked that this is a “give-and-get world.” In such a world, courts cannot be asked simply to give. Courts must also get. This means that the criminal history record product to which the courts are asked to make a contribution must be a high-quality product, tailored to the courts’ needs, available to the courts in a timely manner, without charge,¹⁰ and with feedback to the courts when problems occur regarding data acquisition and delivery. If this kind of a system were in place, courts could be expected to make a substantial investment in disposition reporting, as could other components of the criminal justice system.

¹⁰National Task Force members noted that when courts seek criminal history data for civil purposes, such as in adoption proceedings, courts sometimes are charged a fee, notwithstanding that the disposition information originally came from the courts.

Timing Is Propitious

National Task Force findings and strategies are addressed to state central repositories, courts and other components of the criminal justice system, and to the Congress, state legislatures and the Governors’ offices. Members of the National Task Force believe that the timing is propitious for the publication of these findings and recommendations. Demand for access to criminal history record information, for both criminal justice and noncriminal justice purposes, has never been greater and continues to increase. Much of that demand focuses on access to disposition information, particularly felony disposition information. As a consequence, the nation’s commitment to improving the accuracy and completeness of criminal history record information is perhaps at an all-time high.¹¹

Both the Congress and the executive branch, through the Department of Justice, have been active in improving disposition reporting. In response to a mandate in the 1988 Comprehensive Crime Control Act, the Attorney General has established a “Program for Improving the Nation’s Criminal History Records and Identifying Felons Who Attempt to Purchase Firearms.”

As a part of this effort, BJS and the FBI published voluntary standards for improving the quality of criminal history record information in 1991.¹² BJS is also administering the Attorney General’s Program for Improving the Nation’s Criminal History Records to provide \$27 million in grants to the states for

¹¹See “Reporting of Final Dispositions to State Central Repositories,” p. 1, an unpublished report SEARCH prepared for the Bureau of Justice Statistics, attached as Appendix 2. (Hereafter, Report at Appendix 2.)

¹²U.S. Department of Justice, Federal Bureau of Investigation and Bureau of Justice Statistics, “Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information,” *Federal Register* (13 February 1991) vol. 56, no. 30.

automation, court interface, flagging of felony records, development of master name indexes and participation in the federal Bureau of Investigation's (FBI) Interstate Identification Index (III). Funds for the program were transferred to BJS from the BJA Edward Byrne Memorial State and Local Law Enforcement Assistance discretionary grant program. As of March 1992, \$17.5 million had already been awarded, and it appears that all states will participate in the program.

The program will be evaluated by BJA in 1992. Under the evaluation, BJA will be looking at 10 states to assess compliance with the voluntary standards and to identify strategies that have proven effective in those states to improve the quality and disposition reporting of criminal history record information.

BJA is also administering a program that will require states to annually set aside five percent of their BJA formula grant funds for improvements in disposition reporting, automation and reporting of criminal history records to the FBI. This program was established in the 1990 Comprehensive Crime Control Act. BJA has already published guidelines with respect to the expenditure of the five percent set-aside funds. The guidelines call for the following:

- Establishing statewide task forces;
- Auditing the completeness of criminal history record information;
- Identifying reasons for difficulties in improving criminal history record information; and
- Developing a comprehensive criminal history records and improvement plan in each state.

The FBI is also working to improve their own criminal history record systems. The FBI will spend \$12 million to attack a backlog of three million records awaiting updating and the matching of dispositions with arrests.

Finally, as of early 1992, the Congress is continuing to give serious consideration to adoption of the so-called "Brady Bill." As reported out of conference, the Brady Bill would authorize \$100 million in grants to the states for improvements in their criminal history record systems so that the states can participate in a National Criminal History Instant Check System.¹³ In addition, the Brady Bill would require that, at the end of the five-year period that commences with the Bill's enactment, each state have "at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been activity" within the preceding five-year period.

In the view of National Task Force members, the availability of substantial amounts of federal funding to the states for improvements in criminal history records is a critical ingredient in improving disposition reporting. They emphasized that funding is important, not only in terms of the total dollar amount of the funding, but also as a symbol of commitment to improving criminal history record information. In addition, the National Task Force emphasized that funding for criminal history record improvements also needs to be apportioned among all components of the criminal justice system in a manner commensurate with their criminal history record information responsibilities.

¹³For reasons not related to the criminal history records section of the bill, the conference report was not adopted by the first session of the 102nd Congress.

Finally, National Task Force members noted that continuing advances in information technology, in addition to a strengthened political commitment and the availability of federal funding, provide a basis for optimism about prospects for improving disposition reporting. Computing power continues to go up while computing costs continue to go down. Moreover, a technological revolution is underway with respect to positive identification of individuals. The nation is also in the midst of a revolution in telecommunications capabilities. As one National Task Force member put it, "It's not just that we now know what to do, we have the tools to do it."

The National Task Force is therefore optimistic that their findings and recommendations come at a propitious moment when they can make a significant contribution to improving disposition reporting. It is hoped that this Report and its recommendations will be formally adopted by the Membership Group of SEARCH, by organizations representing the judiciary, and by other criminal justice and noncriminal justice organizations concerned about the quality of criminal history record information.

National Task Force Findings

The National Task Force based its findings on several research papers.¹⁴ These findings reflect the National Task Force's conclusion that:

- (1) Criminal history record information is essential for use in making numerous and important criminal justice and noncriminal justice decisions and for research and statistical purposes;
- (2) Criminal history record information that lacks available dispositions or that contains inaccurate or incomplete disposition information is of limited utility; and
- (3) The lack of full and accurate disposition reporting has a significant negative impact on the efficiency and effectiveness of the criminal justice system and on planning for criminal justice improvements.

¹⁴Two key papers prepared in support of the National Task Force effort and relied upon by the National Task Force are the Report at Appendix 2; and *Statutes Requiring the Use of Criminal History Record Information*, Criminal Justice Information Policy series, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, June 1991). (Hereafter, CHRI Statutes report.) In addition, National Task Force findings and recommendations rely upon a 1988 BJS report prepared by SEARCH titled *Strategies for Improving Data Quality*, Criminal Justice Information Policy series, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, April 1989). (Hereafter, Data Quality Strategies report.)

National Task Force members also recognized that without access to adequate criminal history record information, criminal justice agencies, such as pretrial services agencies, and particularly state central repositories, may have liability arising from their use of inadequate or incomplete data. Finally, National Task Force members emphasized that inaccurate or incomplete criminal history record data poses a significant threat to the privacy and due process rights of record subjects.

Finding 1: There is a high incidence of recidivism, and many recidivists have active criminal careers involving multiple arrests and convictions.

Commentary: Most arrestees are recidivists. In support of this finding, the National Task Force relied upon BJS research reports indicating, for example, that almost two-thirds of released prisoners are re-arrested for a felony or a serious misdemeanor within three years after their release.¹⁵ Federal Bureau of Investigation (FBI) officials estimate that of all federal and state arrests processed by the FBI's Identification Division, two-thirds involve arrestees with prior records.¹⁶ Furthermore, the National Task Force took note of research indicating that many recidivists have extraordinarily active careers. For example, research indicates that prisoners who are rearrested within three years of their release from prison have, on average, criminal history records that include

¹⁵Report at Appendix 2, p. 6.

¹⁶CHRI Statutes report, p. 1.

more than 12 offenses per offender.¹⁷

Finding 2: Because recidivism is common, and because many recidivists have active criminal careers, appropriate decisions made about these individuals by both criminal justice and noncriminal justice decisionmakers must take into account the recidivists' criminal history records.

Commentary: The National Task Force took note of the fact that legislatures in virtually every state have adopted statutes that mandate or authorize that criminal history record information be evaluated prior to making critical criminal justice decisions involving bail, charging, sentencing, probation, correctional classification and parole.¹⁸ The National Task Force also noted that states have in recent years authorized access to criminal history record information for numerous noncriminal justice purposes, such as licensing and employment in positions of special trust.¹⁹ Members also took note of recent federal legislation mandating access by federal agencies to criminal history records for security clearance

¹⁷Report at Appendix 2, p. 6.

¹⁸CHRI Statutes report, pp. 3-4. The table at pages 3-4 shows that virtually every state has adopted statutes requiring the use of criminal history record information in making key criminal justice determinations. This table is excerpted from this report and is attached as Appendix 3.

¹⁹Report at Appendix 2, p. 4.

determinations.²⁰ One National Task Force member emphasized that only a few years ago, most criminal justice officials attached relatively little importance to criminal history records, but today "everyone feels that rap sheets are important."

Finding 3: Accurate and complete criminal history record information assists law enforcement personnel to identify individuals for investigative purposes.

Commentary: The National Task Force took note of published research indicating that law enforcement officials routinely use criminal history record information for identification and investigative purposes. The International Association of Chiefs of Police, for example, has stated, "[I]n the planning and implementation of special programs such as those involving an emphasis on the apprehension of career offenders, narcotics dealers and organized crime figures . . . data quality has a direct impact on the degree to which delivery of law enforcement services meets the needs and expectations of society."²¹ Criminal history record information that lacks available dispositions is simply less useful to law enforcement officials.

Finding 4: Accurate and complete criminal history record information is necessary for prosecutors to make charging and plea bargaining decisions.

Commentary: Research indicates that prosecutors make frequent use of criminal history record information for charging decisions.²² Statutes in 38 jurisdictions provide for the upgrading of charges for defendants with prior convictions.²³ A 1991 report SEARCH prepared for BJS, in reviewing statutes with respect to the upgrading of charges, concludes: "Thus, to comply with the laws, information concerning prior convictions, if any, must be available to the prosecutor at the time the case is filed in court because the class of offense charged may affect the type of charging document utilized or the court in which the case is filed."²⁴ One National Task Force member pointed out that when prosecutors have access in a timely manner to complete and reliable criminal history data, prosecutors can "target their scarce resources on the really bad guys."

Finding 5: Accurate and complete criminal history record information is necessary for courts to make appropriate pretrial release decisions.

Commentary: The National Task Force engaged in considerable discussion of the critical role that criminal history record information plays in bail and pretrial release decisions. The 1991 BJS report on state statutes finds that, "[A]ll but three [Idaho, New Hampshire, Oklahoma] of the 54 jurisdictions have statutes, constitutional provisions or court rules explicitly requiring or permitting the consideration of an arrested person's prior criminal record in deciding whether, and under what circumstances, to release the person

on bail pending trial or appeal."²⁵ Many of these legal provisions authorize pretrial detention for persons with prior records of enumerated serious offenses. The National Task Force also took note of BJS studies which find that there is a relationship between the seriousness of an individual's criminal history record and the likelihood that the individual will fail to appear for a court date at the completion of a bail period.²⁶

The National Task Force further took note of the fact that pretrial services departments are among the most interested and important consumers of criminal history record information. In some jurisdictions, pretrial services departments are barred by statute from maintaining a criminal history record database. In many other jurisdictions, however, pretrial services departments devote enormous resources to compiling and maintaining their own criminal history record information in order to meet the courts' need for prompt and reliable criminal history record information. National Task Force members emphasized that such efforts are necessary because the criminal history records available from some state central repositories may be unsuitable for use by pretrial services departments for a number of reasons: the repositories' databases may not include available dispositions; dispositions may not have been linked to the underlying arrest or charge records; the databases may not be designed to include nonfelony or nonserious misdemeanor data; or the records may not reflect failures to appear or failures to pay fines unless a separate criminal charge was filed. Moreover, many state central repositories are unable to give pretrial services

²⁰Security Clearance Information Act, Pub. L. 99-169 (5 U.S.C. § 9101).

²¹Report at Appendix 2, p. 3.

²²Ibid.

²³CHRI Statutes report, pp. 11-13, and Table 3 at pp. 17-23.

²⁴Ibid, p. 11.

²⁵The 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U. S. Virgin Islands and the federal government comprise the 54 jurisdictions. CHRI Statutes report, p. 5; see also, Table 2 identifying applicable state statutes at pp. 7-10.

²⁶Report at Appendix 2, p. 5.

agencies timely service in the form of response times of under 24 hours.

Finding 6: Accurate and complete criminal history record information is necessary for prosecutors and courts to make effective case management decisions.

Commentary: The National Task Force noted that courts increasingly use criminal history record information as a screening factor in case management systems. The day when courts managed all criminal cases in the same manner is fast disappearing. Aspects of case management include decisions about the timing of the proceeding, courtroom location, assignment of court personnel and, in general, decisions about the allocation of resources. Criminal history record information, in particular, makes a significant contribution to the effective use of case management systems.

Finding 7: Accurate and complete criminal history record information is necessary for courts to make appropriate disposition decisions.

Commentary: The National Task Force recognized that criminal history record information, particularly conviction record information, is critical for effective sentencing decisions. One National Task Force member phrased this conclusion as follows: "Lots of criminal justice officials *think* that criminal histories are important; judges *know* that criminal histories are important."

Today, every state has enacted laws and adopted programs to identify career criminals and to take into account their prior criminal

history records in setting sentences.²⁷ Research conducted in connection with the National Task Force initiative found that statutory provisions in all of the 54 jurisdictions surveyed mandate or permit consideration of an offender's previous criminal record in imposing a sentence.²⁸ Judges and court personnel who participated in National Task Force discussions emphasized that sentencing decisions simply cannot be made in conformance with state law without reliance upon criminal history record information, particularly records of past convictions. Indeed, in recent years many states have adopted sentencing guidelines that require judges to take criminal history record information, especially conviction record information, into account.

Finding 8: Accurate and complete criminal history record information is critical for correctional and parole agencies to make appropriate and fair decisions.

Commentary: The National Task Force took note of research findings that statutes in 31 jurisdictions now expressly require or authorize correctional officials to consider criminal history record information — including, in particular, conviction record information — when making assignments for security and programmatic purposes.²⁹ Further, statutes in 46 jurisdictions require or authorize parole officials to take prior convictions into account in making parole determinations.³⁰ Finally, the National Task Force took note that even in the absence of an explicit,

legal mandate, correctional officials in every state utilize criminal history records in their decisions concerning the housing, treatment and release of offenders. National Task Force members emphasized that correctional use of criminal history record information is among the most important and least recognized uses of these records.

Finding 9: Accurate and complete criminal history record information is critical to make appropriate and reliable security clearance and other national security determinations.

Commentary: The National Task Force noted that criminal history record information is a critical component in decisions with respect to the award of a security clearance or assignment to other sensitive national security duties. The federal Security Clearance Information Act requires state central repositories to make criminal history records available to specified federal agencies for security clearance and national security determinations.³¹ The National Task Force also took note of the fact that in the national security context, felony conviction record information is particularly critical. Applicants for entrance into the Armed Forces can be disqualified on the basis of a felony conviction record; however, an arrest record, without more, is not a sufficient basis for disqualification.³²

²⁷Ibid, p. 7.

²⁸CHRI Statutes report, Tables 4 and 5 at pp. 24-41.

²⁹Ibid, p. 51, and Table 8 at pp. 52-54.

³⁰Ibid, p. 55, and Table 9 at pp. 56-61.

³¹Report at Appendix 2, pp. 3-4; see also, Security Clearance Information Act, Pub. L. No. 99-169 (5 U.S.C. § 9101).

³²Ibid, p. 4; see also, 10 U.S.C. § 504.

Finding 10: Accurate and complete criminal history record information is critical to make appropriate and reliable determinations of eligibility to purchase and/or carry a firearm.

Commentary: Statutes in 45 states make possession of specified types of firearms by individuals with felony convictions or certain types of felony convictions a criminal offense.³³ In addition, federal law proscribes felons from owning or possessing a firearm.³⁴ In an effort to establish a program to enforce this standard, the federal Anti-Drug Abuse Act of 1988 requires the U. S. Attorney General to recommend to the Congress a system for the immediate and accurate identification of felony offenders who attempt to purchase firearms.³⁵ To meet this requirement, a task force was convened, and the *Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms* was submitted to the Congress in November 1989. Obviously, the success of any such system will depend upon the quality of the criminal history record information in the system and the extent to which those systems include felony dispositions.

Finding 11: Accurate and complete criminal history record information is critical to make appropriate and reliable noncriminal justice licensing and eligibility determinations.

Commentary: Today, every state has adopted legislation that makes criminal history record information available for specified occupational and other types of licensing determinations. A patchwork of state and local statutes and ordinances customarily require a criminal history records check for a myriad of licensed professions, including: professional boxers; horse racing officials and jockeys; private investigators and guards; transporters of explosives; members of national securities exchanges; professional bondsmen; longshoremen and related dock workers; employees in check-cashing businesses; insurance agents; employees in liquor stores and bars; boxers and wrestlers; veterinarians; physicians; attorneys; real estate agents; insurance agents; gem dealers; gun dealers; and funeral directors.³⁶

Finding 12: Accurate and complete criminal history record information is critical to make governmental and private sector employment decisions involving positions of trust, such as working with children or the elderly or having the responsibility for significant financial or other assets.

Commentary: The National Task Force noted that in some states, the percentage of noncriminal justice access requests to state central repositories (including requests for security clearance and licensing determinations) already exceed 50 percent of the repositories' total

requests.³⁷ Research indicates that as an absolute number, the total of these requests is approximately two million per year.³⁸ Indeed, hardly a session of a state legislature is completed without the legislature authorizing or requiring the state central repository to make criminal history record information available in connection with a specified type of employment determination, particularly those involving child care. In many states, however, the background check authority is limited to access to conviction record information. Accordingly, the National Task Force recognizes that effective and reliable disposition reporting is of critical importance for governmental and private sector employment determinations.

Finding 13: Accurate and complete criminal history record information is critical for public policy and research.

Commentary: Increasingly, the criminal history record is a source for research and statistical information about crime and the operation of the criminal justice system. This information is of vital importance for criminal justice policymakers and researchers. A 1989 audit conducted by the Illinois Criminal Justice Information Authority concluded, for example, that "criminal history records are also vital to statisticians and researchers working to inform policy makers and the public."³⁹ Most states have established Statistical Analysis Centers (SACs) which rely, in part, upon criminal history record information to generate statistical products. Many states also generate Offender-Based Transaction Statistics (OBTS) from criminal history data. If criminal history record information lacks available

³³CHRI Statutes report, Table 10 at pp. 64-66.

³⁴Ibid, pp. 63; see also, 18 U.S.C. § 922(g).

³⁵Pub. L. No. 100-690, 102 Stat. 4360 (1988).

³⁶U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Privacy and the Private Employer*, Criminal Justice Information Policy series, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, December 1981) pp. 49-50.

³⁷Report at Appendix 2, p. 4.

³⁸Ibid.

³⁹Ibid, pp. 3-4.

dispositions, the information which is used for research or policymaking purposes may not yield accurate results.

Finding 14: Accurate and complete criminal history record information is critical to assure that record subjects are treated in a fair and equitable manner.

Commentary: National Task Force members emphasized the interest that record subjects have in assuring that disposition information is accurately and fully reflected on their criminal history records. Some final dispositions are *not* convictions; accordingly, when a final disposition is missing, it may mean that exonerating information is missing. Naturally, any information which exonerates an individual is of importance to courts and other criminal history record users. Use of incomplete information (or the failure to use available, exonerating information) to make decisions about individuals raises both legal and policy questions with respect to fairness.⁴⁰

Finding 15: Research indicates that, despite significant recent progress, the dispositions on criminal history records maintained by state central repositories are often missing, incomplete or posted late.

Commentary: The National Task Force took note of the findings of numerous studies, including a 1967 study by the National Advisory Commission on Criminal Justice

Standards and Goals; a 1977 study by the MITRE Corporation; a 1980 study by New York University Law School professors; a 1979-1982 survey and study done by the Office of Technology Assessment;⁴¹ and a 1984 SEARCH survey of disposition reporting to state central repositories.⁴² In addition, SEARCH and BJS have recently published the results of a 1990 survey that is perhaps the most comprehensive survey ever undertaken of state central repository directors.⁴³ That survey indicates that significant progress has been made in improving disposition reporting rates. The survey found, for example, that in 1989 over 3.5 million final dispositions were reported to 34 state central repositories. These repositories are in states representing 72 percent of the nation's population. By contrast, in 1983 less than 2 million final dispositions were reported to 30 state central repositories representing 59 percent of the nation's population. All but five states reporting data for both 1983 and 1989 showed an increase in the number of final dispositions reported to the state central repository. Furthermore, out of 40 states responding, 22 indicate that as of 1990, their state central repositories have final disposition reporting rates of 70 percent or greater for arrests that have been entered into the system within the last five years.⁴⁴

⁴¹Ibid, p. 2.

⁴²U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *State Criminal Records Repositories*, Technical Bulletin series (Washington, D.C.: Government Printing Office, October 1985).

⁴³U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Survey of Criminal History Information Systems*, Criminal Justice Information Policy series, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, March 1991). (Hereafter, 1990 Survey.)

⁴⁴1990 Survey, Table 1 at p. 11.

The 1990 Survey indicates, however, that disposition reporting in many states continues to lag. For example, three states reported that their disposition reporting rate for arrests logged within the last five years remains under 30 percent. Another 11 states report disposition reporting rates for recently logged arrests at 50 percent or lower. Disposition reporting rates for all arrests in the system (as opposed to arrests logged in the past five years) is significantly below the level at which states are capturing dispositions for arrests logged within the last five years.⁴⁵

Finding 16: Research indicates that disposition reporting rates vary significantly among state central repositories, with many repositories showing disposition reporting rates of 50 percent or less, and many repositories showing disposition reporting rates (particularly with respect to recent arrests) of 70 percent or more.

Commentary: The National Task Force took note of recent research reports, including SEARCH's 1990 Survey, indicating that many state central repositories and court systems have worked effectively to achieve disposition reporting rates well in excess of 70 percent, particularly for arrests that have been logged within the last five years.⁴⁶ Indeed, of the 40 states responding to this part of the Survey, SEARCH found that six state central repositories have recorded final dispositions for arrests logged within the last five years at a rate of 90 percent or above.

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁰Ibid, p. 4.

By contrast, other state central repositories and court systems have been unable to achieve disposition reporting rates even as high as 50 percent. For arrests logged in the last five years, 14 out of the 40 states responding to this question fall into the 50 percent or below category. When all arrests in the database are taken into account, the number of state central repositories with final dispositions below 50 percent increases to 19.⁴⁷

Finding 17: Research indicates that the causes for inadequate disposition reporting are many and varied and cannot be attributed to any one component of the criminal justice system.

Commentary: National Task Force members concluded that the multiplicity of factors that contribute to the disposition reporting problem is perhaps this Report's most significant finding. This finding merits special emphasis and prominence.

Numerous and differing factors have been identified which contribute to inadequate disposition reporting. These factors include:

- A lack of resources in many states;
- A fracturing of responsibility and accountability for disposition reporting throughout the criminal justice system;
- Multiple and burdensome reporting demands placed on courts and court administrative personnel; and
- The need for greater emphasis on disposition reporting as a priority at the state level.

Several other considerations indirectly, but nonetheless substantially, contribute to disposition reporting problems. For one thing, the inability or failure of state central repositories to provide criminal history record data in a form that is fully adequate for courts discourages courts from assigning a high priority to disposition reporting. Another indirect factor that National Task Force participants believe discourages court reporting of dispositions is that repositories are sometimes unable to match disposition information reported to the repository by courts with arrest information. In some instances, this failure arises from the fact that the prosecutors, courts and law enforcement do not have or do not report appropriate "linking data" that would permit the repository to "link" disposition data to the entry for the underlying arrest. In other cases, the repository has not received the underlying arrest data. Whatever the cause, this problem "resonates" and creates a disincentive for courts to report disposition information.

These causes are discussed in more detail in the commentary to the strategies recommended by the National Task Force for addressing disposition reporting problems.

Finding 18: Information and telecommunication technologies exist to facilitate the reporting of disposition and other data to state central repositories.

Commentary: National Task Force participants concluded that the potential that technology has for improving disposition reporting is another key finding that deserves special emphasis. They emphasized the remarkable progress in information and telecommunications technologies that has been made in the last decade. This progress makes it easier and, just as importantly, less expensive to maintain criminal

history record information and to report such information to state central repositories. Moreover, edit features in automated systems make it far easier than in manual systems to identify errors; incomplete entries; and entries with missing or delinquent dispositions.

Finding 19: Components of the criminal justice system, as well as those outside of the system, have legitimate but differing needs for criminal history record information. The criminal justice system needs to develop a reliable, high-quality criminal history record information "product" that takes into account the heterogeneity of needs and that is readily accessible; available on a timely basis; readable; and customized to be of maximum utility to legitimate users.

Commentary: As noted in the Introduction, the National Task Force, in the course of developing strategies for improving disposition reporting, uncovered a more systemic issue. In order to maximize the utility of the criminal history record product, state central repositories, working in conjunction with the courts and all other components of the criminal justice system, need to identify the users of this product; examine user needs; and develop a plan to prioritize and meet those needs. In doing so, consideration should be given to the "client-server" model. Under such a model, repositories would provide a "menu" of criminal history record products that vary in content and format depending upon the type of record selected by the users in light of users' needs and in light of statutory restrictions on user eligibility for

⁴⁷Ibid.

access. In many states, such an approach would require repositories to change their collection procedures so that repositories collected information not customarily held by repositories (for example, "nonreportable," "nonserious" misdemeanor arrest and conviction information; information about failures to appear after a pretrial release; information about failures to pay fines; and information about assaultive or other violent behavior). National Task Force members noted that this kind of "information utility" approach not only would provide better service to all legitimate criminal history record users but also would, by making the state central repository a more important resource for the criminal justice system, encourage courts and other components of the system to devote greater resources to improving disposition reporting.

National Task Force participants agreed that each state task force, if established as recommended in Strategy No. 1, should review the role that should be played by the state central repository in their state. State task forces should do so from the standpoint of the needs of *all* of the legitimate users of the system and should make recommendations for redesigning the system to more effectively meet those needs.

Strategies for Improving Disposition Reporting

In recommending strategies for improving disposition reporting, National Task Force members were guided by the fact that many state central repositories, together with courts and other components of the criminal justice system, have used the strategies recommended in a 1989 BJS report prepared by SEARCH titled *Criminal Justice Information Policy: Strategies for Improving Data Quality*, to achieve "notable, demonstrable success."⁴⁸ The recommended strategies include administrative reforms (establishing a statewide task force, conducting audits and improving automation); data entry reforms (implementing tracking number systems); data maintenance reforms (improving mandatory reporting statutes and implementing delinquent disposition monitoring systems); and regulatory strategies (implementing training programs and increasing funding levels).⁴⁹

All of the strategies focus on statewide reform and, in particular, on initiatives by state central repositories and statewide offices of court administration. One strategy given particular prominence in the 1989 BJS/SEARCH report is the establishment of a high-level, statewide task force. More recently, BJA's guidelines for implementing the five percent set-aside program call for the establishment of statewide task forces.⁵⁰ The establishment in each state of a criminal history record task force is viewed by National Task Force members as the linchpin for

success in improving disposition reporting.

Strategy 1: In each state, appropriate court and executive branch officials should establish a high-level task force representing all components of the criminal justice system. The state task force should identify the needs of all legitimate users of criminal history record information within the state. In light of those needs, the state task force should adopt recommendations for a plan for a statewide, comprehensive criminal history record system. Issues to be addressed by the state task force include the role of the state central repository and the linkage of its databases to data maintained by the courts and other components of the criminal justice system, as well as timely and effective access to criminal history record information by the courts.

Commentary: National Task Force members were virtually unanimous in recommending that every state, even those states that have enjoyed relative success in improving disposition reporting, establish a task force comprised of knowledgeable, senior-level officials representing all components of the criminal justice system. Such a task force would have three overall goals.

- A. The state task force should articulate what one National Task Force member called a "vision" of a statewide, integrated criminal history record system, including a definition of the respective roles of the state central repository and the courts and other components of the criminal justice system.
- B. The state task force should strive to improve the quality and the reliability of the criminal history record product; improve accessibility to the product to assure that the courts and other users have access to criminal history record information in a convenient and timely manner without payment of fees; improve the readability of criminal history records; and reform statutorily mandated record retention schedules that in many states burden courts and others with the maintenance of aged and redundant criminal history records.
- C. The state task force should promote cooperation and coordination among components of the criminal justice system and branches of government.

National Task Force members felt that state task forces would find that numerous and varied strategies are available to meet the goal of making disposition reporting a priority. For example, state task forces could look for opportunities to publicize the importance of accurate and complete criminal history record information.

National Task Force members also felt that state task forces would have numerous options in promoting cooperation and coordination among the components of the criminal justice system. Members stressed that

⁴⁸Data Quality Strategies report, p. 1.

⁴⁹Ibid, pp. 1-3.

⁵⁰U.S. Department of Justice, Bureau of Justice Assistance, *Guidance for the Improvement of Criminal Justice Records* (December 10, 1991) and "Addendum to the Guidance for the Improvement of Criminal Justice Records" (January 8, 1992).

the very process of involving representatives from all components of the criminal justice system in state task force efforts would likely improve cooperation and coordination. The National Task Force members also felt that state task forces, where possible, should have a legislative charter. They recommended that in most states, the task force should be an ongoing, permanent organization.

National Task Force members emphasized that a state task force's agenda should vary depending upon the state's needs. Customarily, however, the task force process should begin with a careful examination, through the audit process, of the extent and nature of disposition reporting to the state central repository; an identification of deficiencies in the disposition reporting process; and an assessment of the criminal history record needs of all legitimate users of the system.

National Task Force members recognized the following types of tasks that state task forces in most states should undertake:

- Developing uniform definitions for key terms (in many states, components of the criminal justice system disagree on the definition of key terms, even with respect to the definition of the term "disposition");
- Identifying the users of the state central repository, as well as their needs;
- "Customizing" the state central repository's criminal history "product" to meet those needs;
- Identifying and publishing successful strategies for improving disposition reporting;
- Making recommendations for improving the readability of criminal history records; and
- Making recommendations for improving and expediting user

access to criminal history records.

National Task Force members took note of successful, statewide task force efforts previously undertaken by several states, including New York. New York's task force developed a statewide, standardized "data dictionary." In addition, the New York task force is credited with spurring advances in uniform reporting and automation, particularly telecommunications links between New York's repository and its office of court administration.

Strategy 2: Each state should give high priority to encouraging further automation in its criminal justice system (including the information systems of the state central repository and the courts) and to establishing uniform, automated reporting procedures for the repository and the courts.

Commentary: National Task Force members were unanimous in stressing the importance of automation. The National Task Force took note of published recommendations that state task forces include technical committees with a multidisciplinary and technically proficient membership. This committee should assess their state's automation needs on a detailed and technical basis.⁵¹ The National Task Force also noted a mid-1980s SEARCH survey which found that repository directors believe that automation makes the most significant contribution to improving disposition reporting rates.

Surveys show that criminal justice officials at all levels overwhelmingly

believe that automation is the single most important tool for achieving better data quality. Automated systems make it more practical and economical to implement many other data quality strategies, such as improved data entry procedures, uniformity in reporting data, editing, disposition monitoring and data-linking systems. National Task Force members stressed that uniform reporting and uniformity in other data entry and data maintenance programs is an important benefit arising from automation. Members also emphasized the importance of using uniform documentation in manual systems.

The National Task Force also stressed that the telecommunications components of automated systems make the reporting of arrest and disposition data easier and more economical and reliable.⁵² Of course, even where arrest information is transmitted electronically, it must still be fingerprint-supported.

National Task Force members commented that not too many years ago, disposition reporting problems persisted in part because of the unavailability of adequate technology. Now, adequate technology is available, and its use is a matter of priorities and funding. Members took note, however, of findings indicating that automation at the local level lags behind automation at state central repositories. This lag is significant because local law enforcement agencies are responsible for collecting, initially maintaining and reporting arrests. Similarly, the courts, and not the statewide administrative office of the courts, are responsible for collecting, maintaining and reporting dispositions. As one National Task Force member put it, "We have to stop thinking that we can build automated systems from the top down. These systems must be built from the bottom up."

National Task Force members emphasize that the degree to which

⁵¹Data Quality Strategies report, p. 11.

⁵²Ibid, p. 10; see also, Report at Appendix 2, pp. 14-15.

automation can make a contribution to disposition reporting depends not merely on automation in state central repositories but also, just as importantly, on automation in courts and offices of court administration. Court automation and telecommunications links between the courts and repositories need to be "two-way" so that courts can obtain management and statistical information from the repository, as well as on-line operational information. The repositories and the courts are both "links in the chain" with respect to the collection, management and dissemination of criminal history record information. Information must flow along the chain in both directions. The flow of information back to the courts is important and includes on-line feedback with respect to the adequacy of or problems with data reported to the repository. Without the capacity for automated responses to the courts, court officials often perceive that the courts receive relatively little benefit from automation initiatives that focus on disposition reporting.

At present, offices of court administration in many states have court automation projects underway. National Task Force members stated that the extent to which these projects improve disposition reporting depends in large measure on the extent to which disposition reporting occurs as a by-product of the courts' automated case management systems. Court-based automated systems must give priority to the myriad of recordkeeping responsibilities facing court clerks and administrators, including the maintenance of dockets and schedules, and information about witnesses, juries and defendants. The National Task Force emphasized that to be most effective, disposition reporting should be an automatic by-product of a system designed to make the court's job easier.

The National Task Force also noted the importance of including an editing capability in automated systems. An editing capability permits data entry clerks to identify

potential errors on-line and to correct those errors.

The National Task Force agreed that courts should be asked to report dispositions to only one agency. They pointed out that even though automation has brought down reporting costs in many jurisdictions, courts and court clerks customarily receive no special or earmarked resources to meet reporting requirements. Accordingly, multiple reporting requirements are especially burdensome.

Strategy 3: States should encourage the development of electronic data interchange technologies which can improve disposition reporting.

Commentary: State central repositories and courts should seek to develop uniform electronic data interchange (EDI) protocols for the communication of criminal history record information between courts and repositories; and, in doing so, should take into account the demands upon courts and repositories for data interchange with other components of the criminal justice system and other users.

In adopting this strategy, the National Task Force is not intending to address the client-server model, or recommend that repositories adopt the role of a message-switcher or an index-holder among distributed databases. The National Task Force has, however, recommended that each state task force give careful consideration to the role of the repository. In adopting this strategy, the National Task Force recommends that courts and repositories develop standard procedures and protocols for defining and handling data, as well as for moving data from place to place. The National Task Force believes that establishing these kinds of EDI protocols will do much to improve the efficiency and the effectiveness of the interchange of data between courts and repositories.

National Task Force members also recommended that the technical committees of the statewide task forces address EDI and data compatibility issues. The state task forces should also seek to develop other initiatives to improve uniformity in the exchange of data. The National Task Force recognized that the American Bar Association (ABA) has an effort underway to address compatibility standards for court-based, automated systems. Members expressed the hope that statewide task forces could be established in a relatively short time frame so that they can coordinate their efforts with ABA's initiatives, as well as consult with other organizations that have an interest in the exchange of criminal history information between courts and repositories, such as the FBI National Crime Information Center Advisory Policy Board.

Strategy 4: Statewide task forces should examine existing statutory and other reporting requirements and, where appropriate, adopt recommendations to address the following: the needs of all users of criminal history record information, the timeliness with which information is accessed, expansion of the criminal history data being reported to state central repositories, and improvements in the efficiency of criminal history disposition reporting.

Commentary: The National Task Force examined in some detail the pattern of existing disposition reporting laws.⁵³ The National Task Force took note of a 1991 SEARCH survey that found that 52 jurisdictions have adopted legislation which imposes some form of disposition reporting requirement. Only the Virgin Islands has *not* adopted a disposition reporting statute.⁵⁴

In the National Task Force's view, a significant deficiency in existing reporting statutes is that too many of the statutes are too vague.⁵⁵ Of even greater concern is the fact that as of 1991, statutes in only 44 jurisdictions require the courts (customarily the court clerk) to report disposition information to the state central repository.

Statutes in only 43 jurisdictions, for example, require correctional agencies to report correctional disposition information, such as information about escapes, release, parole or death. In only 28 jurisdictions do existing statutes prescribe time limits for the reporting of disposition data; and in only 21 jurisdictions are there provisions which impose sanctions for a violation of disposition reporting requirements.⁵⁶

Despite these deficiencies, National Task Force participants agreed that there have been improvements. Several participants recalled that disposition reporting used to be a haphazard and informal process. Thanks in part to disposition reporting statutes, the process has become more formal and reliable.

The National Task Force noted, however, that reporting statutes can impose unacceptable burdens upon the courts. Court clerks have

responsibilities for reporting many types of information. Reporting criminal dispositions constitutes only a relatively small part of the courts' overall reporting tasks.

The National Task Force concluded that statewide task forces should review carefully their state's existing reporting laws. State task forces should identify the agencies that are currently reporting dispositions to the repository; review the types of dispositions being reported; review the format in which the disposition information is being reported; and review existing reporting deadlines. National Task Force members felt that at the conclusion of this kind of process, the state task force would be in a position to prepare and recommend appropriate amendments to improve their state's reporting statute and to relieve courts or other agencies of inappropriate or unfair burdens. As a matter of both fairness and the efficient and effective operation of the criminal history record system, state task forces, in looking at reporting deadlines, should also look at deadlines for repositories to respond to court requests for criminal history record information.

The National Task Force concluded that every state should adopt statutory provisions that require the reporting to the state central repository of all information to be included in the state's criminal history record. This includes arrest fingerprints and arrest data, as well as all subsequent actions or dispositions occurring in the case through release of the record subject from the cognizance of any segment of the criminal justice system. Included is information concerning case processing by local detention centers, bail agencies, prosecutors, trial and appellate courts, parole and probation agencies, correctional agencies (including departments of mental health or comparable agencies) and the Governor's office (with regard to information concerning executive clemency).

The reporting law should specify the actions or decisions to be

reported, identify the official or agency responsible for reporting each reportable event, and specify the time period within which reporting must occur. An appropriate official should be given authority to issue regulations specifying the particular data elements to be reported at each reporting stage and to specify the form and manner of reporting, including the use of uniform reporting forms and procedures. Regulations that apply to reporting by judicial officials should be issued jointly by the appropriate executive branch official and a designated judicial branch official. Finally, the law should include sanctions for nonreporting that are realistically designed to be enforceable.

In states that do not currently have an adequate reporting law, steps should be taken to involve officials from all segments of the criminal justice system in developing and drafting a new law or appropriate amendments to the existing law. If consensus can be reached concerning the need for a detailed reporting law and the responsibility for reporting specific types of information, this agreement can help foster the kind of interagency cooperation that is necessary for achieving significant gains in the incidence and accuracy of reporting.

Experience has shown that while reporting laws do not necessarily guarantee high levels of reporting — since they are difficult to enforce despite the inclusion of sanctions — at a minimum, they emphasize the state's commitment to data quality improvement, and they can be cited as legal authority for efforts by the repository or other agencies to improve reporting. For these reasons, enactment of a comprehensive mandatory reporting law applicable to all segments of the criminal justice system should be a priority goal in any state that does not already have one.

The National Task Force took note of excellent reporting statutes adopted in Maryland and California, as well as in certain other states. Appendix 5 contains a model

⁵³See SEARCH chart titled "Status of Disposition Reporting Laws (as of September 1991)," attached hereto as Appendix 4. (Hereafter, Report at Appendix 4.)

⁵⁴Report at Appendix 4; and Report at Appendix 2, p. 11.

⁵⁵Report at Appendix 4.

⁵⁶Ibid.

reporting statute. It is not intended to be a uniform law. The model law, however, includes key provisions that are customarily found in the best reporting statutes. These provisions include:

- A requirement that all components of the criminal justice system that hold criminal history record information be required to report;
- A provision that requires all disposition information, not merely felony disposition information, to be reported to the state central repository;
- Specific time periods in which criminal justice agencies are required to report dispositions;
- A requirement that dispositions be supported by fingerprint information so as to assure positive identification; and
- Realistic sanctions.

National Task Force participants cautioned that reporting statutes, even when effectively crafted, are by no means a panacea. On the other hand, a high-level effort to improve existing reporting statutes makes a symbolic statement about the importance of disposition reporting.

Strategy 5: State central repositories should work with appropriate components of the criminal justice system to implement procedures for monitoring missing arrests and/or missing dispositions and to establish procedures to obtain this information.

Commentary: The National Task Force took note of a considerable body of research indicating that state

central repositories' implementation of systems for identifying missing arrests and missing and/or delinquent dispositions, coupled with procedures to obtain the missing information, is one of the most effective strategies for improving the completeness of criminal history records.⁵⁷

Repository directors surveyed by SEARCH in 1984, for example, cited the establishment of delinquent disposition monitoring systems as one of the primary reasons for improvements in the acquisition of dispositions.⁵⁸ SEARCH's 1990 Survey confirmed that state central repositories actively employ various delinquent disposition monitoring strategies.⁵⁹

At present, only 12 states have adopted statutes which mandate the establishment of some type of disposition monitoring system.⁶⁰ In determining what that system should look like, National Task Force members took note of research indicating that the system must identify reportable events and establish a schedule of time periods during which the event should be reported.⁶¹ Flags and schedules are most readily incorporated into automated systems but they can be installed in manual systems as well.⁶²

SEARCH's 1990 Survey indicated that approximately one-half of the states that have the capability of generating lists of arrests for which final dispositions have not been recorded, do so. Other disposition monitoring strategies used by state central repositories include field visits to encourage arrest and disposition reporting (29 states); letters to agencies encouraging arrest and disposition reporting (36 states); telephone calls to encourage and

check on arrest and disposition reporting (31 states and the District of Columbia); and newsletters, audits, training and statewide communication networks to encourage arrest and disposition reporting.⁶³

National Task Force members also emphasized that the state task forces should develop recommendations for state central repositories to provide feedback to courts concerning disposition reporting rates and the success of methodologies to minimize delinquent disposition reporting. The feedback should be in the form of statistical and management data, as well as case-by-case data.

Given that disposition monitoring systems have proven to be effective and that their implementation, particularly in automated systems, involves a relatively modest expenditure, National Task Force members were unanimous in the view that every state central repository should implement a delinquent disposition monitoring system.

The National Task Force also noted that in many repositories, dispositions are received for which there is not an available arrest or charge entry. In those instances, some repositories establish special files for the disposition information in order to keep that information available in the event that the arrest is subsequently reported or obtained. Other repositories simply fail to maintain the disposition information. The National Task Force agreed that state central repositories should maintain disposition data for which there is not an underlying arrest or charge entry in a suspense file and establish a program to obtain the missing arrest or charge data.

National Task Force members emphasized, however, that the ultimate remedy for this kind of unmatched disposition data is to ensure that every individual is "booked" or otherwise appropriately processed. In the absence of such processing, it is unlikely that the

⁵⁷Data Quality Strategies Report, pp. 30-31.

⁵⁸Report at Appendix 2, p. 16.

⁵⁹1990 Survey, Table 14 at p. 28.

⁶⁰Report at Appendix 2, p. 11.

⁶¹Data Quality Strategies report, pp. 30-31.

⁶²Ibid.

⁶³1990 Survey, p. 5.

repository will know about the individual and his arrest until the repository receives the disposition. By then the system has already failed, resulting in greater expense and a lower-quality product.

Strategy 6: To ensure that fingerprints are obtained in all reportable cases, each state should develop procedures to ensure that fingerprints are taken and submitted to the state central repository in each case involving a reportable offense, whether such a case begins by arrest, by the issuance of a summons in lieu of an arrest, or by the filing of a new case against a person already in custody in connection with a prior case.

Commentary: National Task Force members concluded that strategies for assuring that fingerprints are obtained at the outset of all cases involving reportable offenses are among the most important strategies for improving criminal history records. They noted that improvements in fingerprinting technology are making it easier and less expensive to obtain readable and reliable prints. It is critical that fingerprints be obtained in all reportable cases so as to ensure positive identification and to facilitate the linking of underlying arrests with subsequent dispositions. Accordingly, states should establish policies to require the submission of fingerprint cards in all cases involving reportable charges, at the point of origin of the case.

Such a practice would represent no change for cases originating with arrests since arresting agencies currently have procedures for fingerprinting arrested persons and submitting these fingerprints to the repository. In cases originating by

other means, however, such as by the issuance of a summons in lieu of an arrest, or by the filing of a new case against a person already in custody, additional procedures may need to be implemented to ensure that fingerprints are obtained. A suggested procedure is to attach a blank fingerprint card to the indictment or other charging document issued in the case. The presence of the card in the case file should serve as a reminder that the person has not yet been fingerprinted in connection with the case and should be fingerprinted at first appearance or upon conviction.

A tracking number also should be assigned to the case and included on the fingerprint card (see Strategy No. 7). If the tracking number is reported immediately to the repository, this will enable the repository to monitor the case to ensure that fingerprints are obtained and submitted.

National Task Force members also urged state central repositories to take steps to assure that individuals are fingerprinted in misdemeanor cases. As noted earlier, courts have a pressing and unmet need for information about prior misdemeanor arrests and convictions. If misdemeanor arrestees and offenders are fingerprinted, the state central repositories will be positioned to capture this information on criminal history records.

Strategy 7: To ensure that all entries related to a particular case are linked, and to ensure that, in turn, each case is properly linked to the individual's criminal history record, each state should assign a unique, fingerprint-supported number ("tracking number") to each case upon initiation of case processing.

Commentary: National Task Force members took note of research findings indicating that even where courts, prosecutors and other criminal justice officials faithfully report dispositions to state central repositories, repositories often have problems matching the dispositions with underlying arrest and/or charging information. This difficulty is especially commonplace in linking interim and final dispositions. The inability of repositories to "link" disposition data to underlying arrest or charge data is a significant part of the reason for incomplete or inaccurate criminal history record information.⁶⁴ A failure to link disposition data with charge data adversely affects the completeness of criminal history record information in two ways. First, linkage failures directly result in entries with missing dispositions. Second, knowledge that linkage failures are common discourages court officials from reporting dispositions because court officials see little point in expending resources to report dispositions which are not ultimately reflected on an individual's criminal history record.

National Task Force members concluded that part of the reason for persistent linkage problems arises from differences among repositories, courts and prosecutors in definitions and terminology. In addition, courts and prosecutors focus on charging information while repositories focus on arrest information. Furthermore, tracking problems are too often viewed as technical problems; therefore, these problems have escaped serious scrutiny by legislators and other policymakers. Only three states, for example, have adopted legislation that mandates the establishment of a tracking number system to link disposition data with underlying charge and arrest data.⁶⁵

Notwithstanding the absence of legislation, SEARCH's 1990 Survey indicates that most states have

⁶⁴Data Quality Strategies report, pp. 21-26.

⁶⁵Report at Appendix 2, pp. 11 and 16; see also, CHRI Statutes report, p. 69.

adopted numerous strategies to link arrest and disposition information. Thirty-three states and the District of Columbia, for example, employ a unique tracking number for each individual subject. Twenty-eight states and the District of Columbia use a unique arrest event identifier to link disposition and arrest charge information on criminal history records. Twenty states use a unique charge identifier to link disposition and arrest charge information. Thirty-four states use the arrest data, while 38 states use the subject's name as a method of linking disposition information with underlying arrest information. Twenty-seven states report using the subject's name and the reporting agency case number as a data linkage mechanism. Finally, individual states also report using criminal justice information system (CJIS) case numbers; placing fingerprints on the dispositions; using dates of birth and social security numbers; using FBI numbers; and using unique tracking numbers on combination arrest and disposition reporting forms.⁶⁶

In reviewing these various tracking number and linkage strategies, National Task Force members were especially impressed with systems that assigned a case tracking number at the outset of case processing, particularly where the numbers are placed on pre-printed fingerprint cards. This practice ensures the assignment of a tracking number in every case, tied to positive identification of the offender. Tracking numbers should be reported to the state central repository immediately upon assignment of the fingerprint card and should be used by the repository to initiate follow-up action to obtain the fingerprint card if the card is not submitted in a timely manner.

National Task Force members further took note of published research indicating that jurisdictions which assign a unique tracking number to an arrest entry when it is

received and use that number on disposition reporting forms (or on data entry screens in automated systems) have enjoyed considerable success in linking disposition data to underlying arrest data. In these jurisdictions, unique tracking numbers customarily are pre-printed on fingerprint cards used by arresting agencies. In cases originating with arrests, the arrest fingerprint cards are sent to the repository and provide both positive identification of arrest subjects and a basis for linking subsequently reported case disposition information. The unique tracking numbers are passed on to prosecutors, courts and correctional agencies with the case files and are used for reporting disposition information.

National Task Force participants noted, however, that even those jurisdictions with excellent tracking number systems have experienced problems with unlinked dispositions. These problems result from the failure of the arresting agency to forward arrest fingerprint cards to the repository so that a case cycle can be established, or the failure of disposition reporting agencies to include complete and accurate tracking numbers and to pass tracking numbers along to other agencies so that they can be included with disposition information reported by those agencies. Furthermore, particular problems are presented by cases that do not originate through arrests, such as the significantly increasing number of cases that begin with the issuance of a summons in lieu of arrest. Other such cases include charges filed as new cases against offenders already in custody on other charges, as well as charges brought against persons who commit offenses while incarcerated. One National Task Force member estimated that 40 percent of the reportable criminal cases in his jurisdiction originate by summonses rather than by arrests.

SEARCH's 1990 Survey confirmed that unlinked dispositions are, indeed, a significant problem. Thirty-four states, for example,

reported that they sometimes receive final court dispositions that cannot be linked to arrest information in the criminal history record database. Of these 34 states, the average percent of dispositions that cannot be linked to an arrest cycle is 17.5 percent, although 15 states reported that 5 percent or fewer of their final court dispositions could not be linked.⁶⁷

States also report that they use a variety of procedures when a disposition on file at the repository cannot be linked to an underlying arrest. Five states, for example, create "dummy" arrest segments to "match-up" with the dispositions. Ten states enter the disposition information into the database without any linkage to prior arrests; 24 states do not enter the unlinked disposition data; and 11 states use other procedures including, most often, returning the information to the contributing agency.⁶⁸

National Task Force members noted that there is an attractive approach to dealing with unlinked dispositions that occur in cases that do not begin by arrest: it is to implement a system that ensures that a tracking number is assigned and that the offender is fingerprinted at the first appearance or trial. As previously noted, one way of ensuring that this occurs is to attach a blank fingerprint card (with a pre-printed tracking number) to the case papers on all cases originated by grand jury or indictment or in other ways, apart from an arrest. This tracking number, as noted earlier, should be reported immediately to the state central repository. Fingerprint cards can be completed subsequently when the offender appears in court; in the meantime, the presence of a blank card in the file is a reminder that the individual has not yet been fingerprinted.

As a general matter, National Task Force members emphasized that uniformity in reporting protocols, in documentation, and in terminology and definitions are of critical

⁶⁶1990 Survey, Table 15 at p.29, and pp. 5-6.

⁶⁷Ibid, Table 16 at p. 30, and p. 6.

⁶⁸Ibid, p. 6.

importance if linkage problems are to be avoided.

Finally, National Task Force members emphasized that whatever data linkage strategy is adopted, the state central repository and the courts and prosecutors must take joint responsibility for assuring that the strategy is implemented. Neither prosecutors nor courts alone are in a position to implement these strategies.

Strategy 8: Each state should establish a regular and systematic training program for improving the accuracy and completeness of criminal history record information.

Commentary: National Task Force members concluded that establishment of a regular and systematic training program is one of the more important strategies for improving disposition reporting. As one member put it, the National Task Force should “bang the drum” for improved training programs. National Task Force members emphasized that because disposition reporting is, by definition, a task that must involve more than one component of the criminal justice system, training is essential in order to assure adequate levels of expertise among all personnel and effective communication among the components of the criminal justice system. Moreover, the training program should focus not merely on training for law enforcement and court personnel, but also upon training for prosecution and corrections personnel.

The National Task Force recommended that state task forces take a close look at their state’s training needs and resources. The National Task Force took note of research indicating that successful training programs include written materials, are permanent and

ongoing, and are widely available.⁶⁹ Data entry personnel often have little training and high turnover rates. National Task Force members recommended that the training include an emphasis on disposition reporting. They also recognized research findings that indicate that the process of developing a training program is a useful exercise because it helps to make disposition reporting a priority.

Finally, National Task Force participants noted that one often-neglected aspect of training is educating criminal justice personnel outside of the state central repository in understanding and interpreting criminal history records. In this regard, several National Task Force participants said that rap sheets generated by state central repositories are notoriously difficult to read.

Strategy 9: Each state should perform routine, external audits based upon uniform guidelines to measure the reliability and completeness of criminal history record information in the state central repository. These audits should include the performance of all components of the criminal justice system in contributing to the reliability and completeness of the repository’s criminal history record information.

Commentary: The National Task Force emphasized the critical role that can be played by a regular program of external audits. Audits can be used to: identify specific data quality problems; identify potential solutions; help focus attention and resources on disposition reporting and data quality issues; and provide a

benchmark against which to measure progress.

The National Task Force also emphasized that auditing of court performance must be done by and controlled by both the executive branch and court representatives. The statewide task force could supervise the auditing process in the courts, assuming that it has, as recommended, adequate court membership.

The National Task Force took note of published research which has found that auditing is “one of the most effective” data quality tools.⁷⁰ While audits can take a variety of forms, a baseline audit ideally should include an evaluation of the repository’s data quality procedures — including disposition reporting procedures — and an assessment of the completeness and accuracy of criminal history records in the repository. Customarily, auditors compare a sample of repository records with source documents maintained by local criminal justice agencies. Typically, the audit will also review transmittal forms, procedures and protocols used in forwarding information to the repository.

SEARCH’s 1989 report on strategies for improving data quality identified the following activities as part of an effective audit:

- Comparing repository fingerprint cards with the identification and arrest components of criminal histories;
- Checking criminal history disposition data against disposition reporting forms;
- Assessing the timeliness of disposition reporting by comparing the dates of reportable events against the dates the repository received the information and/or entered the information into the database;

⁶⁹Data Quality Strategies report, pp. 39-40.

⁷⁰Ibid, p. 12.

- Making site visits to contributing agencies; and
- Undertaking a representative sampling to assess the completeness of criminal history information.

States should endeavor to perform periodic comprehensive audits of the state central repository database. Such audits should be performed as often as resources permit, but no less often than every five years. These audits should include a thorough review of the repository's processing and data entry procedures and a review of the local agency reporting levels. Reporting levels can be assessed by systematic random sampling at the repository and by site visits to selected contributing criminal justice agencies. A comprehensive repository audit should include site visit audits of enough contributing agencies of all types (large and small agencies, law enforcement agencies, prosecutors, courts, etc.) to enable the auditors to perform a reliable assessment of reporting levels and repository data quality levels. These periodic comprehensive audits of the repository should be performed by state audit agencies, independent contractors or other independent entities.

States should also have a program of regular ongoing audits of contributing agencies to monitor compliance with reporting requirements and to identify problem areas and agencies. These audits can be performed by the repository or by an outside agency. The goal of such a program should be to audit all types of contributing agencies and to audit as many of them as resources permit. These audits might be designed to focus on particular types of agencies in a given year, but the goal should be to audit agencies of all types and to ensure that, in due course, all contributing agencies, particularly larger agencies, are audited.

SEARCH's 1990 Survey found that during the five years preceding the Survey, only 11 states had audited

their state central repositories to determine the level of accuracy and completeness in their systems. In nine of these 11 states, however, the audit was judged to be useful and changes were made as a result of the audit. Perhaps in recognition of the utility of auditing, the 1990 Survey also found that an increasing number of states, a total of 24 and the District of Columbia, planned or already scheduled data quality audits of the state central repository for sometime in the three years following the Survey.⁷¹

Strategy 10: Decisions about the apportionment of funding among the components of the criminal justice system for improvements in disposition reporting must be made on a state-by-state basis, taking into account the responsibilities and existing resources of the various components of the criminal justice system for ensuring an accurate and complete criminal history record information system.

Commentary: National Task Force members emphasized that funding for improvements in disposition reporting must be a priority and is a critical factor in the success of any disposition reporting program. They further emphasized that funding must be apportioned in a fair manner and in a manner commensurate with the responsibilities that each component of the criminal justice system assumes in establishing and maintaining an accurate and complete criminal history record information system.

For virtually every state, this means that the state central repository

will receive a substantial percentage of available funds. In virtually every state, however, such an approach also will mean that courts, including the office of court administration, will receive a substantial percentage of funding. As one National Task Force participant put it, "the courts' problems are the repositories' problems, and the repositories' problems are the courts' problems."

To the extent that prosecution and corrections agencies also assume disposition reporting functions or otherwise contribute to the accuracy and completeness of the criminal history record system, those components should also receive funding commensurate with their responsibilities.

In that vein, some National Task Force members recommended that fees received by repositories for processing criminal history record access requests from noncriminal justice agencies be earmarked for information system and disposition reporting support and be apportioned between the state central repository and the courts. To a lesser extent, other components of the criminal justice system, such as prosecutors' offices, should also share in fee receipts. The National Task Force also emphasized that joint projects between repositories and offices of court administration, such as software development, should be encouraged.

⁷¹1990 Survey, p. 7.

Conclusion

The National Task Force effort leaves further work to be done regarding fundamental questions about the nature of the criminal history record and the role of state central repositories. Although the National Task Force contemplates that some of this work can and must be done by the statewide task forces that are the subject of Strategy No. 1, the issues involved are sufficiently systemic and national in character that a successor to the National Task Force, addressing the kinds of issues set forth below, may be appropriate.

- The National Task Force concluded that the criminal history record in many states does not meet the legitimate information needs of all components of the criminal justice system, particularly the courts. The National Task Force, however, did not reach a conclusion as to what, if any, changes should be made in the format and content of the criminal history record of some states (although the National Task Force recommends that the criminal history record be made more readable). For example, should the criminal record be an archival, historical record or should it be dynamic and contain status information? Should the criminal history record be more descriptive so that it contains information about assaultive and violent behavior? Should the criminal history record be more comprehensive so that it includes entries for misdemeanor arrests and convictions? A "CHRI 2000" study could address these types of fundamental questions.
- A related set of issues involves the role of the state central repositories. Should the state central repository follow a

centralized model and seek to maintain all criminal history information? Alternatively, should the state central repositories be organized on a decentralized, Interstate Identification Index (III) type of model wherein the state central repository acts as an index and message-switcher among distributed databases holding various kinds of criminal history record information? Should state central repositories continue to be oriented toward law enforcement? Or should state central repositories be capable of preparing customized criminal history products based on the needs and access eligibility profiles of all users of the system? And what type of relationship should state central repositories have to noncriminal justice requestors? Should there be direct and on-line interfaces between authorized noncriminal justice requestors and state central repositories?

- There is also a cluster of issues with respect to the likely impact of new information technologies. The National Task Force spent considerable time debating the implications of electronic data interchange, and more study with respect to the policy implications of EDI is needed. A National Task Force effort that "peeks through the looking glass" at other technology-driven developments such as image processing and genetic screening may well be advisable so that policy and resource decisions can be made that effectively anticipate emerging technologies.

The nation now has in place an evolving national criminal history record information system with a capability to exchange criminal history record information among authorized criminal justice and noncriminal justice users. There remain, however, significant questions about the quality of the data in the system; its accessibility; its utility for the constellation of legitimate users; and the ability of the system to respond in a timely manner. Further, the capabilities of each of the states to participate effectively in the system and to provide a quality criminal history record product varies greatly. Much work, therefore, remains to be done. The model of national and statewide task forces seems to be the most promising model to undertake this work.

Appendix 1
Task Force Participants

Task Force Participants

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** Mr. Castille resigned as District Attorney in March 1991, at which time he also resigned from the Task Force.

† Dr. Gallas resigned from NCSC in October 1991, and was replaced on the Task Force by Dr. Sally T. Hillsman.

†† Mr. Stritzinger served as an alternate for Dr. Hugh Collins.

Participants' Biographies

Dr. Robert Barnoski

Dr. Barnoski is Manager of the Research and Information Services Section, Office of the Administrator for the Courts, State of Washington, a position he has held since 1986. Dr. Barnoski previously worked on the Parole Decisions Project of the Washington State Board of Prison Terms and Paroles, and was a project director for the Department of Social and Health Services. (Dr. Barnoski served as an alternate on the Task Force for Mary Campbell McQueen.)

Dr. Barnoski received a Bachelor of Electrical Engineering degree from Villanova University (Pennsylvania) and a Ph.D. in psychometrics from Temple University (Pennsylvania).

Gary L. Bush

Mr. Bush is Senior Policy Advisor for the Information Services Center of the Kentucky State Police. His responsibilities include developing and implementing policies associated with the statewide criminal justice and law enforcement information system in Kentucky.

His 13 years of service to the Commonwealth of Kentucky include positions as the Field Operations Director of the Kentucky Office of Crime Prevention, Commander of the Information Systems Branch of the Kentucky State Police, and Administrator of the central repository of criminal history record information.

In 1988, Mr. Bush was elected Chairman of the SEARCH Board of Directors and Membership Group. As Chairman, he chairs the annual Membership Group meeting and Board of Directors' meetings, appoints all standing and ad hoc committees, has oversight of the professional staff, and represents the corporation before other criminal justice organizations, Congress, and other state and national groups.

Mr. Bush is a former law enforcement officer and served as a military police officer in the U.S. Marine Corps where he was commended by the Provost Marshal of the Second Marine Division for his work in undercover narcotics.

John A. Carver

Mr. Carver is Director of the District of Columbia Pretrial Services Agency and immediate-past President of the National Association of Pretrial Services Agencies.

The District of Columbia Pretrial Services Agency is one of the oldest and largest such programs in the country. It serves as a neutral information source for judicial officers, both local and federal, in the District of Columbia courts. After interviewing and investigating the background of persons charged with criminal offenses, the Agency makes recommendations for nonfinancial release alternatives designed to assure appearance in court and community safety. Awarded the U.S. Department of Justice's designation as an "Enhanced Pretrial Services Program," the Pretrial Services Agency has frequently served as a model for criminal justice administrators in other jurisdictions.

Mr. Carver is a graduate of the University of Wisconsin. Following his service with the Peace Corps in Bolivia, he received his J.D. from Georgetown University Law Center (Washington, D.C.).

Ronald D. Castille

Mr. Castille was first elected Philadelphia's District Attorney in 1985; he was re-elected in 1989. As District Attorney, he oversaw a staff of 240 attorneys who prosecute approximately 50,000 cases annually. (Mr. Castille resigned his post in March 1991, at which time he also resigned from the Task Force.)

Mr. Castille previously served as Chief of the Career Criminal Unit, which expedites the prosecution of repeat offenders. He was also Deputy District Attorney in charge of the Pretrial Division in the Philadelphia District Attorney's Office.

Mr. Castille served as Vice President of the National District Attorneys Association and as Chairman of the Pennsylvania District Attorneys Association Legislative Committee.

Mr. Castille received a B.A. from Auburn University (Alabama) and a J.D. from the University of Virginia.

Dr. Hugh M. Collins

Dr. 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 17 years, having previously held the positions of Acting Judicial Administrator; Acting Chief Executive Officer of the Judiciary; Deputy Chief Executive Officer; Chief Deputy Judicial Administrator; and Deputy Judicial Administrator for Systems Analysis and Planning. Dr. Collins has also taught mathematics for the Department of Psychiatry and Neurology at the Tulane University School of Medicine.

Dr. Collins is Chairman of the Conference of State Court Administrators Committees on Court Statistics, Technology and Trial Court Performance Standards. He is also a member of the Louisiana Sentencing Commission and the National Association for Court Management, and is a board member of SEARCH.

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.

Dr. Geoff Gallas

From 1986-1991, Dr. Gallas oversaw the National Center for State Courts' (NCSC) Research and Technical Services Division and all NCSC federal grant proposals and national scope projects. As of February 1991, NCSC was undertaking 90 national scope projects, including the Trial Court Performance Standards

Demonstration project and numerous education programs and publications dealing with such diverse topics as trial court information networks and management of notorious cases. (Dr. Gallas resigned from NCSC in October 1991. He was replaced on the Task Force by his successor, Dr. Sally T. Hillsman.)

Dr. Gallas was previously Senior Associate at the Institute for Court Management (ICM), an Adjunct and Assistant Professor at the University of Southern California School of Public Administration, and Assistant Executive Director and educational consultant at ICM. He has authored many articles and reports and was the Dean of the ICM Court Executive Development Program for 10 years. From 1977-1980, he was Editor-in-Chief of the *Justice System Journal*, where he now serves as a staff editor.

Dr. Gallas obtained a Bachelor's degree from Wesleyan University (Connecticut), a Master's from Harvard University, and a Master's and Doctorate from the University of Southern California. He is also a Fellow of the ICM.

Owen Greenspan

Mr. Greenspan is Deputy Commissioner, Identification and Data Systems, New York State Division of Criminal Justice Services. Prior to his appointment as Deputy Commissioner, Mr. Greenspan served 20 years as a uniformed member of the New York City Police Department, where his last assignment was commanding officer of the Identification Section. Mr. Greenspan has also served as an

adjunct member of the faculty at Hofstra University.

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). Mr. Greenspan is a board member of SEARCH.

Jane Hess

Ms. Hess has been the State Courts Administrator for the Missouri Supreme Court since 1981. Prior to her current position, Ms. Hess served as Director of Court Services for the Missouri Supreme Court and as Assistant Trial Court Administrator in Bergen County, New Jersey.

Ms. Hess is a board member of the Conference of State Courts Administrators (COSCA) and is a member of its standing Courts Statistics Committee. She has served on the COSCA Education Committee and chaired the Committee to Examine Court Costs, Filing Fees, Surcharges and Miscellaneous Fees.

Ms. Hess received a B.S. degree in speech and English from Southwest Missouri State University and a M.A. degree in theater from the University of Kansas. Ms. Hess also holds a Master of Science degree in Judicial Administration and a J.D., both from the University of Denver.

Dr. Sally T. Hillsman

In October 1991, Dr. Hillsman became Vice President of Research and Technical Services for the National Center for State Courts (NCSC). She oversees all NCSC federal grant proposals and national scope projects. Among other issues, these national initiatives deal with caseload management for general civil, domestic relations, felony, misdemeanor, drug, traffic, small claims and appellate cases; differentiated case management; and trial delay and decisions. In addition, NCSC's national projects also focus on court applications of technology, including statewide and trial court automation. Other projects involve

such topics as trial court accountability and performance standards, human management and racial and ethnic bias. (Dr. Hillsman replaced Dr. Geoff Gallas on the Task Force in October 1991.)

From 1979-1991, Dr. Hillsman was Associate Director of the Vera Institute of Justice in New York City and its Director of Research. She conducted research using experimental and nonexperimental designs in a wide range of criminal justice areas, including intermediate sanctions, case processing, prosecution and court delay, pretrial diversion and policing. Her past work included research on narcotics law enforcement in New York City, the provision of criminal defense services in the New York criminal courts and fining practices in criminal cases in the United States and Western Europe.

Dr. Hillsman holds a Ph.D. in sociology from Columbia University (New York).

Paul E. Leuba

Mr. Leuba is Director of Data Services for the Maryland Department of Public Safety and Correctional Services, a position he has held since 1979. Mr. Leuba has worked for the Maryland state government for 24 years in a variety of technical and management positions in information processing.

In his current position, Mr. Leuba has directed and implemented Maryland's statewide criminal justice information system. He is directly responsible for the management of the state's central repository of criminal records, as well as the Public Safety Data Center, where computer-based information systems are operated for law enforcement, corrections, probation and parole offices throughout Maryland. Mr. Leuba is also a member of SEARCH.

Mr. Leuba received a B.S. degree in industrial engineering from Johns Hopkins University (Maryland).

Linda D. Lovelace

Ms. Lovelace is Court Administrator for the Butler County (Ohio) Common Pleas Court, Division of Domestic Relations. The court is a limited jurisdiction court which serves a population of 300,000. As Court Administrator, Ms. Lovelace's responsibilities include, among others, caseload management, public education, information management, records management, research and advisory services, and intergovernmental relations.

Ms. Lovelace has previously served as Clerk of Courts and Clerk for various Butler County Courts. She has also lectured at Miami University's business law classes and for Butler County's Counter-Measure Program for offenders convicted of driving under the influence of alcohol or drugs.

Ms. Lovelace is immediate-past President of the National Association for Court Management (NACM). She is also a member of the Advisory Board for the Trial Court Management Guideline Project, funded by the U.S. Department of Justice, and serves as the NACM Liaison with the National Judicial College.

Ms. Lovelace received a B.A. degree in political science from Otterbein College (Ohio).

Capt. James V. Martin

Mr. Martin is Captain of the South Carolina Law Enforcement Division and serves as Director of the South Carolina Criminal Justice Information and Communication System, which is the state's central repository for criminal history records. It also consists of the Uniform Crime Reporting and the Criminal Justice Data Center and Intrastate Network.

Capt. Martin currently serves on the National Crime Information Center Advisory Policy Board. He is also a board member of the National Law Enforcement Telecommunications System, and is a member of SEARCH.

Capt. Martin received his undergraduate degree in industrial

management at Charleston South University and an MBA from the University of South Carolina.

Karen R. McDonald

Ms. McDonald is Director of Minnesota's Criminal Justice Information Systems in the Department of Public Safety, Bureau of Criminal Apprehension. As Director, Ms. McDonald's responsibilities include management of the Minnesota Criminal Justice Data Network, including the National Crime Information Center and the National Law Enforcement Telecommunications System; computerized criminal histories; fingerprint identification; Uniform Crime Reporting; "hot files"; training, certification and auditing of terminal agencies; and dissemination of data to criminal justice and noncriminal justice agencies.

Ms. McDonald has served in her Director capacity for three years and has been employed at the Bureau of Criminal Apprehension for 24 years. She currently serves on the Board of Directors of SEARCH.

Mary Campbell McQueen

Ms. McQueen is Administrator, Office of the Administrator for the Courts, State of Washington. Prior to being selected Administrator by the State Supreme Court, she was Acting Administrator and Director of Judicial Services.

Ms. McQueen previously worked with the District of Columbia Superior Court and the Kentucky Department of Justice. She has over 15 years of experience in court administration at the trial, appellate, state and local levels. She has completed numerous studies and projects emphasizing court congestion and delay reduction, and the development and application of innovative court management techniques, including automated systems.

Ms. McQueen has an undergraduate degree from the University of Georgia and a J.D. from

the University of Puget Sound School of Law (Washington). She also has done postgraduate studies in court administration at American University and the Institute for Court Management. Ms. McQueen is the currently the chair of several committees of the Conference of State Court Administrators.

Melvin D. (Bud) Mercer Jr.

Mr. Mercer is Chief/Legal Counsel of the Identification Division at the Federal Bureau of Investigation headquarters in Washington, D.C., a position he has held since 1981. He is responsible for resolving legal, legislative and policy issues concerning criminal history records. Prior to his current assignment, Mr. Mercer was Assistant Section Chief in the Identification Division. He has also served as a Special Agent in the FBI's Mobile, Alabama, and Baltimore, Maryland, offices.

Mr. Mercer earned a B.S. degree from Holy Cross College (Massachusetts) and a J.D. from the Boston College Law School. He is an inactive member of the Massachusetts State Bar.

Honorable Robert C. Murphy

Judge Murphy is Chief Judge of the Maryland Court of Appeals and the administrative head of the Maryland judiciary. He was appointed to this position in 1972. Prior to his appointment to the Court of Appeals, Judge Murphy served as Chief Judge of Maryland's second highest court, the Court of Special Appeals. He has also served as Maryland's Attorney General.

Judge Murphy is a past Chairman of the Board of Directors of the National Center for State Courts. He currently serves as Chairman of the National Center's Commission on Trial Court Performance Standards.

In addition to a J.D. degree from the University of Maryland School of Law, Judge Murphy holds honorary Doctor of Laws degrees from the University of Maryland and the University of Baltimore.

Honorable Dalton A. Roberson Sr.

Judge Roberson is Executive Chief Judge for the Circuit Court for the Third Judicial Circuit of Michigan and the Recorder's Court for the City of Detroit. In September 1990, he was also appointed to a four-year term on the State Judicial Council.

Judge Roberson has been a member of the judiciary since 1974, when he was appointed Judge of the Detroit Recorder's Court. He has also served in both the United States Attorney's Office and the Wayne County (Michigan) Prosecuting Attorney's Office.

Judge Roberson received his B.A. degree from Michigan State University and a J.D. degree from the Detroit College of Law.

Honorable Phillip J. Roth

Judge Roth is a Circuit Judge of Oregon, a position in which he has served since 1964. Prior to his judicial tenure, Judge Roth was in the private practice of law and served in the Oregon House of Representatives.

Judge Roth is the current Chairman of the National Conference of State Trial Judges—Judicial Administration Division of the American Bar Association. Judge Roth has published a number of articles on the doctrine of judicial immunity, as well as an article on sentencing from the court's perspective.

Judge Roth received a B.A. from the University of Portland and holds a J.D. from Northwestern School of Law of Lewis and Clark College (Oregon).

Honorable Thomas J. Stovall Jr.

Judge Stovall is Presiding Judge of the Second Administrative Judicial Region of Texas. Judge Stovall has been serving in the judiciary since 1958, when he became Judge for the 129th Judicial District of Texas.

Judge Stovall has been instrumental in expanding the use of technology by the courts, including the implementation of data processing to support the information needs of state-level court management. In addition, as a result of his efforts and work with NASA scientists to design a computer-driven random number generator, Judge Stovall was able to implement a method for the fair selection of prospective jurors.

Judge Stovall has been a member of the Board of Directors of the National Center for State Courts and the National Conference of Metropolitan Courts, and is currently a member of the Board of Directors of the Institute for Court Management and of SEARCH. He also serves on the Texas Judicial Council.

Judge Stovall received a B.A. from The Rice Institute (now Rice University, Texas) and a J.D. from the University of Texas.

Ronald W. Stritzinger

Mr. Stritzinger has served as Deputy Judicial Administrator in the Judicial Administrator's Office of the Louisiana Supreme Court since 1980. He is responsible for information systems management, word processing, and the collection of statewide court statistics. He also serves as staff to the Judicial Council's Science and Technology, and Appellate Delay and Court Reporting subcommittees. (Mr. Stritzinger served as an alternate on the Task Force for Dr. Hugh Collins.)

Prior to joining the Judicial Administrator's Office, Mr. Stritzinger served 16 years with the New Orleans Police Department. While with the Department, he served in a variety of capacities, including patrol officer, Grants Administrator, and Assistant Director/Supervisor of

the Department's data systems section for programming and systems analysis.

Mr. Stritzinger holds a Master's of Science degree in criminal justice from the University of Southern Mississippi and a B.A. in criminology from Loyola University (Louisiana).

Robert Wessels

Mr. Wessels is Court Manager for the 14 County Criminal Courts at Law, Harris County, Texas, a position he has held since 1976. He has also 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.

In his current capacity, Mr. Wessels' responsibilities include, among others, caseload management, legislative/governmental liaison, management information systems, and policy development and evaluation. Mr. Wessels is a founding member of the Texas Association for Court Administration. He also serves on the Board of Directors of the National Association for Court Management.

Mr. Wessels received his B.B.A. from Sam Houston State University and his M.A. from the University of Houston-Clear Lake. He is also a Fellow of the ICM.

Appendix 2
**Reporting of Final Dispositions
to State Central Repositories**

Reporting of Final Dispositions to State Central Repositories

A report prepared by
SEARCH, The National Consortium for Justice Information and Statistics, for
The Bureau of Justice Statistics, U.S. Department of Justice
(November 1990)

Introduction

In 1989 President George Bush, in connection with the National Peace Officers' Memorial Day Ceremony, stated, "[T]imely and accurate reporting of conviction, sentencing and other case disposition records is essential to the effective operation of the Nation's criminal justice system."¹ Every survey and report, as well as anecdotal evidence, indicate that despite the importance of accurate and timely disposition reporting, a significant percentage of the criminal history record information maintained in State central repositories throughout the nation consists of arrest information without final dispositions.²

¹ Statement by President George Bush at the National Peace Officers' Memorial Day Ceremony, May 15, 1989, *Weekly Compilation of Presidential Documents*, Vol. 25, May 22, 1989, pp. 721-722. (Hereafter, Bush Statement.)

² In 1984, SEARCH Group, Inc. ("SEARCH") surveyed the directors of the nation's State central repositories with respect to the accuracy and completeness of criminal history record information held in those repositories. The 1984 survey results appear in *State Criminal Records Repositories*, Technical Bulletin series, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, October 1985). (Hereafter, Repository Report.) In 1990, SEARCH again surveyed the directors of the State central repositories. The 1990 survey results appear in *Survey of Criminal History Information Systems*, Criminal Justice Information Policy series, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.:

The absence of dispositions causes severe problems — for law enforcement, for prosecutors and, perhaps most acutely, for the courts. The mushrooming use of criminal history record information by noncriminal justice government agencies, the private sector and researchers further compounds the problem.

Although the problem of disposition reporting to repositories is severe, it is not insuperable. As early as 1984, many State central repositories had achieved disposition reporting rates in excess of 75 percent and SEARCH's 1990 survey indicates that in many States this progress has been sustained. This paper is about that progress — the factors that have retarded progress; the factors that have encouraged progress; and the factors that seem likely to produce further progress.

(footnote cont.)

Government Printing Office, March 1991).

As used in this paper, the term "State central repository" means a State agency which maintains comprehensive files of criminal history record information. (See Repository Report, pp. 1 and 3.)

The term "criminal history record information" means information collected by criminal justice agencies about individuals consisting of arrests, or other formal criminal charges, and any disposition arising therefrom. This definition is consistent with the definition in the U.S. Department of Justice's "Criminal Justice Information Systems" regulations, 28 C.F.R. § 20.3(b).

The disposition reporting problem

Anecdotal and empirical reports document disposition reporting problem

The absence of available dispositions in criminal history records poses a double threat — it is both the most severe and the most frequent deficiency in these records. The problem is not new. As long ago as 1967, the National Advisory Commission on Criminal Justice Standards and Goals cited disposition reporting as a principal problem.³ In 1989, the Attorney General of the United States identified the absence of available dispositions as a major obstacle to the Justice Department's implementation of a system for the "immediate and accurate" identification of felons seeking to purchase firearms:

[M]any of the criminal history records maintained by law enforcement are either out of date or incomplete or both. Finally, current records often contain arrest information without a notation of the final disposition.⁴

³ Madden & Lessin. "Privacy: A Case for Accurate and Complete Criminal History Records," 22 VILLANOVA L. REV. 1191, 1199 (1977).

⁴ Letter to the Honorable Thomas S. Foley, Speaker, House of Representatives, from Dick Thornburgh, Attorney General of the United States, November 20, 1989. (Hereafter, Thornburgh Letter.)

In 1990, the Subcommittee on Crime of the House Committee on the Judiciary held hearings with respect to proposals for establishing a system to identify felons who attempt to purchase firearms. Congressman Michael DeWine (R-OH) summed up the weight of witness testimony with respect to the quality of criminal history records.

We will never know how many [criminals] are slipping through the cracks because we have a sorry recordkeeping system in this country.

* * * *

How many, or how much, Mr. Chairman, how much good police time is spent as the Chairman pointed out, trying to run these things down? You get an incomplete rap sheet. You see a guy arrested for something three years ago. Then you have to call 30 different agencies in that other State to find out whether or not he was ever convicted.

* * * *

If some [individual] gets picked up in Utah and he has a record in New York State that we are able to ascertain, not only that he was arrested at some point, but whether he was convicted, we would save a tremendous amount of time.⁵

Audits of specific State repositories suggest a mixed pattern, with some States reporting a chronic disposition reporting problem and other States reporting significant success. The annual audit report for 1988 of Illinois' repository, for instance, concludes that, "[M]issing disposition information continues to be the most serious and persistent

⁵ Statement of Rep. Michael DeWine during hearing of the Subcommittee on Crime, House Judiciary Committee, January 25, 1990, pp. 45-46.

problem that plagues the CCH system, ... [with] over 76% of the arrest transactions ... missing both the State's attorney and court dispositions."⁶ According to the U.S. Department of Justice, the Federal Bureau of Investigation (FBI) estimates that as of 1990, "[A]pproximately one-half of the arrest charges in [the FBI's] records do not show a final disposition."⁷ Empirical research also indicates that disposition reporting to State central repositories is a persistent and serious problem.⁸

On the other hand, SEARCH's 1988 audit of Baltimore County and Baltimore City, done as part of SEARCH's audit of Maryland's Criminal Justice Information System (CJIS) concluded:

Concerning overall reporting to CJIS, the audit results for Baltimore County and Baltimore City suggest that

⁶ Illinois Criminal Justice Information Authority, *Annual Audit Report for 1988: Illinois' Computerized Criminal History System* (June 1989) p. 214.

⁷ Statement of Edward S. G. Dennis, Jr., Assistant Attorney General, Criminal Division, U.S. Department of Justice, before the Subcommittee on Crime, House Judiciary Committee, January 25, 1990, p. 19.

⁸ See, for example, E.J. Albright and others, *Implementing the Federal Privacy and Security Regulations*, vol. I: *Findings and Recommendations of an Eighteen State Assessment* (McLean, Va.: MITRE Corporation, December 1977) p. 31. See also, Laudon, *Dossier Society* (New York: Columbia University Press, 1986) p. 137. (Hereafter, Laudon.) See also, Donald L. Doernberg and Donald A. Zeigler, "Due Process Versus Data Processing: An Analysis of Computerized Criminal History Information Systems," 55 N.Y.U. L. REV., 1173, 1178 (December 1980). (Hereafter, Doernberg and Zeigler.) See also, U.S. Congress, Office of Technology Assessment, *An Assessment of Alternatives for a National Computerized Criminal History System* (Washington, D.C.: Government Printing Office, 1982) p. 92. (Hereafter, OTA Report.)

reporting levels in these two jurisdictions are among the best in the country, particularly for the District and Circuit Courts. The District Courts of both districts reported over 99% of the *reportable events* identified by the audit ... Circuit Court reporting was 97% for Baltimore County and 98% for Baltimore City ... Considering the fact that the low incidence of court disposition reporting is generally felt to be the most serious data-quality problem in most States, court reporting levels in Maryland are clearly remarkable.⁹

While generalizations about the level of disposition reporting in State repositories are fraught with problems, two conclusions seem safe. First, there appears to be a wide variation among the States in disposition reporting levels. Second, notwithstanding variations in reporting rates among central repositories, significant disposition reporting problems remain in most systems. Simply stated, disposition reporting levels are too low.

⁹ SEARCH Group, Inc., *Audit of the Completeness and Accuracy of Criminal History Record Information Maintenance by the Maryland Criminal Justice Information System*, August 11, 1988, p. 76. (Hereafter, Maryland Audit Report.)

A 1989 Fisher-Orsagh Associates, Inc. telephone survey of 20 State central repositories also presents a bright picture. Fisher-Orsagh found that the percentage of "convictions" recorded against arrests varies from a low of 30 to 80 percent to a high of 80 to 95 percent. See Fisher-Orsagh Associates, Inc., "A Survey of Twenty State Criminal History Repositories," unpublished report to the U.S. Department of Justice (June 1989) pp. 12-13.

Consequences of the disposition reporting problem

Adverse effects on law enforcement, prosecutors and corrections

The adverse effects of inadequate disposition reporting rates are widely and deeply felt. Illinois' 1989 Audit Report emphasizes this point.

Throughout Illinois, CHRI [criminal history record information] is routinely used in nearly every stage in the criminal justice process to help make decisions affecting both the individual freedom of the defendant and the public safety of the community. Past research demonstrates that CHRI influences prosecutors' decisions to file, modify or drop criminal charges, and whether to engage in plea bargaining with the defendant. State law also permits State's attorneys and police who file cases directly with the court to upgrade certain criminal charges against defendants who have one or more prior convictions for the same or similar offense . . . CHRI assists probation and correctional officials in determining appropriate supervision levels for defendants.¹⁰

The International Association of Chiefs of Police has also emphasized the reliance that law enforcement agencies place on dispositions in criminal history records, "in the planning and implementation of special programs such as those involving an emphasis on the apprehension of career offenders,

¹⁰ Illinois Criminal Justice Information Authority, *Annual Audit Report for 1989: Audit of Illinois' Repositories for Criminal History Record Information* (April 1990) p. 10. (Hereafter, Illinois 1989 Audit Report.)

narcotics dealers and organized crime figures. . . . Data quality has a direct impact on the degree to which delivery of law enforcement services meets the needs and expectations of society."¹¹

A 1986 study done by Michigan's Citizens Research Council found that police officials cited the "availability of full information on a suspect's previous criminal record throughout the State (and in other States) — arrests, dispositions, etc." as a primary need.¹²

Prosecutors also use disposition information in criminal history records to assist them in making decisions about appropriate charges to be brought against an offender; in categorizing an offender as a serious or habitual criminal; in plea bargaining negotiations; and in making bail recommendations. Richard M. Daley Jr., former State's Attorney for Cook County, Illinois, has described prosecutors' use of criminal history records as follows:

Before I took over the office in 1980, the criminal history records were on 3 x 5 cards, and our volume of felony cases were handled manually. What happened many times was that the [criminal history record] information was not correct, the information was missing, the information could not be found, so we had many, many problems . . . Computerizing our internal system for the

¹¹ William C. Summers, "Law Enforcement Efforts to Improve the Data Quality of Criminal History Records," in *Data Quality Policies and Procedures: Proceedings of a BJS/SEARCH Conference*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1986) p. 27. (Hereafter, Data Quality Conference Proceedings.)

¹² Citizens Research Council of Michigan, *Improving the Criminal Justice Information System in Michigan* (June 1986) p. 6.

storage and retrieval of cases helps us to provide more information to the prosecutor's office, to the individual prosecutor who is making decisions at two in the morning on a felony case. It also has provided information to the felony system before trial and during trial.¹³

Corrections officials and parole board members also use disposition information in shaping their decisions about incarceration strategies and recommendations for parole.¹⁴

Adverse effects on researchers

Increasingly, researchers and statisticians also make frequent use of criminal history records to generate crime statistics and provide raw data for analysis.¹⁵ Indeed, State central repositories are increasingly a source for crime statistics. SEARCH's Repository Survey found that 17 central repositories produce statistical outputs from their criminal history records on a routine basis, while 11 repositories produce statistical outputs on a nonroutine basis.¹⁶ Moreover, 12 repositories reported plans for future statistical activities using their criminal history records. The Illinois 1989 Audit Report states, "Criminal history records are also vital to statisticians and researchers working to inform policy makers and

¹³ Richard M. Daley Jr., "Data Quality and Prosecution," *Data Quality Conference Proceedings*, p. 29.

¹⁴ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Data Quality of Criminal History Records*, Criminal Justice Information Policy series, by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, October 1985) p. 15. (Hereafter, Data Quality report.)

¹⁵ SEARCH Group, Inc., *Coordination of Statistics Program Development Under the Justice System Improvement Act*, Advisory Bulletin No. 7 (February 1980).

¹⁶ Repository Report, p. 5.

the public."¹⁷ In addition, disposition reporting is vital in order to permit criminal history record information to serve as a basis for "Offender-Based Transaction Statistics" reported to the Bureau of Justice Statistics (BJS).¹⁸ When criminal history records lack dispositions, their utility for research and statistical purposes is much diminished.

Adverse effects on noncriminal justice

Increasingly, noncriminal justice agencies also depend upon disposition information in criminal history records to influence important decisions with respect to security clearances, licenses and employment. In some repositories, the percentage of noncriminal justice access requests already exceeds 50 percent of the repository's total requests.¹⁹

SEARCH's most recent review of State privacy and security legislation with respect to criminal history record information found that the trend toward noncriminal justice access to criminal history record information has, if anything, accelerated.

Reversing a trend that began after issuance of the DOJ [Department of Justice] regulations, criminal history record information is increasingly becoming available outside of the criminal justice system. Even nonconviction data are now

being made more available to noncriminal justice agencies. Thirty States have adopted open record or freedom of information statutes which cover some types of criminal history record data. This does not mean that criminal history data are publicly available in these States in all circumstances, but it does mean that the data are more available than they previously were.

As a part of this trend, a majority of the States now permit access to criminal history records by at least some types of noncriminal justice agencies and private entities.

Findings of a recent national survey demonstrate that the State criminal record repositories are now handling about 2,000,000 noncriminal justice access requests a year. In several States, including California, Minnesota, Pennsylvania and South Carolina, noncriminal justice traffic is greater than total criminal justice use of the criminal records system, and, in several other States, noncriminal justice use is 40 percent or more of total system use.²⁰

In some instances, access to disposition information is even more important for noncriminal justice purposes than for criminal justice purposes because many noncriminal justice decisions cannot, as a matter of law, be predicated on arrest-only information.²¹ For example,

applicants for entrance into the Armed Forces can be disqualified on the basis of a felony conviction record; however, an arrest record, without more, is not a sufficient basis for disqualification.²²

Adverse effects on record subjects

Record subjects also have an interest in ensuring that complete disposition information is reflected on their rap sheets. In most cases, missing dispositions turn out *not* to be convictions. Therefore, when an exonerating, or at least mitigating, disposition is missing, the effect is to unfairly overstate the extent or degree of the record subject's criminal activity.²³ When missing or inaccurate disposition data overstate a record subject's criminal activity, the record subject can be harmed unfairly through: adverse charging decisions; adverse pretrial release and sentencing decisions; inappropriate damage to personal reputation; and denial of employment, licenses or government benefits.

Adverse effects on courts

In recent years the courts have been perhaps the most intensive and frequent users of criminal history record information. The then-presiding judge of the Municipal Court of Philadelphia, Joseph R. Glancey, emphasized this point.

I think everyone has beaten to death the idea that we [the courts] must have data when a person is arrested. I think that is just so evident, not only for

¹⁷ Illinois 1989 Audit Report, p. 11.

¹⁸ Repository Report, p. 1.

¹⁹ The OTA study found that 53 percent of all requests to the FBI for criminal history record information are made by noncriminal justice agencies. OTA Report, p. 77. See also, *Compendium of State Privacy and Security Legislation: 1989 Overview*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, April 1990) p. 6. (Hereafter, 1989 Compendium.)

²⁰ 1989 Compendium, p. 6 (citations omitted).

²¹ See *Privacy and the Private Employer*, Criminal Justice Information Policy series, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.: Government

(footnote cont.)

Printing Office, December 1981) p. 30; and *Access by Private Employers to Criminal History Information Held in State and Local Files*, Educational Fund for Individual Rights (January 1985).

²² 10 U.S.C. § 504.

²³ Doernberg and Zeigler, p. 1110.

setting bail, but also for a lot of other information we need.²⁴

Pretrial release decisions

Perhaps the most acute need that the courts have for criminal history record information is at preliminary arraignment. At that time, a court must make quick and critical decisions — is the arrestee correctly identified; is the arrestee a career criminal; and does the arrestee present such a threat to his community that he should be detained pending trial or other action?²⁵ The Illinois 1989 Audit Report states that: "A defendant's prior criminal history is considered a salient factor in setting bond amounts and, in some cases, in determining whether the individual is even eligible for bail."²⁶

Empirical research suggests that the courts are warranted in using criminal history record information, particularly disposition information, to help make bail determinations. A Bureau of Justice Statistics study found that about 35 percent of all Federal defendants with serious records (defined as three prior felony convictions) were arrested for a new crime or failed to appear for a court date during a 120-day bail period. This compares with only eight percent of all defendants with no prior records who were rearrested or failed to appear during that bail period.²⁷

Whether influenced by research findings or public sentiment, or compelled by new pretrial detention

standards applicable in many States and at the Federal level, courts have evidently begun to give greater weight to a prior criminal history record in making bail determinations.²⁸ In 1988, for example, approximately 77 percent of defendants in large urban counties without prior criminal convictions were released on personal recognizance or unsecured bond, compared to only 66 percent of defendants with prior misdemeanor convictions, 52 percent of defendants with prior nonviolent felony convictions, and only 46 percent of defendants with prior violent felony convictions.²⁹

Not surprisingly, courts in many jurisdictions insist that their pretrial services departments take all reasonable steps to obtain criminal history record information for review by the court prior to making bail determinations. John Carver, Director of the Pretrial Services Agency in the District of Columbia, has described the efforts which his agency makes to obtain criminal history record information.

Similarly, in the area of criminal history information, the Agency begins by questioning the defendant on any involvement in the criminal justice system, locally or elsewhere. But this is only the beginning. The Agency then checks every computerized source of criminal history information in the District of Columbia, queries NCIC, and telephones any supervising authority, be it probation, parole or any other form of release. The Agency

does *not* rely solely on criminal history repositories, but utilizes a nationwide network of pretrial programs to conduct local record checks for pending cases, if there is any reason to believe that out-of-State charges may be pending.³⁰

Most prosecutors can recite numerous instances in which offenders were inappropriately released from pretrial detainment because of inaccurate or incomplete criminal history records. For instance, Richard M. Daley Jr. has recounted the story of an individual arrested in November 1983 in Cook County, Illinois, for rape, aggravated kidnapping and aggravated battery. The individual was promptly released on a \$30,000 bond. Less than two months later, on December 31, 1983, the same individual was arrested again for the rape of another victim — this time a 70-year-old. He appeared in court later that same day, but the only information available to the judge was a statement of the facts of the case at hand. The judge was unaware of the individual's prior arrest, not two months earlier, for rape. Consequently, the individual was again released pending trial. Not even a week later, on January 4, 1984, the same individual was arrested yet again for another attempted rape.³¹

Conversely, there are many examples of dangerous individuals who were identified and detained at the pretrial stage, thanks to the availability of criminal history record information. Mr. Daley tells one such story:

Last October, a 40-year-old defendant was arrested in Chicago for rape and kidnapping. He allegedly had abducted a woman and attacked her in the car. The

²⁴ Glancey, "Criminal History Records in the Courts," *Data Quality Conference Proceedings*, p. 41.

²⁵ *Ibid.*, p. 43.

²⁶ Illinois 1989 Audit Report, p. 10.

²⁷ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Federal Offenses and Offenders: Pretrial Release and Misconduct*, Special Report series (Washington, D.C.: Government Printing Office, January 1985) p. 4. See also, Irwin, "Study Shows 10% of Criminal Defendants Violate Bail Rules," *Los Angeles Times* (January 28, 1985) p. 6.

²⁸ The Federal Comprehensive Crime Control Act of 1984 authorizes Federal judges to deny bail if release would "present a danger to the public." Pub. L. 98-473.

²⁹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 1988*, Special Report series (Washington, D.C.: Government Printing Office, April 1990) p. 9.

³⁰ Carver, "Data Quality: A Perspective from Pretrial Services," *Data Quality Conference Proceedings*, p. 36.

³¹ Daley, *Data Quality Conference Proceedings*, pp. 30-31.

prosecutors in night bond court found no criminal history in Chicago on this defendant, not even an arrest. Nevertheless, they were able to send his fingerprints via machine to the Illinois Bureau of Identification and to the FBI. The prosecutors found that the defendant had been convicted of rape twice in Tennessee and had just been released from prison one month earlier on the last rape. The prosecutor gave this information to the judge, who set a \$500,000 bond, which the defendant could not post. If the prosecutors had not retrieved this information, the defendant's bond may have been as low as \$10,000 or less.³²

Sentencing decisions

Of course, preliminary arraignment is by no means the only circumstance in which courts need criminal history record information. Indeed, for many years the courts' principal use of rap sheet data has been at sentencing. Nevada's sentencing statute is representative of the importance attached to the availability of criminal history record data at sentencing:

The probation service of the District Court shall make a presentence investigation and report to the court upon each defendant who pleads guilty or *nolo contendere* or is found guilty before the imposition of probation ... [The report must include] any prior criminal record of the defendant.³³

The Federal Rules of Civil Procedure and criminal code provisions in most States require that a presentence report be prepared before sentencing, at least in felony cases. A few States, including Massachusetts and Texas, require that

a presentence report be prepared prior to sentencing even in misdemeanor cases. At the other extreme, a few States, including Delaware, Iowa, Louisiana, Maine, Minnesota, North Carolina, North Dakota, South Carolina, Utah and West Virginia, make preparation of a presentence report discretionary. In all States, however, if a presentence report is prepared, it must include any available criminal history record information.³⁴

Recidivism

In recent years, an emphasis on enhanced sentences for repeat offenders has put a premium upon the availability of complete and accurate disposition information at sentencing. Congressman Charles E. Schumer (D-NY) has described his constituents' frustration about career criminals:

One of the great things that has disillusioned my constituents about government is that they hear day after day in the news media stories about criminals not being adequately prosecuted and incarcerated for a justifiable period of time. The old story, which may be true in your localities as well, is that we had somebody who committed 40 burglaries but was not put in jail until he committed his 41st.³⁵

Certainly, there is good reason for concern about repeat offenders. A

BJS Special Report with respect to prisoners released in 1983 found that within three years after their release, an estimated 62.5 percent of the released prisoners were rearrested for a felony or serious misdemeanor, 46.8 percent were reconvicted, and 41.4 percent returned to prison or jail.³⁶ The same study also found that these prisoners had been arrested and charged with an average of more than 12 offenses each; nearly two-thirds had been arrested at least once in the past for a violent offense; and two-thirds had previously been in jail or prison.³⁷ Research also indicates that the more extensive a prisoner's prior arrest record, the higher the rate of recidivism — over 74 percent of those with 11 or more prior arrests were rearrested, compared to 38 percent of the first-time offenders.³⁸ In other words, career criminals account for a significant percentage of the nation's crime and some recidivists make an extraordinary "contribution," notching 10 or more convictions.

Examples of the crimes committed by individuals with lengthy and active criminal records are all too common. For example, on April 4, 1986, a California recidivist was sentenced to 144 years in prison for sexual assault and attempted murder.³⁹ The sentence included a 15-year enhancement for the recidivist's prior convictions. Those convictions included a 25-year history of convictions for theft, burglaries and violent sexual assaults.

³⁴ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Statutes Requiring the Use of Criminal History Record Information*, Criminal Justice Information Policy series, by Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, June 1991) pp. 47-50. (Hereafter, State Statutes Report.)

³⁵ Schumer, "The Importance of Federal Assistance to the States in Improving the Quality of Criminal History Records," *Data Quality Conference Proceedings*, p. 15.

³⁶ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983*, Special Report series (Washington, D.C.: Government Printing Office, April 1989) p. 1.

³⁷ *Ibid.*

³⁸ *Ibid.*, p. 2.

³⁹ Smith, "Laborer with Lengthy Record Gets 144 Years for Attack in Tujunga," *Los Angeles Times* (April 5, 1986) p. 6.

³² *Ibid.*, p. 31.

³ NEV. REV. STAT. § 176.135.

Career criminal statutes

In view of the concern about repeat offenders, it is not surprising that the Congress and every State legislature has adopted statutes which permit, or in some cases require, enhanced sentences for repeat offenders. The enhancement arising from prior convictions can be up to five times the sentence for a first offender. In other States, the enhanced sentence provides for no parole or for a mandatory substantial sentence, such as 20 years.⁴⁰

Michigan's drug penalty scheme, for instance, provides for enhanced penalties of up to life without parole for second and subsequent offenses.⁴¹ In other States, the enhancement statutes are not as prescriptive and merely provide general sentencing criteria which include aggravating circumstances such as an offender's prior criminal history record.⁴²

Under the Federal statute, offenders can receive an enhanced sentence for a second offense involving violent crimes or drug trafficking with a firearm. A first offender would receive five years for such a conviction. Second and subsequent offenders receive as much as 20 years.⁴³

In most States, only one prior conviction, at least if it is a felony, triggers some sentence enhancement. A few States also take into account prior misdemeanor convictions as a basis for sentence enhancement.⁴⁴ In

several States, the enhancement structure is graduated so that the sentence becomes more severe for second and third offenses. A review of State statutes indicates that sentence enhancements are attached to prior convictions for prostitution; burglaries; driving under the influence; obscenity/pornography; drug trafficking; armed robbery; offenses against children; weapons offenses; larceny; capital offenses; fencing; gambling; domestic abuses; shoplifting; tax violations; agricultural offenses; and assault of police officers, to name the most common.⁴⁵

Many States have enacted repeat offender statutes, not only because these statutes improve public safety by increasing the amount of time that the most intractable criminals are separated from society; and not only because they satisfy the public's sense of "just deserts"; but also because the nation's extremely limited prison capacity requires that only the most dangerous or intractable offenders be incarcerated. At the end of 1982, there were more than 400,000 persons in State and Federal prisons, and an additional 200,000 persons in local jails.⁴⁶ By 1990, the number had mushroomed to almost 1.1 million.⁴⁷ Building new prison capacity is often not an answer because additional capacity is quite expensive. Thus, many experts argue that it is imperative that the criminal justice system use its limited prison capacity as efficiently as possible by

maximizing its incapacitative effect.⁴⁸

Of course, in order to implement repeat offender sentence enhancement programs, courts and probation departments must have accurate and complete criminal history record data.⁴⁹

In recent years a variety of crime control initiatives have been designed that are aimed at improving prosecution, adjudication and corrections functions. Many of these initiatives are aimed at identifying, prosecuting and incapacitating dangerous offenders.

* * *

The new programs frequently require that substantial data be available to distinguish among offenders.⁵⁰

Not only must "substantial data" be available but also accurate and complete data, including, in particular, data about prior convictions. Many experts believe that deficiencies in the disposition reporting rate substantially impair the effective use of repeat offender programs. Professor Alfred Blumstein, a researcher and frequent writer about career criminal issues, has expressed this concern as follows:

Thus, while accurately recorded record variables may provide some helpful selectivity, these results suggest that errors in the recordkeeping processes — particularly errors in recording and retention of matters of

⁴⁰ State Statutes Report, pp. 24-41.

⁴¹ MICH. CODE ANN. § 333.7413.

⁴² See, for example, N. J. REV. STAT., Article IIC:44-1.

⁴³ 18 U.S.C. § 924(c); see also, State Statutes Report, p. 24.

⁴⁴ Robert J. Bradley, "Trends in State Crime-control Legislation," in *Information Policy and Crime Control Strategies: Proceedings of a BJS/SEARCH Conference*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, July

(footnote cont.)

1984) p. 19. (Hereafter, Crime Control Strategies Conference Proceedings.)

⁴⁵ See State Statutes Report, pp. 24-35.

⁴⁶ Alfred Blumstein, "Violent and Career Offender Programs," Crime Control Strategies Conference Proceedings, p. 76.

⁴⁷ See U.S. Department of Justice News Releases (Sunday, May 20, 1990, and Sunday, June 3, 1990).

⁴⁸ Blumstein, Crime Control Strategies Conference Proceedings, p. 76.

⁴⁹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Crime Control and Criminal Records*, Special Report series (Washington, D.C.: Government Printing Office, October 1985) p. 1.

⁵⁰ *Ibid.*, p. 2.

record — probably militate against fair and effective use of such information [criminal history record information] until there is significant improvement in the quality of recorded information.⁵¹

Misdemeanor offenders

Prior criminal history information is not only vital for sentencing career criminals, it is also important in the sentencing of misdemeanor offenders. Misdemeanor offenders often appear on crowded criminal court dockets. In this situation, judges have a critical need for rap sheet data if they are to make intelligent sentencing decisions.

For example, Irving Lang, a New York criminal court judge, explained that he is able to see over 100 misdemeanor offenders per day, thanks, in part, to the use of criminal history records:

The fact that we do things in a short period of time does not mean that you have not assessed a number of factors. While they're calling a case I'm looking at the complaint, the criminal record, the ROR sheet, so by the time the defendant is actually in front of the bench I know what the charges are and the weaknesses or gaps in the facts.

* * *

"You can tell a lot from a cold piece of paper," the judge said, flipping through the record of past arrests and convictions of a defendant whose name had just been called.⁵²

⁵¹ Blumstein, Crime Control Strategies Conference Proceedings, p. 80.

⁵² "A Day in Court: The Judge, the Prosecutor, the Defender: Turnstile Justice: The Breakdown of Criminal Court," *New York Times* (June 28, 1983) p. 1.

Probation decisions

Criminal history record information is vital not only in making decisions to enhance a sentence but also in making an equally important decision to release an offender on probation. The Congress and legislatures in 40 States have adopted statutory provisions which address the use of criminal history record information in probation decisions. Most of the statutes require courts to consider a defendant's prior criminal history record in deciding whether to permit probation and in determining the length and conditions of the probation term.⁵³

Under many of these statutes, offenders who have two or more convictions for a serious offense are ineligible for probation. Serious offenses can include felony offenses; offenses against children; violent offenses; and various kinds of sexual offenses. In other States, the statute merely sets out criteria and provides that a factor favoring probation is the absence of prior offenses; conversely, a factor discouraging probation is a prior conviction.⁵⁴

In summary, the criminal history record is a vital resource for all components of the criminal justice system, particularly for the courts. Disposition deficiencies in the nation's criminal history record system squander this vital resource.⁵⁵

⁵³ State Statutes Report, pp. 42-46.

⁵⁴ See, for example, OHIO REV. CODE ANN., § 2951.02, and State Statutes Report, pp. 42-46.

⁵⁵ Repository Report, pp. 1-5.

Statutory, regulatory and judicial response

Deficiencies in disposition reporting, and the significant adverse consequences caused by these deficiencies, have prompted the Congress and State legislatures to enact legislation setting disposition reporting standards for criminal history records. In addition, the courts have effectively imposed disposition reporting requirements on the basis of statutory, common law and constitutional principles. This section looks at the content and impact of Federal statutes, including the comprehensive criminal history record system regulations originally published by the Law Enforcement Assistance Administration (LEAA); State initiatives, including statutes which require court clerks to report dispositions to State central repositories; and judicial decisions.

Federal activity

Federal legislation in the 1970s

In 1973, the Congress adopted legislation which, for the first time, expressly addressed criminal justice agencies' duty to obtain dispositions. The Congress amended the Omnibus Crime Control and Safe Streets Act of 1968 to require State and local agencies which had received funds from LEAA in support of their criminal history information systems to meet the following data quality standard:

All criminal history information collected, stored or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data, where arrest data is included therein. The collection, storage and dissemination of such information shall take place under procedures reasonably designed to ensure that all such

information is kept current therein...⁵⁶

Congress was aware that this broad and somewhat vague standard was unlikely to resolve difficult data quality problems. Indeed, the Conference Report admitted as much and promised future, definitive legislation:

The Conferees accept the Senate version, but only as an interim measure. It should not be viewed as dispositive of the unsettled and sensitive issues of the right of privacy and other individual rights affecting the maintenance and dissemination of criminal justice information. More comprehensive legislation in the future is contemplated.⁵⁷

The next year, the Congress included data quality safeguards in the Privacy Act of 1974. The Privacy Act requires that personal records, including criminal history records, held by Federal agencies be complete before the record is used as a basis for decisions about the record subject. The Privacy Act also requires that all Federal agencies "maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination."⁵⁸

⁵⁶ Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789g(b), as amended by Section 524(b) of the Crime Control Act of 1973, Pub. L. 93-83, 87 STAT. 197 (1973) (sometimes referred to as the Kennedy Amendment).

⁵⁷ U.S. Congress, Senate, Committee on the Judiciary, *Criminal Justice Data Banks - 1974 Hearings Before the Subcommittee on Constitutional Rights on S. 2542, S. 2810, S. 2963, and S. 2964*, 93rd Congress, 2d Session, 1974.

⁵⁸ Pub. L. 93-579, 5 U.S.C. § 552a(3)(e)(5).

The Congress was not so successful, however, in adopting comprehensive criminal history legislation governing State and local agencies. In late 1973 and early 1974, the House and Senate held hearings on several omnibus criminal history record bills. Similar legislation was introduced in 1975. None of this legislation, however, emerged from committee due, in part, to criticism by the press.⁵⁹

Federal regulations

During this period, LEAA accomplished what the Congress was not able to accomplish — the adoption of a comprehensive, regulatory scheme for criminal history records. The 1976 LEAA Regulations (referred to hereafter as Federal Regulations) are still in effect and apply to all State and local criminal justice agencies that collect, store or disseminate criminal history record information, whether by manual or automated means, where that effort has been funded, in whole or in part, by the Department of Justice.⁶⁰

The Federal Regulations state that complete records should be maintained at a State central repository.⁶¹ The Regulations further state that in order to be complete, an arrest record must contain any disposition occurring within the State within 90 days of the occurrence.⁶² To promote the dissemination of complete criminal history record information, the Federal Regulations also require State and local criminal justice agencies to establish procedures to query the central repository prior to

⁵⁹ U.S. Congress, Senate, Committee on the Judiciary, *Criminal Justice Information and Protection of Privacy Act of 1975, Hearings Before the Subcommittee on Constitutional Rights on S. 2008, S. 1427, S. 1428*, 94th Congress, 1st Session, 1975.

⁶⁰ 28 C.F.R. Part 20.

⁶¹ 28 C.F.R. § 20.21(a)(1).

⁶² *Ibid.*

disseminating criminal history information.⁶³

Because virtually every large, local agency and all State agencies have, at one time or another, accepted Department of Justice funding in support of their criminal history record systems, virtually every major criminal history record system is covered by the Federal Regulations. Thus, all of these systems are under a duty to obtain in-State disposition information within 90 days of its availability. As discussed earlier, many criminal history record systems may be unable to comply with this requirement.

Antidrug Act provisions

In recognition of this problem, the last two Congresses have adopted legislation aimed at helping State and local criminal justice agencies to improve the accuracy and completeness of criminal history record information. In 1988, the 100th Congress adopted H.R. 5210, the Omnibus Antidrug Abuse Substance Act of 1988. That Act amends the Bureau of Justice Statistics' charter to expressly authorize BJS to provide grants to State and local criminal justice agencies and nonprofit organizations to improve the accuracy and completeness of criminal history records. Specifically, the new language calls upon BJS to "provide for research and improvements in accuracy and completeness and inclusiveness of criminal history record information and information systems..."

Two years later, in October 1990, the 101st Congress adopted another comprehensive antidrug and crime bill. The Comprehensive Crime Control Act of 1990, S. 3266, includes a first-ever earmark on the Bureau of Justice Assistance's block grant funding. The Act requires that a State allocate "not less than five percent" of its block grant funds for the "improvement of criminal justice records." The statute makes clear

⁶³ *Ibid.*

that such improvement refers primarily, if not exclusively, to criminal history records. The Act further provides that monies spent under the five percent set-aside shall include: "the completion of criminal histories to include the final dispositions of all arrests for felony offenses; the full automation of all criminal justice histories and fingerprint records; and [improvements in the] frequency and quality of criminal history reports to the Federal Bureau of Investigation. The director of the Bureau of Justice Assistance, in consultation with the director of the Bureau of Justice Statistics, is directed to adopt guidelines for this program."

Firearms purchaser initiatives

In the last few years, the executive branch has also taken steps to attempt to improve the accuracy and completeness of criminal history record information. Indeed, as noted at the outset, the President has expressly called for improving criminal history record systems in order to strengthen the nation's capability to identify offenders who attempt illegally to purchase firearms. Specifically, the President:

urged States to transfer criminal history conviction, sentencing and other case disposition records to the proper Federal authorities. ... [d]irected the Attorney General to recommend additional improvements in the criminal records data system. The quality of criminal history data is a critical factor in crime control and prevention. Timely and accurate reporting of conviction, sentencing and other case disposition records is essential to the effective operation of the Nation's criminal justice system. To improve the national database, States should make such criminal record reporting mandatory and take steps to ensure that centralized State

criminal history repositories are adequately funded and managed.⁶⁴

Following up on the President's message, the 1988 Crime Bill required the Attorney General to develop a system for the immediate and accurate identification of felons who attempt to purchase firearms but who are ineligible to do so pursuant to Federal law. On November 20, 1989, the Attorney General submitted his plan to the Speaker of the House. As a part of that plan, the Attorney General pledged that the Bureau of Justice Assistance, acting through the Bureau of Justice Statistics, will devote \$9,000,000 in each of three fiscal years beginning with fiscal year 1990 to grants to States for purposes of improving criminal history record systems, including disposition reporting.⁶⁵

As a result of these congressional and executive branch initiatives, relatively significant amounts of Federal funding are now available to local criminal justice agencies and, in particular, State central repositories for improvements in the accuracy and completeness of criminal history record information.

State activity

Impact of federal regulations

Although compliance with the Federal Regulations has not necessarily been achieved, the Federal Regulations have had a significant impact. In 1974, just prior to LEAA's publication of the proposed regulations, only 14 States had adopted statutory data quality standards. By 1977, one year after the adoption of the Federal Regulations, 41 States had adopted data quality standards of varying kinds. That number increased to 45 by 1979 and to 49 States by 1981. Today, all 50 states and the District

of Columbia have adopted some type of data quality statute.⁶⁶

Uniform Criminal History Records Act and SEARCH Model Standards

In addition to Federal initiatives, two State-oriented initiatives in the mid-1980s brought further attention to the importance of accuracy and completeness in criminal history records. In August 1986, the National Conference of Commissioners on Uniform State Laws adopted a Uniform Criminal History Records Act. Among other things, the Uniform Criminal History Records Act provides for the establishment of a central repository in each State and vests that central repository with authority to require arrest and disposition reporting.⁶⁷

In 1988, SEARCH adopted revised model standards for security and privacy of criminal history record information. This was the third such time that SEARCH acted upon the model standards, the previous adoptions of the standards having occurred in 1975 and 1977. Model Standard No. 12 calls for criminal history records to be maintained in a manner to ensure accuracy and completeness. Specifically, Standard No. 12 requires agencies to adopt the following kinds of data quality procedures: prompt reporting of dispositions; standardized reporting formats; verification and edit procedures; tracking and linking systems to link arrest and charge entries with dispositions; disposition monitoring systems to flag aged arrest entries that do not have dispositions; regular auditing programs; automated systems with

⁶⁶ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Privacy and Security of Criminal History Information: Compendium of State Legislation, 1985*, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, 1985) p. 25; and 1989 Compendium, p. 4.

⁶⁷ "The Uniform Criminal History Records Act," *Interface*, SEARCH Group, Inc. (Spring 1987) p. 22.

⁶⁴ Bush Statement, pp. 721-722.

⁶⁵ Thornburgh Letter.

data quality protocols; and "policies and procedures which promote and facilitate communication with the courts and other parts of the criminal justice system in order to maximize the sharing of disposition and other relevant information."⁶⁸

State legislation

SEARCH's 1989 survey of State criminal history record statutes found that many of the procedures called for in SEARCH *Technical Report No. 13* are in place. For example, in almost every State, the applicable statute requires law enforcement agencies to report arrests for all serious offenses (felonies and serious misdemeanors) to the central repository. In most of these States, the arrest must be reported on arrest fingerprint cards which include the record subject's name and identification information, arrest event information, arrest charges and inked fingerprint impressions.⁶⁹ Positive identification through fingerprint impressions is important not only in order to correctly identify the arrestee, but also to link the arrest and charging information with subsequent dispositions.

SEARCH's review of State legislation also found that 51 jurisdictions have adopted legislation which impose some form of disposition reporting. Some of the statutes are quite specific as to the types of data to be reported and the responsible official to do the reporting. Statutes in many other States, however, merely establish generalized reporting requirements. Statutes in only 13 States, for example, specifically require prosecutors to report disposition information to central repositories. Worse, as of 1989, statutes in only 24 States require the courts (and customarily the court clerk) to report

disposition information to the central repository.⁷⁰ Only 31 States require correctional agencies to report correctional disposition information, such as escape, release, parole or death.⁷¹

Other problems with many of the disposition reporting statutes include the States' failure to impose time limits for the reporting of disposition data and the lack of meaningful penalties for a failure to comply. Only 30 States, for example, prescribe time limits for the reporting of disposition data and only 12 States have adopted provisions which include civil or criminal sanctions for a violation of disposition reporting requirements. Only 12 States

⁷⁰ Ibid, p. 5.

It is sometimes charged that court reporting requirements run afoul of the separation of powers doctrine. It is a cardinal principle of the American constitutional system, of course, that governmental powers are divided among the three separate and co-equal branches of the government — the legislative, the executive and the judiciary — and that the branches cannot impinge on one another's independence. *O'Donoghue v. United States*, 289 U.S. 516, 530 (1933). Accordingly, the courts have held that legislatures cannot exercise judicial power or encroach upon the judiciary's exercise of such powers. *Duplantier v. United States*, 606 F.2d 654, 668 (5th Cir. 1979).

However, the courts have also held that legislatures can enact statutes which set requirements for the nonjudicial, administrative activities of the courts, so long as these requirements do not affect the courts' exercise of judicial power. For example, in *Duplantier v. United States*, the Court of Appeals for the 5th Circuit upheld the authority of the Congress to mandate that federal judges disclose personal financial information. The opinion explained that the separation of powers doctrine does not require "three airtight departments of government" [citing *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977)]. Rather, the doctrine operates to prohibit one branch of government from unduly impeding the operation of a coordinate branch of government." *Duplantier* p. 667.

⁷¹ 1989 Compendium, p. 5.

reinforce disposition reporting requirements with a statutory requirement that the repository implement some kind of a delinquent disposition monitoring system (for example, a system designed to identify aged arrest entries for which dispositions are probably available but not reported).⁷²

In addition to reporting requirements, State statutes establish other types of data quality standards. For example, 35 States require that agencies maintain a transaction log to record the particulars of each instance in which criminal history record information is disseminated. Statutes in 25 States also require that the central repositories conduct some type of an audit. Statutes in 12 States require State and local criminal justice agencies to query the central repository prior to disseminating criminal history record information in order to ensure that the most up-to-date disposition data are being used. Four States have adopted statutory provisions that impose training requirements on personnel involved in handling criminal history records. Four States have statutory provisions which require that automated programs use systematic editing protocols for the purpose of detecting missing or non-conforming data. Only three States have adopted statutory provisions that require the use of a "tracking number system" to link disposition information to charge information.⁷³

Of course, in almost every State, the bulk of data quality requirements are expressed in regulations or administrative policies and procedures, rather than in legislation. The extent to which State legislation addresses data quality issues, however, is probably a fair reflection of State policymakers' concern about data quality.

⁷² Ibid.

⁷³ Ibid, pp. 5-6.

⁶⁸ SEARCH Group, Inc., *Technical Report No. 13: Standards for Security and Privacy of Criminal History Record Information* (Revised July 1988) pp. 23-24.

⁶⁹ 1989 Compendium, p. 405.

Case law

Most courts that have addressed the issue have held that a government agency cannot rely upon inaccurate or incomplete criminal history data to make an adverse decision about an individual without violating the individual's constitutional right of due process or otherwise running afoul of constitutional obligations. When this occurs, the courts customarily overturn the decision that was made on the basis of the inaccurate or incomplete data. Moreover, when a State agency makes an adverse decision about an individual in reliance upon inaccurate or incomplete criminal history data, the individual may have a cause of action against the agency under the Civil Rights Act, 42 U.S.C. § 1983, if the agency did not have procedures in place that were reasonably designed to produce accurate and complete records and if the individual can meet certain other requirements.

Invalidating decisions made on basis of inaccurate or incomplete data

When criminal history record information is used as a basis for critical decisions involving incarceration or freedom, the courts have had no trouble in finding that constitutional due process protections require that such decisions be made on the basis of accurate and complete criminal history record information. This view was articulated by the United States Supreme Court as early as 1948 in *Townsend v. Burke*:

This petitioner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue. Such a result, whether caused by carelessness or design, is inconsistent with due process of law and such a conviction cannot stand.⁷⁴

⁷⁴ 334 U.S. 736, 739-40 (1948).

The Supreme Court revisited this issue in 1972. In *United States v. Tucker*, the Court reviewed a conviction for armed robbery in which the trial judge explicitly relied upon three previous convictions in setting sentence.⁷⁵ Two of those convictions, however, were constitutionally invalid. The Court found that the sentence was defective because it was based upon assumptions which were materially untrue:

Due process is violated if a sentencing court imposes a sentence based on extensive and materially false information. Reliance on false assumptions about prior convictions may be of constitutional magnitude if the assumptions are materially untrue. [Citations omitted.]⁷⁶

Of course, courts are free to take an offender's prior arrest history into account at sentencing, even if disposition information is unavailable. In that event, however, the court must make clear that it recognizes that the arrests alone do not indicate criminal conduct.⁷⁷

In *Commonwealth v. Allen*, for example, a Pennsylvania Superior Court upheld a sentence for burglary and simple assault after finding that the sentencing judge did not impermissibly rely on a presentence report which failed to include the dispositions of 12 prior arrests.⁷⁸ The opinion noted that the contents of a presentence report may properly include references to all arrests, whatever the disposition. The court quoted with approval a 1949 Supreme Court statement regarding arrest information in a presentence report: "Highly relevant — if not essential

⁷⁵ 404 U.S. 443, 447 (1972).

⁷⁶ 404 U.S., p. 447.

⁷⁷ *Commonwealth v. Bryant*, 458 A.2d 1010, 1011 (Pa. 1983); *Commonwealth v. Craft*, 450 A.2d 1021, 1024 (Pa. 1981).

⁷⁸ 439 A.2d 906, 911-12 (Pa. Super. Ct. 1985).

— to ... [the judge's] ... selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics," citing *Williams v. New York*.⁷⁹

The *Allen* court distinguished a prior Pennsylvania decision, *Commonwealth v. Shoemaker*,⁸⁰ wherein the court relied upon a presentence report showing 14 arrests, all without dispositions. In *Shoemaker*, however, the appellate court had found that the sentencing judge had not distinguished between arrests and convictions. In *Allen*, the appellate court found that "unlike the sentencing in *Shoemaker*, Judge Fornelli exercised sound judgment with respect to the appellant's record of prior arrests. He did not treat the prior arrests as convictions or give them undue weight."⁸¹

Due process may also be violated when pretrial release decisions, as opposed to sentencing decisions, are made on the basis of erroneous, ambiguous or incomplete criminal history data. In 1979, a Federal District Court for the Southern District of New York reached this conclusion in *Tatum v. Rogers*:

Plaintiffs are clearly and systematically being deprived of due process in violation of the Fourteenth Amendment to the U.S. Constitution, and of the right of effective assistance of counsel as guaranteed by the Sixth Amendment, whenever rap sheets containing erroneous, ambiguous or incomplete data with respect to prior arrests and dispositions are submitted to courts at arraignment sessions for use in connection with bail determinations. The Eighth Amendment right to reasonable bail is also thus denied ... [N]either plaintiff nor their

⁷⁹ 337 U.S. 241, 247, *reh. denied*, 338 U.S. 841 (1949).

⁸⁰ 313 A.2 342 (1973), *aff'd* 341 A.2d 111 (1975).

⁸¹ 489 A.2d, p. 912.

counsel is capable, as a practical matter, of correcting errors, resolving ambiguities, or supplying missing information to cure defects contained in rap sheets.... The result is frequently the imposition of bails in amounts exceeding those which would be set if complete and accurate information were available to the courts.⁸²

Civil Rights Act actions

The Civil Rights Act⁸³ gives individuals a cause of action for deprivation of their Federal constitutional rights caused by persons acting under color of State authority. An individual wishing to bring a Section 1983 action on the basis of an inaccurate or incomplete criminal history record, however, must surmount several hurdles. First, the record subject must be able to demonstrate that the agency engaged in an unconstitutional act. Second, the record subject must be able to show that the State official acted at least negligently, if not maliciously, and that this conduct arose out of an official policy or custom.

The accuracy and completeness of criminal history records comes into play in Section 1983 Civil Rights actions in two respects. First, there is a minority view expressed in a few older opinions that an agency's failure to maintain accurate and complete criminal history records, or at least the dissemination of such records, may, in and of itself, violate an individual's constitutional rights of privacy or due process.⁸⁴

⁸² *Tatum v. Rogers*, Slip Opinion (S.D.N.Y., Feb. 20, 1979), as quoted in Laudon, p. 134.

⁸³ 42 U.S.C. § 1983.

⁸⁴ *Menard v. Mitchell*, 430 F.2d 486, 492 (D.C. Cir. 1970); *Tarlton v. Saxbe*, 507 F.2d 1116, 1125, 1126 (D.C. Cir. 1974).

But see, *Paul v. Davis*, 424 U.S. 693, 713 (1976) and *Rowlett v. Fairfax*, 446 F. Supp. 186, 188 (W.D. Mo. 1978). See also, *Reyes v. Supervisor of Drug*

Second, the prevailing view is that an arrest, detainment or search made on the basis of what turns out to be inaccurate or incomplete criminal history records may provide a basis for a 1983 action. In these cases, the plaintiff does not claim that the maintenance or even the dissemination of the inaccurate or incomplete records violated his constitutional rights. Rather, the individual's constitutional claim is based upon a false arrest, detainment or search.⁸⁵ The defendant agency

(footnote cont.)

Enforcement Administration, 834 F.2d 1093, 1098 (1st Cir. 1987), wherein a Federal appeals court rejected a 1983 action by an inmate alleging that the Department of Justice willfully disseminated false information that the plaintiff was a member of a terrorist group. The court noted that "the Supreme Court has clearly held that the interest in a good name or a good reputation does not trigger the due process clause, in spite of the fact branding someone a criminal (or a terrorist, as in this case) entails substantial disadvantages." *Ibid*, p. 1098. Accordingly, the court found that the plaintiff did not have standing to seek injunctive relief. Further, the court denied the plaintiff's 1983 claim for willful dissemination of false information because the plaintiff had failed to name in the suit the specific officials responsible for the alleged dissemination and had failed to demonstrate that the information was relied upon to deprive the plaintiff of some interest protected by the Constitution. In other words, in the First Circuit's view, the mere dissemination of the inaccurate information is not, in and of itself, a deprivation of a constitutional right.

⁸⁵ In *Paine v. Baker*, 595 F.2d 197, 201, 202, (4th Cir. 1979), *cert. denied*, 444 U.S. 926 (1979), the 4th Circuit Court of Appeals denied a state prisoner's request for access to his prison file. The court opinion stated that record subjects have a limited constitutional due process right to have inaccurate or incomplete information removed or corrected in their records. In order to assert such a right, the record subject must specify what part of his record he is disputing; he must allege that the information is false or incomplete; and he

official, however, has a defense if he acted reasonably and in good faith in relying upon what turns out to be an inaccurate or incomplete record. The agency official is likely to be found to have acted reasonably and in good faith if the agency made reasonable efforts to establish a recordkeeping system designed to produce accurate and complete information.

In *Bryan v. Jones*,⁸⁶ for example, a 5th Circuit Court of Appeals panel held that a 1983 claim for false imprisonment arising out of a typographical error in the jailer/defendant's warrant records would turn on whether the jailer, "negligently establishe[d] a record keeping system in which errors of this kind are likely." The court concluded that in such an event the jailer, "will be held liable."⁸⁷

In *Sadiqq v. Bramlett*, a Federal district court considered whether a local official's dissemination of inaccurate disposition information provided a basis for recovery under Section 1983.⁸⁸ The plaintiff, a Federal prisoner, sought monetary damages from a local police department for transmitting "misinformation" to the FBI. Sadiqq argued that his FBI rap sheet showed, or at least implied, that he had been convicted of both murder and armed robbery, rather than murder alone. He alleged that this error had harmed his reputation and caused him to be denied parole.

The court found that in order to recover under Section 1983, Sadiqq would have to establish the following

(footnote cont.)

must claim that the challenged information has been relied upon to a "constitutionally significant degree." The opinion noted that reliance "to a constitutionally significant degree" would include a decision to deny or revoke parole or deny statutory good time credit.

⁸⁶ 530 F.2d 1210, 1215 (5th Cir. 1976), *cert. denied*, 429 U.S. 865 (1977).

⁸⁷ *Ibid*, p. 1215.

⁸⁸ 559 F. Supp. 362, 364 (N.D.Ga. 1983).

three elements: (1) that the official's misconduct had breached a constitutional duty owed to Sadiqq; (2) that some tangible harm had been done to Sadiqq; and (3) that the officer's actions were intentional, not merely negligent. The test adopted by the *Sadiqq* court is especially difficult for a plaintiff alleging a criminal history violation because it requires a plaintiff to demonstrate that the State official's recordkeeping failures were not merely negligent, or even reckless, but intentional. The *Sadiqq* court also stated that in considering whether the plaintiff had suffered cognizable injury, damage to reputation alone would not be enough. Denial of parole based on inaccurate criminal history data, however, might constitute a deprivation of due process in violation of the Fifth and Fourteenth Amendments, if the plaintiff could establish that the Parole Board actually relied upon the inaccurate FBI record.

One of the most recent and best publicized Section 1983 cases involved a claim by Terry Dean Rogan for monetary damages, declaratory relief and attorneys' fees against the City of Los Angeles and two Los Angeles Police Department detectives.⁸⁹ Rogan was arrested five separate times on the basis of an erroneous FBI report that Rogan was wanted for robbery and murder. As it turned out, a suspect in a robbery/murder case had been using Rogan's name after obtaining Rogan's birth certificate. The district court cited the Supreme Court's decision in *Monell v. Department of Social Services of the City of New York*,⁹⁰ and the 7th Circuit Court of Appeals' decision in *Powe v. Chicago*,⁹¹ for the proposition that in order to recover under Section 1983, a plaintiff must show that: (1) the plaintiff suffered a deprivation of a constitutional right; and (2) such

deprivation was caused by an official policy, custom or usage of the municipality.

The *Rogan* court held that the plaintiff's constitutional liberty interest was indeed infringed by the repeated arrests arising from the maintenance and multiple use of an incorrect warrant entry.⁹² The court also found that the second leg of the *Monell* test was met in that the defendant detectives had repeatedly reentered information which the detectives knew was incorrect. In the court's view, this behavior reflected the Los Angeles Police Department's inadequate training and supervision. Such inadequacies can constitute an actionable policy or custom for 1983 purposes.⁹³ In this connection, the court noted that the FBI's policies require that State agencies, "adopt a careful and permanent program of data verification."⁹⁴

A fair reading of the case law suggests that if courts, parole boards or other criminal justice agencies rely upon inaccurate criminal history record data to make decisions that are constitutionally significant (such as pretrial release or sentencing decisions), the decisions can be overturned. Furthermore, criminal justice agencies and their employees can incur liability if they intentionally or even negligently use inaccurate criminal history data as a basis for a

constitutionally significant action, and they cannot show that they relied upon a recordkeeping system reasonably likely to produce accurate and complete records.

Factors which have improved disposition reporting

This paper has discussed the nature and scope of the disposition reporting problem; its consequences; and the legal requirements with respect to reporting, collection and use of dispositions. This section now turns to a discussion of strategies which have been shown to improve the accuracy and completeness of criminal history record information.

Automation

In SEARCH's 1984 survey of repository directors, a substantial percentage credited automation with making a significant improvement in disposition reporting rates.⁹⁵ A recent SEARCH publication, *Strategies for Improving Data Quality*, makes the following statement with respect to the importance of automation:

Surveys show that criminal justice officials at all levels overwhelmingly believe that automation has resulted in the greatest improvement in information management in their agencies and is the single most important tool for achieving better data quality. Automated systems make it more practical and economical to implement many other data quality strategies, such as improved data entry procedures and editing, disposition monitoring and data-linking systems.

⁹² In support of this holding, the court cited numerous cases for the proposition that if a plaintiff is subjected to repeated arrests on the basis of inaccurate information, the plaintiff's Fourth and Fourteenth Amendment interests are violated. See, for example, *Guenther v. Holmgreen*, 738 F.2d 879 (7th Cir. 1984), cert. denied, 469 U.S. 1212 (1985); *McKay v. Hammock*, 730 F.2d 1367 (10th Cir. 1984); *Harper v. McDonnell*, 679 F.2d 955 (D.C. Cir. 1982), cert. denied, 459 U.S. 864 (1982); *Shilling Ford v. Holmes*, 634 F.2d 263 (5th Cir. 1981); *Wanger v. Bonner*, 621 F.2d 675 (5th Cir. 1980); *Douthit v. Jones*, 619 F.2d 527 (5th Cir. 1980); and *Whitley v. Seibel*, 613 F.2d 682 (7th Cir. 1980).

⁹³ *Rogan*, p. 1395.

⁹⁴ *Rogan*, p. 1397.

⁸⁹ *Rogan v. City of Los Angeles*, 668 F. Supp. 1384, 1395-97 (C.D. Cal. 1987). (Hereafter, *Rogan*.)

⁹⁰ 436 U.S. 658 (1978).

⁹¹ 664 F.2d 639, 643 (7th Cir. 1981).

⁹⁵ Repository Report, p. 4.

Furthermore, the telecommunications components of automated systems make the reporting of arrest and disposition data easier and more economical and reliable.⁹⁶

Of course, merely automating a repository's criminal history database does not ensure greater success in collecting or maintaining dispositions. The repository's automated system must be calibrated appropriately to the State courts' operations. For example, a recent audit report published by Illinois' Criminal Justice Information Authority found that "the current CCH system is not equipped to handle the variety of disposition outcomes which are encountered in routine criminal justice processing." Problems found in Illinois' extensively automated system included the following:

1. Failure to capture a second disposition in cases where more than one disposition resulted from a given charge, or set of charges;
2. Failure to permit the entry of criminal history record information related to more than eight charges;
3. Failure to enter reported dispositions where a disposition report indicates an arrest date which does not match the arrest date on the arrest report;

⁹⁶ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Strategies for Improving Data Quality*, Criminal Justice Information Policy series, by Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, April 1989). (Hereafter, Data Quality Strategies report.) OTA research also suggests that automation plays a key role in improving disposition reporting. OTA Report, p. 101.

4. Failure to enter accurate or complete disposition information because dispositions are taken from the fingerprint reports rather than from disposition reports;
5. Failure to record dispositions when aliases are used or when a missing or incorrect date of birth is encountered;
6. Failure to establish a uniform method for circuit court clerks to report dispositions when supervision, probation and confidential discharge orders are terminated, revoked or result in re-sentencing, or when sentencing is modified or reversed by appellate court decisions.⁹⁷

As noted earlier, SEARCH's recent audit of the Maryland Criminal Justice Information System found that automated reporting by district and circuit courts in Baltimore County and Baltimore City was extraordinarily high at 97 percent and above.⁹⁸ SEARCH concluded, however, that despite high levels of reporting, much of the information actually reported to CJIS was not properly linked and recorded on the rap sheets due to failure to properly report and record CJIS' tracking number.

The type of automation that makes perhaps the most significant contribution to data quality and disposition reporting is not automation of the repository database alone, but the establishment of telecommunications links between the courts and the repository. For example, through New York State's Office of Court Administration, New York's central repository obtains dispositions from many of New York's large, urban court systems on

⁹⁷ Illinois Criminal Justice Information Authority, *Annual Audit Report for 1985-1986: Court Disposition Reporting and Processing* (September 1986) pp. ii-iv.

⁹⁸ Maryland Audit Report, p. 76.

an automated basis. New York officials report that disposition reporting rates from courts that have established telecommunication links with the Office of Court Administration are substantially higher than are disposition reporting rates from courts which report dispositions manually.⁹⁹

Data entry and maintenance techniques

Another factor often seen as responsible for improvements in disposition reporting rates is the implementation of data entry techniques, particularly tracking and linking systems, and data maintenance techniques, particularly disposition monitoring systems and audits.

Data entry techniques

It is a maxim among information system operators that the data maintained in a system is only as good as the data entered into a system. It is possible, of course, to identify poor quality data after entry and to upgrade the data at that time. Such efforts, however, are likely to be expensive and only partly successful. Accordingly, many repositories have adopted strategies for policing the quality of criminal history record data as it is entered into their systems.

SEARCH's 1989 repository survey confirmed that most repositories perform a manual review of incoming source documents before entering data from those documents into the system. In addition, most repositories have implemented edit-checking and verification protocols in automated criminal history systems. Finally, all repositories have implemented at least some procedures to link arrest charges with dispositions. Under most such

⁹⁹ "Agencies Start Project to Get Data Missing from Rap Sheets," N.Y. LAW JOURNAL (June 25, 1985) p. 1. (Hereafter, New York Law Journal article.)

systems, each reported charge is assigned a number that accompanies that charge through each step in the criminal justice process. In this manner, dismissals, acquittals, convictions and other dispositions can be linked by number to original charges. To date, however, only three states have formalized this technique by adopting statutory or regulatory provisions which require the use of a tracking/number system.¹⁰⁰

Data maintenance techniques

At least two types of data maintenance techniques have proven to be helpful in improving disposition reporting: delinquent disposition monitoring systems and auditing programs. Disposition monitoring systems flag arrest entries which, after passage of a reasonable period of time, still lack dispositions. The time period that must elapse before an arrest is cited for a delinquent disposition varies among States and agencies, but is generally not less than three months from the time that the original arrest entry is logged.

Repository directors surveyed by SEARCH in 1984 cited the establishment of disposition monitoring systems as one of the primary reasons for improvements in disposition reporting.¹⁰¹ SEARCH's 1990 survey confirmed that disposition monitoring systems are effective in improving disposition reporting.

Auditing is another especially useful method for policing and improving the quality of data in criminal history record systems. SEARCH's *Strategies for Improving Data Quality* report concludes: "Auditing is one of the most effective yet most neglected data quality tools."¹⁰² Repository directors responding to SEARCH's 1984 survey cited auditing as an important technique for improving disposition

reporting, in particular, and data quality in general.¹⁰³

The Federal Regulations require each State to conduct an annual audit of a representative sample of State and local criminal justice agency criminal history record systems chosen on a random basis.¹⁰⁴ In addition, statutes in 25 States require central repositories to conduct audits.¹⁰⁵ In 12 of those States, the repository is required to conduct an annual audit of its own system.

Cooperation between courts and repositories

Experts caution that in order for many repositories to make further progress in improving disposition reporting rates, repositories must establish close and effective working relationships with the courts. In SEARCH's 1984 survey, repository directors cited cooperation between repositories and their State court administrator's office as one of the key ingredients in improving disposition reporting.¹⁰⁶ SEARCH's *Strategies for Improving Data Quality* report calls for a formal commitment to improving data quality by appropriate, high-level officials such as "the governor, the chief judge of the state supreme court, or the administrator of state courts."¹⁰⁷ SEARCH's report also identifies the establishment of a task force comprised of law enforcement and judicial officials as an effective strategy:

To help ensure the cooperation of the courts, the task force membership should include the highest ranking judicial officials possible, such as the chief justice; the chief judges of the appellate courts and the major trial courts; the

administrator of the state courts; and the official responsible for the state's judicial information system, if one exists.¹⁰⁸

Effective working relationships between repositories and courts, however, are not always easily achieved. There are many complicating factors. For instance, the 50 State repositories operate under a variety of administrative schemes. In some States, repositories are part of the Attorney General's Office; in other States, repository officials report to the Governor. In some States, repositories are part of the State Police; in other States, part of a consolidated, cabinet-level law enforcement department; and in other States, independent agencies. Moreover, the sheer size of repositories' databases makes coordination difficult.

The court system is even more diverse. There are almost 9,000 judges in State courts of general jurisdiction.¹⁰⁹ In 1988, criminal filings in the State courts totaled approximately 11.96 million.¹¹⁰ Each of these filings has the potential to generate a disposition. Los Angeles, California, one of the largest court systems, provides an illustration of the sheer volume of criminal court activity. In fiscal 1989, Los Angeles County had approximately 115,000 felony filings and over 100,000 criminal dispositions.¹¹¹

Size and diversity are not the only, and may not be even the most significant, factors which hinder courts and repositories in their attempts to establish effective and close relationships. Many court representatives note that the courts' willingness to cooperate with

¹⁰⁸ Ibid, pp. 8-9.

¹⁰⁹ National Center for State Courts, *State Court Caseload Statistics: 1988 Report* (1990) p. 270.

¹¹⁰ Ibid, p. 112.

¹¹¹ Judicial Council of California, *1990 Annual Report of the Administrative Office of the California Courts*, vol. II, p. 86.

¹⁰³ Repository Report, p. 5.

¹⁰⁴ 20 C.F.R. § 20.21(e).

¹⁰⁵ 1989 Compendium, p. 5.

¹⁰⁶ Repository Report, pp. 4-5.

¹⁰⁷ Data Quality Strategies Report, p.

¹⁰⁰ 1989 Compendium, p. 6.

¹⁰¹ Repository Report, p. 5.

¹⁰² Data Quality Strategies Report, p. 12.

repositories is limited by judicial concerns about preserving the courts' traditional autonomy and independence; and by concerns about the potential for use of disposition data by the media, court watchdog groups, and others to criticize bail and sentencing decisions.¹¹²

Despite these concerns, the prospects for greater cooperation between courts and repositories appear to be good. As the repositories' mission becomes better established and accepted, the courts' concern about encroachment on judicial prerogatives appears likely to subside. Similarly, concerns about the "misuse" of disposition data appear to be on the wane, as reflected in the trend for closer public scrutiny of judicial decisionmaking. Perhaps the principal reason, however, that the prospects for greater cooperation appear to be good is that courts are increasingly beneficiaries of accurate, complete and comprehensive criminal history record data. In view of the courts' vastly expanded use of criminal history records for arraignment and sentencing, it is clear that both courts and repositories have much at stake.

Many experts cite New York's experience as illustrative of the kind of relationship between courts and repositories that is apt to become more common and that can produce marked progress in improving disposition reporting. In New York, the State repository (the Department of Criminal Justice Services) and the Office of the Court Administrator have worked together, not only to implement an automated reporting system, but also to implement a program to obtain missing dispositions for arrests recorded at the repository.¹¹³

A number of criminal justice officials have called for joint efforts of the kind undertaken in New York in order to improve data quality. For example, the director of the legal section of the International

Association of Chiefs of Police stated:

The nature of the problems associated with data quality require a national effort to highlight these issues and motivate law enforcement commitment. Task forces including representatives from the police, prosecutors, courts and corrections should be established to examine issues related to data entry standards, data maintenance standards, and dissemination standards and to recommend actions designed to rectify problems associated with the lack of uniformity and documentation, error notification, audits, tracking, etc.¹¹⁴

At SEARCH's 1984 data quality roundtable conference, court officials suggested establishing a joint court/repository task force to explore disposition reporting problems.

By contrast, they [court representatives] believe that cooperative and voluntary approaches by courts and repositories have a potential for success, emphasizing that here too a task force approach may be useful.¹¹⁵

A number of States, including, for example, Delaware, have recently established high-level, statewide task forces comprised of law enforcement and judicial officials in order to improve criminal justice records.

Conclusion

Calls for establishing repository and court task forces are reflective of two important developments. First, there is a near-universal recognition today that both courts and law enforcement benefit if repositories are better able to do their job — the collection, maintenance and dissemination of accurate, complete and comprehensive criminal history record information. Second, there is a growing recognition that repositories simply will not be able to do their job unless repositories are able to establish close and effective working relationships with the courts.

¹¹² Data Quality Report, pp. 71-72.

¹¹³ New York Law Journal article, p. 1.

¹¹⁴ Summers, *Data Quality Conference Proceedings*, p. 28.

¹¹⁵ Data Quality Report, p. 72.

Appendix 3
**Summary of Statutes Requiring
the Use of Criminal History
Record Information**

Summary of Statutes Requiring the Use of Criminal History Record Information

Table 1, "Summary of statutes requiring the use of criminal history record information by jurisdiction and category," is excerpted from a 1991 report that SEARCH prepared for the Bureau of Justice Statistics, U.S. Department of Justice, titled *Statutes Requiring the Use of Criminal History Record Information*.¹

The table shows that each of the states, the federal government, the District of Columbia, Puerto Rico and the Virgin Islands have laws throughout the criminal justice process that require consideration of past criminal records for their implementation. Many states have more than one law in the categories designated in the table. The table — and the report from which it is taken — clearly demonstrates that the effective operation of the criminal justice system is directly dependent upon the timely availability of accurate and complete information about the past criminal involvement of persons processed through the system.

¹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Statutes Requiring the Use of Criminal History Record Information*, Criminal Justice Information Policy series, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, June 1991) pp. 3-4.

Table 1
Summary of statutes requiring the use of criminal history record information
by jurisdiction and category

("X" indicates that the jurisdiction has one or more statutory provisions of the category indicated.)

Jurisdiction	Firearms	Ball	Offense upgrade	Sentence enhancement	Habitual criminals	Probation	Presentence reports	Correctional classification	Parole
United States	X	X		X	X	X	X		
Alabama	X	X	X	X	X	X	X	X	X
Alaska	X	X	X	X	X	X	X	X	X
Arizona	X	X	X	X	X	X	X	X	X
Arkansas	X	X		X	X	X	X	X	X
California	X	X	X	X	X	X	X	X	X
Colorado	X	X	X	X	X	X	X		X
Connecticut	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	X
Georgia		X	X	X	X	X	X	X	X
Hawaii	X	X		X	X	X	X	X	X
Idaho			X	X	X	X	X	X	X
Illinois	X	X	X	X	X	X	X	X	X
Indiana		X	X	X	X	X	X	X	X
Iowa	X	X	X	X	X	X	X	X	X
Kansas	X	X	X	X	X	X	X		X
Kentucky	X	X	X	X	X	X	X		X
Louisiana	X	X		X	X	X	X	X	X
Maine	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	X
Minnesota	X	X			X		X		X
Mississippi	X	X	X	X	X	X	X	X	X
Missouri	X	X	X	X	X	X	X	X	X
Montana	X	X		X	X	X	X		X
Nebraska	X	X		X	X	X	X	X	X
Nevada	X	X	X	X	X	X	X	X	X
New Hampshire	X		X	X	X				
New Jersey	X	X		X	X	X	X	X	X
New Mexico	X	X	X	X	X				X
New York	X	X		X	X	X	X	X	X
North Carolina	X	X	X	X	X	X	X		X
North Dakota	X	X	X	X	X	X	X		X
Ohio	X	X	X	X	X	X	X	X	X
Oklahoma	X		X	X	X		X		X
Oregon	X	X	X	X	X				X

Table 1 (cont.)
Summary of statutes requiring the use of criminal history record information
by jurisdiction and category
("X" indicates that the jurisdiction has one or more statutory provisions of the category indicated.)

Jurisdiction	Firearms	Ball	Offense upgrade	Sentence enhancement	Habitual criminals	Probation	Presentence reports	Correctional classification	Parole
Pennsylvania	X	X	X	X	X	X	X		X
Puerto Rico		X	X	X	X	X	X		X
Rhode Island	X	X		X	X		X	X	X
South Carolina	X	X	X	X	X	X	X	X	X
South Dakota		X	X	X	X	X	X		X
Tennessee	X	X	X	X	X	X	X		X
Texas	X	X	X	X	X	X	X	X	X
Utah	X	X	X	X	X		X	X	
Vermont		X		X	X	X	X		X
Virgin Islands	X	X		X	X				
Virginia	X	X	X	X	X	X	X		X
Washington	X	X	X	X	X	X	X	X	X
West Virginia	X	X	X	X	X	X	X	X	X
Wisconsin	X	X	X	X	X			X	X
Wyoming	X	X	X	X	X	X	X	X	X

Appendix 4
**Status of Disposition
Reporting Laws**

Status of Disposition Reporting Laws

(As of September 1991)*

- All 50 states, the District of Columbia and the Commonwealth of Puerto Rico have adopted legislation which imposes some form of disposition reporting requirement on some state and local agencies.
- The following 28 states have statutes that specifically require the reporting of prosecutor data to the state central repository:

Alabama
Arkansas
District of Columbia
Georgia
Illinois
Iowa
Kansas
Kentucky
Louisiana
Maryland

Massachusetts
Minnesota
Mississippi
Missouri
Nebraska
Nevada
New Jersey
New York
North Dakota

Oregon
Pennsylvania
Rhode Island
Texas
Utah
Vermont
Washington
West Virginia
Wyoming

- The following 44 states have statutes that require the reporting of court disposition information (customarily by the court clerks):

Alabama
Arkansas
Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas

Kentucky
Louisiana
Maine
Maryland
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New York
North Carolina

North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
South Carolina
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

* Source: *Compendium of State Privacy and Security Legislation: 1989 Overview*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, April 1990), updated through September 1991.

- The following 43 jurisdictions require correctional agencies to report correctional "disposition" information, such as reception, release, parole, escape or death:

Alabama	Kentucky	North Dakota
Arkansas	Louisiana	Ohio
California	Maryland	Oregon
Colorado	Massachusetts	Pennsylvania
Connecticut	Michigan	Rhode Island
Delaware	Minnesota	South Dakota
District of Columbia	Mississippi	Texas
Florida	Missouri	Utah
Georgia	Montana	Vermont
Hawaii	Nebraska	Virginia
Idaho	Nevada	Washington
Illinois	New Hampshire	West Virginia
Indiana	New Jersey	Wisconsin
Iowa	New York	Wyoming
Kansas		

- The following 28 jurisdictions have statutes that prescribe time limits for the reporting of some types of disposition data:

Alabama	Mississippi	Ohio
Arizona	Missouri	Pennsylvania
California	Montana	Puerto Rico
Delaware	Nebraska	South Carolina
Georgia	Nevada	Texas
Idaho	New Jersey	Utah
Illinois	New York	Virginia
Indiana	North Carolina	Washington
Iowa	North Dakota	Wisconsin
Maryland		

- The following 21 jurisdictions have statutory provisions that expressly prescribe administrative, civil or criminal sanctions for failure to comply with disposition reporting requirements:

Alabama	Maine	North Dakota
Arkansas	Michigan	Oregon
Connecticut	Minnesota	Pennsylvania
Delaware	Montana	Puerto Rico
Georgia	New Hampshire	Utah
Kansas	New York	Vermont
Louisiana	North Carolina	West Virginia

- There are no known reported cases in which a criminal justice official has been penalized for failing to comply with disposition reporting requirements.

Appendix 5

**Model Reporting Provisions for
Criminal History Record Law**

Model Reporting Provisions for Criminal History Record Law

Preamble

In Strategy No. 4 of the Report, the National Task Force recommends that every state examine its present statutory reporting requirements and, where appropriate, adopt new or amended statutory provisions to ensure that all necessary criminal history record information is reported to the repository within specified timeframes and is entered into the repository's database without undue delay. The reporting law should:

- (1) Identify all criminal justice processing decisions or actions that are required to be reported to the repository;
- (2) Identify the official or agency responsible for reporting each reportable event;
- (3) Specify the time periods within which reporting to the repository and data entry by the repository must occur; and
- (4) Provide sanctions for nonreporting.

An appropriate official should be given authority to issue regulations specifying the particular data elements to be reported at each reporting stage and to specify the form and manner of reporting, including the use of uniform reporting forms and procedures.

The National Task Force acknowledged that mandatory reporting laws do not necessarily guarantee high levels of reporting. These laws do emphasize the state's commitment to data quality improvement, however, and can be cited as legal authority for efforts by the repository and other agencies to improve reporting. Many of the states that have achieved high levels of

reporting have comprehensive reporting laws. For these reasons, the National Task Force recommended that enactment of a comprehensive mandatory reporting law (and the issuance of implementing regulations) should be a high priority goal in any state that does not already have such a law.

The reporting approach embodied in the proposed model provisions set out below is based on the statutory approach followed in Maryland (Md. Ann. Code, art. 27 § 747 (1957)), California (Cal. Penal Code §§ 13125-13153), and several other states that have enacted comprehensive reporting laws. The intent is (1) to compile a list of all decisions or actions occurring in the processing of criminal offenders that need to be reflected on the criminal history record in order to make it complete and unambiguous, and (2) to require the agency responsible for each such "reportable event" to forward relevant information about the action or decision to the repository. Some of the comprehensive state reporting laws (notably California's) enumerate the particular data elements that must be reported concerning each reportable event. Since these requirements may well change over time, however, the proposed model follows the approach adopted by Maryland: it pinpoints the basic responsibility for reporting information about enumerated reportable events and leaves it to the Secretary of Public Safety (or other appropriate official) to specify in regulations the particular data elements to be reported by each reporting agency and the form and manner in which they must be reported.

The reporting approach followed in Maryland is very comprehensive because the Maryland state central repository collects and maintains a broad range of criminal history record

data. These data include not only basic arrest, adjudication and correctional data, but also data relating to bail decisions, pretrial and post-trial detention and appellate decisions that affect verdicts or sentencing. States that do not have such a comprehensive criminal history record format may not have a need for reporting and maintaining all of the criminal transactions and decisions enumerated as reportable events in the proposed model law. These states should review the proposed list and retain only those reportable events that are necessary for their purposes. In this respect and in other respects, the proposed reporting provisions should be considered as *suggested* models. Particular provisions should be reviewed carefully and revised as necessary to accommodate the needs of particular states, depending upon the state's criminal history record format, criminal history record system structure and criminal case processing structure.

Some state reporting laws take a different approach to reporting requirements than that which is set out here. Instead of listing reportable events and requiring the agencies responsible for particular transactions to report them, these laws identify the agencies or officials with reporting duties (for example, law enforcement agencies, prosecutors and court clerks) and specify separately the types of information each must report. The Missouri reporting law is a good example of this approach (Mo. Ann. State. (Vernon) Sec. 43.503).

Model Reporting Provisions

The following model reporting provisions affect fingerprinting (Section 1), reporting of criminal history record information (Section 2), sanctions (Section 3) and appropriation of funds (Section 4).

Section 1: Fingerprinting.

- (a) *Fingerprinting at Arrest or First Appearance.* Following an arrest, or at the arraignment or first appearance of a defendant whose court attendance has been secured by a summons or citation, the arresting officer or other appropriate official shall take, or cause to be taken, the fingerprints of the arrested person or defendant if an offense which is the basis for the arrest or the accusatory instrument pursuant to which the summons or citation was issued is:
- (1) a felony;
 - (2) a misdemeanor defined in the statutes of [State] unless exempted from the requirements of this section by the Secretary of Public Safety; or
 - (3) being a fugitive from justice.
- (b) *Fingerprinting of Persons Already in Custody.* When charges for offenses set out in subsection (a) are brought against a person already in the custody of a law enforcement or correctional agency and such charges are filed in a case separate from the case for which the person was previously arrested or confined, the agency shall take the fingerprints of the person in connection with the new case.
- (c) *Fingerprinting after Conviction.* When a defendant is convicted by a court of this state of an offense set out in subsection (a), the court shall determine whether such defendant has previously been

fingerprinted in connection with the criminal proceedings leading to the conviction and, if not, shall order that the defendant be fingerprinted.

- (d) *Fingerprinting by Correctional Agencies.* Persons in charge of correctional facilities shall obtain fingerprints of all offenders received on criminal commitment to such facilities.
- (e) *Submission of Fingerprints to Repository.* Fingerprints taken after arrest or court appearance pursuant to subsection (a) or taken from persons already in custody pursuant to subsection (b) shall be forwarded to the repository within 72 hours. Fingerprints taken pursuant to subsections (c) and (d) shall be forwarded to the repository within 10 days after the conviction or reception. In all cases, such fingerprints shall be in the form specified by the Secretary of Public Safety and shall be accompanied by such additional identifying information as the Secretary of Public Safety may require by appropriately issued regulations.

Commentary

Section 1 sets out the responsibilities of law enforcement agencies (and other agencies, in some circumstances) for obtaining and forwarding fingerprint images of arrested persons and persons convicted and incarcerated. The forwarding of fingerprints to the repository is a critical step in creating a record of the arrest or case cycle in the criminal history database, since it provides (1) a means of legally-sufficient positive identification of the offender and (2) a means of assuring that the new case will be associated with any prior arrests and prosecutions of the offender in a complete criminal history record. For these reasons, every state criminal history record system except one is currently fingerprint-based; that is, case cycles are included on the

criminal history record only if based upon fingerprint identification.¹

The proposed model covers the fingerprinting of persons arrested for felonies or serious misdemeanors; that is, all misdemeanors defined in the state's criminal statutes except nonserious offenses excluded by regulation. This is the approach followed by the Federal Bureau of Investigation and most of the states.

Subsection (a) provides for the taking of fingerprints of persons arrested for such offenses, as well as of persons who are brought to court by summons or citation without prior arrest and fingerprinting. In the latter cases, the courts in which the persons first appear must have them fingerprinted or order them to be fingerprinted by a law enforcement or correctional agency. Subsection (b) provides for the fingerprinting of persons who are already in custody. Examples include persons who have been arrested and fingerprinted in a prior case and who are subsequently charged with other offenses that will be filed and prosecuted as separate cases, as well as persons who commit offenses while incarcerated that are prosecuted as criminal offenses rather than handled as administrative matters. In both cases, it is important that the persons be fingerprinted in connection with the new charges so that case cycles can be opened in the criminal history database.

Subsection (c) provides for cases in which, for whatever reason, an offender is convicted without having been previously fingerprinted in connection with the criminal proceedings leading to the conviction. It should be noted that since the language applies only to convicted persons, it leaves open the possibility that a person who is acquitted or receives some other favorable disposition, and who has not been fingerprinted in connection with the

¹ Massachusetts is currently in the process of linking fingerprint-based arrest files with their criminal history record information. At this time, that procedure has not been completed.

case, may receive a *de facto* expungement since the absence of fingerprints will mean that the case cycle cannot be reflected on his criminal history record.

Subsection (d) is modeled after provisions in numerous state laws requiring penal institutions to obtain fingerprints of persons committed to such institutions to serve criminal sentences. Many other states follow this practice, though not expressly required by law. Fingerprints obtained in such cases are forwarded to the repository as a means of assuring that the right person is being incarcerated. The fingerprints also provide a way of constructing case histories in cases in which fingerprints have not been obtained previously and reflecting all reported information on the criminal history record of the committed offender.

Subsection (e) sets time requirements for the forwarding of fingerprints to the repository. Fingerprints taken at arrest or first appearance pursuant to subsection (a) or taken from persons already in custody pursuant to subsection (b) are the most time-critical, since the existence of a prior record may affect police or prosecutor decisions concerning the processing of the offenders, such as decisions to charge them as repeat or habitual offenders. Such fingerprints are required to be reported within 72 hours. Experience has shown that this is a reasonable standard that law enforcement agencies and courts can meet in practice. It also accords with the time standard adopted by most of the states, although statutory fingerprint reporting time requirements in some other states vary from 24 hours to a week or more.

Fingerprints taken after conviction or upon receipt of an offender by a correctional institution must be forwarded to the repository within 10 days after the conviction or reception. Again, this is a standard which has been found to be reasonable in practice.

Section 2: Reporting of Criminal History Record Information.

(a) *Reportable Events.* The following events shall be reportable events under this section:

- (1) An arrest;
- (2) The release of a person after arrest without the filing of a charge;
- (3) A decision by a prosecutor not to commence criminal proceedings or to defer or indefinitely postpone prosecution;
- (4) A decision by a prosecutor to drop charges forwarded by the arresting agency or to add charges to those forwarded by the arresting agency;
- (5) The presentment of an indictment or the filing of a criminal information or other statement of charges;
- (6) A release on bail or other conditions pending trial or appeal;
- (7) A commitment to or release from a place of pretrial confinement;
- (8) Failure of a person to appear in court as ordered;
- (9) The dismissal of an indictment or criminal information or any of the charges set out in such indictment or criminal information;
- (10) An acquittal, conviction or other *court* disposition at or following trial, *including dispositions resulting from pleas*;
- (11) The imposition of a sentence;
- (12) Failure to pay a fine;
- (13) A commitment to, release from or escape from a state or local correctional facility, including commitment

to or release from a parole or probation agency;

- (14) A commitment to or release from a hospital or other facility as not criminally responsible or as incompetent to stand trial;
 - (15) The entry of an appeal to an appellate court;
 - (16) A judgment of an appellate court;
 - (17) A pardon, reprieve, commutation of sentence or other change in sentence length, including a change ordered by a court;
 - (18) A revocation of probation or parole or other change in probation or parole status; and
 - (19) Any other event arising out of or occurring during the course of criminal proceedings declared to be reportable by regulations issued by the Secretary of Public Safety.
- (b) *Responsibility for Reporting.* Information concerning reportable events related to offenses specified in section 1 (a) shall be reported to the repository by the criminal justice official or agency directly responsible for the reportable action, event or decision. The Secretary of Public Safety may at his discretion provide for the reporting of particular information by agencies or officials other than those directly responsible for the reportable events to which the information relates, provided such other agencies or officials agree.
- (c) *Form and Manner of Reporting.* The form and content of reported information and the method of reporting to

the repository shall be specified by regulations issued by the Secretary of Public Safety. Regulations relating to reporting by courts or judicial agencies shall be issued jointly by the Secretary of Public Safety and the [appropriate judicial official].

(d) *Reporting Time Requirements.* Criminal justice agencies shall report criminal history record information to the repository, whether directly or indirectly, manually or by means of an automated system, in accordance with the following provisions:

- (1) Information pertaining to an arrest as required by subsection (a) (1), to the release of a person after arrest without the filing of a charge as required by subsection (a) (2) or to a decision by a prosecutor not to commence criminal proceedings or to defer or postpone prosecution as required by subsection (a) (3) shall be reported to the repository within 72 hours and shall be entered into the repository's database within 72 hours after receipt;
- (2) Information pertaining to any other reportable event specified in subsections (a) (4) through (a) (19) shall be reported to the repository within 30 days and shall be entered into the repository's database within 30 days after receipt.

Commentary

Section 2 sets out the "reportable events" that must be reported to the repository and defines the roles of reporting agencies. The list set out in subsection (a) is intended to be complete and, as noted above, should be tailored by particular states to include all actions or decisions in the

criminal justice process that are reflected on the criminal history record. This should include all arrest and disposition information necessary to ensure that the record will clearly reflect the outcome of major processing steps and the final outcome of the case. To accommodate changing requirements and other unforeseen circumstances, the subsection includes a final catch-all category authorizing an appropriate official to require by regulation the reporting of other events or actions, such as the issuance or withdrawal of an arrest warrant or the filing of habeas corpus petitions, other appellate petitions or petitions for parole or probation revocation.

Subsection (b) provides that the criminal justice agency or official directly responsible for a reportable action or decision shall have the responsibility for reporting relevant information about the event to the repository. The subsection provides, however, that the repository, through action by an appropriate designated official, may agree to have particular information reported by agencies or officials other than those upon whom the statute imposes the primary reporting duty. For example, the repository may agree — as some state repositories reportedly have done or have considered doing — to have some prosecutor and court disposition information reported by the police or to have some court disposition information reported by prosecutors by means of an automated case management information system. Such approaches should be regarded as interim measures, however, and full reporting by the agencies with the primary responsibility for the reportable transactions should be pursued as an important goal.

Subsection (c) authorizes the Secretary of Public Safety (or other appropriate official in particular states) to issue regulations specifying the form and content of reported information and the method of reporting. This would enable such an official to enumerate in detail the particular data elements to be reported by particular agencies,

including the reporting of unique tracking numbers to facilitate the linking of reported information. Regulations issued under this authority also could specify whether particular information is to be reported by mail, by direct computer link or by computer tape. The subsection provides that regulations which affect reporting by courts or judicial agencies (for example, clerks' offices, bail agencies and probation agencies) shall be issued jointly by the designated executive department official and a designated judicial branch official, such as the Chief Judge of the state's highest court or the Administrator of State Courts. This is intended to accommodate separation-of-powers considerations and to assure that the reporting requirements applicable to courts and judicial agencies are realistic and agreeable to them.

Subsection (d) sets out time requirements for arrest and disposition reporting and for entry of reported information by the repository. Since arrest information (subject and agency identification information, charge information and other types of information related to arrests) usually is reported on fingerprint cards, the time requirement for reporting such information is the same as the requirement set out in section 1 (e) for forwarding fingerprints (72 hours). The repository is required to process and enter such information within 72 hours. Decisions by the police not to bring charges against arrested persons or decisions by prosecutors not to prosecute such persons are generally regarded as time-critical events as well; in fairness to the individuals, these favorable dispositions should be reflected on the criminal history record as soon as possible (and in some states may trigger or authorize expungement proceedings). Accordingly, the time period for reporting these dispositions also is set at 72 hours and the repository's data entry time requirement is also set at 72 hours.

All other reportable events are required to be reported to the repository within 30 days after the event and to be entered by the repository within 30 days after receipt. This is consistent with California's reporting law (Cal. Penal Code § 13151) and the laws of several other states. It is stricter, however, than the requirement in most states with reporting laws that set time limits, which average about 60 days.² Thirty days does not seem to be an unreasonable requirement. In fact, the few data quality audits that have been conducted have shown that most dispositions are reported within 30 days. *if at all*. Individual states should set time requirements that realistically reflect the reporting methods and capabilities of reporting agencies. Although prompt reporting is an important goal, there is no point in setting time requirements that criminal justice agencies cannot reasonably be expected to meet.

Section 3: Sanctions.

- (a) *Administrative Sanctions.* Agencies subject to fingerprinting or reporting requirements pursuant to sections 1 or 2 shall take appropriate steps to ensure that all agency officials and employees understand such requirements and shall provide for and impose in appropriate cases administrative sanctions for failure to report as required.
- (b) *Repository Sanctions.* If any criminal justice agency subject to fingerprinting or reporting requirements under section 1 or 2 shall intentionally and

persistently fail to comply with such requirements, the Secretary of Public Safety may order that such agency's access to criminal history record information maintained by the repository be denied or restricted until such agency comes into compliance with legal reporting requirements.

Commentary

Section 3 sets out sanctions for failure to report fully and in a timely fashion. Sanctions are important, but they should also be realistic. Although some of the existing state reporting laws provide for criminal penalties and even the withholding of salaries, there is no record of any such law ever being enforced, and it is doubtful that these penalty provisions are much feared by criminal justice personnel with reporting duties. For that reason, the model act provides only for administrative sanctions, to be developed and imposed by the reporting agencies themselves, and the ultimate sanction (cut-off from access to criminal history record information), to be imposed by the repository in extreme cases of intentional and persistent noncompliance.

Section 4: Appropriation of Funds.

There is hereby authorized to be appropriated, on a continuing basis, such funds as may be necessary to enable state criminal justice agencies to comply with the provisions of this act and to reimburse local criminal justice agencies for the cost of personnel, facilities and equipment necessary to perform the additional duties imposed by this act.

Commentary

Section 4 authorizes the appropriation of funds to offset the cost to state and local criminal justice agencies of complying with the act's reporting requirements. Since the criminal justice system is overtaxed in virtually every state, it is safe to say that most criminal justice practitioners already have more duties than they can reasonably perform, including numerous reporting duties related to noncriminal matters. Improved criminal record information reporting will impose additional duties on these persons and will create new requirements for equipment, such as automated data processing and telecommunications equipment. This section of the model law authorizes the appropriation of funds to offset these new costs. The amounts of funds needed by particular agencies will need to be set out in departmental and agency budget proposals and justified before state legislative appropriation committees.

² Maryland's law requires events other than arrests and release-without-charging decisions to be reported within 60 days (Md. Ann. Code, art. 27, § 747 (1957)). Pennsylvania and Delaware set 90 days as the requirement (18 Pa. Con. Stat. Ann. § 9113 (a) (Purdon); (Del. Code Ann., tit. 11 § 8509)). Missouri (Mo. Ann. Stat. § 43-503 (Vernon)), and several other states require disposition reporting "without undue delay" or pursuant to some other nonspecific requirement.

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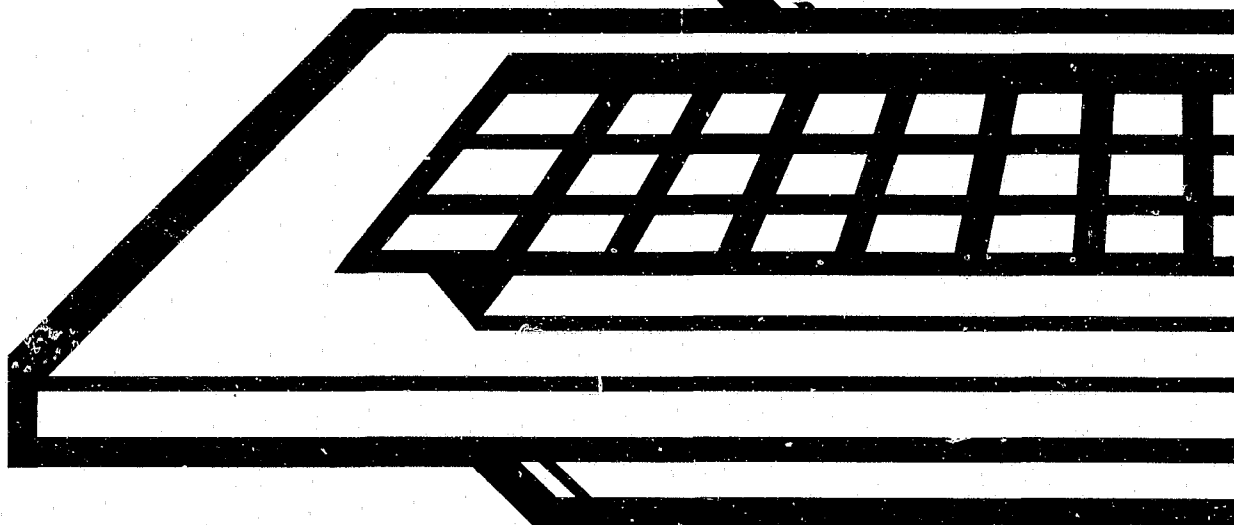
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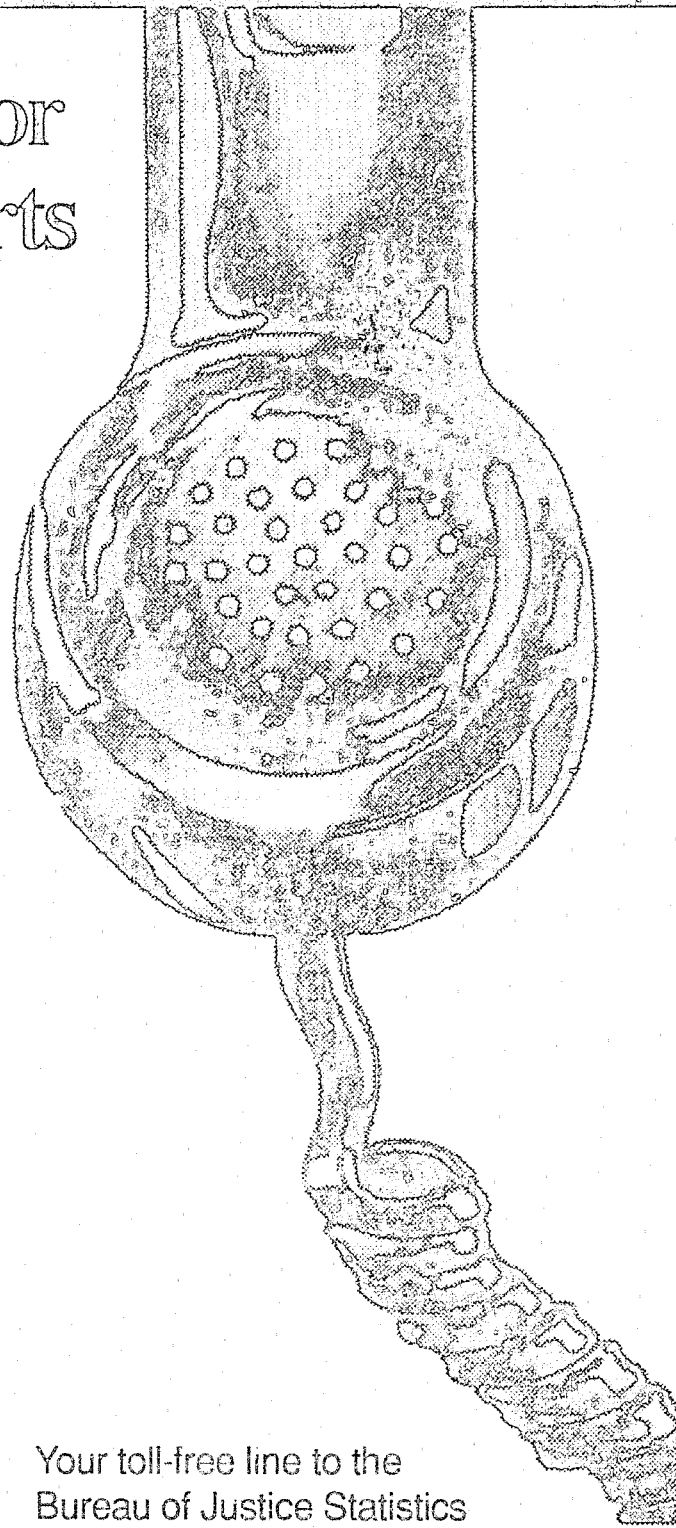
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