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**Chapter 11**

**Possible Impacts of a National  
CCH System on the Criminal  
Justice Process**

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# Possible Impacts of a National CCH System on the Criminal Justice Process

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## Chapter Summary

During the 12-year debate over a national computerized criminal history (CCH) system, much of the attention has focused on the possible impacts of a national system in five key areas: criminal justice process, employment and licensing decisions, minority groups, federalism, and monitoring or surveillance potential. These areas are discussed in general terms in this chapter and the next.

### Criminal Justice Process

The primary purpose of a national CCH system would be to improve the functioning of the criminal justice process. There is no question that criminal history information is used throughout the criminal justice process. The impacts of a national CCH system are more difficult to assess, due in part to the absence of generally accepted measures of effectiveness. Very few criminal justice agencies systematically keep track of how CCH information actually contributes to arrests, property recoveries, charging decisions, successful investigations, and the like. Nonetheless, many Federal, State, and local law enforcement and criminal history record repository officials believe that a national CCH system would make a substantial contribution. However, some local and State criminal justice officials (especially district attorneys, judicial officials, and public defenders) believe that, to be useful, a national CCH system would have to be able to provide information that is more accurate, complete, and timely than is generally available from existing Federal and State criminal history record systems.

*Police Use:* When the police are investigating a reported crime, they sometimes use criminal history records to search for characteristics of past offenders that might connect them to the present crime.

When the police are patrolling, looking for suspicious circumstances or individuals, they frequently use criminal justice information in deciding how to handle situations that arise; e.g., whether to interrogate, detain, issue a summons, or make an arrest. However, such information comes primarily from hot files (wanted persons, stolen property) rather than criminal history files. Nonetheless, in the 1979 OTA 50-State survey, 37 States indicated that on-duty law enforcement officers can gain access to criminal history information in both State and local files through local police patrol and inquiry systems. Since patrol decisions often must be made quickly, a national CCH system could make criminal history records more readily available, thus increasing their use.

After an arrest, police make or participate in decisions about whether to release or how long to hold the suspect, whether to fingerprint, and the level of charges to be placed. Each of the decisions clearly affects the creation of a criminal history record, and conversely, criminal history records (and thus a national CCH system) may potentially influence these decisions.

*Prosecutorial Use:* District attorneys use criminal history information in arraignment and bail hearings, plea bargaining, formal

charging, trial, and sentencing, as well as for special pretrial release and career crime programs.

The frequent lack of court disposition information limits the usefulness of State and Federal criminal history records to district attorneys in cases where subjects have records from outside of the local jurisdiction. In many jurisdictions, judges will not consider an arrest-only record as indicative of criminal propensity, or as a factor in considering whether or not a subject might jump bail. Speedy arraignment rules adopted in most States point to the need for rapid, accurate, certifiable rap sheet or criminal history information.

The impact of a national CCH system could be particularly significant in pretrial release and bail decisions. If accurate and complete, such CCH records could help prosecutors and judges better balance the need to protect the public from harm by defendants out on bail, versus the need to minimize the detention of defendants on charges for which they have not been tried and convicted under due process of the law. Such a system might also promote the more consistent use of CCH records in charging decisions, and allow prosecutors to direct police resources to the need for additional investigation in cases involving repeat serious or violent offenders.

*Judicial Use:* Criminal court judges use criminal history information in bail hearings, trial proceedings, and sentencing. Research suggests that a national CCH system probably would have limited impact on judicial sentencing behavior, since other factors (circumstances of the crime, police behavior, community expectations) play such a large role, but could significantly enhance the quality of pretrial decisions. However, in States with mandatory sentencing guidelines for offenders with prior convictions, information from a national CCH system could significantly affect even sentencing decisions.

*Public Defender and Defense Attorney Use:* Public defenders and criminal defense attorneys use criminal history information to support the credibility of their clients and witnesses, to interpret for the court their client's circumstances where the client has a past record, and to challenge the credibility of prosecution witnesses. Public defenders are critical of existing Federal, State, and even local CCH systems because of serious record quality problems, their exclusion from equal access to these systems, and what they believe to be the discriminatory impacts of these systems, primarily on minority groups. Public defenders give limited support to a national CCH system if it provides equal access to defense interests, is accurate and up to date, and is purged regularly.

*Probation Use:* The most common use of criminal history information by probation officers is in the preparation of presentence investigation reports. Judges use these to determine sentences suited to offenders, and they are subsequently used by courts and the corrections departments in assigning offenders to appropriate institutions. A national CCH system would appear to be helpful in preparing presentence reports (and in pretrial services) if it were based on accurate and complete records that could be obtained quickly and easily.

*Correctional and Parole Use:* Correctional officials have noted that criminal history is an important input to decisions on initial levels of supervision and security. To the extent that correctional decisions rely on presentence reports, a national CCH system could make a difference if, as a result, these reports were more accurate and complete. With respect to parole decisions, the nature and seriousness of any prior record can be important. However, the impact of a national CCH system would most likely be limited, since an inmate's behavior in prison and the seriousness of the current offense can carry as much or more weight than prior criminal history.

## Impact on the Criminal Justice Process

The impacts of a national CCH system are difficult to assess. A 1980 survey by the Missouri State Highway Patrol and an August 1981 survey by the National Crime Information Center (NCIC)<sup>2</sup> found that historically it has been difficult to describe or document the effectiveness of computerized real-time criminal justice information systems. While perhaps half of the agencies responding indicated that they measure the number of hits on a system (i.e., matches between an inquiry and a record on file), very few keep track of how hit information contributes to a law enforcement action (e.g., arrest, summons, recovery, apprehension, successful investigation). None of the agencies responding keeps track systematically of how such information contributes to other criminal justice actions such as prosecutions, setting of bail, sentencing, and the like. The NCIC Advisory Policy Board has established a subcommittee to study and develop recommendations on how best to measure the effectiveness of NCIC.

These surveys and others conducted by OTA, the Department of Justice (DOJ),<sup>3</sup> and the House Judiciary Subcommittee on Civil and Constitutional Rights<sup>4</sup> have found strong support for computerized hot files among Federal, State, and local law enforcement officials. Of the dozens of State and local law enforcement officials surveyed, not one seriously

questioned the need for, or benefits of, the NCIC hot files. Indeed, many noted that law enforcement personnel “simply could not do without” Federal hot files, and that the interstate transportation of stolen properties and interstate mobility of wanted persons necessitates a national system.

Likewise, many Federal, State, and local law enforcement and criminal history record repository officials support the concept of a national CCH system, although there is some disagreement over the specifics. However, some local and State criminal justice decisionmakers (especially district attorneys, judicial officials, and public defenders) emphasized that to be useful such a system needs to provide information that is more accurate, complete, and timely than is generally available from existing Federal and State criminal history record systems. Some believe that a national CCH system should be limited to certain kinds of records (e.g., felony convictions) and purged at periodic intervals. On the other hand, some officials, especially in law enforcement, emphasize the importance of CCH records, however incomplete they may be, as a pointer to sources of more complete information. Also, no hit (or no record) information may, in some situations, be just as useful to police as hit (or record) information.

A survey conducted in September 1981 by the Florida Department of Law Enforcement, based on 269 responses from 529 criminal justice agencies, found that the Florida State CCH summary record information met the needs of about 85 percent of law enforcement agencies responding, 64 percent of prosecuting attorneys responding, and 49 percent of probation and parole agencies responding. The survey also found that Florida State CCH full record information met the needs of about 91 percent of law enforcement agencies, 96 percent of prosecuting attorneys, and 72 percent of probation and parole agencies responding.<sup>5</sup>

<sup>5</sup>See Federal Bureau of Investigation, *Interstate Identification Index: Background and Findings for July-September 1981 Phase I Pilot Project*, Dec. 4, 1981, p.89.

<sup>2</sup>Robert J. Bradley, *State-Level Criminal Justice Network Systems Effectiveness Survey*, prepared by the Information Systems Division, Missouri State Highway Patrol, September 1980; summarizes the results of a brief questionnaire sent to 11 States.

<sup>3</sup>NCIC Staff Paper on “Statistical Measurement of NCIC Benefits” prepared for the Dec. 9-10, 1981, meeting of the NCIC Advisory Policy Board, Topic #10; summarizes the results of a questionnaire sent to 97 Federal, State, and local NCIC users.

<sup>4</sup>See U.S. Department of Justice, *Representative Viewpoints of State Criminal Justice Officials Regarding the Need for a Nationwide Interchange Facility*, Mar. 6, 1978, reprinted in U.S. Congress, Office of Technology Assessment, *A Preliminary Assessment of the National Crime Information Center and the Computerized Criminal History System*, Washington, D. C., December 1978, p. 69.

<sup>5</sup>The Subcommittee Chairman sent a brief questionnaire on NCIC to the chiefs of police of 36 metropolitan areas. For a summary of the results, see May 18, 1981, letter to the FBI Director from the Chairman, Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary.

The most common intended uses of criminal history records were for criminal investigations and booking and intake by law enforcement agencies, criminal investigations and bail and bond determinations by prosecuting attorneys, and pretrial intervention and presentence investigations by probation and parole agencies.<sup>7</sup> State officials interviewed in the 1978 DOJ survey, which included the State of Florida, also make the point that "the equal treatment of offenders is in part dependent upon the equal availability of appropriate and relevant information at all stages of the criminal justice process."<sup>7</sup>

### Police Use

When the police are investigating a reported crime, they sometimes use criminal history records to search for characteristics of past offenders that might connect them to the present crime. Prior research indicates that relatively few crimes are solved as a result of investigation alone.<sup>8</sup> One study found that the vast majority of case clearances result from patrol capture at the crime scene, complete identification by victims or witnesses, or provision of uniquely linking evidence (such as license plate numbers) by victims and witnesses. A small proportion of case clearances were found to result from matching latent fingerprints to existing fingerprint files, matching offense modus operandi (MO) with those of offenders on file, using information tips, or having victims view mug shots.<sup>9</sup>

One area that seems directly relevant to a national CCH system is the matching of a crime MO, physical descriptions, or other evidence with information in existing criminal history files. In the local jurisdictions surveyed by OTA in 1979, police used local files primarily and State files to a lesser extent. In investigating serious and violent crimes, on

the other hand, the need for rapid retrieval of criminal history information from State and Federal systems was perceived as more important.

When the police are patrolling, looking for suspicious circumstances or individuals, they frequently use criminal justice information in deciding how to handle situations that arise, e.g., whether to interrogate, detain, issue a summons, or make an arrest.

The Coremission on Criminal Justice Standards and Goals concisely described the police need for information while on patrol:<sup>10</sup>

In any citizen contact, the officer should know if the citizen is wanted by police, is in possession of any stolen property . . . or is otherwise involved with criminal activity that might indicate the person's present intentions or behavior upon police contact . . . The officer should have knowledge about the contact that serves either to protect the officer or increase his chances of success.

This is one area of police operations where computer and communication capabilities are almost essential. To affect patrol decisions, response times must be rapid. Radio calls to the local police station or to a central State repository for manual searches of criminal record files frequently would be too slow to be very useful, especially in heavily populated jurisdictions. As a consequence, computerized recordkeeping and communication systems have been used to increase the information available to patrol officers, particularly with respect to wanted persons, stolen vehicle and other stolen property information, and, to a lesser extent, criminal history information.

OTA found that police on patrol make relatively little use of criminal history information, but rely quite heavily on hot files. However, in the 1979 OTA 50-State survey, 37 States indicated that on-duty law enforcement officers can gain access to criminal history information in the State as well as the local file through local police patrol and inquiry systems.

"National Advisory Commission on Criminal Justice Standards and Goals, *Criminal Justice System* (Washington, D. C.: U.S. Department of Justice, 1973), p. 39.

<sup>7</sup>Ibid., p. 87.

<sup>8</sup>DOJ, *Representative Viewpoints*, Ibid., p. 69.

<sup>9</sup>Charles E. Silberman, *Criminal Violence, Criminal Justice* (New York: Random House, 1979), pp. 217-219.

<sup>10</sup>Peter W. Greenwood, et al., *The Criminal Investigative Process* (Lexington, Mass.: D.C. Heath and Co., 1977), pp. 125 and 135.

Relatively little is known about the extent to which police patrol decisions are based on criminal history information when it is available and used. An observational study of arrest practices in three States by the American Bar Foundation found that prior criminal record history did influence police arrest decisions, and noted that courts have held that police indeed may use a past record as one of several factors in making legal arrests.<sup>11</sup> An experimental study of situations where the probable cause to arrest was ambiguous concluded that a prior criminal history record did affect the decision to arrest.<sup>12</sup>

A prior criminal history record is also a factor in police decisions on whether to use an alternative to arrest. Growing concerns about the number of petty cases clogging the courts and the stigma of arrest have stimulated the use of a summons or field citation in place of arrest. Commonly used in traffic offenses and some misdemeanors, the field citation orders a person to appear in court on a given day for violating a statute. A summons serves the same purpose, but *is* used for all types of charges. For example, in 1977, a summons was issued to about 3 percent of persons charged with murder, 14 percent of persons charged with aggravated assault, 40 percent of persons charged with fraud, and 61 percent of persons charged with violating liquor laws.<sup>13</sup>

A person's prior arrests and convictions time considered in deciding whether to make an arrest or issue a summons. Some police departments require officers to use a point system that takes into account information concerning identification, employment, residence, and family ties, as well as criminal history. Since the decision to summon or arrest often must

be made quickly, a national CCH system could make criminal history records more readily available, thus increasing their use.

After an arrest, police make or participate in decisions about whether to release or how long to hold the suspect, whether to fingerprint, and the level of charges to be placed. Each of these decisions clearly affects the creation of a criminal history record, and conversely, criminal history records may potentially influence the decisions. Police do not have exclusive control over these decisions; prosecutors may also be involved. The division of authority between police and prosecutors varies with each jurisdiction. For example, in some areas charges are placed against a suspect by the police that are not reviewed by the prosecutor until the preliminary hearing. In other areas, police book suspects "on suspicion," and prosecutors place formal charges.

Police may decide to release an individual for a variety of reasons—further investigation reveals evidence is lacking, witnesses refuse to cooperate, the offense was minor, or the arrest was made for reasons other than prosecution (e.g., to protect the person from harm). Plausibly, knowledge of criminal history could influence a police officer's decision to release a suspect, especially if the offense is minor.

On the other hand, a criminal history, especially one related to the current offense, may give police additional evidence on which to charge a suspect. The level or seriousness of charges may also be affected by criminal history records. In some States, persons arrested for a crime of which they were previously convicted may face a more serious charge that carries a stiffer penalty.

In order to provide adequate evidence to charge, police may decide to hold arrested individuals if they are suspected of offenses requiring further investigation. A criminal history is likely to affect police suspicions, and therefore will influence the decision to hold an individual and whether to hold without booking or to proceed immediately to booking and fingerprinting, even if the arrestee is subsequently released.

<sup>11</sup>Wayne R. LaFave, *Arrest, The Decision to Take A Suspect Into Custody* (Boston, Mass.: Little, Brown and Co., 1965), pp. 150-354.

<sup>12</sup>R. C. Smith, et al., "Background Information: Does It Affect the Misdemeanor Arrest?" *Journal of Police Science and Administration*, vol. 4, March 1976, pp. 111-113.

<sup>13</sup>Lynne Eickholt Cooper, et al., *An Assessment of the social Impacts of the National Crime Information Center and Computerized Criminal History Program*, Bureau of Governmental Research and Service, University of South Carolina, October 1979, sec. II, pp. 102-103.

Finally, criminal history records are used in career criminal programs to identify arrestees whose cases will receive priority for investigation and case preparation by police and prosecutors. Police may make an early determination that an arrestee qualifies as a career criminal (dangerous repeat offender) and intensify investigatory efforts to provide adequate evidence for the highest possible charge.

### Prosecutorial Use

Prosecuting attorneys use criminal history information in arraignment and bail hearings, for plea bargaining, formal charging, trial, and sentencing, as well as for special pretrial release and career crime programs.<sup>4</sup>

Given the predominantly local nature of crime in the urban areas investigated by OTA, prosecuting attorneys generally opted for the development of comprehensive local and State criminal history systems that identify a large percentage of local criminals who have records. However, prosecuting attorneys also supported a national CCH system if it would provide information that is more complete, accurate, and timely than is presently available.

Aside from problems of verifying out-of-State records, prosecuting attorneys also pointed out that in many jurisdictions judges do not consider that a record of arrest necessarily indicates either a criminal propensity or a tendency to jump bail. Here, prosecuting attorneys stressed that the frequent lack of court disposition information on State and Federal criminal history records was a major impediment to using them in cases where subjects have records from outside of the local jurisdiction where they are being processed.

Record quality and the ease with which criminal history records can be interpreted are even more important in specialized programs that are developing in local areas, such as prior felon, career crime, and violent felon programs. These programs assign special prosecutors to subjects who have prior felony convictions.

The lack of conviction information on many criminal history records disseminated by existing Federal systems, and the use of valuable time and resources to verify out-of-State felony arrests, can limit prosecutorial use of out-of-State information in these specialized programs.

Speedy arraignment rules adopted in most States point to the need for rapid, accurate, certifiable rap sheet or criminal history information. As a matter of law, the use of arrest-only information in bail decisions under some circumstances has been found unconstitutional by the courts. In the case of *Tatum v. Rogers*, the court ruled in 1979 that:<sup>15</sup>

Plaintiffs are clearly and systematically being deprived of due process in violation of the Fourteenth Amendment ..., and of the right to 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 determination. The Eighth Amendment right to reasonable bail is also thus denied.

It is important to note that the court found a violation of constitutional rights only when arrest information without dispositions was used, when disposition information was otherwise available, and when the incomplete information was used in setting bail.<sup>16</sup>

Thus, a national CCH system could have a significant impact on pretrial release and bail decisions by district attorneys and judges.\* A 1978 study in the District of Columbia confirmed that, with all other factors held constant, release conditions were made more stringent for arrestees whose criminal histories were more extensive.<sup>17</sup> A 1979 study con-

<sup>15</sup>*Tatum v. Rogers*, 75 Civ. 2782 (U.S. District Court, South District of New York), Findings of Fact and Conclusions of Law, p. 20.

<sup>16</sup>*Ibid.*, p. 24.

\*In most cases, judges make the actual pretrial release and bail decisions, but prosecutors play a significant role when making recommendations.

<sup>17</sup>Jeffrey A. Roth and Paul B. Wice, *Pretrial Release and Misconduct in the District of Columbia*, Executive Summary (Washington, D. C.: Institute of Law and Social Research, 1978).

<sup>4</sup>*Ibid.*, sec. 11, pp. 111-150.



ducted for the *Tatm v. Rogers* case in New York showed similar results. This research also highlighted the frequent lack of disposition data in early stages of the criminal justice process and the reliance of prosecutors (and judges) on incomplete rap sheets listing only arrests.<sup>18</sup>

While the value of conviction data in predicting pretrial rearrest (for another crime committed while out on bail or on personal recognition) has not been established empirically,<sup>19</sup> the majority of States have legislation or rules requiring judges to consider prior convictions in determining pretrial release conditions. Thus, a national CCH system, if accurate and complete, presumably could assist prosecutors and judges in better balancing the need to protect the public from harm by defendants while out on bail, versus the need to minimize the detention of defendants on charges for which they have not been tried and convicted under due process law.

With respect to charging and plea bargaining, the impact of a national CCH system is less clear. Evidence suggests that the criminal history record of an arrestee can affect the prosecutor's decisions to bring or drop charges, the level and number of charges, and whether to negotiate at trial for lower charges through plea bargaining.<sup>20</sup> To some extent, prosecutors can delay a decision to dismiss a case or to place final charges until they have received criminal history information from existing files, whether manual or computerized. The time factor is not as critical as it is in pretrial release decisions.

However, some anecdotal evidence suggests that prosecutors, under the crush of heavy caseloads, may make quick decisions to dismiss or reduce charges without considering a

defendant's criminal history." To the degree that this occurs, the rapid response time of a national CCH system may promote the more consistent use of such records in charging decisions, thereby allowing prosecutors to direct police resources to the need for additional investigation in cases involving repeat serious or violent offenders.

## Judicial Use

Criminal court judges use criminal history information in bail hearings, trial proceedings, and sentencing. Judges do not perceive their role as simply to judge the accused, but also to understand and consider the behavior of the police and the prosecution in order to understand the circumstances of the accused. Criminal history information is one input to judicial decisions.

Some judicial researchers believe that the quality of justice administered in criminal courts "could be significantly enhanced if relevant and reliable criminal history information were to be available to key decisionmakers at the courthouse—particularly the judge and the district attorney—within a short time after arrest. Critical decisions about charge and pretrial custody are typically made very shortly after arrest, and hard information about an arrestee's prior record can be of great value. ' However, these researchers also point out that "such information is seldom available from existing CCH systems at the present time' and that "the lack of reliable information about dispositions is a major problem in many criminal history records systems."<sup>21</sup>

With respect to sentencing, there are several realities that limit the role of criminal history information. For example:<sup>22</sup>

If there is no agreement on what causes crime, there can be no agreement on how

<sup>18</sup> Roth, op. cit., p. x; Wayne Thomas, *Bail Reform in America* (Berkeley, Calif.: University of California Press, 1976), pp. 234-240.

<sup>19</sup> Vera Institute of Justice, *Felony Arrests: Their Prosecution and Disposition in New York City Courts* (New York: Vera Institute of Justice, 1977); Arthur Rosett and Donald R. Cressey, *Justice by Consent: Plea Bargains in the American Courthouse* (Philadelphia, Pa.: J.B. Lippincott and Co., 1976), ch. 5.

<sup>20</sup> Herbert S. Miller, et al., *Plea Bargaining in the United States* (Washington, D. C.: U.S. Government Printing Office, 1978), pp. 72-73.

<sup>21</sup> Sept. 15, 1981, letter to OTA from Barry Mahoney, Research Director, Institute for Court Management.

<sup>22</sup> Alexander B. Smith and Harriet Pollack, *Criminal Justice: An Overview* (2d ed.) (New York: Holt, Rinehart, & Winston, 1980).

criminals should be handled. If criminals are sick they should be treated, but if they are bad they should be punished. Judges, juries, probation, parole, and corrections officials do not handle all cases in a uniform manner but vacillate, sometimes unpredictably, between these two polar positions. One cause of sentence disparity, thus, is the lack of a consistent theory of crime causation and punishment.

In the absence of a consistent theory of punishment, other factors play a large role in judicial sentencing, such as the expectations of a particular community or the personality and philosophy of the judge. Sentencing decisions are also affected by the overloaded conditions that exist in many urban courts, prisons, and other detention facilities.

Nevertheless, criminal history information clearly has an influence on sentencing. For example, a study of sentencing practices in the District of Columbia found that decisions to incarcerate were influenced most strongly by the prior criminal history of the offender, the severity of the current offense, and the philosophy of the judge. Sentence length was influenced mainly by the seriousness of the offense, community ties, type of plea, and prior convictions (to a lesser extent).<sup>24</sup> Many States now have mandatory sentencing guidelines (especially for offenders with prior records).

## Defense Use

Public defenders and criminal defense attorneys use criminal history information, where available, to support the credibility of their clients and witnesses, to interpret any past record of their clients to the court, and to challenge the credibility of the prosecution witnesses.

Public defenders are critical of existing Federal, State, and even local CCH systems because of serious record quality problems, the exclusion of defense interests from equal ac-

cess to these systems, and what they believe are discriminatory impacts of these systems, particularly on minority groups. Public defenders are concerned that arrest-only information is used by prosecutors to characterize their clients unfairly, and that such information is frequently included in the presentence investigation report obtained from a probation department, which also influences the court's behavior. In addition, public defenders are unhappy that they are excluded from access to most local, State, and Federal criminal history systems. Information from these systems can be used by the prosecution to attack the credibility of defense witnesses without allowing public defenders the same opportunity with respect to prosecution witnesses.

Public defenders believe that the creation of arrest records discriminates against minority groups in their localities. Defenders believe that local police are more likely to stop, search, detain, and arrest members of minority groups. Defense interests believe they can exercise a greater influence over the use of information in local CCH systems through both legal and political means, and therefore are more supportive of local systems than of State and Federal systems.

In general, public defenders give limited support to a national CCH system that provides equal access to defense interests, is accurate and up to date, and is purged regularly.

In comments to OTA, the National Legal Aid and Defender Association (NLADA) noted that 'one of the major problems public defenders have with a CCH system is its lack of ability to quickly and accurately expunge incorrect information. Further, there need to be legislative guidelines to insure such modifications can be made. These guidelines would also be useful in insuring public defenders equal access to this information. The only way to insure such access is to require prosecutorial employees to turn over, within 48 hours, all CCH information (or lack thereof) on the accused.' Defenders also need, according to the NLADA, a means to get into the system "to check on records of their own and government

<sup>24</sup>Terence Durgworth, *An Empirical Assessment of Sentencing Practices in the Superior Court of the District of Columbia* (Washington, D. C.: Institute for Law and Social Research, 1978), pp. VI-7 to VI-25.

witnesses without the government being aware of these checks. It is unrealistic in most jurisdictions to merely suggest that defenders be given access. Legislation must mandate such access. <sup>25</sup>

### Probation Use

Probation officers use criminal history information in specialized pretrial services programs, such as pretrial release programs. However, the most common use of such information is in the preparation of presentence investigation reports. These reports are made available to the court for the purpose of evaluating the character of persons brought before it. They are used by judges in arriving at a sentence suited to an offender, and are subsequently used by courts and by corrections departments in assigning offenders to appropriate institutions.

Despite the intention of State legislation, arrest-only information may influence the presentence investigation report and judicial sentencing. This influence stems from the concern of the probation profession to include all the information that may be helpful in explaining the criminal conduct of an offender. For example, a presentence report may cover significant police contacts which could include arrests without dispositions.

Given the incomplete disposition reporting in State and Federal record systems, probation agencies must spend considerable resources to verify records from such systems. There is a tendency to ignore the verification of Federal records because of the difficulty involved. It appears that a national CCH system could be useful in pretrial services (principally in bail hearings, as noted earlier) where accurate and reliable information is needed within 72 hours of arrest. Time is not as important in the preparation of presentencing reports. Here the major problem is incomplete disposition data and the shortage of resources (time and money) necessary for verification. A na-

tional CCH system would appear to offer an advantage if based on accurate and complete records, and if those records could be obtained quickly and easily.

### Correctional and Parole Use

The criminal history of an offender is considered significant in determining initial custody rating (level of supervision needed) and institutional placement (e.g., maximum v. medium security). Correctional officials have noted that criminal history information is more important to these decisions than the results of inmate evaluation and testing. Career criminals are more likely to be placed under closer supervision in more secure facilities. However, once in prison the behavior of an inmate largely determines the correctional program, e.g., assignment to educational, work, and rehabilitation activities.

Before an offender is imprisoned, criminal justice officials have ample time to retrieve criminal history information. Correctional authorities have long relied on detailed presentence reports, which include criminal history information, in making their decisions. There is no reason to believe that a national CCH system alone would alter this approach. A national CCH system could make a difference if, as a result, presentence reports were more accurate and complete.

With respect to parole decisions (to release an inmate from prison, subject to supervision by a parole officer), criminal history is one of many factors considered. One study found that, in the majority of cases decided by the U.S. Parole Commission, parole decisions could be predicted by the seriousness of the current offense, the nature and seriousness of any prior record, and the offender's conduct in prison.<sup>26</sup>

Thus, there is reason to believe that a national CCH system would have at least some impact on parole decisions. However, any

<sup>25</sup>Mar. 16, 1982, letter to OTA from the Deputy Director, Defender Division, National Legal Aid & Defender Association.

<sup>26</sup>Leslie T. Wilkins, et al., sentencing *Guidelines: Structuring Judicial Discretion*, final report (Albany, N. Y.: Criminal Justice Research Center, 1976), pp. 13-19.

major changes in the way in which criminal history information is used in parole decisions will likely result from resolution of other issues. These include whether the parole function should continue at all and, if so, whether

persons with extensive criminal histories should be allowed parole, and whether the degree of supervision after release should depend on their criminal histories.