
Chapter 14

**Congressional Policy
Considerations, Part II**

Contents

	<i>Page</i>
Chapter Summary	167
Policy Control	167
File Size and Content	167
Record Quality	167
Noncriminal Justice Access	168
Oversight and Audit	168
Public Participation	168
Comprehensive Legislation	168
III Development Plan	168
AIDS/CCH Consolidation	168
Private Carrier Role in a National CCH System	169
Policy Control	169
File Size and Content	173
Record Quality	174
Noncriminal Justice Access	176
Oversight and Audit	177
Public Participation	179
Comprehensive Legislation	180
Access, Review, and Challenge Procedures	182
Criminal Penalties	182
Privacy Standards	182
Technical Accountability	183
Uniform Crime Codes and Record Formats	184
III Development Plan	184
AIDSICCH Consolidation Plan	186
Private Carrier Role in National CCH System	188

TABLES

<i>Table No.</i>	<i>Page</i>
33. 1979 Preferences of State Repository Personnel for CCH System Structure and Policy Control	172
34. File Size Options for a National CCH System Based on Composition of Ident File	173
35. Subject Areas Relevant to Comprehensive Legislation on Criminal Justice Information Systems	181
36. Possible File Structure of a Reorganized National Crime Information Center	187

Congressional Policy Considerations, Part II

Chapter Summary

As noted in chapter 13, the emerging consensus among Federal and State law enforcement and criminal history record repository officials supports the national index concept known as the Interstate Identification Index (III). However, full implementation of III (or any other national computerized criminal history (CCH) system) would require resolution of a number of issues that warrant congressional attention to ensure that beneficial impacts are maximized and adverse impacts are controlled or minimized.

Policy Control

Considerable debate has focused on which agency or organization should have direct policy control over a national CCH system. Suggestions include a consortium of States, a broadened and strengthened National Crime Information Center (NCIC) Advisory Policy Board (APB), an independent board, and/or the FBI. For example, a broadened and strengthened APB could include greater representation from the prosecutorial, judicial, correctional, and public defender sectors of the criminal justice community that at present, and could include an "advise and consent" role, at least with respect to State and local participation in a national system. There are many other possibilities, but the key issue is how to devise a mechanism that will effectively represent the interests of the diverse users of a national system, and afford them a strong and possibly controlling policy role.

File Size and Content

Under the III concept, the national index would include only names and identifying in-

formation (e.g., height, weight, social security number, and State and Federal criminal identification numbers). Proposals have been made to limit the index to entries on violent or very serious offenders, that is, for crimes included in the Federal Bureau of Investigation (FBI) crime index. However, this would exclude entries for drug, weapons, drunk driving, and other offenses generally considered to be serious but not included in the FBI crime index. At the other extreme, a totally unrestricted index could include entries on as many as 36 million persons. Other national index issues include the need for policies on limited retention periods for some entries, and on the handling of juvenile offender records.

Record Quality

With a national index, the FBI would no longer maintain non-Federal records, and the problems of record quality in Ident and NCIC/CCH would be reduced. However, the quality of records maintained by the States, as well as the quality of any index based on those records, would still be a matter of concern. Record quality could be strengthened by tightening the disposition reporting requirements and/or requiring confirmation of records lacking disposition data with the originating agency prior to any dissemination. In the opinion of some, the latter requirement would be costly and impractical. The progress made by many States in recent years indicates that improved disposition reporting is possible, but continued record quality improvement would require a significant further commitment measured in manpower, dollars, and system improvements at the State and local levels.

Noncriminal Justice Access

Significant noncriminal justice use of Federal and State criminal history record systems, coupled with widely varying State statutes defining authorized users and State policies on sealing and purging, has generated concern about control of access to criminal history records. Noncriminal justice access to a national index could be prohibited, although this would conflict with many Federal and State laws. Noncriminal justice access could be permitted, but only under stronger Federal guidelines than presently exist. A dual index could be established, one for criminal justice use and a second for noncriminal justice use, perhaps with the latter based on disposition or conviction information only. Even under the status quo, access to a national index would require complicated safeguards (which are technically feasible with a computer-based system) to be consistent with the wide variety of existing State laws and regulations, and would require some means to resolve conflicts among State laws, and between Federal statutes and Executive orders and State laws.

Oversight and Audit

The purposes of new oversight mechanisms would be to help assure Congress, the public, and others that a national index (or any other national CCH system) is operating within the boundaries of law and regulation, and to help identify any problems that may emerge. Oversight is closely linked to system audit. Several possibilities have been suggested. First, Congress could require an annual management report on the operation of a national CCH system. Second, Congress could require periodic audits of Federal and State CCH files to help ensure compliance with whatever system standards may be established. To keep costs down, the audits would presumably be conducted by sampling Federal and State files on a rotating and perhaps unannounced schedule. Any Federal audit authority, whether by the General Accounting Office (GAO) or some other body, would appear to require new Federal legislation and/or regulations.

Public Participation

NCIC'S APB is the only direct avenue of public participation in the governance of the existing NCIC/CCH system. However, at present the APB does not include representation from the general public or from public defenders. Public defenders feel strongly that they should be represented on any policy board established for a national CCH system and that defense interests should have access to that system. The experience of Alameda County, Calif., where public defenders are considered to be part of the criminal justice community, has been that public participation in oversight can help ensure accountability of criminal justice record systems and can be beneficial in terms of system performance.

Comprehensive Legislation

Legislation represents one of the strongest measures to provide Federal direction and ensure accountability and control. It could provide explicit authority for a national index or other national CCH system, and include statutory guidelines for its operation and use. In addition to the areas discussed above, legislation could establish access, review, and challenge procedures; criminal penalties; privacy standards; funding for computer-based user audits and court disposition monitoring procedures; and uniform crime codes and criminal history record formats.

III Development Plan

In order to develop important additional data from the III test now underway, Congress may wish to consider whether the plan should be revised so that: 1) some or all of the participating States can be tested with no NCIC message switching as well as with partial message switching (known as automatic inquiry referral); and 2) record quality research can be conducted.

AIDS/CCH Consolidation

At present, the Ident/Automated Identification Division System (AIDS) and NCIC/CCH

files duplicate each other to a significant and growing extent. Any AIDS/CCH consolidation is likely to have a significant impact on the cost of FBI criminal history and identification services and could be an integral part of a national CCH system. Congress may wish to request the preparation of several alternative consolidation plans, including the possible creation of a new National Criminal Information and Identification Division of the FBI, which would combine Ident, NCIC, and related activities. Congress may also wish to examine the pros and cons of shifting management of a national CCH system to a new bureau within the Department of Justice (DOJ) or elsewhere.

Private Carrier Role in a National CCH System

Congress may wish to review the role of private communication carriers in a national CCH system. Privately offered nationwide data communication networks using satellite as well as landline transmission, and providing security measures such as data encryption, may offer significant benefits over lines currently used by NCIC and the National Law Enforcement Telecommunications System (NLETS).

Policy Control

Considerable debate has focused on which agency or organization should have direct policy control over a national index (or other national CCH system). There is general agreement that any national CCH system would require some degree of policy control to ensure that compatible message formats, operating protocols, and the like would be used. This would be essential even for an "ask-the-network" system resembling NLETS. The policy control requirements would be correspondingly greater for systems with a centralized file or index. Over the years, various proposals have suggested that a national CCH system be controlled by the Law Enforcement Assistance Administration (LEAA), by a single State, by a consortium of States, by NCIC, by Ident, by a new division within the FBI, by a new bureau within DOJ, or by a new independent Federal agency or board.

For example, SEARCH Group, Inc., has in the past advocated that policy control be vested in a consortium of States. SEARCH believed that a policy advisory board, similar to the current NCIC/APB, would not be sufficient even if broadened to give greater representation to the States. At the same time, SEARCH supported the role of the FBI in cre-

ating and maintaining III, and also recognizes that Federal agencies would be participating as well. In light of the constitutional and practical difficulties of State control over Federal agencies, SEARCH has recommended a policy advisory role for the States with respect to Federal participation in a national CCH system, but has maintained that States must have policy control over State participation in such a system. "What is necessary is a consortium of all the States whose members are responsible to the Governors."¹

Another policy control alternative is to strengthen and possibly broaden the NCIC/APB. Officially, the role of NCIC/APB is limited to reviewing NCIC issues and making appropriate recommendations to the FBI Director.² In practice, at least on some issues, NCIC/APB has had a significant influence on FBI decisions. Nonetheless, as early as 1978 NCIC/APB has sought to modify its charter to include a formal "advise and consent" rela-

¹See SEARCH Group, Inc., *A Framework for Constructing an Improved National Criminal History System*, Sacramento, Calif., April 1978; and SEARCH Group, Inc., *Essential Elements and Actions for Implementing a Nationwide Criminal History Program*, Sacramento, Calif., February 1979.

²FB 1, *Bylaws for the NCIC Advisory Policy Board and Regional Working Groups*, Dec. 11, 1980, p. 2.

tionship to the FBI Director on matters relating to NCIC and especially 111.³ NCIC/APB in the past has agreed with SEARCH that policy control over State participation in III should be vested directly in the States, but apparently has disagreed on what should be the instrument of control.

NCIC/APB is currently composed of 20 elected and 6 appointed members. The 20 elected members all represent State and local law enforcement—16 State (9 from State police or patrols and 7 from State bureaus of identification or the equivalent) and 4 local (all city or county chiefs of police). The six appointed members are designated by the FBI Director and must include two members each from the judicial, prosecutorial, and correctional sectors. Thus, at present, NCIC/APB is composed of about three-quarters law enforcement and one-quarter other criminal justice representatives. If a more even balance between law enforcement and other criminal justice sectors is desired, the size of NCIC/APB could be expanded, for example to 40 with 20 members elected from law enforcement and 20 from other criminal justice sectors. Alternatively, the current size could be maintained, but with 13 law enforcement members and 13 other criminal justice members. A 1978 DOJ survey of 10 States found that “many, although not all State officials, were critical of the composition of the NCIC/APB. . . . Indeed, some State law enforcement officials acknowledged that CCH was of primary interest to prosecutors, judges, . . . correction officials, etc., and was of only limited interest to law enforcement agencies per se.”⁴

Yet another alternative is to have two policy control groups—NCIC/APB and an independent board (or a consortium of States). NCIC/APB could have an advise and consent role with respect to the NCIC hot files that are

³Minutes of the Apr. 12, 1978, meeting of NCIC's APB, “A Proposed Concept for a Decentralized Criminal History Record System,” p. 19.

⁴U.S. Department of Justice, “Representative Viewpoints of State Criminal Justice Officials Regarding the Need for a Nationwide Criminal Justice Information Interchange Facility,” March 6, 1978, reprinted in U.S. Congress, Office of Technology Assessment, *A Preliminary Assessment of the National Crime Information Center and Computerized Criminal History Program*, Washington, D. C., December 1978, p. 71.

used primarily by law enforcement agencies, and an independent board could have a similar role with respect to a national index or other national CCH system. The role of NCIC/APB or an independent board could be extended to include a national fingerprint repository, which is generally viewed as an integral component of the national index (III) concept.

Various representatives of the judicial and prosecutorial communities have forcefully argued that any viable national CCH system must have their active involvement and cooperation, since judges and prosecutors would be major users of the system and central to achieving improved disposition reporting. This may require a much larger role (and representation) for judges and prosecutors on the NCIC/APB and/or an independent policy board than has historically been the case at either the Federal or State levels. The public defender community also believes that it has a legitimate stake in any national CCH system and deserves some representation on any policy board.

Several times over the last 12 years proposals have been advanced to vest policy control in an independent board. As early as September 1970, the Office of Management and Budget recommended the establishment of a strong “policy control board” that would report directly to the U.S. Attorney General. The board was to include officials from the FBI, LEAA, and the States and represent all elements of the criminal justice community. The Board was to be structured so that the States would have an equal voice with the Federal Government. This proposal grew out of a conflict between LEAA and the FBI over control of the original CCH program (then known as Project SEARCH (System for Electronic Analysis and Retrieval of Criminal Histories) and funded by LEAA). In December 1970, the Attorney General assigned management responsibility for the CCH program to the FBI.⁵

⁵See Donald A. Marchand, et al., *A History and Background Assessment of the National Crime Information Center and Computerized Criminal History System*, Bureau of Governmental Research and Service, University of South Carolina, June 1979, sec. III, “The CCH Program: Its Origin and History,” pp. 78-86.

Continuing conflict between LEAA (and various States) and the FBI in part led to comprehensive legislative proposals in 1974 that included an independent Federal Information Systems Board. The board was to be responsible for the operation of a national CCH system and for promulgation and enforcement of regulations on the use of such a system. In addition, the board was to have an advisory committee with one representative from each State who would serve at the pleasure of the Governor.⁶ In 1974 congressional hearings, LEAA and Project SEARCH supported the independent board approach, while the FBI opposed placing policy control in either an independent board or LEAA. The FBI testified that the single-State/multi-State alternative advocated by NCIC was preferable to the national index (pointer index) and that NCIC was best equipped to manage and operate a national CCH system.⁷ As discussed in chapter 6, in large part because of these conflicts, efforts to enact comprehensive legislation were not successful.

The 1978 DOJ survey of selected States (conducted from November 1977 through February 1978) found that “many State officials expressly or implicitly recognized that in the longer term a Federal agency other than the FBI could provide the services” expected of a national CCH system, although “there was a clear consensus that the FBI should continue to provide such services in the foreseeable future.” State officials were critical of the fragmented responsibility for criminal history records within the FBI and the organizational separation between Ident and NCIC/CCH.⁸ Coincidentally, on June 1, 1978, a presidential decision memorandum (PRM) was prepared for President Jimmy Carter by the President Reorganization Project on Federal Law Enforcement. Among other things, the PRM rec-

ommended that Ident and NCIC (as well as statistical programs such as the Uniform Crime Reports) be combined into a new Bureau of Information and Statistics that would be organizationally separate from the FBI, although still a part of DOJ. The reorganization plan was never enacted.⁹

In mid-1979, OTA conducted a survey of State repository personnel in 42 States.¹⁰ At that time, repository officials from 22 States felt that the FBI was the logical place to locate management responsibility for a national system. However, seven conditioned their support for the FBI on increased State and user participation in system policymaking. The present NCIC/APB was not regarded as being sufficiently representative or authoritative, at least with respect to the CCH program. Thus, these officials proposed that the board be reconstituted with participants from all States and be given policymaking (as opposed to solely advisory) authority.

Officials from seven States indicated a preference for vesting CCH policymaking authority in an independent board or council. Some noted that there is no compelling necessity to locate a national index within the FBI. Rather, the participating States could again follow the NLETS model and create their own management and policymaking machinery outside of the Federal Government.

Four States indicated no preference, one expressed an equal preference for the FBI or NLETS, another indicated an equal preference for SEARCH Group or NLETS, and seven did not respond to the question on policy control.

Table 33 illustrates the division of opinion that existed in 1979 among State repository

⁶S. 2963, “The Criminal Justice Information and Control and Protection of Privacy Act of 1974.” *Ibid.*, pp. 97-100.

⁷*Ibid.*, pp. 101-104.

⁸DOJ, “Representative Viewpoints,” *op. cit.*, p. 70.

⁹Marchand, et al., *History and Background* *op. cit.*, pp. 151-153.

¹⁰Steven W. Hays, et al., *An Assessment of the Uses of Information in the National Crime Information Center and Computerized Criminal History Program*, Bureau of Governmental Research and Service, University of South Carolina, October 1979, sec. IV, Inter-State and Intra-State Uses of NCIC and Identification Information,” pp. 177-180.

Table 33.—1979 Preferences of State Repository Personnel for CCH System Structure and Policy Control^a

System structure	Policy Control						Totals
	FBI	FBI with revised board	Independent board	No preference	FBI or NLETS	SEARCH or NLETS	
National repository	1						1
Single-State/multi-State	8	1	1				11
National index	6	6	6		1	1	24
Regional systems							1
Total decentralization							1
No preference				4			4
Totals	15	7	7	4	1	1	42

^aForty-two states responding by telephone and/or mail to an OTA survey conducted in mid-1979. See app. C for a list of State repository officials responding.

SOURCE: Office of Technology Assessment

personnel with regard to policy control and system structure for a national CCH. As of mid-1979, officials from States that had contributed records to NCIC/CCH were split between those preferring a national index versus a single-State/multi-State system, and between those preferring control by the FBI versus an independent board. Officials from States preferring a national index were almost evenly split among those favoring policy control by the FBI, by the FBI only if the APB is broadened and strengthened, and by an independent board.

There also appeared to be a growing belief on the part of some State repository personnel that the FBI should not maintain any non-Federal criminal records, either automated or manual. They expressed the view that the FBI only needs to keep one fingerprint card for each offender, not a rap sheet. Some repository personnel also expressed a sense of frustration over the absence of a clear direction at the Federal level, as evidenced by the inability of the Federal Government to formulate a clear and consistent position on a national CCH system, at least up to that time.

During 1980 and 1981, consensus on a system structure was substantially reached, at least among those segments of the law enforcement and criminal justice community that are involved most directly. NCIC/APB, NLETS

Board of Directors, and SEARCH Group have all endorsed the national index concept which, if fully implemented, would mean that all State records would be maintained by the States themselves. Only Federal records and an identification index, known as III, would be maintained at the national level, along with a national fingerprint repository. The results of the III pilot project (as well as the Phase 1 test) suggest that a national index is feasible. The December 1981 NCIC/APB action to accelerate the testing of the III on the recommendation of NCIC staff and the III Subcommittee, confirms the strength of that consensus.¹¹ In June 1982, NCIC/APB endorsed plans to proceed with Phase 2 of III. However, the question of policy control has yet to be resolved. Further, while the U.S. Attorney General's Task Force on Violent Crime has endorsed III, the task force also supported renewed consideration of a national repository and/or full message switching if III does not prove to be feasible.¹²

¹¹At the Dec. 9-10, 1981, meeting of the NCIC's APB, they voted Unanimously to combine Phases 2 and 3 of the Interstate Identification Index development plan. This means that if decentralization of single-State records of current CCH participating States proves successful, the next step would include testing of full decentralization in at least some States.

¹²*Attorney General's Task Force on Violent Crime, *Final Report*, U.S. Department of Justice, Aug. 17, 1981, pp. viii and 67-69.

File Size and Content

As noted earlier, both the FBI and NCIC/APB (as well as SEARCH Group, Inc.) are now proposing that a centralized national index be created containing names and other identifying information such as personal identifiers (height, weight, race, etc.), social security numbers, State identification numbers, and Federal FBI identification numbers.

There are essentially four options in terms of the number and types of persons that could be listed in the index file. The first option is a so-called “narrowband” index, which would include entries for only certain types of offenders; for example, multi-State violent offenders. The estimated size of such a narrowband index would range from about 1 million to at most 2 million or 3 million entries, as shown in table 34. For example, the OTA record quality research on the Ident criminal history file found that 30.4 percent of individuals arrested were multi-State offenders (counting Federal offenders as multi-State), and about 11 percent of arrests were for violent crimes.¹³ Thus, multi-State violent offenders would total about 0.7 million persons (i.e., 11 percent violent offenders of the 30.4 percent multi-State offenders in the 21 million person Ident criminal file; or $0.11 \times 0.304 \times 21$ million persons).

A second option is a so-called “mediumband” index that would include very serious property crimes as well as violent crimes such as are included in the FBI crime index. * For example, multi-State FBI index offenders (which include violent offenders) would total about 2.6 million persons (41 percent FBI crime index offenders¹⁴ of the 30.4 percent multi-State offenders in the Ident criminal file;¹⁵ or $0.41 \times 0.304 \times 21$ million persons). One

¹³Based on 1979 OTA record quality research.

*Includes murder, manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

¹⁴Includes 11 percent violent crimes and 30.1 percent property crimes. Of the 168 records sampled from the Ident file and subsequently verified, violent crimes accounted for 113 arrests out of a total of 1,029 and property crimes accounted for 310 arrests out of 1,029.

¹⁵See ch. 3, table 1.

Table 34.— File Size Options for a National CCH System Based on Composition of Ident File

Index size option	Number of records in index ^a	
	Only multi-State offenders	Single-State and multi-State offenders
Narrowband (violent offenders)	0.7 million	2.3 million
Mediumband (FBI Crime Index offenders)	2.6 million	8.6 million
Restricted broadband (serious and significant offenders)	6.4 million	210 million
Unrestricted broadband (all offenders)	10.9 million	36.0 million

^aAll Numbers approximate. Based on arrests, not convictions, and includes Federal as well as State offenders. Assumes 30.4 percent multi-State offenders.

SOURCE: Office of Technology Assessment.

serious problem with a mediumband index is that it would exclude entries for drug, weapons, financial (e.g., bribery or fraud), escape or unlawful flight, drunk driving, and other offenses generally considered to be serious but not included in the FBI crime index.

A third option has been termed a “restricted broadband” index that would include entries for all persons arrested and/or convicted of one or more serious and/or significant crimes. The current Ident criminal file, with criminal records on 21 million individuals, is a good example of a restricted broadband file. The Ident file is restricted in the sense that nonserious offenses (e.g., disturbing the peace, drunkenness) are excluded.¹⁶

Finally, an unrestricted broadband index in theory could include entries on as many as 36 million persons—the estimated number of people with criminal offenses ranging from minor misdemeanors to serious felonies.¹⁷

¹⁶The current Ident file probably contains 5 to 10 percent nonserious arrests entered prior to 1975 when 28 CFR §20.32 went into effect.

¹⁷See 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. I, “Background on the Criminal Justice Process and Criminal History Records,” pp. 52-77 and especially p. 63 and 76.

File size also depends on record retention policies. For example, at present NCIC/CCH maintains records indefinitely, with the exception of court-ordered deletions and expungements and records for individuals over 80 years of age. By comparison, the California State CCH system has established a 5-year retention period for records of misdemeanor arrests not resulting in a conviction or for which no disposition was received, and a 7-year retention period for misdemeanor convictions and felony arrests not resulting in a conviction or for which no disposition was received. Also, felony convictions are purged for individuals over age 70 with no arrests since age 60. Through these policies, California is able to keep the file size under better control, remove criminal record information that has become outdated and has little value to the criminal

justice community, and protect individual privacy rights. Retention policies for entries in a national index may need to be considered for similar reasons.

One other file content question relates to juvenile offenders. States vary in their handling of criminal history records on juvenile offenders. In the OTA 50-State survey, 11 States indicated that criminal history information on juvenile offenders is maintained in the State repository, while 38 States reported that juvenile offender information is not maintained (except, in some States, when juvenile offenders are tried as adults). Policies for entry and retention of juvenile offenders in a national index need to be established to prevent index use that might conflict with State laws on juvenile offenders.

Record Quality

Record quality is one of the most important aspects of any CCH alternative, yet it is one of the most difficult to achieve since all alternatives depend largely on information (whether name and identifiers, summary criminal history record, or full record) originating at the State and local levels. As discussed in chapter 8, a major problem with State CCH files is a lack of court disposition information. The implementation of procedures to ensure reporting of dispositions was found, not surprisingly, to be highly variable at the State level, as summarized in chapter 9.

Ident currently requires disposition reporting within 120 days (after the disposition has occurred),¹⁸ but Ident has found it very difficult if not impossible to enforce this requirement. OTA found that, as of mid-1979, about 30 percent of the arrest events in records disseminated from the Ident manual file lacked information on dispositions that had taken place and were listed in local records. Indeed, there is no easy way even to determine how many rap sheets in the Ident manual file lack

disposition data, other than by a special audit as was conducted by OTA. AIDS is developing the capability to determine what percentage of records lack disposition data.

NCIC/CCH also requires disposition reporting within 120 days.¹⁹ Based on the OTA sample, however, as of mid-1979 about 27 percent of the arrest events in records disseminated from the CCH file lacked a court disposition that was recorded at the local level. NCIC/CCH does conduct 418 computer edits to check for routine errors, periodic quality checks (including comparison with manual and/or automated Ident records), and automatic computer listing of criminal history records containing an arrest without a disposition if the arrest is 1 year old or more. These listings are used by participating States in followup actions to obtain the final dispositions. At the request of a participating State, NCIC/CCH will prepare a computer tape of all records entered by that State, and will conduct offline searches to identify missing disposition

¹⁸28 CFR § 20.37.

¹⁹Ibid.

data.²⁰ However, the only sanction available to the FBI for noncompliance with the 120-day reporting requirement is a cutoff of NCIC/CCH service,²¹ which the FBI finds to be counterproductive and therefore does not exercise.

Current NCIC/CCH operating procedures also require State control terminal agencies to conduct systematic audits of record quality “to insure that files have been regularly and accurately updated. Where errors or points of incompleteness are detected, the control terminal shall take immediate action to correct or complete the NCIC/CCH record as well as its own State record.”²² However, the OTA 50-State survey found that as of 1979 about three-quarters of the States had never conducted a record quality audit of either computerized or manual criminal history record systems. The existing NCIC/CCH standard might be further refined to require that systematic audits be conducted at regular intervals as a condition of participation. States could be required to provide documented and independently verified certification that record quality audits were indeed being conducted, and that appropriate followup actions were being taken.

With a national index, the FBI would no longer maintain non-Federal records, and the problems of record quality in Ident and NCIC/CCH would be reduced. But the quality of records maintained by the States would still be a matter of concern, as would be the quality of any index based on those records.

Current Federal regulations hold agencies contributing records responsible for keeping the information complete, accurate, and current. * Source agencies are required to submit dispositions to their State criminal history record repository within 90 days after the disposition has occurred.”

²⁰ See Oct. 22, 1981, statement by William A. Bayse, FBI Assistant Director, before the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, pp. 6-13.

²¹ 28 CFR §20.38.

²² FBI, *NCIC Operating Manual*, pt. 10, p. 15.

* See ch. 6.

²³ 28 CFR § 20.21(a)(1).

Thus, there is a 90-day period during which individuals may be subject to criminal justice decisions based on incomplete records that are, nonetheless, in compliance with Federal regulations. The regulations do require criminal justice agencies to query their State repository for the most up-to-date disposition data prior to dissemination of a record, except in cases where the State repository is technically incapable of responding within the necessary time period.²⁴

The record quality of a national CCH system could be strengthened by tightening the disposition reporting requirements and/or requiring confirmation of CCH records lacking disposition data with the originating agency prior to dissemination of the record. For example, the basic disposition reporting requirement could be reduced from 90 days to perhaps 30 days or even less. Some States with fully computerized State CCH systems and effective centralized reporting (where local agencies report all data to the central State repository) could probably comply with a tightened standard. In the OTA 50-State survey, computerized States such as Florida, Kansas, Minnesota, Oregon, Texas, Utah, Virginia, and Washington indicated that an average update time (time from occurrence of a criminal history event, e.g., arrest or disposition, to the updating of the criminal history file) of 30 days or less had already been achieved. For example, Minnesota indicated an average update time of 2 to 5 days, Virginia 7 to 21 days, and Washington 2 to 10 days. States with manual or semiautomatic CCH systems that lack effective centralized reporting might have considerable difficulty. Substantial system development, and in some cases enactment or revision of State law, would be required to bring these States into compliance with a tighter disposition reporting standard. Nonetheless, in the OTA 50-State survey, noncomputerized States such as New Hampshire, Vermont, Wisconsin, and Wyoming indicated that they too had achieved an average update time of 30 days or less.

²⁴ Ibid.

The OTA 50-State survey update found that as of 1982, 13 States indicated that less than half of all dispositions were ever reported, regardless of the time period." Computerized States indicated a significantly higher disposition reporting rate overall (70.6 percent) than did the noncomputerized States (56.3 percent).²⁶ It seems evident that a tighter disposition reporting standard could be established by law or regulation, but its full implementation would require a significant further commitment measured in manpower, dollars, and system improvements at the State and local

²⁶Office of Technology Assessment, 50-State survey conducted in 1979-80. See ch. 9, table 19.

²⁷Ibid.

levels. The progress made by many States in recent years indicates that improved disposition reporting is possible.

On the other hand, requiring confirmation of a CCH record lacking disposition (or other important) data prior to dissemination would be feasible but could be very time-consuming, to the point, in the opinion of some, of strangling the system. Confirming an out-of-State record—whether manual or computerized—apparently can be an onerous task. However, NCIC/CCH already performs a large number of automated quality checks. And it is possible that disposition checks could also be automated, particularly with originating agencies in States with an online CCH file. Confirmation of CCH records could be required by law or regulation.

Noncriminal Justice Access

OTA has found that there is a significant amount of noncriminal justice use of criminal history record systems at both the State and Federal levels. For example, as of 1982, roughly 15 percent of all requests to State CCH systems were for noncriminal justice purposes. As of 1981, about 53 percent of requests to Ident were from noncriminal justice users (30 percent from Federal noncriminal justice agencies and 23 percent from State and local noncriminal justice users). Most of the noncriminal justice use is for employment or licensing purposes. At the Federal level (for Ident and NCIC/CCH) such use must be authorized by Federal statute or Executive order or by State statute if approved by the U.S. Attorney General.²⁷

A major problem is that State statutes vary widely in terms of defining authorized users of criminal history records. Some State and local officials are concerned about the possibility that CCH information might be provided to users in other States who would be denied access in their own State. The definition of

criminal justice users also varies from State to State, although not so widely as the definition of authorized employment and licensing users. The problem of noncriminal justice access is further aggravated by the wide variation in State policies on sealing and purging. Some States purge or seal records of all arrest events that do not result in a conviction, whereas other States maintain all police contact information.

Assuming that State laws on sealing and purging and noncriminal justice access to State files will continue to vary widely, four major options have been proposed for dealing with noncriminal justice access to a national index. First, it could simply be prohibited, as was the case for the III pilot and Phase 1 tests. Second, it could be permitted, but only under considerably stronger Federal guidelines than presently exist. Third, a separate index for such use could be established; and fourth, the status quo could be maintained.

Prohibiting noncriminal justice access to a national index would conflict with the many Federal and State laws that grant a variety

²⁸28 CFR § 20.33(a)(3).

of noncriminal justice users access to existing criminal history record systems. Given that such access serves many lawful and legitimate purposes, such as screening convicted violent or serious offenders from positions of public employment, a total prohibition is probably not realistic.

The development of stronger guidelines for noncriminal justice access seems more reasonable. In New York, for instance, existing State statutes mandate that public agencies seeking access to the State CCH file must establish a probable connection between an occupation and criminal activities of potential job applicants. This approach could be mandated for all States by Federal statute or regulation, and might involve the establishment of oversight committees at the Federal and State levels to develop occupation-crime matrices.

A third possibility is the establishment of a dual index—one for criminal justice use and one for noncriminal justice use. The criminal justice index would be based on arrest information. The noncriminal justice index could be based on disposition or conviction information only. Thus, persons such as public and private employers would have access only to index entries based on dispositions or convictions. Noncriminal justice inquiries that matched index entries based on arrest-only information would receive a “no record” response. No new data collection would be required since, in effect, the noncriminal justice

file would be a subset of the criminal justice file. A dual index approach is technically feasible and straightforward in a computerized—as opposed to manual-system. The FBI already has, in effect, a partial dual file, since arrest data over 1 year old without a disposition are not disseminated to State or local licensing and employment agencies, unless the arrest is known to be still under active prosecution.²⁸ An intermediate approach would permit noncriminal justice access to a national index for entries based on disposition or conviction information or on arrest information subject to confirmation that the arrest is still active (and that a disposition has not occurred).

Under the status quo, noncriminal justice access to a national index would be permitted, presumably subject to existing Federal and State laws and regulations. However, this would require the programing of the index so that access would be consistent with the wide variety of State laws and regulations, and an agreement would be needed on whether the laws of the donor or recipient States, or of the Federal Government or States (for Federal noncriminal justice inquiries), will take precedence where the laws conflict.

²⁸When requests come in to NCIC/CCH for State and local employment or licensing purposes, the computer automatically checks to determine if all arrest information has a corresponding final disposition. If not, and the arrest is more than 1 year old, the arrest is deleted from the record prior to dissemination. See Bayse, *op. cit.*, p. 8.

Oversight and Audit

The purposes of new oversight mechanisms would be to help assure Congress, political executives, managers, courts, and the public that the national index (or any other national CCH system) is operating within the boundaries defined by law and regulation, and to help identify any system problems that might emerge in the course of operation. Oversight is closely linked to system audit, since audit is one of the strongest mechanisms for monitoring system performance.

Several possibilities have been suggested. First, Congress could require an annual management report on the operation of a national CCH system. Such a report could include tallies of routine system activity, e.g., participation levels by State and number of inquiries by purpose, as well as statistics on any system irregularities, errors, and problems.

Second, Congress could require periodic audits to help ensure compliance with whatever

record quality and system access standards might be established. For example, periodic record quality checks of both Federal and State files, along the lines of those conducted by OTA for the purposes of this study,* would be necessary to accurately measure the level of compliance with system standards. These audits could check not only the content of records in Federal files against those in State files, but also the Federal and State records against local police arrest and court disposition data in order to determine the extent to which records are inaccurate, incomplete, and/or ambiguous. In order to keep costs at a reasonable level, the audits would presumably be conducted by sampling Federal and State files on a rotating and perhaps unannounced schedule. Presumably audits would also extend to the use as well as the content of Federal and State files.

OTA estimates that a two-person audit team could conduct about 12 reasonably comprehensive audits per year. Thus, five two-person teams would be required to audit each State once a year (50 States plus the District of Columbia and Puerto Rico, for a total of 52 audits per year), the national index and the Federal offender CCH file twice a year, and up to three other Federal CCH files (e.g., Treasury Enforcement and Communication System), plus the national fingerprint repository, once a year. Thus, the 10-person audit staff could be expected to conduct a total of 60 audits per year. Audit priorities could, of course, be adjusted to focus on files with significant irregularities, errors, and problems as identified by operating statistics and/or by the system manager (or, for that matter, by congressional or policy board oversight).

The FBI has already agreed in principle to a GAO audit requested by Congress to ensure that the upgraded NCIC communications controllers (front-end processors) and host computers are not used for message switching.**

*See ch. 8.

**See ch. 5.

However, Federal legislation may be necessary to provide GAO with adequate authority to carry out an audit involving direct access to criminal history records. In a 1975 letter to the Senate Judiciary Committee commenting on proposals for comprehensive criminal justice information systems legislation, the Comptroller General advised that:

... we believe explicit access to the necessary criminal history data should be provided to our office in this legislation because of the sensitive nature of the data involved. We also need access to the records of all non-Federal criminal justice information systems subject to the legislation for the purpose of evaluating the Attorney General's or the Federal Information System Board's operations under the legislation. An explicit statement of congressional intent regarding this matter should preclude future executive agency reluctance to allow us access to documents we believe we must review to properly discharge our responsibilities.²⁹

Third, Congress could establish a hybrid audit structure. There are several possibilities. For example, GAO could audit just the national index and Federal offender file, independent State auditing agencies could audit State and local CCH files, and GAO (or some other outside organization) could compare the results of these audits for consistency.

The existing Federal law and regulations place the responsibility for annual audit of State CCH systems with each State. Thus, any Federal audit authority, whether granted to GAO or some other body, would appear to require new legislation and/or regulations. Considerable support for such audit authority was expressed in numerous congressional hearings held in the mid-1970's and was reflected in several bills. None of these, however, was enacted.

²⁹Letter from Comptroller General of the United States to Chairman, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, Apr. 14, 1975.

Public Participation

At present, NCIC'S APB is the mechanism designed to facilitate public participation in the existing NCIC/CCH system. APB is intended to serve as the formal liaison between system users and the system manager (currently the FBI). However, users are defined as those involved in the creation of the data base and who ultimately use it. This confines the definition of users to the criminal justice community. Within that community, it is largely law enforcement agencies that are represented on APB. As discussed earlier, APB could be substantially broadened and strengthened with increased representation from the States and from the rest of the criminal justice community, perhaps along the lines of SEARCH Group, Inc. When compared with NCIC/APB, SEARCH has roughly double the representation from nonlaw enforcement criminal justice agencies (as a percentage of total membership) and has representatives from all 50 States. As of December 1981, NCIC/APB members came from 19 different States. However, NCIC/APB does have a regional structure that includes representatives from all 50 States.

Participation from outside the criminal justice community would also help ensure accountability. Alameda County, California, has a model of public participation in a CCH system known as CORPUS (Criminal Oriented Records Production Unified System). Designed and implemented by a local district attorney in cooperation with a broadly based representation of criminal justice and public decisionmakers, CORPUS integrates the information needs of the police, sheriffs, district attorneys, public defenders, courts and probation departments.

The CORPUS system is unusual, partly because of the degree of information-sharing among criminal justice agencies that traditionally have not cooperated and that have been excluded from the design of criminal history systems. CORPUS is also unusual in terms of its governance. It is governed by a county-

wide Alameda County Committee on Criminal Justice and Data Processing (the Parent Committee). This committee includes a broad representation from the criminal justice agencies, as well as the public defender, probation officers, court administrators, five public members, and a member of the county Board of Supervisors. The five public members are appointed by the Board of Supervisors and represent a range of political points of view in Alameda County. The committee has 19 members and conducts monthly meetings that are open to the public. The governing or parent committee is supported by a staff composed of CORPUS administrators. It has regular standing subcommittees on security and privacy and a CORPUS operations committee that reports on day-to-day operations.

The presence of public members as well as nonlaw enforcement personnel on the parent committee of CORPUS has resulted in broadly based concern and effort at understanding the privacy and due process implications of criminal justice information. It has also yielded highly developed auditing procedures and significant efforts to ensure the quality and security of information in the system. The parent committee also has the power to hire external auditors to conduct routine audits on the CORPUS system. One local Alameda County assistant district attorney commented:³⁰

The system of public governance which we have established here in Alameda County takes law enforcement and criminal justice information recordkeeping out of the closet and into the public light. I'm sure most criminal justice agencies around the country will resist this, but so do most other organizations. It all comes down to developing public confidence in the operation of these important information systems. Without participation, without independent insights and external auditors just as in financial institutions, there really can be no public confidence or trust in the operation of systems like this.

³⁰1979 interview with Alameda County, Calif., assistant district attorney; reaffirmed in 1982.

The CORPUS experience has been that inclusion of outside (noncriminal justice) individuals and groups is initially uncomfortable, in that issues or perspectives that might otherwise be avoided are forced onto the Parent Committee's agenda. However, generally acceptable solutions have apparently been found that have stood the test of the inevitable public scrutiny.

In many jurisdictions, public defenders do not have direct access to criminal history record systems, and are not considered part of the criminal justice community. CORPUS does permit public defender access. As noted by an Alameda County assistant public defender:³¹

One of the reasons that (we are) so supportive of the system is that from the very beginning, we were considered a necessary member of the Alameda County criminal justice community . . . For a multi-State or national system to work effectively, the public and private defender organizations must be accepted as part of the criminal justice communities in which they reside. We were given membership on the (CORPUS) planning and implementation boards and committees and input into the design of the system. As a result, the public defender is a user agency.

³¹Sept. 22, 1981, letter from Alameda County Assistant Public Defender Duane A. Sciford.

The National Legal Aid and Defender Association believes that legislation is needed to mandate public defender access to a national CCH system so that defenders can check on the criminal history records of defendants and witnesses for both the defense and the prosecution. "No legitimate policy reason exists as to why the defense should not receive all available CCH information, if truth-seeking and honesty are part of the criminal justice process." ³²

As for public participation, the III Evaluation Committee established by NCIC/APB is another example. Here, in addition to representatives of Federal, State, and local law enforcement, the courts, corrections, and prosecutors, the committee includes public members from such groups as the American Civil Liberties Union and the National Association for the Advancement of Colored People. The intent is to help ensure that a wider range of perspectives and affected interests are reflected in the NCIC/APB evaluation of and decisions concerning III.

³²Mar. 16, 1982, letter from Jack J. Schmerling, Deputy Director, Defender Division, National Legal Aid and Defender Association.

Comprehensive Legislation

Perhaps one of the strongest measures to provide Federal direction and ensure accountability and control would be the enactment of comprehensive national criminal justice information system legislation. As noted in chapter 6, criminal justice information systems currently operate at the Federal level under the very general statutory authority provided by title 28, United States Code, section 534. Although more detailed regulations have been promulgated (and appear as title 28, Code of Federal Regulations, pt. 20), initiatives in the

early and mid-1970's to enact comprehensive legislation were not successful.*

Comprehensive legislation could provide explicit authority for a national index or other national CCH system and include statutory guidelines for the operation and use of the system that are much more detailed than those currently available. Eleven areas that could be covered by comprehensive legislation are listed in table 35. Several have been discussed

*See discussion in ch. 6.

Table 35.—Subject Areas Relevant to Comprehensive Legislation on Criminal Justice Information Systems

1. Applicability: Federal, State, local Police, courts, corrections, other criminal justice Secondary users (private, public)	Researcher (method of use, challenge—judicial or administrative) Media
2. Information covered: Arrest records (rap sheets) Conviction Correctional Investigative Intelligence Want/warrant Stolen property	7. Training: Data processing and recordkeeping personnel Primary users (use, interpretation) Secondary users (use, interpretation)
3. Collection: Content of records Restrictions on particular types of data elements Restrictions on method of collection	8. Dissemination by type of information: Primary users Secondary users
4. Maintenance: Record quality (accuracy, completeness, timeliness) Security (data, people, physical) Separation of files Dedication (complete, partial) Transaction logs Listing of information systems (public notice)	9. Penalties: Civil Criminal Administrative sanctions
5. Retention: Purging by type of information Sealing by type of information (e. g., conviction v. nonconviction, juvenile offender) Removal of disqualifications Right to state nonexistence of record	10. Auditing/evaluation of: Use (primary, secondary) Record quality Operations Management Social impacts (privacy, confidentiality, and security)
6. Access: Individual (method of review/inspection, challenge—judicial or administrative review of challenged information)	11. Regulatory authority: Type (operating agency, special council/board, advisory group) Responsibilities (consultation, study and advise, establish policy and procedures, oversight, audit) Membership (stakeholders included) Duration (permanent, temporary) Resources (executive director, staff, general appropriation/specific allocation) Powers (subpoena, hold hearings, mandate binding policies and procedures, audit, mandate reporting requirements)

SOURCE: Office of Technology Assessment

earlier, and several others are discussed below. Many of these are quite controversial, as evidenced by the last 12 years of debate. However, even in the early 1970's some members of Congress believed that such legislation was a prerequisite for any effective national CCH system. For example, in introducing his own bill in 1974, Senator Sam Ervin noted that:

... the bill is quite detailed and attempts a resolution of all the major privacy and security issues which have arisen in the development of law enforcement data banks. It endeavors to balance the legitimate needs of law enforcement with the requirements of individual liberty and privacy. It would for the first time give firm statutory authority for criminal justice data banks, a major obstacle in the development of such systems. It would impose upon the data banks strict but manageable privacy limitations. Not the least important, the bill also attempts to solve fundamentally important questions of Federal-State re-

lationships in these comprehensive national information systems.³³

Given the vagaries of the criminal justice process, it would be a difficult challenge to ensure the accountability and control of a national index or other national CCH system in the absence of national legislation. Criminal law and the customs and traditions of the criminal justice process vary widely among the States and localities. * Criminal justice agencies are under increasing pressure to apprehend, process, and dispose of persons suspected of committing a crime as expeditiously as possible. This is done through the use of strategies such as pretrial diversion, plea bargaining, presentencing negotiations, and career criminal programs designed presumably to improve the efficiency and effectiveness of an already overburdened and underfunded

³³*Congressional Record*, Senate, Feb. 5, 1974.

*See ch. 9.

criminal justice process. As a consequence of all these factors, the process by which criminal history records are generated also varies widely.

In addition to policy control, file size and content, record quality, and noncriminal justice access, national legislation could enhance the accountability and control of a national CCH system by addressing the following other areas.

Access, Review, and Challenge Procedures

At present, any individual has the right to access and review his/her criminal history record maintained by NCIC/CCH or Ident. However, if the record is believed to be incorrect or incomplete, the individual must seek correction by the source agency. Individuals may also direct a record challenge to the FBI, which will then forward the challenge to the source agency. The FBI will make any changes necessary only upon proper notification by the source agency.³⁴

An alternative approach would be to: 1) hold the national index or other national CCH system manager fully accountable for the accuracy and completeness of records referenced in the index; and 2) give the national index manager the responsibility and legal authority to require the State repository to verify with the source agency—and correct if necessary—any index entries and underlying records challenged by properly identified individuals. While this might appear to be potentially quite costly and burdensome, the experience of the many States with access, review, and challenge statutes has been that challengers are few in number.* It appears that individuals with records in criminal justice information systems are not very likely to exercise their rights of access, review, and challenge. While many of these individuals may have strong incentives to conceal their records, some may not know how to exercise their “rights” or may not even be aware of them.

³⁴28 CFR § 20.34, and 28 CFR § 16.34.

*See ch. 9.

Criminal Penalties

Under current Federal law and regulation there are no civil or criminal penalties for violation of NCIC/CCH system standards, except as provided by the Privacy Act of 1974; for example, for willful unauthorized disclosure of records that contain individually identifiable information. Any agency or individual violating Federal regulations on State and local criminal history information systems is subject to a fine not to exceed \$10,000 and possible cutoff of LEAA funds.³⁵ As a practical matter, LEAA no longer exists and LEAA funding for CCH-related systems ended in fiscal year 1981. Any agency or entity failing to comply with regulations on the Federal systems and interstate exchange of criminal history information is subject to cancellation of NCIC/CCH and Ident services.³⁶

Accountability of a national CCH system could be strengthened by establishing criminal penalties, or at the minimum strong civil penalties, for violation of national system standards. Many States already have enacted both civil and criminal penalties, particularly for violation of various privacy and security statutes and regulations applicable to criminal history record information systems.

Privacy Standards

Legal accountability of a national CCH system could be strengthened by bringing such a system more fully under the requirements of the Privacy Act of 1974. For example, this act requires each Federal agency with a records system to keep an accurate accounting of the disclosure of a record (including the date, nature, and purpose of each disclosure and the name and address of the recipient),³⁷ and to retain this accounting for at least 5 years or the life of the record, whichever is longer.³⁸ These two provisions are mandatory and have been implemented by the FBI. The Privacy Act also requires each agency to make

³⁵28 CFR § 20.25.

³⁷28 CFR § 20.38.

³⁸5 USC §552a(c)(1), Privacy Act of 1974, Public Law 93-579.

³⁶5 USC §552a(c)(2).

the accounting available to the person named in the record at that person's request.³⁹ However, the act provides that law enforcement and criminal justice record systems can be exempted from this requirement,⁴⁰ as is the case with the FBI.

As another example, the Privacy Act requires agencies maintaining a record system to publish a notice in the Federal Register, at least annually, that includes "the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him."⁴¹ Here, too, the act provides a legal exemption for law enforcement systems, although both Ident and NCIC/CCH do publish such notices.

In sum, Federal law enforcement and criminal justice record systems, including Federal criminal history record systems, may exempt themselves from a number of the legal accountability measures in the Privacy Act. For example, should Congress wish to make it easier for individuals to request corrections in criminal history information contained in a national index or other national CCH system, the Privacy Act could be amended to remove certain exemptions now exercised by NCIC/CCH.⁴² Alternatively, provisions of the Privacy Act could be incorporated in new legislation to ensure that privacy standards are applicable to a national index, and that such standards also extend to the records maintained in Federal and State repositories on which index entries would be based.

Technical Accountability

Measures to provide technical accountability include, for example, comprehensive transaction logs, systematic audits of local user agencies, and training of employees in the im-

plementation of applicable State and Federal regulations. As discussed in chapter 9, as of 1979, the transaction logging, local auditing, and training procedures varied widely and frequently fell short of fully accounting for the flow of criminal history information within the States.* In the OTA 50-State survey, to which 49 States responded, dissemination logs maintained by State repositories contained the following information: name or identification number of requesting agencies (46 States); type of information disseminated (43 States); purpose of request (34 States); requestor's terminal identification number (32 States); name or identification number of person requesting information (32 States); and user agreement or authority (13 States). Major problems included lack of funding, wide variations in the interpretation of State and Federal regulations, and absence of the necessary statutory or policy mandate. In addition, there are inherent difficulties in implementing logs and audits at the local level.

Some States, such as Minnesota and New York, have implemented detailed logging procedures. Minnesota has added to its State repository transaction log the name of the police or other officer making the request for criminal history information. This automated personal identifier will assure the central State repository the capability to at least identify who it was in a local agency who requested and used the information. This method should be much more accurate than the maintenance of manual logs alone. New York State has implemented a central State repository transaction log that includes, in addition to the typical agency identifiers and purpose code requests, the personal identifier for the officer making the request, and in addition, a case number for which the request was made. Systematic review of transaction log books is accomplished by randomly selecting requests for criminal history information from the log, going to local agencies that received the information and from

³⁹5 USC §552a(c)(3).

⁴⁰5 USC §552a(j)(2).

⁴¹5 USC §552a(e)(4)(G).

⁴²5 USC §552a(d) places responsibility for correcting records in the Federal agency maintaining the record system. Moreover, law enforcement agencies can exempt themselves from this requirement and Ident and NCIC/CCH have done so by placing primary responsibility for record accuracy and completeness with the agencies originating the records.

*While nearly all States maintain transaction logs, as of 1979 nearly two-thirds review the logs only when a specific abuse is indicated. Only a few States conduct systematic audits of user agencies. See ch. 9.

there directly to the person who made the request, and reviewing the files in which the information was used.

Additional problems are raised when considering audit trails for local criminal history systems. There may be hundreds of police agencies in a large State, each with different local criminal history rap sheets that often may be simply recorded on 3 X 5 cards. An examination in California showed how difficult it was to develop audit trails for such card systems.

Thus, technical accountability would appear to be possible but difficult to achieve in a national CCH system. Because the records or entries in such a system would originate largely from and be used by State and local law enforcement and criminal justice agencies, audit trails and transaction logs would be needed at the State and local agency levels. Congress could mandate and fund the development of computer-based user audits, transaction logging procedures, and the required training programs through enactment of comprehensive

legislation establishing a national index or other national CCH system.

Uniform Crime Codes and Record Formats

Another problem with the interstate exchange of criminal history records is the wide variability in the classification and coding of crimes and in criminal history record formats. The more complex and variable the crime codes and record formats, the more difficult the records are to understand, particularly for out-of-State users. Comprehensive legislation could establish a national crime coding standard along the lines presently used by NCIC, and could promulgate guidelines for criminal history record formats. Surveys conducted by the State of Florida and NCIC have found that summary records are frequently too abbreviated to be fully useful, while the full records may have more details than are really needed. NCIC is developing a new record format that might strike a better balance.

III Development Plan

The III pilot test with the State of Florida was completed during July through September 1981. Based on the generally favorable results, Phase 1 of the III development plan was completed during February and March 1982 with the addition of five other fully participating States.* In December 1981, NCIC/APB concurred in the NCIC staff recommendation to combine Phases 2 and 3 of the original III plan. In June 1982, NCIC/APB recommended that the FBI proceed to implement the consolidated Phase 2. As revised, in Phase 2, already participating States will be tested on a fully decentralized basis (multi-State as well as single-State records decentralized) and currently nonparticipating States will be added to III on a decentralized basis. This revised plan will provide a more clear-cut test of the national index concept, more vivid-

ly demonstrate the FBI's commitment to a national index CCH alternative, and eliminate the need for the nonparticipating States to join III first on a single-State/multi-State basis before shifting to a national index basis at a later date. In Phase 3 of the revised plan (Phase 4 of the original plan), the III concept would be fully implemented.

One unresolved question concerns whether Phase 2 should include a test of III with no message switching as well as with partial message switching. As discussed in chapter 10, III was originally proposed to involve no message switching. For a variety of reasons, the III pilot test with the State of Florida and Phase 1 with Florida plus five other States were conducted using a form of partial message switching known as automatic inquiry referral (AIR).

While there may be significant advantages to AIR, several of the advantages that are

*These states included Michigan, North Carolina, South Carolina, Texas, and Virginia, in addition to Florida.

claimed cannot be effectively substantiated without a test that would compare operational results with and without AIR. For example, the State of Florida (and other members of the III Subcommittee of NCIC/APB) believes that AIR would improve the overall III response time, reduce the burden on inquiring States by eliminating the need to send a second round of messages to States holding the desired records, simplify the verification of authorized users, standardize the format of inquiry messages, and provide greater security for messages than would be available over NLETS. NLETS has disputed the concern over security, noting that even with AIR, the actual summary records are transmitted over NLETS. In addition, NLETS is clearly capable of handling both the inquiry and record traffic. Use of NLETS might avoid any possible overload of NCIC, and might encourage greater participation of States without an automated interface. An operational test could perhaps resolve some of these concerns. The NCIC staff, NCIC/APB, and NLETS have initiated discussions of whether and how such a test might be carried out.

In view of the high percentage of name hits during the III Phase 1 test that did not match the subject individual,⁴³ NCIC is proposing a two-step inquiry when unique identifying numbers are not available. Thus, in case of a name hit, NCIC would return only the identification segment to the inquiring agency to confirm the hit prior to referring the inquiry on to the State or States of record. The inquiring State could then exercise the option of using NLETS rather than NCIC to contact the State or States holding the record, and thus obviate part of the need for AIR.

The second unresolved question concerns the quality of III, especially during Phases 2 and 3. One plan is to establish the index initially by extracting names and identifiers from the 5.8 million AIDS records and the 0.8 million CCH records not in AIDS. This would result in an initial III containing 6.6 million

entries." Additional entries would be provided by participating States. Another plan would be for States to either enter their own index records or have AIDS make the entries on their behalf.

In any event, III quality would ultimately depend on the quality of the records in the Ident/AIDS and NCIC/CCH files for Federal offenders and on the quality of the State criminal history files, on which the index is based. OTA research presented in chapter 8 found that, as of mid-1979, more than a quarter (27 percent) of the records disseminated from the NCIC/CCH file were missing a court disposition, and about one-fifth contained inaccurate information. OTA also found that, as of mid-1979, over 30 percent of the records disseminated from the Ident file lacked a court disposition and about one-fifth percent contained inaccurate information. At the State level, OTA found that on the average about 35 percent of dispositions were not reported. Assuming that these figures are still reasonably valid, roughly one-third of the III entries on the average would be expected to be based on arrest data where a disposition had occurred and was recorded at the local level, but had not been reported to the State repository or to the FBI.

This potential record quality problem highlights the role of III as an index to arrests, not to dispositions or convictions. A hit on the index would simply mean that the subject was arrested at some time for something in the State indicated. A hit would not say anything about whether the individual had charges dropped or dismissed or was acquitted, convicted, incarcerated, or served time and was released.

In view of these concerns, Congress may wish to direct that record quality research be conducted as part of Phase 2 of the III development plan. This would help to determine where III currently stands with respect to

⁴³ NCIC, Draft Report-Preliminary Findings of the February-March 1982 III test, April 1982, p. 18.

⁴⁴ See NCIC staff paper prepared for the Nov. 3-4, 1981, meeting of the Interstate Identification Index Subcommittee of the NCIC Advisory Policy Board, Topic #7, p. 6.

*See chs. 8 and 9.

record quality and the extent to which problems exist in the records on which the index is based. No such research was included in the 111 pilot test or Phase 1. Congress may also wish to request the development of alternative plans for establishing III in ways that would

ensure a higher index quality. For example, one possibility would be to create the index from scratch based on current and updated information submitted directly from the States and meeting some set of minimum record quality standards.

AIDS/CCH Consolidation Plan

As noted in chapter 4, the FBI is currently operating two files—AIDS and NCIC/CCH—that maintain computerized criminal history records.⁴⁵ Between 1979 and 1981, the percentage of NCIC/CCH records also held in AIDS increased from about 44 to 58 percent. Thus, the two files duplicate each other to a significant and growing extent. This duplication reflects the unique need of Ident to develop a capability for automated fingerprint identification, the low level of State participation in the NCIC/CCH file, and the absence of a clear and agreed on long-range plan. AIDS and NCIC/CCH have now developed to the point where the U.S. Attorney General's Task Force on Violent Crime recommended that the FBI prepare plans to reduce duplication between AIDS and NCIC/CCH and that such plans take into account the results of phase 1 of the III development plan.⁴⁶

Any AIDS/CCH consolidation is likely to have a significant impact on the cost of FBI criminal history and identification services and could be an integral part of a national CCH system. Therefore, Congress may wish to request the preparation of plans for AIDS/CCH consolidation that would be consistent with the national index and other national CCH system alternatives under consideration, and that would provide a clear basis for com-

paring costs of the various alternatives at least with respect to the Federal share.

Should Congress make a decision on a specific national CCH system, DOJ could be directed to prepare a plan to consolidate AIDS and CCH in a way that is consistent with cost-effective implementation of the alternative selected. For example, from a technical viewpoint, a national index plan could:

- establish a national index on serious offenders as a new NCIC file;
- provide initial inputs (screened to meet quality standards) to the index from the NCIC/CCH file and Ident/AIDS;
- subsequently return all NCIC/CCH records to the States, except for records on Federal offenders;
- phase out the AIDS automated rap sheet function;
- include the AIDS automated fingerprint identification service as another new NCIC file; and
- seek further inputs to the index from the States (this could be in the form of computer tapes). The inputs would have to be screened to remove any that did not meet applicable quality standards.

NCIC could be restructured as shown in table 36. These functions could be located in a new National Criminal Information and Identification Division of the FBI that would combine the existing Ident Division and NCIC Section and perhaps other related activities. After reorganization, the FBI would maintain full records on Federal offenders only. The only other criminal information available would be hot file information, index informa-

⁴⁵See U.S. Comptroller General, *The FBI Operates Two Computerized Criminal History Information Systems*, U.S. General Accounting Office, Washington, D. C., 1979.

⁴⁶U.S. Attorney General's Task Force on Violent Crime, *Final Report*, U.S. Department of Justice, Washington, D. C., Aug. 17, 1981, pp. 67, 69.

Table 36.—Possible File Structure of a Reorganized National Crime Information Center

File Nos.	File content
1-8	Existing NCIC hot files ^a
9	CCH full record file limited to Federal offenders
10	Existing CLIS ^b file
11	AIDS fingerprint file with interface to residual manual file ^c
12	National index file ^d

^aIncluding stolen vehicles, stolen guns, stolen license plates, wanted Persons, stolen securities, stolen boats, and missing persons

^bComputerized Laboratory Information System

^cAs known as the National Fingerprint File

^dAlso known as the Interstate Identification Index

SOURCE Office of Technology Assessment

tion, and fingerprint identification information.

Congress could authorize this reorganization through new legislation that could also, for example:

- establish statutory guidelines for operation and use of the system;
- require periodic outside audit by GAO and/or an independent board;
- broaden and strengthen the NCIC'S APB or establish an independent board to exercise policy control;
- specify limits on file and index size and content (e.g., CCH full record file limited to Federal offenders);
- mandate record and index quality and system access standards (e.g., with respect to disposition reporting and non-criminal justice access);
- authorize Federal funding and technical assistance to strengthen State and local CCH systems, field audits, and court disposition reporting;
- reiterate and revise the title 28 privacy and security regulations where necessary;
- codify NCIC/CCH operating procedures where appropriate; and
- specify message switching authority and responsibilities.

Finally, when considering AIDS/CCH consolidation plans, Congress may also wish to examine the pros and cons of shifting management of a national CCH system out of the FBI to a new bureau within DOJ, to an independ-

ent Federal agency, or to a consortium of States. It has been argued that the FBI is burdened with too many contradictory—or at least conflicting—responsibilities. The FBI is primarily an investigatory and law enforcement agency, but also bears a heavy responsibility for the maintenance of criminal records and the production of criminal statistics. In addition, it offers training programs for State police officials, maintains an extensive forensic laboratory, and provides a considerable amount of technical assistance to State and local (as well as Federal) law enforcement agencies.

Since any national index or other national CCH system would still depend on AIDS to a large extent for fingerprint identification and presumably on NCIC for computer and communication support, adequate management and technical coordination might prove to be difficult unless AIDS and NCIC were also moved to another agency. But this could possibly weaken the commitment and cooperation of State and local law enforcement agencies, which have been based in part on their longstanding involvement and rapport with the FBI. On the other hand, judicial and correctional agencies, for example, might be more inclined to actively participate in a national CCH system if it were managed by someone other than the Nation's preeminent law enforcement agency. However, judicial and other nonlaw enforcement criminal justice agencies could be given a substantial role in a broadened and strengthened NCIC'S APB or an independent board established to exercise policy control over a national CCH system.

Alternatively, the current NCIC APB could be left as is with its jurisdiction limited to the NCIC hot files. A new and separate APB, with substantial representation from prosecuting attorneys, judges, defense attorneys, correctional and probation/parole officials, and the general public, could be given jurisdiction over a national CCH system. Under either of these conditions, and with strong legislative guidance and congressional oversight, the FBI might be in the best position to enforce system standards and operating procedures and man-

age the Federal component of a national system. Nonetheless, the experience of the several States (e.g., New York) that have successfully located their State CCH system in a crimi-

nal justice services agency, as opposed to a police or law enforcement agency, should be examined for relevance to control and management of a national CCH system.

Private Carrier Role in National CCH System

Congress may wish to review the role of private communication carriers in a national CCH system. At present, the NCIC communication lines are leased from private carriers; and NLETS is a private nonprofit corporation funded and controlled by the States that also uses dialup or leased lines from private carriers.

Two questions have arisen. First, for the national index alternative, would new technical equipment and systems available from private vendors eliminate any need for partial message switching (automatic inquiry referral)? It may be that new computer technology alone, or in combination with new communication technology, could substantially reduce or eliminate problems with inquiry formatting, verification, and followup, and simultaneously provide greater security. The growing availability of small, inexpensive, easily programmable, yet powerful computers means that States

with manual criminal history files will be able to automate more easily and at less cost than previously thought, and will be better able to fully participate in a national index or ask-the-network CCH system. Second, would the national index or ask-the-network alternative be more cost-effective using a privately offered communication network? For example, several private carriers now offer nationwide data communication networks, both packet switched and message switched, broadcast as well as narrowcast, using satellite as well as landline transmission links and providing security measures such as data encryption.

The possible benefits from the greater use of privately offered new technology and services are significant enough to warrant further consideration. Congress may wish to commission more detailed research on the private sector role in a national CCH system.