

Overview

The United States already has a national criminal history system. It is partly manual and partly computerized, and includes criminal record and fingerprint card repositories maintained by the Federal Bureau of Investigation's (FBI) criminal identification file (known as Ident) and 49 State identification bureaus. The national system also includes the computerized criminal history (CCH) files in the FBI's National Crime Information Center (NCIC) and in 27 States. Seven other States have a computerized name index to their manual files, and 10 more States are in the process of implementing a computerized index. As of October 1981, Ident held about 6 million automated criminal history records, NCIC/CCH held about 1.9 million, and the 27 State CCH files collectively held about 11.5 million records. For the interstate exchange of criminal history records, the national system uses the U.S. Mail, the NCIC communication network, and the National Law Enforcement Telecommunications System (NLETS). The many local and metropolitan criminal history record systems, either manual or automated, are also part of this national system.

Thus, most of the building blocks for a national *computerized* criminal history record system are already in place. Technically, there are many ways that a national CCH system could be designed. At one end of the spectrum, criminal history records for all offenders could be stored in a central national repository. At the other end, a national repository could be limited to records of Federal offenders, with records of State offenders stored only in the respective State repositories. The emerging consensus among Federal and State criminal record repository and law enforcement officials favors the latter, with only Federal offender records and an index to State offenders (known as the Interstate Identification Index or "III") maintained at the national level along with a national fingerprint file on serious criminal offenders.

Criminal history records are used at all levels of government, by all sectors of the criminal justice community, and increasingly by the noncriminal justice community as well. To

the extent that a national CCH system provides information that is more complete, timely, and verifiable (based on positive identification) than is presently available, the system would improve the functioning of the criminal justice process. The most significant improvements are likely to be in the areas of criminal investigations, police booking and intake, pre-trial release and bail decisions, and presentence investigation reports. For example, the impact could be particularly significant in pre-trial release and bail decisions, which typically must be made within 36 to 72 hours after arrest. If accurate and complete, 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 under due process of law. The potential contribution of a national CCH system becomes even more important in view of State bail and sentencing reforms that place greater reliance on criminal history information, and the many recommendations of the U.S. Attorney General's Task Force on Violent Crime that involve criminal history records.

Depending on how a national CCH system is controlled and used, the quality of the CCH records exchanged, and the standards set for access and operation, the system could have important implications for employment and licensure, Federal-State relationships, and civil and constitutional rights, as well as for public safety and the administration of justice. Full implementation of III (or any other national CCH system) raises a number of issues that warrant congressional attention to ensure that beneficial impacts are maximized and potentially adverse impacts are controlled or minimized.

Policy Control.—Considerable debate has focused on which agency or organization(s) should have direct policy control over a national CCH system. Suggestions include a consortium of States, a broadened and strengthened NCIC Advisory Policy Board (APB), an independent board, and/or the FBI. For example, a strengthened APB could include greater rep-

resentation from the prosecutorial, judicial, correctional, and public defender sectors than 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 role.

Record Quality .—Since 1970, Congress has expressed its concern about the completeness and accuracy of criminal history records. Based on the results of record quality research conducted by OTA and others, the quality of criminal history records at the State level has improved; however, significant problems remain, especially with respect to court disposition reporting. The average nationwide disposition reporting level increased from 52 percent in 1970 to 65 percent in 1979, but has changed little since then (to 66 percent in 1982). Fourteen of 41 States in 1979 and 13 of 47 States in 1982 indicated that disposition reporting to the State repositories was less than 50 percent. In both 1979 and 1982, eight States indicated a reporting level of less than 25 percent.

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. The progress made by many States in recent years indicates that continued improvement in disposition reporting is possible but would require a significant further commitment measured in manpower, dollars, and system improvements at the State and local levels. As of August 1982, 49 of 50 States maintain transaction logs of criminal history records disseminated, 35 of 46 routinely employ quality control checks on the accuracy of input data, 30 of 49 have automated or manual procedures for the regular review of court disposition reporting, and only 13 of 49 States have conducted a record quality audit.

File Size and Content.—Under the III concept, the national index would include only

names and identifying information. Index size would depend on what limitations are placed on entries (e.g., with respect to types of offenses and the handling of juvenile offender records), how long entries are kept in the index (e.g., limited retention period for some types of entries), and how the index is initially established and then maintained and updated. The index could have as many as 21 million entries if all persons with arrests for serious or significant offenses were included.

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. As of fiscal year 1981, about 53 percent of requests to Ident were from noncriminal justice users (30 percent Federal and 23 percent State/local). As of 1982, roughly 15 percent of requests to State CCH systems were for noncriminal justice purposes.

Noncriminal justice access to a national index could be prohibited entirely, or could be permitted 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 a 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.—Oversight mechanisms would 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 might emerge. Congress could require an annual report and periodic audits of Federal and State CCH files to help ensure compliance with whatever system standards may be established.

Federal Funding.—Throughout the 1970's, it was Federal Government policy to support the development of State CCH systems and the implementation of Federal privacy and security regulations. However, Federal support has been phased out. The following three areas are possible priorities for further Federal funding: 1) improving court disposition reporting on a nationwide basis; 2) upgrading criminal history record systems in States that are operating manually, or assisting those in the process of automating their name index and/or file; and 3) improving procedures in all States where necessary to assure the accuracy and completeness of criminal history information, to conduct audits of local users, to maintain and periodically review transaction logs, and to train employees and users.

Message Switching.—Unless all criminal history records were stored in one place (e.g., a national CCH repository), a national CCH system would require some electronic means to transfer criminal history records (and inquiries for such records) among and between the various State and Federal repositories and participating agencies. The transfer or switching of messages from one State to another through the NCIC computer has been a point of controversy with respect to the impact on Federal-State relations and the potential for monitoring and surveillance use. There are several message switching alternatives for III. First, inquiries could be switched via NCIC, with records returned via the NLETS message switching system. This approach has been used in pilot tests of III. Second, both inquiries and records could be switched via NCIC. Third, both inquiries and records could be switched via NLETS. Fourth, records could be switched via NLETS and inquiries via NCIC or NLETS. Fifth, the use of NCIC or NLETS could be optional for switching of both inquiries and records. Any Department of Jus-

tice or FBI message switching role in a fully operational III (or other national CCH system) would probably require congressional approval.

Federal Direction and Legislation.—In the 7 years since Congress last considered legislation on criminal history record systems, both the States and the FBI have made significant progress in improving the interstate exchange of criminal history information and in implementing State and Federal privacy and security regulations. Substantial consensus has developed around III, and pilot tests indicate that III is technically feasible. Nonetheless, absent Federal direction and probably some modest Federal funding, full implementation of III is likely to take many years. Also, further improvement in nationwide record quality and some kind of national standards on record access and use are needed. Resolution of conflicts between and among State and Federal laws is a necessity.

Legislation represents one of the strongest measures to provide Federal direction and ensure accountability and control. Legislation 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 listed above, legislation could address access, review, and challenge procedures; criminal penalties; privacy standards; and possibly a prohibition on unauthorized intelligence or surveillance use of a national CCH system. In sum, legislation appears to be the most appropriate vehicle for guiding the full implementation of a national CCH system in a way that will enhance the efficiency and effectiveness of the criminal justice process, protect civil and constitutional rights, and properly balance the roles and responsibilities of the Federal and State Governments.