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# Appendixes

# Update on Computerized Criminal History Record Systems\*

## Introduction

OTA has carried out an extensive prior study of Federal and State criminal history record systems. The preliminary and final results were published in, respectively, *A Preliminary Assessment of the National Crime Information Center and the Computerized Criminal History System* (1978) and *Assessment of Alternatives for a National Computerized Criminal History System* (1982).

The 1982 study addressed four major areas:

1. the status of criminal history record systems in the United States;
2. the alternatives for a national computerized criminal history (CCH) system;
3. the possible impacts of such a system on the criminal justice process, Federal-State relations, and civil and constitutional rights; and
4. the relevant policy issues that warranted congressional attention to ensure that the beneficial impacts of a national CCH system are maximized and the possible adverse impacts controlled or minimized.

Since 1982, one particular alternative for a national CCH system, known as the Interstate Identification Index (or Triple I), has been tested and generally accepted by the criminal justice community. Triple I is now one of 12 operational files in the National Crime Information Center (NCIC)

operated by the Federal Bureau of Investigation (FBI). Triple I is essentially a national electronic index to persons with Federal and/or State criminal history records. The records themselves are maintained in FBI and State record repositories. Triple I replaced the now defunct Computerized Criminal History file on NCIC, and is the largest file on NCIC, as shown in table A-1.

Also since 1982, the extent of computerization in other criminal history record repositories has continued to increase. The FBI's Automated Identification Division System (a CCH record system separate from the NCIC) included 8,740,908 computerized records as of May 1985, compared to about 5.8 million records in October 1981.<sup>3</sup> At the State level 35 States reported at least a partially computerized criminal history record file as of late 1984, compared to 27 States in August 1982.<sup>4</sup> And 39 States reported, as of late 1984, at least a partially automated name index to persons with criminal history records, as compared with 34 States in August 1982.<sup>5</sup> The fully or partially computerized criminal history files of the States account for an estimated 90 percent of all criminal history record activity.<sup>6</sup>

As discussed in chapter 4 and more extensively in the 1982 OTA report, the Triple I concept evolved after a protracted debate, spanning more than a decade, over the appropriate Federal and State roles in a national CCH system.<sup>7</sup> While the

\*Outside reviewers for this appendix included Robert R. Belair, Kirkpatrick & Lockhart; Gary R. Cooper, SEARCH Group, Inc.; David F. Nemecek, Federal Bureau of Investigation; and Fred Wynbrandt, California Department of Justice.

<sup>1</sup>U.S. Congress, Office of Technology Assessment, *A Preliminary Assessment of the National Crime Information Center and the Computerized Criminal History System, OTA-1-80* (Washington, DC: U.S. Government Printing Office, December 1978). Also published as U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure and Subcommittee on the Constitution, *Preliminary Report by the Office of Technology Assessment on the Federal Bureau of Investigation National Crime Information Center (NCIC) Accompanied by Letters of Comment on the Draft Report*, 95th Cong., 2d sess., December 1978.

<sup>2</sup>U.S. Congress, Office of Technology Assessment, *An Assessment of Alternatives for a National Computerized Criminal History System, OTA-CIT-161* (Washington, DC: U.S. Government Printing Office, October 1982). Prepared at the request of the House and Senate Committees on the Judiciary, this study was one of four components of the OTA 'Assessment of Societal Impacts of National Information Systems.' The other components included a September 1981 OTA report on *Computer-Based National Information Systems: Technology and Public Policy Issues*; a March 1982 background paper on selected *Electronic Funds Transfer Issues: Privacy, Security, and Equity*; and an August 1982 OTA report on *Implications of Electronic Mail and Message Systems for the U.S. Postal Service*.

<sup>3</sup>Based on Federal Bureau of Investigation data.

<sup>4</sup>Aug. 6, 1982 data from an OTA survey cited in U.S. Congress, Office of Technology Assessment, *Computerized Criminal History System*, op. cit., pp. 46-48; late 1984 data from a SEARCH Group, Inc., survey cited in U.S. Department of Justice, Bureau of Justice Statistics, "State Criminal Records Repositories," technical report, October 1985, pp. 2-3, prepared by SEARCH Group, Inc., for a Jan. 9, 1986, conference cosponsored by SEARCH Group and the Bureau of Justice Statistics.

<sup>5</sup>Ibid.

<sup>6</sup>OTA previously concluded that, for fiscal year 1981, the 27 States with on-line CCH files accounted for about 85 percent of all criminal fingerprint cards submitted to State and Federal criminal record repositories—a valid measure of criminal history record activity. See OTA, *Computerized Criminal History System*, op. cit., pp. 46-48 and table 5. As of late 1984, eight other States (Louisiana, Montana, New Hampshire, Arizona, Connecticut, Wyoming, Idaho, and Pennsylvania) had automated at least partially, accounting collectively for an estimated additional 5 percent of criminal record activity. Actually, based on 1984 data, these eight States together held about 6.5 percent of the total number of State criminal history records. See Bureau of Justice Statistics, "Criminal Records Repositories," op. cit., p. 2.

<sup>7</sup>Also see U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Patents, Copyrights, and Trademarks, *Computerized Criminal History Records*, hearing, 98th Cong., 1st sess., May 12, 1983; and U.S. General Accounting Office, *Observations on the FBI Inter-*

**Table A.1.—Number of Records Included in NCIC, by File, 1979, 1981, 1985**

	Number of records as of		
	June 1981	October 1981	May 1985
Interstate identification index. . . . .	—	—	9,268,232
Computerized criminal history. . . . .	1,482,017	1,885,457	—
Stolen securities. . . . .	1,998,778	2,361,971	2,072,785
Stolen guns. . . . .	1,337,310	1,674,814	2,052,018
Stolen vehicles. . . . .	970,714	1,163,771	1,170,613
Stolen articles. . . . .	1,091,461	1,427,535	1,053,415
Stolen license plates. . . . .	397,706	543,173	495,225
Wanted persons. . . . .	148,644	190,159	219,123
Missing persons. . . . .	21,535	24,610	38,374
Stolen boats. . . . .	17,615	22,807	24,370
Unidentified persons. . . . .	—	—	1,067
Canadian warrants. . . . .	n.a.	183	249
U.S. secret service protective. . . . .	—	—	91
<b>Total. . . . .</b>	<b>7,465,780</b>	<b>9,294,327</b>	<b>16,395,662</b>

NOTES: — =file did not exist.  
n.a. = data not available.

SOURCE: Federal Bureau of Investigation.

Triple I now appears to be generally accepted by the criminal justice community, OTA reviewed the results of the 1982 study and found that at least three of the key policy issues previously identified have not yet been resolved: 1) noncriminal justice use of criminal history records; 2) the quality (completeness and accuracy) of such records; and 3) policy oversight of the interstate exchange of criminal history information. The status of each is briefly updated below, along with an overview of policy implications.

### Noncriminal Justice Use

Criminal record checks are increasingly used in screening applicants for a wide range of jobs and licenses. In the 1982 study, OTA found that noncriminal justice use of criminal history records was already substantial (about one-half of all record requests received by the FBI's Identification Division and about one-seventh of all record requests received by State repositories).

Since 1982, the trend toward criminal record checks for employment and licensing has further intensified. For example, Congress included a provision in Public Law 98-473 requiring that States

establish procedures to provide for nationwide criminal history checks for all operators and employees of child-care facilities.<sup>8</sup> There has also been growing interest in implementing criminal record checks for teachers, youth group leaders, and elder-care providers. The primary motivation for the increased emphasis on criminal record checks has been the intensified attention and concern about child abuse (and, to a lesser extent, abuse of the elderly) and the perceived need to more carefully screen applicants for positions entrusted with the care of persons who are likely to be especially vulnerable.<sup>9</sup> In addition, there has been increased emphasis on criminal history record checks for current or prospective Federal employees, especially those in sensitive or classified positions.<sup>10</sup>

Absent policy action, this increasing level of record check activity is likely to aggravate access, equity, and due process problems resulting from the inconsistent Federal and State laws and regulations on dissemination of criminal history records for noncriminal justice purposes. These problems were identified in the 1982 OTA report and further amplified in two 1984 studies commissioned by the FBI to study the implications of using Triple I for noncriminal justice record checks.

One study, conducted by former FBI agent Raymond J. Young and reflecting a Federal perspective, concluded that:<sup>11</sup>

The most obvious impact (of III) would be the total lack of availability of criminal history record information from States for many or all Federal non-criminal uses. The inability to acquire criminal history data would affect many vital uses, including matters involving national security. . . . In

<sup>8</sup>U.S. Department of Health and Human Services, *Model Child Care Standards Act—Guidance to States To Prevent Child Abuse in Day Care Facilities*, Washington, DC, January 1985, p. 2.

<sup>9</sup>See, for example, Adrian Higgine, "Day Care Worker Checks Getting Mixed Reviews," *Arlington Journal*, Sept. 6, 1985, p. A7; Linda Lantor, "Fairfax Schools To Tighten Employee Screening," *Arlington Journal*, Sept. 10, 1985, p. A4, and Andee Hochman, "Youth Workers Face Additional Screening; Change Follows Spate of Sex Abuse Cases," *The Washington Post*, Sept. 23, 1985, pp. D1-D2.

<sup>10</sup>See, for example, Mike Causey, "FBI Checks Background of 41,000 at HHS," *The Washington Post*, June 21, 1985, pp. A1-A11; S. 274, the Anti-Nuclear Terrorism Act of 1985, 99th Cong., 1st sess., that would require criminal record checks for nuclear powerplant personnel; S. 1203, 99th Cong., 1st sess., that would allow railroad police and private university or college police access to FBI criminal history records; and S. 1347, the Security Clearance Information Act of 1985, 99th Cong., 1st sess., introduced by Senator Sam Nunn (for himself and Senators William Roth, Lawton Chiles, Albert Gore, and Ted Stevens) and enacted by Congress as Title VIII of Public Law 99-169, that gives the Department of Defense, Office of Personnel Management, and Central Intelligence Agency the statutory authority to access Federal and State criminal history information for national security purposes.

<sup>11</sup>Raymond J. Young, *Federal Non-Criminal Justice Use of the Interstate Identification Index*, prepared for the Federal Bureau of Investigation, Dec. 14, 1984, pp. 5-1, 5-2.

state Identification Index. Report to the Chairman, Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, Oct. 16, 1984.

many other instances, Federal agencies would receive only limited amounts of data from States which, while providing some criminal history information from some Federal uses, place restrictions on the type of criminal history records furnished.

A second study, carried out by SEARCH Group, Inc.—a consortium representing State perspectives—found that:<sup>12</sup>

[T]here is great disparity among present State laws and policies regarding noncriminal justice access and use. Laws and policies on dissemination range from those in a few States that essentially do not permit access to any criminal history records for any noncriminal justice purpose to those of a few "open record" States that permit access to all or most of such records for anyone for any purpose. Between these extremes is an almost bewildering variety of statutory approaches, with access permitted in particular States to specified records for specified purposes and subject to specified conditions, including requirements that access be authorized by separate legal authority or approved by a council, board, or other official.

As a consequence of these and other as yet unresolved problems, noncriminal justice use of Triple I is currently prohibited.

## Record Quality

The importance of accurate records has long been recognized in Federal and State laws and regulations. Since 1970, Congress has explicitly expressed its concern about the completeness and accuracy of criminal history records. Section 524(b) of the Crime Control Act of 1973 required the Law Enforcement Assistance Administration to promulgate regulations that, among other things, were to provide safeguards for the completeness and accuracy of criminal history records. Such regulations were issued in 1975 (as Title 28, Code of Federal Regulations, part 20) and applied to the Federal Government and all States whose criminal history record systems were federally funded in whole or in part.

Federal courts have also ruled on record quality issues. For example, in *Tarlton v. Saxbe* (1974) the U.S. Court of Appeals for the District of Columbia ruled that the FBI had a duty to prevent dissemination of inaccurate arrest and conviction records, and had to take reasonable precautions to prevent inaccuracy and incompleteness. Most States now have statutes or regulations requiring agencies to ensure reasonably complete and accu-

<sup>12</sup>SEARCH Group, Inc., *A Study To Identify Criminal Justice Information Law, Policy and Management Practices Needed To Accommodate Access to and Use of III for Noncriminal Justice Purposes*, prepared for the Federal Bureau of Investigation. Sept. 18, 1984, p. 4.

rate criminal history information, including reporting of court dispositions. The number of States with statutes or regulations on record quality increased from 14 in 1974 to 45 in 1979, and to 49 in 1981.<sup>13</sup>

In spite of legislative and judicial mandates to improve record quality, the 1982 OTA study documented significant record quality problems in Federal and State criminal history record systems. The record quality problem that stands out above all others is the lack of information on dispositions. A long series of record quality audits, including OTA'S, have shown that, on the average, one-third to one-half of the dispositions that occurred were missing from State and Federal criminal history records.<sup>14</sup> OTA'S audits also documented that, for the Federal and State files sampled, roughly one-fifth of criminal history records contained erroneous information.<sup>15</sup>

Since the 1982 OTA report, record quality has received heightened attention. For example, SEARCH Group, Inc.—with Department of Justice (Bureau of Justice Statistics) funding—has held conferences and prepared reports on understanding the problem and on possible solutions, and has developed procedures for conducting record quality audits.<sup>16</sup> The FBI Director has assigned record quality improvement a high priority.<sup>17</sup> And the FBI, with the support of the NCIC Advisory Policy Board, has established an audit team to check State compliance with NCIC procedures, including those on record completeness and accuracy. However, as yet, the audit of record quality is limited to the NCIC files on wanted persons and stolen vehicles, and does not include the criminal history records on which the NCIC Triple I is based.

The FBI has solved part of its record quality problem by terminating the NCIC/CCH file. In effect, it was discontinued as part of the decision to

<sup>13</sup>See, U.S. Congress, Office of Technology Assessment, *Computerized Criminal History System*, op. cit., pp. 71-73 and 94-96.

<sup>14</sup>*Ibid.*, pp. 89-96 and 99-102.

<sup>15</sup>*Ibid.*, pp. 89-96.

<sup>16</sup>See SEARCH Group, Inc., *Audit Manual for Criminal History Records Systems*, Sacramento, CA, December 1982; *Audit Documentation Guide: A Model Study Approach*, Sacramento, CA, January 1984; "SEARCH Audit Clinics Take New Approach" and "National Workshop To Examine Data Quality," *Interface*, summer 1984, pp. 19, 31; U.S. Department of Justice, Bureau of Justice Statistics, *Data Quality of Criminal History Records*, prepared by SEARCH Group, Inc., October 1985; and "National Conference on Data Quality and Criminal History Records," Jan. 9-10, 1986, cosponsored by the Bureau of Justice Statistics and SEARCH Group, Inc.

<sup>17</sup>U.S. Department of Justice, Federal Bureau of Investigation, *Minutes of National Crime Information Center Advisory Policy Board*, Washington, DC, Oct. 17-18, 1984, p. 2.

<sup>18</sup>See U.S. Department of Justice, Federal Bureau of Investigation, *National Crime Information Center Control Terminal Audit Manual*, June 4, 1985.

proceed with the Triple I.<sup>19</sup> The FBI has initiated several actions to improve disposition reporting at the Federal level, such as "computer tape exchange with other Federal agencies, automatic generation of disposition follow-up requests, and field recovery teams to review court and agency records," and reports some improvement.<sup>20</sup>

However, audits and surveys of State criminal history record files conducted since 1982 have generally confirmed the results of the 1982 OTA study and suggest significant, continuing record quality problems. For example, 1984 audit results from one State—Illinois—indicated that about 20 percent of arrest events audited had erroneous information and about 50 percent of arrest events audited were missing dispositions, a majority of which were included in local police records.<sup>21</sup> Also, a 1984 national survey of criminal history record quality conducted by SEARCH Group, Inc., found wide variability in disposition reporting. Many States were unable to provide estimates of disposition reporting. For those that did, the average disposition reporting by law enforcement, prosecution, and local correctional agencies was estimated to be about 50 percent—a finding generally consistent with results of other, prior audits.<sup>22</sup> On the positive side, disposition reporting by State correctional agencies was estimated to be about 95 percent. About two-thirds of the States believed that disposition reporting and overall record accuracy were increasing, although most States did not provide hard numbers or audit results to support this belief. States cited increased automation as a major reason for improvement. Other reasons cited include, for example, interagency cooperation, periodic audits, training, reporting laws, and tracking systems.<sup>23</sup>

### Policy Advisory and Oversight Body

The 1982 OTA study documented a long history of debate—at least since 1970—over which organization(s) should have a formal policy advisory and oversight role with regard to a national com-

puterized criminal history system. Policy control over any system for the interstate exchange of criminal history information is complicated by several factors:

- the involvement of a wide range of criminal justice agencies—from law enforcement and prosecutorial to judicial and correctional—as providers and users of criminal history information,
- the frequently conflicting Federal and State laws on noncriminal justice access and use,
- the trend towards increasing use of criminal history record checks for employee screening and other noncriminal justice purposes,
- the inevitable tension between Federal and at least some State governments in a sensitive area of interstate activity, and
- the implications of record use for privacy and constitutional rights.

Current policy control over the Triple I is vested in the Attorney General of the United States who has delegated authority to the FBI with a strong advisory role assigned to the NCIC Advisory Policy Board (APB). APB is comprised of 30 representatives:<sup>24</sup>

- 20 law enforcement members elected from the States and localities;
- 6 members appointed by the FBI Director (2 each from the judiciary, prosecutor agencies, and correctional institutions); and
- 4 members appointed by criminal justice associations (1 each by the International Association of Chiefs of Police, National Sheriff's Association, National District Attorney's Association, and National Probation and Parole Association).

However, now that the NCIC/CCH file has been terminated, APB has not defined a clear role for itself with respect to criminal history records beyond the pilot testing and operation of Triple I. The FBI's Identification Division still maintains a large, increasingly computerized criminal history record system, but has no advisory board or council similar to APB. Should an advisory or oversight board be created for criminal history record exchange, either a new board or a modification of APB, membership could encompass groups not currently represented on APB. These could include representatives of, among others, defense attorneys, civil liberties groups, research criminologists (from government or academia), and social scientists concerned with the effects of criminal records on rehabilitation.

<sup>19</sup>U.S. Department of Justice, Federal Bureau of Investigation, *NCIC 2000 Project Statement of Work*, Washington, DC, January 1985, p. A-9.

<sup>20</sup>U.S. Department of Justice, *Minutes*, *op. cit.*, p. 226.

<sup>21</sup>Illinois Criminal Justice Information Authority, "Many 'Rap Sheets' Not Automated, Audit Finds," *The Compiler*, vol. 6, No. 2, summer 1985, pp. 3, 8. Also see Bureau of Justice Statistics, *Data Quality*, *op. cit.* The State of Illinois now has a uniform disposition reporting law and the Criminal Justice Information Authority has prepared an advisory for criminal justice agencies.

<sup>22</sup>Bureau of Justice Statistics, "State Criminal Records," *op. cit.*, p. 4.

<sup>23</sup>*Ibid.* Also see, for example, improvements in disposition reporting cited in the State of California, per Nov. 18, 1985 memo from Roy T. Iwata, Manager, Disposition Update Section, Record Analysis and Processing Program, Bureau of Criminal Identification.

<sup>24</sup>U.S. Department of Justice, *NCIC 2000*, *op. cit.*, p. A-10.

SEARCH Group, Inc., has, for example, repeatedly taken the position that an advisory body for interstate criminal history record exchange should be more broadly constituted than the present APB. SEARCH Group has stated that the board "be predominantly representative of the States" and that "its representation should ensure that it is responsive to all components of the criminal justice community, not just law enforcement." SEARCH Group also believes that "public interest positions, representing the public at large as well as components of the criminal justice community, must be appropriately represented on the board to ensure that policy decisions are consistent with broad, national considerations."<sup>25</sup>

As long as there is no clear advisory or oversight body for criminal history records exchange, whether APB or some other group, the policy control issue is further complicated by FBI proposals for new intelligence applications of NCIC, for example to include files on white-collar crime and organized crime suspects and associates-as contrasted with the existing wanted persons file, which is limited to persons who have been charged with a crime. These kinds of proposals pose difficult questions. On the one hand, intelligence applications aggravate already existing concerns about record quality and raise new concerns about possible abuse or misuse." On the other hand, the one intelligence file now on NCIC (the Secret Service file) apparently has proved useful, and similar applications may be helpful in other areas.<sup>27</sup>

<sup>25</sup>SEARCH Group, Inc., policy statement as reprinted in Federal Bureau of Investigation, National Crime Information Center, agenda materials for NCIC Advisory Policy Board meeting, Oct. 17-18, 1984, p. 63.

<sup>26</sup>See, for example, *Privacy Journal*, November 1984, p. 2, and August 1985, pp. 1, 3; Faye A. Silas, "A Bad Rap; Snafus in Computer Warrants," *ABA Journal*, January 1985, pp. 24-25; "Jailing the Wrong Man," *Time*, Feb. 25, 1985, p. 25; Donna Raimondi, "False Arrests Require Police To Monitor Systems Closely," *Computerworld*, Feb. 25, 1985, p. 23; Charles Babcock, "On-line Crime Suspect System Implicated in False Arrest," *Computerworld*, Aug. 19, 1985, p. 12; and John Bennett, "White-Collar Crime File Draws Ire of Left, Right," *Arlington Journal*, Oct. 23, 1985, p. 2. Also see U.S. Congress, House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, *Proposed Contract To Study and Redesign the National Crime Information Center*, Oversight Hearing, 98th Cong., 2d sess., Aug. 1, 1984.

<sup>27</sup>For further discussion, see U.S. Congress, Office of Technology Assessment, *Federal Government Information Technology: Electronic Surveillance and Civil Liberties*, OTA-CIT-293 (Washington, DC: U.S. Government Printing Office, October 1985), esp. ch. 5 section on "Data Base Surveillance."

## Policy Implications

The issues discussed above raise the following policy questions:

First, how should differences between and among State and Federal laws on noncriminal justice criminal history record checks be reconciled? Presumably, this should be done in a way that reasonably ensures that, for record checks deemed to be lawful and in the public interest, criminal history information will be complete, accurate, and timely. Differences could be reconciled by Federal law, interstate compact, or a set of uniform State laws.<sup>28</sup> Failing any of these, an option would be to use a national full-record file for noncriminal justice purposes, while retaining the Triple I for criminal justice purposes only. A national file maintained by a Federal agency, such as the FBI, would be governed by Federal, not State, laws on record access and dissemination.<sup>29</sup>

Second, how can record quality be improved? Independent audits of Federal and State criminal history record files could be required. The existing FBI audit function could be extended to include State and local criminal history records that support Triple I index entries (and related Automated Identification Division System records). An audit function could be assigned to APB or some other advisory body. Congress could enact legislation, along the lines previously proposed by Representative Charles Schumer, that would establish and fund a record quality audit program.<sup>30</sup> Whatever the mechanism, the audits could be conducted so as to produce quantitative estimates of record completeness and accuracy to provide a firm basis for measuring record quality improvement (or lack thereof).

Actually, the current FBI audit process provides a good prototype. As part of the audit function, the FBI audit team selects a statistically valid sample of NCIC entries from the NCIC wanted persons and stolen vehicles files and compares the record contents with State and local source information (e.g., from courts and prosecutors) to determine whether the records are accurate and valid. This FBI record quality audit procedure is similar to that used by OTA as reported in the 1982 study. Indeed, the results of FBI audits of five States in-

<sup>28</sup>See Young, *Federal Non-criminal Justice Use*, op. cit.; and SEARCH Group, Inc., *Use of III for Noncriminal Justice Purposes*, op. cit.

<sup>29</sup>SEARCH Group, Inc., *Ibid.*, p. 20.

<sup>30</sup>See H.R. 896, Jan. 31, 1985, H. R. 2129, Apr. 18, 1985, and an amendment in the nature of a substitute to H.R. 2129 (discussion draft), Nov. 12, 1985, all entitled the "Criminal Justice Information Improvement Act of 1985," 99th Cong., 1st sess.

licated that an average of 5.5 percent of the NCIC wanted persons entries were invalid,<sup>31</sup> almost identical to the 5.8 percent result obtained by OTA.<sup>32</sup> The FBI found comparable error rates in the NCIC stolen vehicles files from the same five States.<sup>33</sup> Overall, the FBI audit process appears to be successfully identifying record problems and possible solutions with respect to these two files, and could be extended to include criminal history record files that are relevant to Triple I.

Third, what kind of national policy council or board should oversee the interstate exchange of criminal history records? Policy oversight issues include, for example: 1) should an advisory policy board have more than advisory power? 2) should the board report to the Attorney General or the FBI Director? 3) should the board have a broader composition when compared to the present APB to reflect the growing noncriminal justice use of criminal history records? 4) should the board include State representatives appointed by the respective Governors rather than, or as a complement to, those elected by law enforcement practitioners? and 5) should a separate board be established with respect to noncriminal justice uses and concerns, while retain-

ing the current APB for criminal justice applications?<sup>34</sup>

One option is to establish statutory guidelines for the role and composition of an advisory body.<sup>35</sup> Another option, not necessarily mutually exclusive, is to assign some oversight responsibilities to any independent Federal data or privacy protection board that might be established (as discussed in ch. 6). One reason that law enforcement and criminal justice record systems were exempted from key provisions of the Privacy Act of 1974 was the expectation at that time that separate criminal justice record privacy legislation would be enacted shortly. One of the legislative proposals at that time, introduced by the late Senator Sam Ervin, Jr., would have established a Federal Information Systems Board. While congressional hearings were held, neither this nor related proposals ever were reported out of committee or voted on by the House or Senate.<sup>36</sup>

<sup>31</sup>See OTA, *Computerized Criminal History System*, op. cit., pp. 169-172.

<sup>32</sup>This approach was taken in the original version of H.R. 2129, the Criminal Justice Information Improvement Act of 1985, 99th Cong., 1st sess. A later draft version, dated Nov. 12, 1985, in the nature of a substitute, was limited to record quality matters.

<sup>33</sup>See OTA, *Computerized Criminal History System*, op. cit., pp. 73-74, and S. 2963, the Criminal Justice Information Control and Protection of Privacy Act of 1974, 93d Cong., 2d sess. Also see U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Constitutional Rights, *Criminal Justice Data Banks, Hearings*, 93d Cong., 2d sess., March 1974; *Criminal Justice Information and Protection Privacy Act of 1975, Hearings*, 94th Cong., 1st sess., July 15 and 16, 1975; U.S. Congress, House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, *Criminal Justice Information Control and Protection of Privacy Act of 1975, Hearings*, 94th Cong., 1st sess., July 14, 17, and Sept. 5, 1975; and Donald A. Marchand, *The Politics of Privacy, Computers, and Criminal Justice Records* (Arlington, VA: Information Resources Press, 1980).

<sup>31</sup>See Federal Bureau of Investigation, National Crime Information Center Audit Reports for Wisconsin (September 1984), Oregon (October 1984), Arizona (December 1984), Alabama (March 1985), and South Carolina (April 1985).

<sup>32</sup>See U.S. Congress, Office of Technology Assessment, *Computerized Criminal History System*, op. cit., pp. 191-192; also see Kenneth C. Laudon, "Data Quality and Due Process in Large Interorganizational Record Systems," *Communications of the ACM*, vol. 29, No. 1, January 1986, pp. 4-11; David Burnham, "FBI Says 12,000 Faulty Reports On Suspects Are Issued Each Day," *The New York Times*, Aug. 25, 1985; and David Burnham, "Computer Data Faulted in Suit Over Wrongful Arrest," *New York Times*, Jan. 19, 1986.

<sup>33</sup>See FBI NCIC Audit Reports, op. cit.