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Bureau of Justice Statistics



## Criminal Justice Information Policy

## Criminal Justice "Hot" Files

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## INTRODUCTION

Previous volumes in the Criminal Justice Information Policy Series have examined legal and policy issues related to intelligence and investigative records, juvenile justice records and adult criminal history records.<sup>1</sup> This volume deals with another type of criminal justice record—information compiled and utilized to identify and locate wanted and missing persons and stolen property, including vehicles, guns and articles of personal property. Information of this type is compiled and indexed in national files maintained by the FBI's National Crime Information Center (NCIC) and in state and local files throughout the country. Among law enforcement officials, these files are commonly called "hot files" and the information in them is perhaps the most heavily used type of criminal justice information.

Police officers in the field rely upon immediate access to these files, by radio or by mobile terminal, to determine whether vehicles or other property have been reported stolen and whether individuals they encounter in the course of their duties are wanted for criminal offenses and, more important, whether they may be armed and dangerous. It is routine procedure in law enforcement agencies throughout the country for police officers to query these files before approaching vehicles they have stopped for traffic violations or for other reasons and to rely upon the accuracy of the responses they receive in deciding how to approach the vehicles and whether to question, detain or arrest the occupants. Other routine uses include wanted person checks on all arrested persons, persons being released from confinement and even persons visiting inmates of confinement facilities; and stolen property checks on pawned property, currency and other property in the possession of arrested persons, and items received in police property rooms. Indeed, an FBI pamphlet describing the use of the NCIC hot files

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<sup>1</sup>The Bureau of Justice Statistics Criminal Justice Information Policy Series (U.S. Department of Justice, Washington, D.C.): Privacy and the Media (1979); Privacy and the Private Employer (1981); Privacy and Juvenile Justice Records (1982); Intelligence and Investigative Records (1985); Data Quality of Criminal History Records (1985).

suggests that ". . . routine inquiries should be made on every person and all property encountered by the criminal justice community."<sup>2</sup>

It is not surprising, then, that many criminal justice officials consider the hot files to be the most important type of criminal justice information and that information system managers often consider the hot files to be their top priority. They regard the hot files as "life blood" information for officers on the street, who must rely upon it in making hurried and perhaps irreversible decisions affecting their own safety and the lives and liberty of the persons they deal with in discharging their duties.

Despite its importance, however, relatively little has been published concerning the hot file system. There have been occasional newspaper articles and television programs on the subject, some of which have criticized the FBI's files for an alleged lack of accuracy and completeness.<sup>3</sup> Remarkably, however, there has been no publication or broadcast that has attempted to present a broader view of the NCIC hot file system, describing in detail the types of information maintained in this federal-state cooperative system and the procedures in place to attempt to keep the files accurate, complete and current, and discussing the legal and policy issues arising from the operation of the system and the use of the information obtained from it. In particular, virtually nothing has been published concerning the extensive wanted person and stolen property files maintained at the state and local levels throughout the country.

This report makes a beginning at filling that void. It describes the FBI's NCIC system in some detail, including the types of files maintained, the national telecommunication network through which the files are accessed by criminal justice

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<sup>2</sup>National Crime Information Center, *The Investigative Tool, A Guide to the Use and Benefits of NCIC*, U.S. Department of Justice, Federal Bureau of Investigation, Washington, D.C., June 1984, p. 7.

<sup>3</sup>For example, the August 25, 1985 edition of the *New York Times* contained an article by David Burnham entitled "FBI Says 12,000 Faulty Reports on Suspects Are Issued Each Day." See also *The Rise of the Computer State*, by David Burnham, Vintage Books, New York, N.Y., 1984.

agencies throughout the country, and the procedures for using the system and maintaining data quality (Part I). It also describes the parallel files maintained by the states and municipalities and the way in which these state and local systems operate in conjunction with the FBI's national system (Part II). Part III discusses federal and state laws dealing with the establishment and operation of hot file systems and Part IV discusses court decisions that have dealt with issues affecting the maintenance and use of hot file information, including the duty of criminal justice officials to maintain complete and accurate records, the risk of liability for wrongful maintenance or use of hot file information and the question of the legality of arrests based on invalid or inaccurate hot file information.

It is hoped that this document will provide a useful introductory look at these important information systems and will at least identify some of the difficult problems faced by system managers and criminal justice policymakers in attempting to ensure the effectiveness and reliability of the systems.

## PART I

### THE NATIONAL HOT FILES SYSTEM

#### THE NCIC NETWORK

The national hot files are maintained by the Federal Bureau of Investigation as part of its National Crime Information Center, generally referred to as "NCIC."<sup>4</sup> NCIC is a nationwide computerized criminal justice information system established in 1967 to provide an automated filing system of documented criminal justice information available to criminal justice agencies throughout the country. In addition to the hot files, NCIC also includes a U.S. Secret Service Protective File, an Unidentified Persons File and the Interstate Identification Index, which is a computerized index of state criminal history records maintained by the state central record repositories and records of federal offenders maintained by the FBI.<sup>5</sup> These files are outside of the scope of this report.

The NCIC computer equipment is located at FBI Headquarters in Washington, D.C. Connecting terminals are located throughout the United States, Canada, Puerto Rico and the U.S. Virgin Islands, in police departments, sheriff's offices, state police facilities, federal law enforcement agencies and other

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<sup>4</sup>NCIC was established and is maintained pursuant to 28 USC §534 and 28 CFR Part 20. (See Part III of this report.)

<sup>5</sup>Throughout much of the 1970's NCIC also maintained a Computerized Criminal Histories File, known as "CCH," which included arrest and disposition data on federal offenders and on state offenders to the extent that such information was forwarded to the FBI by state and local criminal justice agencies. CCH was phased out when the testing and implementation of the III system began and the remaining CCH records were merged into the FBI's Federal Offender File and the Automated Identification Division System files. SEARCH Group, Inc. has published numerous documents dealing with the III system and with various legal and policy issues concerning the state and federal criminal history records that are indexed in the system and are available to criminal justice agencies throughout the country through NCIC.

criminal justice agencies. The system provides virtually uninterrupted service 24 hours a day, 7 days a week.

The FBI is responsible for the operation of the computer center located in Washington, D.C., including equipment, programming and personnel costs. In addition, the costs of dedicated telecommunications lines and modems that link the NCIC computer to federal agencies and to central Control Terminal Agencies (CTAs) in each state are borne by the FBI. Telecommunications lines and equipment that link criminal justice agencies within each state to the state's control terminal are provided by the states and by participating criminal justice agencies. Each state's Control Terminal Agency is responsible for observance of NCIC rules and policies by the CTA and by all of the agencies it services. Figure 1 shows the location of the State Control Terminal Agencies and indicates the NCIC regions into which they are divided: Northeastern, Southern, North Central and Western.

Local agencies that do not have an NCIC terminal (including many small rural agencies throughout the country) can access NCIC through an agency that does have terminal access. Dispatchers with terminal access can inquire for and respond by radio to law enforcement officers on the street. Some agencies utilize mobile terminals—vehicle-mounted terminals that enable officers to inquire directly from their units into NCIC and state data banks. To ensure prompt responses to users, NCIC and the state CTAs have established response-time standards that require responses to be returned within seconds.

## NCIC POLICY DIRECTION

NCIC operates as a cooperative federal-state venture, with policy set by the FBI on the basis of input by participating state agencies. This input is provided through the NCIC Advisory Policy Board (APB) which is composed of 30 members representing criminal justice agencies and criminal justice associations throughout the country. Twenty members are elected for two-year terms by the state Control Terminal Operators. Of these, five members (four state members and one local member) are elected from each of the four NCIC regions. Six members are appointed by the Director of the FBI for two-year terms (two representing the judiciary, two representing prosecutory agencies and two representing correctional



**Figure 1. NCIC State Control Terminal Agencies**

**1. Northeastern States and District of Columbia (11)**

Connecticut: State Police (Hartford)  
Delaware: State Police (Dover)  
Maryland: Dept of Public Safety and Correctional Services (Pikesville)  
Massachusetts: Dept of Public Safety (Boston)  
New Hampshire: Dept of Safety (Concord)  
New Jersey: Dept of Public Safety (Trenton)  
New York: Division of Criminal Justice Services (Albany)  
Pennsylvania: State Police (Harrisburg)  
Pennsylvania: State Police (Philadelphia)  
Rhode Island: State Police (North Scituate )  
Vermont: Dept of Public Safety (Montpelier)  
Washington, D.C.: Metropolitan Police Department

**2. Southern States (13), Commonwealth of Puerto Rico  
and Virgin Islands**

Alabama: Criminal Justice Information Center (Montgomery)  
Arkansas: Dept of Public Safety (Little Rock)  
Florida: Dept of Law Enforcement (Tallahassee)  
Georgia: Bureau of Identification (Atlanta)  
Kentucky: State Police (Frankfort)  
Louisiana: Dept of Public Safety (Baton Rouge)  
Mississippi: Dept of Public Safety (Jackson)  
North Carolina: Dept of Justice (Raleigh)  
Oklahoma: Dept of Public Safety (Oklahoma City)  
Puerto Rico: Police of Puerto Rico (San Juan)  
South Carolina: Law Enforcement Division (Columbia)  
Tennessee: Criminal Justice Information System (Nashville)  
Virginia: State Police (Richmond)  
Virgin Islands: Dept of Public Safety (Charlotte Amalie)  
West Virginia: Dept of Public Safety (Charleston)

### 3. North Central States (12)

Illinois: Dept of Law Enforcement (Springfield)  
Indiana: State Police (Indianapolis)  
Iowa: Dept of Public Safety (Des Moines)  
Kansas: Highway Patrol (Topeka)  
Michigan: State Police (East Lansing)  
Missouri: State Highway Patrol (Jefferson City)  
Minnesota: Bureau of Criminal Apprehension (St. Paul)  
Nebraska: State Police (Lincoln)  
North Dakota: Radio Communications Dept (Bismark)  
Ohio: State Highway Patrol (Columbus)  
South Dakota: Division of Criminal Investigation (Pierre)  
Wisconsin: Dept of Justice (Madison)

### 4. Western States (14)

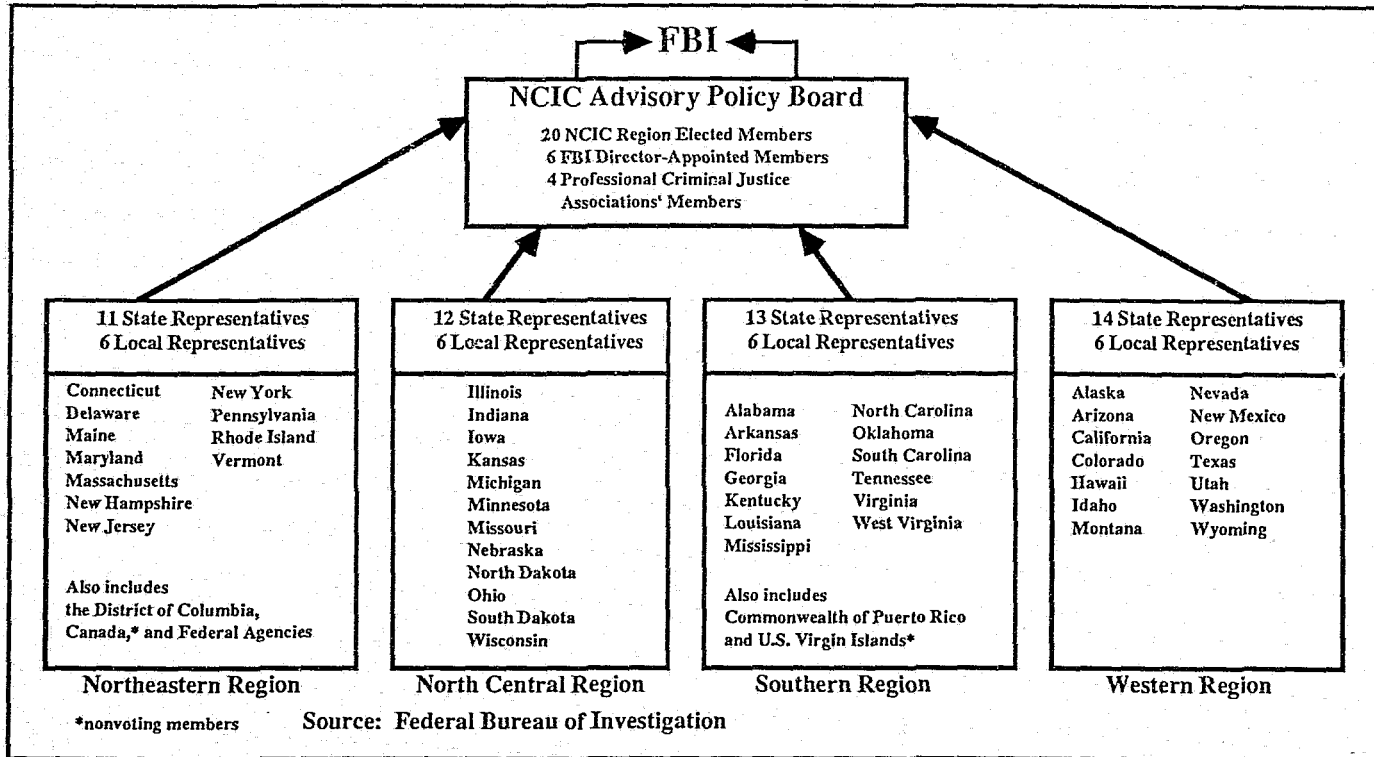
Alaska: Justice information System (Anchorage)  
Arizona: Dept of Public Safety (Phoenix)  
California: Dept of Justice (Sacramento)  
Colorado: Bureau of Investigation (Denver)  
Hawaii: Honolulu Police Dept  
Idaho: Dept of Law Enforcement (Boise)  
Montana: Dept of Justice (Helena)  
Nevada: Highway Patrol (Carson City)  
New Mexico: State police (Sante Fe)  
Oregon: Law Enforcement Data System (Salem)  
Texas: Dept of Public Safety (Austin)  
Utah: Dept of Public Safety (Salt Lake City)  
Washington: State Patrol (Olympia)  
Wyoming: Criminal Identification Division (Cheyenne)

*Note: NCIC also has direct computer-to-computer links with several large cities, with the Royal Canadian Mounted Police in Ottawa, and with a number of federal agencies located in Wasington, D.C. Other federal agencies have access to NCIC through the state control agencies in the states in which they are located.*

agencies). The four additional members are executive-level representatives designated by the International Association of Chiefs of Police, the National Sheriff's Association, the National District Attorneys' Conference and the National Probation and Parole Association. The chairman of the APB, who is elected by the members, must be one of the 20 elected state or local members. Figure 2 shows the NCIC policy structure and the makeup of the four regions.

The APB meets at least twice a year to consider issues originating from periodic regional meetings, NCIC participants meetings, technical meetings, or from the FBI/NCIC staff. The APB's authority is advisory only—that is, it may recommend policy to the FBI Director, but it does not have the authority to direct that the policy be implemented. In practice, the recommendations of the APB usually, but not always, are accepted and implemented.

Figure 2. NCIC Policy Structure



## CONTENT OF THE NCIC FILES

The NCIC hot files contain identifying information concerning wanted and missing persons, stolen vehicles and identifiable stolen property of several types. The information is entered into the system by the originating agency—the agency holding the arrest warrant, the missing person report or the theft report. Originating agencies are primarily responsible for the validity, timeliness, accuracy and completeness of the data they enter, although, as explained in some detail below, the FBI and the Control Terminal Agencies have established policies and implemented procedures that are designed to help maintain the integrity and quality of NCIC system records.

The following paragraphs describe the wanted person, missing person, stolen vehicle and stolen property files maintained by NCIC.<sup>6</sup>

**Wanted Persons.** This file includes identifying information on persons for whom federal warrants, or state warrants for felonies or serious misdemeanors, are outstanding, including parole and probation violators and juveniles who will be tried as adults. Juvenile escapees and juvenile probation and parole violators may be included, and juveniles charged with acts of delinquency may be entered by agencies in the 36 states that have signed the Rendition Amendment to the Interstate Compact on Juveniles. In addition, "temporary felony want" records may be entered when a law enforcement agency needs to take prompt action to apprehend a person who has committed, or is reasonably believed to have committed, a felony and circumstances prevent the immediate acquisition of a warrant. The record format for wanted person entries permits the inclusion of caution messages indicating that the person is "armed and dangerous" and also permits the entry of the vehicle identification number (VIN) and license plate number of any vehicle that the entering agency has reason to believe is being operated by the wanted person. In such cases, the wanted person records can be accessed by inquiries on the VINs or license plate numbers.

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<sup>6</sup>The information presented here was obtained from the NCIC Operating Manual and other documents published by the FBI and from NCIC officials and staff.

**Missing Persons.** This file is used almost exclusively by state and local criminal justice agencies to assist in the location of missing juveniles. However, the file contains identifying information on persons of any age who have been reported missing and are (1) under proven physical or mental disabilities that might subject them or other persons to danger, (2) in the company of other persons under circumstances suggesting that they are in danger, (3) possibly abducted or kidnapped, or (4) possible catastrophe victims. Like the wanted person files, these files may include the VIN or license plate numbers of vehicles which the missing persons may be operating or in which they may be passengers, and the files can be accessed by inquiries on these numbers.

**Stolen Vehicles.** This file includes identifying information on stolen vehicles, vehicles involved in the commission of felonies ("felony vehicles") and stolen major component vehicle parts. For NCIC purposes, a vehicle is any motor-driven conveyance designed to carry its operator (except boats, which are entered in the stolen boat file), including aircraft, trailers, motorcycles, snowmobiles, all-terrain vehicles, and motorized mobile construction equipment and farm and garden equipment.

When NCIC receives any entry indicating that a vehicle registered in one state has been reported stolen in another state or has been reported by another state to be possibly associated with a wanted or missing person, the NCIC computer automatically notifies the state of registry of the entry and of subsequent modifications to or cancellation of the entry. This Out-of-State Registry Program, in which all except three states participate, significantly reduces NCIC system traffic by making it possible for state computer systems to respond at the state level to inquiries concerning vehicles registered in particular states, whether stolen within that state or in another state, without having to query the NCIC stolen vehicle file. It also enables the states of registry to flag these entries in their own files (including department of motor vehicle files) so that subsequent inquiries or actions concerning these vehicles will elicit responses indicating the existence of out-of-state stolen vehicle or wanted or missing person entries relating to those vehicles.

**Stolen License Plates.** This file contains information relating to stolen vehicle license plates. In two-plate states, entries are limited to instances when both plates have

been stolen or the entering agency can be assured that the owner will not use the remaining plate. The Out-of-State Registry Program also applies to stolen license plates.

**Stolen Guns.** This file is used to store information concerning stolen guns and guns that have been abandoned, seized or found. Only serially numbered guns may be entered. For NCIC purposes, a gun is any weapon which will, or is designed to or may readily be converted to, expel a projectile by air, carbon dioxide or the action of an explosive. Included are pistols, rifles, shotguns, machine guns and cannons. Also included are weapon frames or receivers and mufflers or silencers. Grenades, mines, missiles, rockets and other such destructive devices are included.

**Stolen Boats.** This file contains information relating to stolen boats, boat trailers or boat parts that are uniquely identifiable by registration number, document number, permanently-affixed hull serial number or owner-applied number. For NCIC purposes, a boat is any vessel for transport by water, constructed to provide buoyancy and shaped to give stability and permit propulsion.

**Stolen Securities.** This file includes information on certain types of serially numbered securities that have been stolen, embezzled or counterfeited. For NCIC purposes, securities include currency, certificates of property ownership or debt, documents which represent subscription rights, or other documents or certificates traded in securities exchanges in the United States, except for commodities futures. Included are U.S. Notes; Federal Reserve Notes; Silver Certificates; Treasury-issued bills, bonds and notes; municipal and corporate bonds; common or preferred stock; and stock warrants or stock rights. *Excluded* are personal notes, checks (whether personal, company, governmental, or bank-issued), credit cards, gold and silver coins, gift certificates, and savings and checking account passbooks.

**Stolen Articles.** This file contains information relating to stolen property which can be uniquely identified by manufacturer's serial number or owner-applied number, and which does not meet the entry criteria for any of the other NCIC property files. An item of stolen property can be entered in this file if (1) the item is valued at \$500 or more, (2) regardless of value, if the item is one of several items stolen in one theft and the value of all items stolen exceeds \$5,000, or (3) regardless of

value, if the circumstances of the theft indicate that there is a probability of interstate movement or the seriousness of the crime indicates that an entry should be made for investigative purposes. Records entered in the articles file include automotive accessories, bicycles, camera equipment, measuring devices and tools, household appliances, musical instruments, office equipment, personal accessories, jewelry, radios, television sets, sound entertainment devices, sports equipment and viewing equipment.

**Canadian Arrest Warrants.** This file contains information relating to outstanding Canadian-issued warrants. The data in this file is entered and kept current by Canadian criminal justice officials. A user making an NCIC inquiry and receiving a hit on a Canadian entry is advised in a caveat included in the response message that no arrest can be made in the United States based on the Canadian warrant. The inquiring agency is directed to contact the Royal Canadian Mounted Police to initiate the process for obtaining a U.S. extradition warrant. If the subject of the record is not a U.S. citizen, the inquiring agency also is directed to contact the nearest office of the U.S. Immigration and Naturalization Service.

Figure 3 shows the various NCIC files and the years of implementation. Figure 4 shows the continuous growth in NCIC yearly transactions over the 18 years the system has been operational. Figure 5 shows the breakdown among the various files of the 17,869,605 records that were on file as of August 1, 1986, and shows the relative sizes of the files. It should be borne in mind that records are continuously being entered into the system and removed from the files when no longer timely or valid (when wanted or missing persons are arrested or located, when stolen vehicles and property are recovered, or when records are cancelled or purged pursuant to the system's retention schedule); thus, the total number of records in the system during a given year will be much greater than the number on file at any given time.

## USE OF THE SYSTEM

Any record entered in the NCIC system is required to be supported by documentation in the possession of the entering agency. The documentation required is (1) a warrant for the

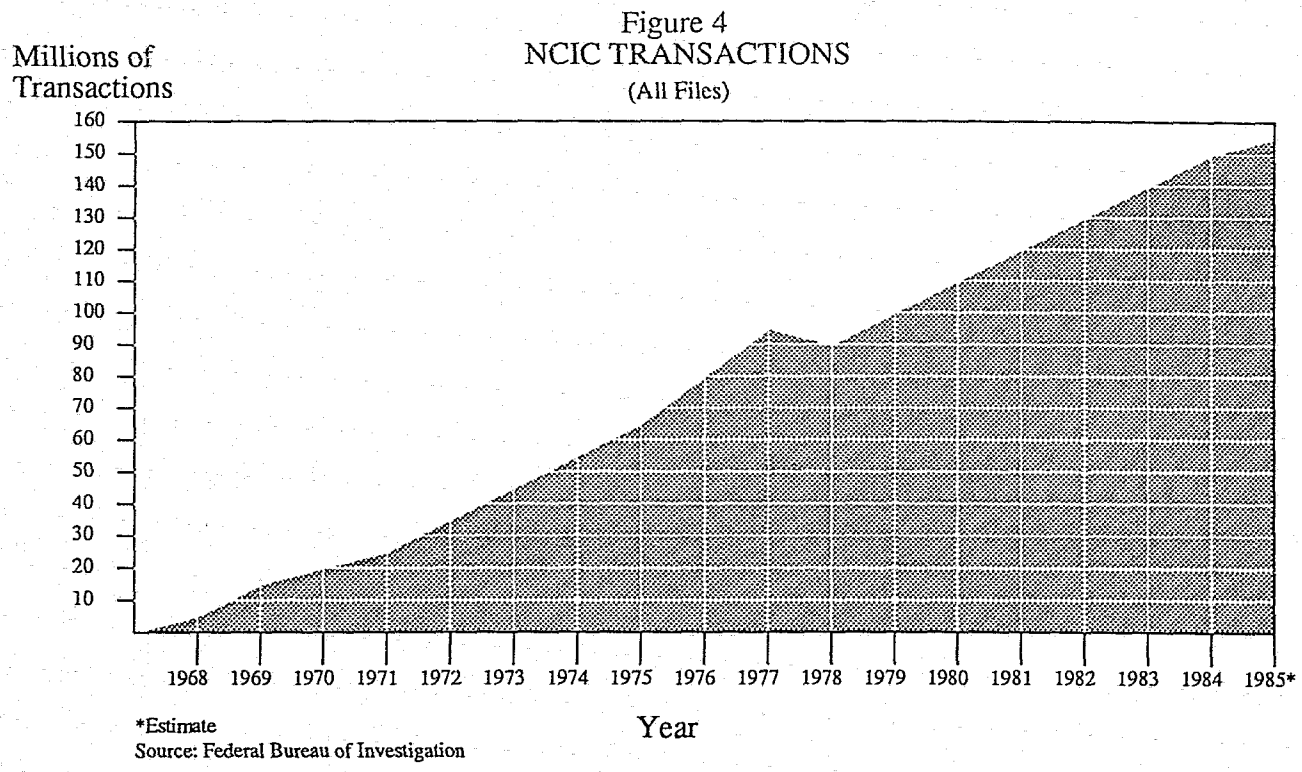


**Figure 3. NCIC Files**

**NCIC INFORMATION BASES**

<b>File</b>	<b>Year of Implementation</b>
Stolen Vehicles	1967
Stolen Articles	1967
Stolen or Recovered Guns	1967
Stolen Licence Plates	1967
Wanted Persons	1967
Stolen Securities	1968
Stolen Boats	1969
Missing Persons	1975
Canadian Warrants	1980
Interstate Identification Index	1983
U.S. Secret Service Protective	1983
Unidentified Persons	1983

Source: Federal Bureau of Investigation



**Figure 5. NCIC File Sizes**

**INFORMATION BASES**  
**Records on File (17,869,605)\***

<b>File</b>	<b>No. Records</b>	<b>Percentage</b>
Interstate Identification Index	10,102,212	56.53
Stolen Securities	2,168,841	12.14
Stolen or Recovered Guns	2,066,211	11.56
Stolen Articles	1,391,891	7.79
Stolen Vehicles	1,194,429	6.68
Stolen Licence Plates	616,431	3.54
Wanted Persons	249,374	1.40
Missing Persons	52,736	.30
Stolen Boats	25,857	.14
Unidentified Persons	1,309	<.10
Canadian Warrants	253	<.10
U.S. Secret Service Protective	61	<.10

\*August 1, 1986

Source: Federal Bureau of Investigation

arrest of a wanted person, (2) a missing person report for a missing individual, and (3) a theft report for items of stolen property. Every record entered is required to contain at least (1) the identity of the agency entering the record; (2) the agency's case number; (3) the date of theft for stolen property, the date that the arrest warrant was issued for a wanted person, or the date of last contact for a missing person; and (4) other specific information such as serial numbers and descriptive data for stolen property and identifying numbers and descriptive data for wanted or missing persons.

In order to make an entry or an inquiry, the terminal operator must furnish the computer with a standardized, coded description of the transaction to be processed (entry, modification, cancellation or inquiry, for example) and must provide an NCIC-assigned code that identifies the agency, referred to as the originating agency identification number or ORI. Then the pertinent information concerning the substance of the entry or inquiry is furnished in an established order and format. If the transaction is a record entry, the computer automatically stores the information and acknowledges that it has been recorded. If the transaction is an inquiry of a particular file, the computer will conduct the necessary search or searches and furnish a response including any matched information found or a negative response if no matching record is found. As noted earlier, these responses are processed and returned to the inquiring agencies within seconds.

An inquiry may be made of the wanted person and missing person files and the Canadian warrant file by providing the name of the person inquired upon and at least one numeric identifier. Numeric identifiers include date of birth, FBI number, originating agency case number, Social Security number, operator's license number and various miscellaneous identification numbers (military serial number, passport number, Selective Service number, Veterans Administration claim number, Canadian Social Insurance Number, for example).

The stolen vehicle file can be inquired upon by providing the vehicle identification number and make of the vehicle in question or its license plate number and the state, province or country of registration. The stolen license plate file can be inquired upon by providing a license plate number and the state, province or country of registration.

The other stolen property files (articles file, boat file, gun file and securities file) can be inquired upon by indicating the type of property involved and providing a serial number, owner-applied number, registration/document number, or (for the securities file) the name of the owner or the owner's social security number.

An inquiry of one file may automatically trigger searches of other files. For example, any inquiry containing a name and a numeric identifier will cause an automatic search of the wanted person file, the missing person file and the Canadian warrants file. Any inquiry containing a vehicle identification number will automatically cause a search of vehicle identification numbers entered in the wanted person file, the missing person file, the Canadian warrants file, the vehicle file and the boat file. Any inquiry containing a license plate number will automatically cause a search of the license plate numbers entered in the license plate file, the wanted and missing person files, the Canadian warrants file, the vehicle file and the boat file.

As of September 1985, NCIC was processing an average of 403,230 hot file inquiries daily. Figure 6 shows the number and percentage of inquiries against the various hot files as of September 1985. Figure 7 shows the average daily total transactions (including inquiries, record entries, cancellations and other traffic) as of September 1985. It is clear from these figures that the stolen vehicle file and the wanted person file account for about 95 percent of all hot file inquiries and about the same percentage of all hot file system traffic, which includes record entries, modifications and cancellations. Indeed, FBI officials have expressed concern about the under-utilization of some of the stolen property files and have undertaken efforts to encourage greater use of these files.

In addition to the on-line inquiries described above, NCIC will, upon request, make off-line searches when insufficient information is available to make a terminal inquiry. Off-line searches can be made on non-unique personal descriptors such as sex, height, weight, estimated age and hair coloring to identify wanted or missing persons or on a partial vehicle identification number to identify a vehicle. Gun make, article type, securities descriptors, date of theft and date of warrant also can be used as search parameters. Searches can be made on active records, inactive (historical) records and past transaction logs. Searches can be limited to particular time

**Figure 6. NCIC Hot Files Inquiries**

**AVERAGE DAILY HOT FILES INQUIRIES**  
**403,230\***

<b>File</b>	<b>No. Inquiries</b>	<b>Percentage</b>
Wanted and Missing Persons	216,453	53.68
Stolen Vehicles and Licence Plates	167,435	41.52
Stolen Articles	9,045	2.24
Stolen Guns	8,688	2.15
Stolen Boats	1,208	.30
Stolen Securities	355	<.10
Unidentified Persons	46	<.10

\*September 1985

Source: Federal Bureau of Investigation

**Figure 7. NCIC System Transactions**

**AVERAGE DAILY TRANSACTIONS (ALL FILES)**  
**457,527\***

<b>File</b>	<b>No. Inquiries</b>	<b>Percentage</b>
Wanted Persons	218,704	47.80
Stolen Vehicles	174,058	38.04
Interstate Identification Index	37,941	8.29
Stolen Articles	11,402	2.49
Stolen Guns	9,716	2.12
Missing Persons	2,375	.52
License Plates	1,330	.29
Stolen Boats	1,263	.28
Stolen Securities	687	.15
Unidentified Persons	51	.01

\*September 1985

Source: Federal Bureau of Investigation

frames and to records and transactions of particular jurisdictions. Some state Control Terminal Agencies are equipped to conduct off-line searches of state files.

During 1985, NCIC received requests for 2,189 investigative off-line searches. In an FBI survey of requesting agencies undertaken to assess the usefulness of these searches, survey responses returned by 13 percent of the surveyed agencies indicated that the searches resulted in the arrest of 183 persons and the recovery of stolen property valued at \$2.1 million.

## **QUALITY CONTROL PROCEDURES**

Since the information contained in the hot files is extremely sensitive, there is good reason to take care to ensure that the records are accurate, complete and timely. This is important both from the standpoint of law enforcement officials who must rely upon the information in making critical decisions affecting their safety and the rights of citizens with whom they deal, as well as from the point of view of persons whose names and identifying data are contained in the records and who may be subjected to detention or arrest as a result of reliance upon the information. In an effort to promote record quality and integrity, NCIC system rules include detailed procedures designed to ensure that information entered into the files is accurate and complete and that records are corrected when found to be inaccurate and are removed from the system when they are no longer valid. These procedures are reflected both in the day-to-day use of the system for entering records and making inquiries, as well as in a systematic quality control program implemented by NCIC personnel and the state Control Terminal Operators.

### **System-Use Procedures**

These procedures, which are incorporated in the rules governing use of the NCIC system, are intended to ensure that user agencies enter only accurate, complete and timely information, that inquiring agencies confirm the accuracy and validity of information received from the system (by contacting the entering agency) before relying upon it, that records are removed from the system when wanted or missing persons have been located or when stolen vehicles or property have been



recovered, and that records are cancelled when they are no longer valid, such as when warrants are served or withdrawn.

**Record Entry Procedures.** A record may be entered in the hot files only by the criminal justice agency directly involved with the offense or event that is the basis for the record entry. For example, an entry in the wanted person file may be made only by the agency that issued the arrest warrant or the agency holding the warrant for service. An entry in the stolen property files may be made only by the agency holding the theft report and having primary jurisdiction over the place of actual theft. An entry in the missing person file may be made only by the agency holding the missing person report. An exception to these rules is made for agencies that do not have telecommunications equipment. In such a case, another criminal justice agency or regional dispatch center may enter the record, but the record is required to bear the ORI of the non-terminal agency unless there is a written agreement between the two agencies which delineates the legal responsibility for the record.

As noted previously, NCIC policy states that entering agencies are primarily responsible for the accuracy, completeness and timeliness of records they enter into the system. To help ensure accuracy, the rules require that entering agencies make cross-checks whenever possible (by checking vehicle identification numbers and license plate numbers with state departments of motor vehicles, for example) and that record data be double-checked by a third party or by the case officer before it is entered into the system in order to ensure that the NCIC record matches the data in the investigative report and other source documents.

All record entries and modifications are subjected to a series of automatic edits by the NCIC computer, and by Control Terminal Agencies that have the computer equipment to perform such edits, to ensure that all mandatory data fields are properly filled and that the information does not contain any apparent errors. If these edits detect missing information or apparently erroneous information, the entry is rejected and an error message identifying the type of error is returned to the entering agency.

NCIC policy includes specific requirements concerning the inclusion of extradition information in wanted person records. The entering agency is required to determine, to the maximum extent possible, whether and under what circumstances extradition will be authorized if the individual is

apprehended in another state. If the agency knows that extradition will not be authorized, the record is not permitted to be entered into the NCIC system. If at the time of entry there is a known limitation concerning extradition of the individual, this data is required to be placed in the record. The record may indicate, for example, that extradition will be authorized only from adjacent states, from west or east of the Mississippi, or from jurisdictions within a specified distance from the entering agency. It is recognized, however, that extradition is not necessarily a law enforcement decision and thus it may not be possible for the entering agency to forecast extradition policy. In such cases, the wanted person entry is permitted, but the record is required to be cancelled or modified if the entering agency later learns that extradition will not be authorized or will be authorized only within limits.

**Hit Confirmation.** When a positive response to an inquiry of the NCIC hot files is received, the agency receiving the "hit" is required to immediately contact the agency that entered the record to confirm that the person or property inquired upon is identical to the person or property in the record received and to ensure that the status of the arrest warrant, missing person report or theft report has not changed. These contacts may be made by telephone, by means of the National Law Enforcement Telecommunications System (NLETS) or by other means. The originating agency is required by NCIC rules to respond *within ten minutes*, indicating a positive or negative confirmation or a notice of the specific amount of time within which a confirmation will be provided. Agencies that enter records in NCIC are required to provide hit confirmations at any time, day or night. If the agency is not manned 24 hours a day, it must include in its NCIC records the phone number of another agency to contact for hit confirmation information.

With respect to the wanted person file, confirmation of hits entails not only verifying that the individual inquired upon is identical to the record subject and that the warrant is still outstanding, but also ascertaining whether or not the individual will be extradited. If extradition information is not readily available, the originating agency is required to respond within ten minutes indicating how much additional time will be required to obtain the information. Failure of agencies to comply with the hit confirmation policy can lead to cancellation of their NCIC

records and persistent noncompliance can result in denial of access to the system.

**Clearance and Cancellation of Records.** If an agency that has entered a record into NCIC subsequently apprehends the wanted person or locates the missing person who is the subject of the record or recovers stolen property it has entered into the system, it is required to immediately "clear" the record from the system. The entering agency must also clear such records if it is officially advised that the person has been located or apprehended or the property has been recovered by another agency. Cleared records are immediately removed from the system.

If an agency other than the entering agency locates or apprehends a missing or wanted person or recovers a stolen vehicle or stolen property indexed in NCIC, it is required to immediately transmit a "locate" message to NCIC. NCIC records the locate notice on the record and notifies the entering agency, which then is required to clear the record. If no clearance message is received by NCIC, however, the record is removed ten days after the locate message is recorded.

Exceptions to these rules apply to both the wanted person file and the missing person file. A missing person record is purged immediately upon receipt of a locate message. An agency that locates or apprehends a wanted person indexed in NCIC is required to obtain extradition information from the entering agency, as noted previously, and this information must be included with the locate message sent to NCIC. A wanted person record to which one locate notation has been appended indicating that the subject will *not* be extradited is removed from the files immediately upon receipt of a second locate message. A record to which one locate notation has been appended indicating that the subject *will* be extradited is removed five days after receipt of the locate message or immediately upon receipt of a second locate message. If an entering agency declines to extradite an apprehended wanted person because of the distance involved but determines that extradition would be authorized if the wanted person were apprehended in a nearer jurisdiction, it is required to cancel the record and enter a new record with the extradition limitation noted.

If an agency that has entered a record in NCIC determines that the record is no longer valid, it is required to immediately cancel the record. A wanted person record must be

cancelled, for example, when the warrant which is the basis for the record has been dismissed or when a decision has been reached not to extradite the individual. A missing person record must be cancelled when the parent or legal guardian of the individual withdraws the missing person report. Stolen vehicle or stolen property reports must be cancelled if the entering agency learns that the theft report was false or fictitious. Cancelled records are removed from the system immediately upon receipt by NCIC of the cancellation notices.

## **NCIC Quality Control Procedures**

In addition to the above procedures that are part of the routine use of the NCIC system for entering records and making inquiries, NCIC has an ongoing quality control program designed to discover erroneous or invalid records and to correct or cancel them. NCIC also has a field audit program designed to assess data quality and policy compliance within the state Control Terminal Agencies and the local law enforcement agencies they service.

**Periodic Record Reviews.** NCIC personnel in Washington periodically check randomly selected sample records to assess record quality. Errors discovered during these reviews are classified as serious or nonserious depending upon whether the error would be likely to cause the record to be missed in a file search or might result in the false arrest or improper detention of an individual or the improper seizure of property. In the case of nonserious errors, NCIC personnel contact the appropriate state Control Terminal Agencies requesting that corrective action be instituted by the originating agency or agencies. Serious errors, however, result in the cancellation of the affected records. Serious errors arise from the entry of records in the wrong file or from the inclusion of certain kinds of apparently erroneous or inappropriate information. For example, inclusion in a wanted person record of information indicating that the individual will not be extradited or will be extradited only if apprehended within the state in which the entering agency is located is a serious error. Another type of serious error occurs if stolen property records are entered with nonunique identification numbers. The NCIC manual sets out a list of errors that are classified as serious. When such errors are discovered, NCIC cancels the affected records and

advises the appropriate Control Terminal Agencies and the originating agencies so that they can correct the errors and re-enter the records.

**Record Validation.** NCIC periodically prepares listings of records to be validated by the agencies that entered them to ensure that they are accurate, complete and current. These listings are mailed to the appropriate state Control Terminal Agencies, which forward them to the appropriate originating agencies for validation by comparison with supporting documentation and by contacts with complainants, victims, law enforcement officials, courts, motor vehicle registry files or other appropriate persons or sources. The validation schedule is designed to provide for the validation of 1/12 of the records in each file (except the stolen articles file<sup>7</sup>) each month. Records are included on the validation lists during the third month they are on file and annually thereafter until they are cleared or cancelled. Thus, any record entered during the month of January will be included on the validation list the next April and in April of every year thereafter. In this way, all hot file entries are validated annually and the workload is spread evenly throughout the year.

Control Terminal Agencies are required to immediately acknowledge, in writing, receipt of validation lists. They must then obtain written certifications from their originating agencies stating that all records on the lists which are no longer current have been cancelled and that all listed records remaining in the system are valid, accurate and complete. The Control Terminal Agencies must, within 45 days, certify to NCIC in writing that all validation certifications have been received. If any originating agency fails to provide a certification response, the Control Terminal Agency is required to cancel all of that agency's records included on the validation list.

**Retention Schedule.** NCIC has a record retention schedule designed to ensure that stale records do not remain in the files. Records are removed upon the expiration of the applicable retention periods, which vary according to the particular file and type of record, unless sooner cancelled or

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<sup>7</sup>Due to the short retention period for stolen article entries, these records are not included on the validation lists.

cleared. These retention periods have been established to reflect the operational needs and experiences of criminal justice agencies, based upon discussions at NCIC working group meetings. The retention periods are as follows:

*Wanted person, missing person and Canadian warrant records* remain on file until cleared or cancelled by the originating agency. *Temporary felony want records* are removed from the file after 48 hours.

*Stolen vehicle records* which contain a vehicle identification number (VIN) or owner applied number (OAN) and *stolen vehicle part records* which contain an OAN or serial number remain on file for the year of entry plus four years. Vehicle records which do not contain a VIN or OAN are removed 90 days after entry. *Felony vehicle records* remain on file 90 days after entry.

*Stolen license plate records* remain on file for one year after the end of the plate's expiration year. Records for nonexpiring license plates remain on file for the year of entry plus four years.

*Stolen boat records* remain on file for the balance of the year of entry plus four years. Records without a boat hull number or OAN remain on file for 90 days after entry.

*Stolen gun records* remain on file until the originating agency clears or cancels the record. *Recovered gun records* remain on file for the balance of the year of entry plus two years.

*Stolen article records* remain on file for the balance of the year of entry plus one year.

*Stolen securities records* remain on file for the balance of the year of entry plus four years, except that records of stolen traveler's checks and money orders are retained for the balance of the year of entry plus two years.

**NCIC Field Audit Program.** In 1984, NCIC implemented a nationwide audit program for the purpose of assessing data quality within the system and monitoring policy compliance by the state Control Terminal Agencies and the originating agencies. NCIC has established the goal of auditing each Control Terminal Agency every other year. Results of the audits are included in draft reports provided to the Control Terminal Agencies for their review and comments. Their responses concerning audit findings and recommendations are included in the final audit reports. As of May 1, 1986, NCIC had conducted 19 audits of state CTAs. Final reports had been

issued for audits in Alabama, Arizona, Idaho, New Jersey, Oregon, Rhode Island, South Carolina, Wisconsin and Wyoming. Results of these audits are discussed in the next section of this report.

**Training.** NCIC also has established a training program to provide assistance to state and local criminal justice personnel in understanding the NCIC system and using it properly. To the extent that the availability of staff permits, NCIC provides trainers, upon request, for participation in state-sponsored training sessions. During 1985, training sessions were conducted in 5 states—Alabama, Missouri, Nevada, Oklahoma and Rhode Island. Training curricula have been developed for terminal operators and for administrative and investigative personnel. The training program for terminal operators is a two-day session covering such subjects as system security, data quality procedures, reliance on NCIC information in establishing probable cause for arrest, and legal liability for record mishandling. The sessions also include in-depth discussions of each of the NCIC hot files, covering such things as entry criteria, retention periods, hit confirmations and record validations. The training program for investigative and administrative personnel is a less intense one-day session covering the development and organization of the NCIC files, system usage, quality control procedures and the availability of special services such as off-line investigative searches.

NCIC concentrates its limited staff resources on the training of state-level personnel and relies upon state officials to provide training for local user agencies. In this regard, NCIC has adopted a policy requiring each state that does not have a training program for user agencies to establish such a program by the end of 1986.

## **QUALITY OF NCIC DATA**

As noted in the previous section, as of May 1, 1986, NCIC audit personnel had conducted audits in 19 states and had issued final audit reports for 9 states: Alabama, Arizona, Idaho, New Jersey, Oregon, Rhode Island, South Carolina, Wisconsin and Wyoming. (Other audits conducted during 1985 and 1986 have not yet been finalized and released, according to NCIC officials.) Each audit consisted of a review of the policies of the CTA and a local agency review involving at least 12 agencies

served by the CTA, including major agencies and randomly selected smaller agencies. The reviews at the state level are designed to assess compliance with NCIC policy concerning (1) dissemination of NCIC policy information to users, (2) quality assurance, (3) security, and (4) training. For the local agency reviews, statistically valid samples are drawn from records the agencies have entered in the wanted person, missing person and stolen vehicle files. These records are checked against agency and court records and complainants are contacted to determine whether the records are accurate and valid.

Although it is perhaps inappropriate to draw conclusions about the overall quality of NCIC data based on these few audits, the results do suggest rather clearly that (1) there is a wide disparity among some of the states with regard to the quality of data entered into NCIC, and (2) some of the states and particularly some local agencies do not consistently follow NCIC data quality procedures with the result that entries from these jurisdictions have unacceptably high levels of inaccuracy and invalidity.

The audits in Arizona, New Jersey, Oregon and Wisconsin indicated that the quality of entries from those states is generally quite high. Of 376 wanted person entries checked in Arizona, 97 percent were found to be valid and accurate. Five entries were found to be invalid (the warrants had been served or dismissed) and five entries were found to contain serious inaccuracies that might have caused the records to be missed in a file search or misused. Of 611 stolen vehicle entries, 95 percent were valid and accurate. Six were invalid (the vehicles had been recovered or the theft reports had been withdrawn) and 25 had VIN errors. In New Jersey, of 842 wanted person entries checked, 97 percent were found to be valid and accurate (16 were invalid and 4 were inaccurate) and of 1,561 stolen vehicle entries checked, 96 percent were valid and accurate (30 were invalid and 26 were inaccurate). In Oregon, 97 percent of the 413 wanted person entries checked were found to be valid and accurate (3 were invalid and 11 were inaccurate) and 97 percent of the 639 stolen vehicle entries checked were determined to be valid and accurate (7 were invalid and 12 were inaccurate). In Wisconsin, all of the 346 wanted person entries reviewed were found to be valid and accurate and 97.5 percent of the 439 stolen vehicle entries reviewed were found to be valid and accurate (7 were invalid and 4 were inaccurate).



On the other hand, the audits in South Carolina and particularly Alabama revealed higher levels of inaccuracy and invalidity. Of 341 wanted person entries reviewed in South Carolina, 8 percent were found to be invalid or inaccurate (18 were invalid and 10 were inaccurate) and of 828 stolen vehicle entries reviewed, 11 were inaccurate and 49 were invalid, including 30 entries relating to vehicles that had been recovered by the owners but not reported to the entering agencies. In Alabama, of 333 wanted person entries reviewed, 44 (13 percent) were determined to be invalid and another 29 (8 percent) were inaccurate. Another 67 records that were included initially in the auditors' sample had been cleared just prior to, and apparently in anticipation of, the audit. Of 707 stolen vehicle entries from Alabama reviewed by the auditors, 100 were not supported by case files, 27 were invalid and 9 were inaccurate when compared to case files. Another 12 vehicles had been recovered by their owners but not reported to the entering agencies. Ninety-three stolen vehicle entries originally included in the auditors' sample had been cleared just prior to the audit. The auditors also reviewed 453 wanted person entries from the Mobile Police Department that were on file with NCIC at the time of the audit and found that 338 inaccurately indicated the subject's weight to be 499 pounds and his height to be 7 feet 11 inches (in both cases the maximums that can be entered). Some of these records also indicated the subject's hair color to be "XXX" and the subject's date of birth to be "01/01/01."

Of the problems identified by the auditors as contributing to data quality deficiencies, perhaps the most serious is the failure of law enforcement agencies to remove invalid records, particularly wanted person entries when the warrants have been withdrawn or served and stolen vehicle entries when the vehicles have been recovered. This is an especially serious problem because these entries represent a risk that an individual may be wrongfully detained or arrested or a vehicle may be wrongfully seized. Other problem areas included failure of entering agencies to institute procedures for cross checks and third-party review of record data before entering it into the system, failure of some agencies to provide hit confirmations as required by NCIC rules, failure to properly validate records and inadequate audit and training staffs at the state level.

On the basis of these initial audits, it appears that in states where NCIC procedures have been followed, generally

high levels of data quality have been achieved, while in others that have not instituted required data quality procedures and have not followed prescribed system rules, data quality falls below acceptable levels. Although the overall quality of NCIC entries may be quite high, it appears likely that the files do contain an unknown but possibly large number of serious errors which present the possibility of improper arrests and seizures of property.

## PART II

### STATE AND LOCAL HOT FILES

In addition to the national hot files maintained by the FBI, most of the states and many of the larger cities in the country, including some regional associations of jurisdictions, maintain some types of files on wanted persons, stolen vehicles and stolen property. Collectively, these files are vastly more extensive than the national files maintained by NCIC and the volume of inquiries against them is much greater than the total number of inquiries routed to NCIC. Thus these files represent an extremely important component of the nationwide hot files system structure. Remarkably, no recent comprehensive survey of these state and local systems has been undertaken and such a survey is beyond the scope of this report. However, SEARCH has obtained information about some of the state-level systems through previous surveys of the state repositories of criminal history records, many of which also maintain the state hot files and serve as the Control Terminal Agencies for NCIC. This information has been supplemented by additional information obtained through a telephone survey of state information system officials, undertaken for purposes of this report, in order to be able to present a general overview of existing state and local hot file systems. In addition, detailed information was obtained concerning the state-level systems in California and Florida (both of which maintain extensive and sophisticated systems) and the local system maintained in Dade County, Florida (which includes the City of Miami). The description of these systems presented here is intended to provide a general overview of the types of state and local hot file systems maintained throughout the country and the way in which these systems operate in conjunction with the NCIC system. In particular, the descriptions of the Florida state-level system and the Dade County municipal system show how the two systems interact in practice and how they are related to the national NCIC files, both for purposes of record entry and file inquiries.

## NATIONAL OVERVIEW

Most of the states maintain at least some on-line computerized files on wanted and missing persons and/or stolen vehicles and other property. In about one-third of the states, those that maintain sophisticated statewide computerized criminal justice information systems, these files are quite extensive and may include all or most of the file types maintained by NCIC. Many of these state files are quite large, sometimes equalling or exceeding the total number of records maintained in parallel NCIC files for the entire nation. Most of the other states with less sophisticated systems maintain at least wanted person and stolen vehicle files on-line. In addition, many of the large metropolitan jurisdictions in the country maintain automated wanted person and stolen vehicle files, but few maintain automated files for other types of stolen property. In virtually all of the states that maintain state-level hot files, these files are maintained by the same agencies that serve as the Control Terminal Agencies for the NCIC system and usually as the state link to the National Law Enforcement Telecommunications System (NLETS). Thus, an inquiry of the state system usually automatically triggers a search of related NCIC files.

Figure 8 shows the types of on-line hot files maintained by the states. As noted previously, no comprehensive survey of these systems was undertaken and thus the information presented is not necessarily complete. As Figure 8 shows, practically all of the states maintain automated stolen vehicle files. In most cases, these files are essentially mirror images of the entries from those states included in NCIC, since virtually all stolen vehicle reports received by the state systems are forwarded to NCIC. As pointed out earlier in this report, the NCIC Out-of-State-Registry Program provides for notification to a state whenever a vehicle registered in that state is reported stolen or recovered in any other state or is reported in another state to be possibly associated with a wanted or missing person. These notices are filed in the state systems and make it possible for the states to respond to inquiries concerning vehicles registered in-state, whether reported stolen within the state or outside of it, without having to query the NCIC system. In general, the stolen vehicle files are considered to be the most useful and cost-effective of the hot files, at both the state and

Figure 8: State Hot File Systems

State	Wanted Persons	Missing Person	Stolen Vehicles	Stolen Boats	Stolen Guns	Stolen Articles	Stolen Securities
Alabama							
Alaska							
Arizona							
Arkansas							
California							
Colorado							
Connecticut							
Delaware							
District of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois							
Indiana							
Iowa							
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland							
Massachusetts							
Michigan							
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska							
Nevada							
New Hampshire							
New Jersey							
New Mexico							
New York							
North Carolina							
North Dakota							
Ohio							
Oklahoma							
Oregon							
Pennsylvania							
Rhode Island							
South Carolina							
Tennessee							
Texas							
Utah							
Vermont							
Virginia							
Washington							
West Virginia							
Wisconsin							
Wyoming							
Total State Files	41	31	39	19	23	25	9

Source: Telephone survey by SEARCH Group, Inc., of State Control Terminal Officers and other state criminal justice system officials.

national levels,<sup>8</sup> and the volume of inquiries of these files is extremely heavy.

The majority of the states also maintain state-level automated wanted person files, which usually include all of the entries from these states included in NCIC as well as a large number of additional entries that either do not qualify for entry into NCIC or are not forwarded to NCIC as a matter of law enforcement agency discretion. For example, state files may include entries for persons wanted for less serious offenses that are not acceptable for inclusion in NCIC. Entries may also include warrants for wanted persons as to whom the entering agency has indicated that extradition will not be authorized if the fugitives are apprehended in other states. These entries, too, are not acceptable for entry into NCIC, but are properly included in state-level systems. If the issuing agency has indicated that the subject of a warrant is of local interest only, the warrant may be filed only in a local wanted person file and not be forwarded to the state.

The wanted person files are considered by most law enforcement officials to be second only to the stolen vehicle files in usefulness and cost-effectiveness<sup>9</sup> and, for this reason, most warrants reported to the states that qualify for entry into NCIC are entered into the national system. As noted earlier, the wanted person and stolen vehicle files are by far the most utilized of the NCIC hot files and the same is true of the state-level systems. As at the national level, the number of inquiries against stolen property files at the state level constitutes only a small fraction of total system usage.

Indeed, many of the states do not maintain stolen property files (other than stolen vehicles, vehicle plates and vehicle parts), relying instead solely on NCIC. Some of the states that do maintain such files do not maintain separate files for stolen securities or stolen boats, although in some states stolen boats may be entered in the stolen vehicle files.

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<sup>8</sup>See *Report on the Vehicle File Survey, April, 1982*, Federal Bureau of Investigation, National Crime Information Center.

<sup>9</sup>See *Report on the Wanted Person File Survey, April, 1984*, Federal Bureau of Investigation, National Crime Information Center.

However, in states that do maintain stolen property files, these files commonly are much more extensive than the file entries from these states included in NCIC. For example, state files may include articles that do not qualify for NCIC entry because they do not bear unique identification numbers or because they do not meet the minimum valuation limits set for NCIC. In addition, items of stolen property that could be entered into NCIC sometimes are not forwarded to NCIC because the entering agencies do not regard it as necessary. Comments by numerous state officials suggest that most stolen guns that are serially-numbered are entered into NCIC, but perhaps only half or less of other types of stolen articles reported to the states that would qualify for inclusion in NCIC is actually entered into the national system.

No survey of municipal systems has been undertaken, but it is known that most large cities and metropolitan areas maintain stolen vehicle and wanted person files. The stolen vehicle entries in these files are usually included in state-level files and in NCIC, but local warrant files may contain entries of local interest only—or of interest only within the state—which may not be forwarded to the state and/or to NCIC.

The following sections provide detailed descriptions of the extensive state-level systems maintained by California and Florida and the municipal system maintained by the Metro-Dade Police Department in Miami, Florida, which serves the populous metropolitan area of Dade County. These systems are generally representative of the systems maintained by the larger states and metropolitan areas in the country. In addition, the interaction between those state systems and NCIC and between the Metro-Dade system and the Florida state-level system are generally representative of the ways in which local and state systems throughout the country operate in conjunction with each other and with NCIC, for both record entry and file inquiry purposes.

## THE CALIFORNIA SYSTEM<sup>10</sup>

The California hot files are part of the state's automated Criminal Justice Information System (CJIS), which is maintained by the California Department of Justice and is accessed by authorized criminal justice agencies via the California Law Enforcement Telecommunications System (CLETS) network. CJIS also maintains the state's automated criminal history record system and serves as the state link with NCIC and NLETS. California duplicates all of the NCIC file types except the stolen securities file. Automated files are maintained for (1) wanted persons, (2) stolen vehicles, license plates and boats, (3) stolen or recovered firearms, and (4) stolen articles. California also maintains a manual missing persons file.

California law enforcement agencies enter records into both CJIS and NCIC via CLETS. Agencies may elect to enter a record into CJIS only or into both CJIS and NCIC. NCIC-only entries are permitted for missing persons and stolen securities, since California does not maintain parallel automated systems for these NCIC file types. California law provides for mandatory reporting to CJIS of stolen or recovered vehicles and license plates (Cal. Vehicle Code § 10500, Cal. Penal Code § 11108), stolen or recovered boats (Cal. Vehicle Code § 10551) and stolen or recovered firearms and serialized articles (Cal. Penal Code § 11108). California Penal Code Section 11114 provides for mandatory reporting to CJIS and NCIC of missing persons.

The most frequently used CJIS file is the stolen vehicle and boat file. The file is essentially a mirror image of the records on California-registry vehicles entered into NCIC, with the added capability of accepting a more comprehensive list of stolen vehicle parts and the ability to link vehicles, boats, trailers and parts reported stolen at the same time. A hit on an inquiry on any one of the linked items will produce the full set. Over 16 million inquiries a year are made against this file. At any one time, the file contains over 300,000 record entries and on a yearly basis over 700,000 records are entered.

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<sup>10</sup>Information about the California system was provided by Mr. Fred H. Wynbrandt, Assistant Director, Identification and Information Branch, California Department of Justice.



The CJIS wanted person file contains some 370,000 warrant entries (more than the entire NCIC national wanted person file), of which about 80 percent are for misdemeanor offenses and 20 percent are for felony offenses. Obviously, this file contains many warrant records that are not entered into NCIC either because the entering agencies elected to enter the records only into CJIS or because the offense type or indicated extradition interest did not meet NCIC entry standards. CJIS processes over 30,000 wanted person inquiries daily, or over 10 million inquiries a year.

The CJIS stolen articles file included some 932,000 entries as of March, 1985. In addition to serialized property that has been reported stolen, this file contains serialized property that has been reported lost, found, under observation, held for evidence or pawned. California officials estimate that only about 50 percent of the stolen article entries in CJIS that qualify for NCIC inclusion are entered into NCIC. CJIS processes approximately 680,000 stolen article inquiries per year.

As of February, 1986, the CJIS stolen gun file contained 296,300 records. In addition, this file contained 7,500 guns reported as lost, 6,960 guns reported as found and 58,400 firearms held by law enforcement agencies as evidence in criminal cases. CJIS processes some 1,100,000 stolen gun inquiries per year.

CJIS policies concerning record entry, record quality responsibility, hit confirmation, and record clearance and cancellation are essentially identical to NCIC policies. In addition, with a few minor differences, record retention periods are the same as those for related NCIC files. However, CJIS does not follow the NCIC monthly validation procedure for CJIS-only records. Felony warrant entries in the CJIS-only file are required to be validated by the entering agencies after 5 years from the date of entry and misdemeanor warrants must be validated after 3 years from the date of entry. Validation lists are sent out quarterly and agencies are allowed 60 days to review their CJIS-only record listings and certify that the records are still active and accurate. Records that are not validated are automatically purged. As to all other CJIS-only files, CJIS relies upon compliance with the hit confirmation policy and record cancellation and clearance policies to maintain file integrity.

At present, CJIS has insufficient personnel to meet NCIC audit and training standards. Available staff concentrate on auditing and training in high-volume or problem agencies. Efforts are underway to augment the audit and training staffs in order to meet NCIC standards by the end of 1986.

## THE FLORIDA SYSTEM<sup>11</sup>

The Florida state-level hot file system is part of the Florida Crime Information Center (FCIC) maintained by the Division of Criminal Justice Information Systems of the Florida Department of Law Enforcement. FCIC also serves as the state's central repository of criminal history records and as the state's link with NCIC and NLETS. FCIC provides dedicated telecommunication links directly to 635 terminals in state and local law enforcement agencies and indirectly to another 1,659 terminals through computers located in 13 counties and the City of Miami.

The FCIC hot files include all of the file types maintained by NCIC except a stolen securities file. Separate files are maintained for (1) wanted persons, (2) missing persons, (3) stolen vehicles and boats, (4) stolen license plates, (5) stolen and recovered guns and (6) stolen serialized articles.

As of February 1986, the files included:

- 202,185 wanted persons
- 5,333 missing persons
- 217,544 stolen vehicles, boats and license plates
- 207,098 stolen guns and serialized articles.

With the exception of reports on missing juveniles, there is no statutory requirement in Florida for the reporting to FCIC

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<sup>11</sup>Information about the Florida system was provided by Mr. Patrick J. Doyle, Director, Division of Criminal Justice Information Systems, Florida Department of Law Enforcement, and members of his staff.

of information on wanted or missing persons or stolen vehicles or property. Those agencies that enter data into FCIC do so voluntarily, utilizing procedures and formats established by FCIC to help ensure that the information is accurate and complete and that it meets entry standards for FCIC and for NCIC. FCIC policy provides for forwarding to NCIC of all entries reported to the state that qualify for NCIC inclusion. Thus, the NCIC stolen vehicle file for Florida-registered vehicles is essentially a mirror image of the FCIC stolen vehicle file. All missing person entries in FCIC are included in NCIC as are all serialized stolen guns and all serialized stolen articles that meet the NCIC valuation standards. However, FCIC files include many stolen article entries that do not qualify for NCIC. In addition, the FCIC wanted person file is much larger than the NCIC file for Florida, since it includes entries for persons wanted on less serious charges that do not qualify for NCIC and persons as to whom the indicated extradition interest does not meet NCIC standards.

FCIC processes well over a million hot file inquiries per month. Except for stolen vehicle inquiries on vehicles registered in Florida, all inquiries of FCIC automatically trigger searches of both the FCIC and NCIC files. For January, 1986, inquiries included:

- 549,001 inquiries of the in-state stolen vehicle file;
- 187,858 NCIC inquiries on out-of-state license plates;
- 549,666 inquiries of the wanted persons file;
- 1,835 stolen boat inquiries;
- 19,318 stolen gun inquiries;
- 33,756 inquiries of the stolen articles file.

During this same period, FCIC processed approximately 110,000 criminal history inquiries. Thus, hot file inquiries of the FCIC system outnumber criminal history inquiries by more than 10 to 1.

FCIC system policies are modeled closely after NCIC policies. The policies regarding record quality responsibility, confirmation of positive responses, entry and cancellation of records, record retention periods, terminal security and the use of FCIC information to establish probable cause for arrest or seizure are virtually identical to NCIC policies. In addition, Florida follows NCIC record validation procedures for all FCIC records. Monthly validation lists from NCIC are supplemented by FCIC entries not included in NCIC before being forwarded to originating agencies for validation.

FCIC has a four-person audit team that conducts regular audits of local criminal justice agencies. An effort is made to audit all terminal agencies once every two years. The audits are designed to assess compliance with FCIC and NCIC policies and to monitor the accuracy and completeness of data entered into the state and federal criminal justice information systems. In addition, FCIC has two persons assigned exclusively to training in the use of the hot files. An effort is made to offer training sessions for all user agencies once a year.

## **THE DADE COUNTY, FLORIDA SYSTEM<sup>12</sup>**

The hot files system for metropolitan Dade County, Florida (Metro-Dade) is part of the Metro-Dade Criminal Justice Information System maintained by the Metro-Dade Police Department in Miami. Over 100 agencies and offices have terminal access to the Metro-Dade system, including police departments in municipalities throughout Dade County, the State Attorney's Office, the Department of Motor Vehicles, city and county jails, and the county sheriff's office. The system operates 24 hours a day, 7 days a week.

The Metro-Dade CJIS includes automated files on wanted persons and stolen vehicles. User agencies rely on the state system (FCIC) and NCIC for any inquiries concerning stolen guns and stolen articles. An inquiry of the Metro-Dade stolen vehicle file automatically triggers a search of FCIC (and NCIC for out-of-state vehicles). An inquiry of the warrant file does not automatically cause a search of FCIC and NCIC, but

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<sup>12</sup>Information concerning the Dade County System was provided by system officials in the Metro-Dade Police Department.

dispatchers routinely query both systems before responding to officers in the field.

As of April, 1986, the Metro-Dade stolen vehicle file contained approximately 77,000 records of vehicles reported stolen in Dade County. All of these entries also are in FCIC and NCIC. The system processes about 18,000 stolen vehicle inquiries per week. Stolen vehicle entries are validated monthly as part of the validation process initiated by NCIC through FCIC. There is no maximum retention period for stolen vehicle entries. Stolen auto plate entries are removed after one year from the date of entry.

As of April, 1986, the Metro-Dade warrant file contained about 49,000 entries, including 17,000 felony warrants and 32,000 misdemeanor warrants. About 2,000 wanted person inquiries are processed per week. All of the felony entries are forwarded to FCIC for entry into the state system, and into NCIC if appropriate. No misdemeanor warrant entries are forwarded to the state. Felony warrants are validated monthly as part of the regular NCIC validation procedures. The misdemeanor warrant file is reviewed annually and warrants over five years old are removed.

## PART III

### STATUTORY BASIS FOR HOT FILES

#### STATUTORY BASIS FOR NCIC HOT FILES

The NCIC hot files were established and are maintained pursuant to Section 534 of Title 28 of the United States Code. Subsection (a)(3) of that section provides specific authority to maintain the missing person file:

(a) The Attorney General shall — \* \* \*

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, legal guardian, or next of kin); \* \* \*

The other hot files (wanted persons, stolen vehicles and stolen property of other types) are maintained pursuant to the general authority given to the Attorney General by subsections (a)(1) and (a)(4) of Section 534 to "acquire, collect, classify, and preserve identification, criminal identification, crime and other records" and to "exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities and penal and other institutions." There is no federal statute dealing with such issues as the completeness and accuracy of the information in the NCIC hot files or the re-dissemination of the information by agencies with terminal access. Subsection (b) of Section 534 provides that access to the NCIC files is subject to cancellation "if

dissemination is made outside the receiving departments or related agencies." However, this section seems to be interpreted as applying only to criminal history records. The NCIC Operating Manual states that:

There is no federal legal or policy prohibition against indirect dissemination of information contained in NCIC files, other than III. If no state/local law or policy prohibition exists, indirect dissemination of NCIC records, other than III, is discretionary with the state Control Terminal Agency.<sup>13</sup>

In 1975, the Department of Justice issued federal regulations on criminal justice information systems (28 CFR Part 20), which contain specific requirements and standards concerning accuracy, completeness and dissemination of criminal justice information contained in Department of Justice record systems and in state and local systems funded by the Law Enforcement Assistance Administration or its successor agencies, including the Bureau of Justice Statistics. However, these regulations do not apply to information contained in hot files. They apply only to records relating to identifiable individuals setting out notations of arrest, detention or the bringing of formal criminal charges and any dispositions of such charges.<sup>14</sup> Missing person records, stolen vehicle records and stolen property records clearly are outside of the coverage of the regulations, since they do not fit within this definition of covered records. Wanted person records do fit within the definition, but are specifically exempted from the scope of the regulations by 28 CFR Part 20, §20.20(b) which states:

The regulations in this subpart shall not apply to criminal history record information contained in ... posters, announcements or lists for

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<sup>13</sup>NCIC Operating Manual, Introduction §1.6.

<sup>14</sup>28 CFR Part 20, §20.3(b).

identifying or apprehending fugitives or wanted persons.

This provision was included in the regulations to ensure that wanted person information would not be subject to the limits on dissemination imposed by the regulations. However, the broad exemption also had the effect of excluding wanted person information from the provisions of the regulations dealing with completeness and accuracy, including the audit requirements.

In the absence of statutory language in Section 534 or any other provision of federal law spelling out a specific responsibility for the accuracy and completeness of the information in its files, the Department of Justice initially maintained that this responsibility fell upon the state and local agencies that submit records for inclusion in the hot files and in the criminal history records maintained by NCIC and the FBI's Identification Division. However, the courts have rejected this approach and have stated that the FBI does have a duty to implement reasonable procedures to maintain accurate and complete records, although no court has yet spelled out the precise scope of this duty.<sup>15</sup> In recent years, the FBI has initiated activities to improve the quality of the information in the hot files and in the criminal history records in III and the Identification Division, including enhanced quality control procedures and programs, training and field audits, to help ensure file quality.

## STATUTORY BASIS FOR STATE HOT FILES

### Maintenance of Hot Files

The federal regulations on criminal justice information systems cited above had the intended effect of spurring the state legislatures to review state criminal records laws to assess the level of compliance with the minimum standards set out in the regulations. In most cases, these reviews resulted in the development and enactment of new legislation. Today, virtually every state has one or more provisions of law dealing

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<sup>15</sup>These court decisions are discussed in Part IV of this report.



specifically with the maintenance and dissemination of criminal history records. About half of the states have enacted relatively comprehensive criminal history record laws providing specific authority for the maintenance of such records in centralized automated systems and dealing with the issues of completeness, accuracy, dissemination and security.<sup>16</sup>

However, most of these states have followed the approach of the federal regulations and have exempted wanted person information and information not identifiable to a specific person from the coverage of their criminal justice information laws. As a result, relatively few of the states have laws specifically authorizing the establishment of hot files and fewer still have statutory provisions dealing with the quality of the information contained in these files, such as provisions mandating the reporting of information about wanted persons and stolen property to the state and requiring the removal of such information when it is no longer valid. A review of state legal codes<sup>17</sup> identified only three states with laws dealing with wanted persons and stolen property that can be considered at all comprehensive. These essentially identical provisions are found in the broad criminal justice information statutes of Alabama, Georgia and Mississippi.<sup>18</sup> They specifically authorize those states' central criminal record repositories to establish and maintain files of wanted persons, stolen and recovered vehicles and stolen and recovered identifiable property. They also mandate the reporting of appropriate information by local

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<sup>16</sup>See *Privacy and Security of Criminal History Information: Compendium of State Legislation*, 1985 (Washington, D.C., U.S. Department of Justice, 1985).

<sup>17</sup>The discussion of state laws presented here is based upon a computer search of state legal codes, verified by a manual review of these codes. However, since an exhaustive search of state laws was beyond the scope of this project and since no survey of state officials was undertaken, the information presented may not be complete.

<sup>18</sup>Alabama Code, §§41-9-621(1),(6); 41-9-627; 41-9-633; 41-9-634; Georgia Code of 1981, §§35-3-33(5),(14); 35-3-36(e),(1),(m); Mississippi Code 1972 Annotated, §§45-27-7(1)(a),(g); 45-27-9(4),(8),(9).

criminal justice agencies and provide for the annual validation of outstanding arrest warrants.

The Georgia law is representative. Section 35-3-33 authorizes the Georgia Crime Information Center to:

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to law enforcement agencies.

The reporting to the Georgia Crime Information Center of wanted person information and information about stolen property and the annual validation of outstanding arrest warrants are required by Section 35-3-36 of the Georgia law, which states:

(3) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center, confirm to the center all arrest warrants of this type which continue to be outstanding.

\* \* \*

(1) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating

department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery.

Other states that have enacted specific statutory authority to maintain some types of hot files include Alaska (stolen vehicles); Arizona (stolen vehicles); Arkansas (stolen vehicles, wanted persons); Colorado (wanted persons, stolen property); District of Columbia (stolen property); Idaho (wanted persons, stolen or lost property); Kansas (wanted persons); Louisiana (wanted persons); Michigan (stolen property); Nebraska (stolen property); North Carolina (wanted persons, missing persons, stolen vehicles, stolen property); North Dakota (stolen property); Rhode Island (stolen property); Utah (wanted and missing persons); Vermont (wanted persons, missing persons, stolen

property); and Wisconsin (wanted persons and stolen property).<sup>19</sup>

In addition, several other states have criminal record statutes with general language that appears to be broad enough to authorize the establishment of hot files, although the statutes do not specifically mention such files. As an example, the Ohio law establishing the Bureau of Criminal Identification and Investigation provides:

The superintendent may operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals, criminal activity, crime prevention, law enforcement and criminal justice, and may establish and operate a statewide communications network to gather and disseminate information, data and statistics for the use of law enforcement agencies.<sup>20</sup>

As another example, the Florida law establishing the Division of Criminal Justice Information Systems provides:

(2) The division shall: \* \* \*

(b) Establish a system of intrastate communication of vital statistics and information relating to crimes, criminals and criminal activity. The division shall cooperate with state, county, municipal

<sup>19</sup>Alaska Stat. Ann., §28.10.071(d); Ariz. Rev. Stat. Ann., §28-1422A; Ark. Stat. Ann., §§5-1102, 75-167; Colo. Rev. Stat. Ann., §24-32-412; D.C. Code §4-131; Idaho Code Ann., §19-4812; Kan. Stat. Ann., §22-4705; La. Rev. Stat. Ann., §15:591; Mich. Stat. Ann., §4:473(2); Neb. Rev. Stat., §29-210; Gen. Stat. of N.C., §114-10(2); N.D. Cent. Code, §12-60-06; R.I. Gen. Laws, §12-1-7; Utah Code Ann., §77-26-3; Vt. Stat. Ann., §20-2055; and Wis. Stat. Ann., §165.83(2)(d),(e).

<sup>20</sup>Ohio Rev. Code Ann., §109.57c.

and federal agencies in the establishment of such a system.<sup>21</sup>

Other states, however, cannot point to either specific statutory authority or to general language that appears to encompass authority to establish files on wanted persons and stolen property. Indeed, some of these states appear to rely for such authority upon criminal record statutes that are modeled after the federal regulations and specifically exclude from coverage wanted person information and information not associated with an identifiable person.

### **Mandatory Reporting**

Perhaps more important, only a few states have laws requiring criminal justice agencies to report information concerning wanted persons and stolen property to the appropriate state agency for inclusion in existing hot files and many of the few provisions that do exist do not specifically require the contributing agencies to report the subsequent apprehension of wanted persons or the recovery of stolen vehicles or other property so that the records can be removed from the files. The Georgia, Alabama and Mississippi laws set out above do contain such provisions. They require that unserved arrest warrants be reported to the state record repositories "immediately" upon determination that the warrants cannot be served and require that the contributing agencies notify the repository "immediately" if the warrants subsequently are served or withdrawn. They also require that arrest warrants on file be validated at least annually. Essentially identical provisions requiring the reporting and validation of arrest warrants are contained in the laws of Idaho and Wisconsin.<sup>22</sup> These two states also specifically require the repository to obtain and file any available information "indicating that the person

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<sup>21</sup>Fla. Stat. Ann., §943.05.

<sup>22</sup>Idaho Code Ann., §19-4813(3); Wis. Stat. Ann., §165.84(3).

named on the warrant may be armed, dangerous or possessed of suicidal tendencies."<sup>23</sup>

The Georgia, Alabama and Mississippi laws also require law enforcement agencies to report stolen vehicles or identifiable property as soon as practicable but no later than 12 hours after ascertaining that the property has been stolen (see the text above). If the stolen vehicle or property is subsequently recovered by the agency that made the report, it must immediately notify the repository. If an agency other than the original entering agency recovers a stolen vehicle or stolen property or apprehends a wanted person, it must immediately notify the entering agency. These laws essentially codify NCIC policies on the reporting of "clearance" and "locate" messages.

Other states with laws requiring local law enforcement agencies to report some types of information for inclusion in state hot files include: California (stolen or recovered vehicles/plates, boats, firearms or serialized property); Indiana (felony arrest warrants); Kansas (wanted persons); Louisiana (wanted persons and stolen property); Maryland (issuance or withdrawal of arrest warrants); Michigan (stolen or recovered property of \$25 value or more, within 48 hours); Minnesota (felony arrest warrants); Rhode Island (stolen or recovered property, daily); and Vermont (wanted or missing persons and stolen property).<sup>24</sup>

Numerous states have provisions in their motor vehicle codes (derived from a provision in the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act) that require law enforcement agencies to report the theft or recovery of vehicles to a state agency, usually to the Department of Motor Vehicles or the State Police, but sometimes to the Department of Public

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<sup>23</sup>Idaho Code Ann., §19-4812(2)(e); Wis. Stat. Ann., §165.83(2)(e).

<sup>24</sup>Cal. Penal Code, §11108; Cal. Vehicle Code §§10500, 10551; Ind. Stat. Ann., §10-1-1-18; Kan. Stat. Ann., §22-4705; La. Rev. Stat., §15:590; Md. Code Ann. 1957, §27-747(a)(1),(c)(1); Mich. Stat. Ann., §4:473(1); Minn. Stat. Ann., §299C.12; R.I. Gen. Laws, §12-1-10; and Vt. Stat. Ann., §20-2053(b).

Safety.<sup>25</sup> It is not clear in some cases whether these provisions are interpreted as requiring the reporting of stolen vehicle information for inclusion in the state's hot files or, instead, in a separate list maintained by the Department of Motor Vehicles or by some other state agency. In California, the provision requires reporting to the California Highway Patrol and Department of Motor Vehicles. However, the law is interpreted as requiring the reporting of stolen vehicle information for inclusion in the hot files maintained by the Department of Justice. Indeed, the law has been amended, effective January 1, 1989, to require reporting directly to the Department of Justice. In Florida, on the other hand, the motor vehicle code provision requires the reporting of stolen or recovered vehicles to the Department of Highway Safety and Motor Vehicles, which is required to keep an index and to distribute a monthly list of stolen or recovered vehicles to law enforcement agencies. This provision is not interpreted as requiring the reporting of stolen vehicle data for inclusion in the hot files maintained by the state Department of Law Enforcement.

In addition to these states that have enacted specific mandatory reporting laws, a few other states have given their central record repositories authority to promulgate rules and regulations requiring the reporting of whatever information repository officials may deem necessary to maintain appropriate criminal justice record systems. As an example, South Carolina law requires law enforcement agencies in the state to report to the State Law Enforcement Division "all criminal data and information related thereto" that the Division shall require.<sup>26</sup> Additionally, the law provides:

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<sup>25</sup>For example, West's Ann. Cal. Veh. Code, §10500; Alaska Stat. Ann., §28.10.071; Ariz. Rev. Stat. Ann., §28-1422B; Ark. Stat. Ann., §75-167.1; Colo. Rev. Stat., §43-5-126; Del. Code Ann., §21-312; Ill. Veh. Code (Smith-Hurd), title 95-1/2, §4-107; Fla. Stat. Ann., §319.26; N.J. Stat. Ann., §39:3-85; N.Y. Veh. & Traffic Law (McKinney), §424.1; Pa. Stat. Ann. (Purdon), §75-7113; Vt. Stat. Ann., §23-2084.

<sup>26</sup>Code of Laws of S.C. 1976, §23-3-120.

The State Law Enforcement Division is authorized to determine the specific information to be supplied by the law-enforcement agencies and court officials pursuant to § 23-3-120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.<sup>27</sup>

## Penalty Provisions

Research revealed only one state statute that specifically provides for a penalty for failure to report hot file information to the state repository. Vermont law, as noted above, requires law enforcement agencies in the state to report information concerning wanted and missing persons and stolen property to the state department of public safety. The law authorizes the commissioner of the department to provide forms for the reporting of such information and to adopt regulations relating to the use, completion and filing of such forms.<sup>28</sup> The law then provides that:

A department, agency or law enforcement officer who fails to comply with the regulations adopted by the director with respect to the use, completion or filing of the uniform forms, after notice of failure to comply, shall be fined not more than \$100.00. Each such failure shall constitute a separate offense.<sup>29</sup>

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<sup>27</sup>Id., §23-3-130.

<sup>28</sup>Vt. Stat. Ann., §20-2054(a).

<sup>29</sup>Id., §2054(b).



## Statewide Regulations

Numerous states, including most of those with sophisticated computerized systems and statewide communications networks, have issued regulations or agency rules governing the operation of their hot file systems. Often these rules are modeled on NCIC operating procedures and include provisions relating to data quality. As an example, the Illinois Department of Law Enforcement has issued a Reference Manual<sup>30</sup> setting out regulations and policies governing the Illinois Law Enforcement Agencies Data System (LEADS), a statewide computerized telecommunications system that provides on-line access to numerous criminal justice files, including the state's computerized hot files, NCIC files and computerized criminal history records. The Illinois hot files are maintained pursuant to the general authority of the Department of Law Enforcement to establish and operate an electronic data processing center and statewide communications network for the collection, storage and dissemination of information necessary to plan and operate programs of crime prevention, law enforcement and criminal justice.<sup>31</sup> The law does not deal specifically with the establishment of hot files, the reporting of information for inclusion in such files, nor the quality of data included in the files. However, the LEADS regulations issued pursuant to these statutory provisions are quite detailed and specifically incorporate most of the data quality procedures applicable to the NCIC system, including procedures relating to responsibility for record accuracy, hit confirmation requirements, 10-minute hit confirmation responses, 24-hour terminal operation, supporting documentation, record validation, cancellation of invalid records, record retention schedules, audits of participating agencies and training of user agency personnel.

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<sup>30</sup>LEADS Reference Manual, 20 Ill. Admin. Code 1240.

<sup>31</sup>Ill. Stat. Ann. (Smith-Hurd), §§127-55a, 38-206.

## Summary

It is not suggested that those states lacking specific statutory authority to establish and maintain hot files are improperly maintaining such files. Criminal justice agencies undoubtedly have sufficient implied authority to maintain any records necessary for or appropriate to the performance of their duties. And, as the FBI audits have shown, some states that do not have provisions of law establishing data quality requirements for their hot files nevertheless are managing to maintain high standards of record quality. On the other hand, some other states clearly are not achieving acceptable levels of record quality. Although mandatory reporting laws, statutory audit and training requirements and penalty provisions do not guarantee high levels of record quality, most criminal justice officials agree that they provide an important underpinning for data quality procedures and an incentive for increased cooperation by local criminal justice agencies in state-sponsored programs to improve record quality.

The existing lack of statutory guidance concerning the maintenance of information about wanted persons, stolen vehicles and stolen property stands in stark contrast to the considerable volume of state laws dealing with criminal history records. As noted, virtually every state has enacted specific authority for a designated state agency to maintain a statewide criminal history record system, and most states have legal provisions dealing with the accuracy and completeness of such records, including provisions requiring timely reporting, quality control audits and personnel training. In contrast, relatively few states can point to specific statutory authority to maintain hot files and only a handful have statutory provisions designed to help ensure the quality of the information in those files. The enactment of such laws, particularly provisions requiring the timely reporting of information and the cancellation of wanted person records and stolen vehicle records when they are no longer valid, might be an important step in solving the data quality problems identified by the FBI audits. State officials might consider proposing laws modeled on the Georgia statute discussed above and might consider amending existing criminal history record laws to make appropriate data quality provisions applicable to their hot files.

These steps seem especially appropriate in view of the fact that the number of records in the combined files of the states is much greater than the number of records in the NCIC system, which is specifically authorized by statute and which has received considerable scrutiny in recent years. In addition, the quality of state files directly affects the quality of NCIC files since much of the data entered into NCIC is derived from information reported for entry into state files.

## PART IV

### COURT DECISIONS CONCERNING THE MAINTENANCE AND USE OF HOT FILES

Numerous court decisions handed down during the past 15 years, by both federal and state courts, have dealt with issues concerning the maintenance of criminal justice information systems, including specifically hot files, and the use of information obtained from these systems. These issues can be grouped into three categories: (1) the duty of criminal justice agencies to maintain reasonably accurate and current records, (2) the risk of civil liability for maintaining inaccurate records or improper utilization of records, and (3) other consequences of record mishandling, including the suppression of evidence obtained as an incident of an arrest based on inaccurate information.

#### THE DUTY TO MAINTAIN ACCURATE AND CURRENT RECORDS

As noted earlier in this report, the Department of Justice initially took the position that it was merely a repository of information submitted by state and local criminal justice agencies for inclusion in NCIC and other FBI record systems and that the responsibility for the accuracy and currency of that information rested with the contributing agencies. This "passive recipient" theory was rejected by the federal courts in two cases decided in 1974 involving the maintenance of arrest records by the FBI's Identification Division. In those cases, *Menard v. Saxbe*<sup>32</sup> and *Tarleton v. Saxbe*,<sup>33</sup> the U.S. Court of Appeals for the District of Columbia held that, although the primary responsibility for the accuracy of the FBI's files of state-contributed records rests with the contributing agencies, the FBI does have a duty to take reasonable steps to help ensure the accuracy of the information,

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<sup>32</sup>498 F.2d 1017 (D.C. Cir. 1974).

<sup>33</sup>507 F.2d 1116 (D.C. Cir. 1974).

since it maintains the records in an organized file and disseminates them widely. The court declined, however, to spell out the precise scope of the FBI's duty.

In a later case, another federal court applied the same reasoning in deciding that the FBI has a duty to take reasonable steps to help ensure the accuracy of the information in the NCIC hot files. In *U.S. v. Mackey*,<sup>34</sup> a United States district court ordered the suppression of evidence obtained during a search following an arrest based upon inaccurate arrest warrant information obtained by means of an NCIC inquiry. It was subsequently learned that the warrant had been served five months earlier, but the entry had not been cleared from the NCIC system. The court said that a computer error of this nature and duration, even if unintended, amounted to a capricious disregard of the record subject's rights. Thus, his arrest on the basis of the inaccurate information violated his right to due process of law and rendered the subsequently seized evidence inadmissible. The court stopped short of determining the precise extent of the FBI's responsibility for the accuracy of the information in NCIC, but it did say that the function of maintaining and disseminating the records—

carries with it as a corollary the responsibility to discharge this function reliably and responsibly and without unnecessary harm to individuals whose rights have been invaded.<sup>35</sup>

The responsibility of state and local criminal justice agencies for the accuracy of information they contribute to NCIC was spelled out with a little more detail in another federal court

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<sup>34</sup>387 F.Supp. 1121 (D. Nev. 1975).

<sup>35</sup>*Id.* at p. 1125. Interestingly, although the court indicated that the inaccurate arrest warrant information was obtained by means of an NCIC inquiry, in fact it was obtained from the California Criminal Justice Information System by means of an inquiry via the California Law Enforcement Telecommunications System. However, this does not alter the relevance of the court's ruling as it applies to the duty to maintain complete and accurate records and possible liability for failure to properly discharge this duty.

decision, *Testa v. Winquist*.<sup>36</sup> In that case, persons who were arrested on the basis of inaccurate stolen vehicle information brought a civil damage action against the arresting officers, who, in turn, filed third-party actions against the administrator of the state NCIC system that had provided the stolen vehicle "hit" (presumably the state Control Terminal Agency) and police officers of the agency that originated the stolen vehicle report who subsequently confirmed the status of the vehicle as stolen, seeking contribution and indemnity for any liability based on the arrest. In sustaining the third-party complaint, the court said that the NCIC administrator and the police officer who wrongfully confirmed the vehicle's status could be liable in damages for breach of their duty to maintain accurate and current records. Noting that it is now commonplace for arresting officers to rely on NCIC computer checks, the court said that those persons who control the information systems that provide the checks have a duty to maintain reasonably accurate and current record systems. In the case of the state administrator of the NCIC system, that duty included the responsibility for establishing "reasonable administrative mechanisms designed to minimize the risk of inaccuracy by requiring that the records be constantly updated."<sup>37</sup> But the primary responsibility for the accuracy of the stolen vehicle entry, the court said, rested with the police department which initially reported the vehicle stolen and confirmed its status to the arresting officer. The court said:

Particularly since the crime involves an item quintessentially mobile, the primary duty to keep track of the vehicle must fall to the police department that covers the area where the vehicle is registered. Thus, Officer Steiner and his department had a duty to maintain current, accurate records of the previously stolen vehicle.<sup>38</sup>

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<sup>36</sup>451 F.Supp. 388 (D.R.I. 1978).

<sup>37</sup>*Id.*, at p. 394.

<sup>38</sup>*Id.*, at p. 395.

Thus, the courts have said that the duty to make reasonable efforts to ensure that NCIC records are accurate and current is shared by the contributing agencies, the state information systems that provide the NCIC interfaces and the FBI. The primary duty rests with the contributing agencies, since they are in the best position to verify the information. But both the state systems and the FBI must take reasonable steps to help keep the information accurate and current, including specifically procedures to continuously update the information. Breach of this duty to make reasonable efforts to maintain accurate records may result in civil liability on the part of criminal justice agencies and their officials and employees, as well as in the invalidity of arrests based upon reliance on inaccurate information and the suppression of evidence seized after such arrests.

#### **LIABILITY FOR RECORD MISMANAGEMENT OR MISHANDLING**

It is well established by numerous court decisions that criminal justice personnel may incur personal liability for mishandling criminal records through either intentional or negligent conduct and this may involve the maintenance, dissemination or use of accurate as well as inaccurate information. Liability may be based upon breach of a federal or state statute or implementing regulations, deprivation of a record subject's constitutional rights or interference with interests protected by common law, primarily negligence law.<sup>39</sup> State and local criminal justice agencies and their employees may be sued in state courts or in federal courts pursuant to the Civil Rights Act of 1871 (42 U.S.C. Section 1983), which gives individuals the right to bring civil actions for deprivation of federal constitutional rights by persons acting under color of state authority.

Generally, most duties involving the maintenance and use of criminal records have been considered by the courts to be "discretionary" acts protected by the doctrine of qualified

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<sup>39</sup>See *Liability for Mishandling Criminal Records*, SEARCH Group, Inc., Sacramento, Cal., April, 1984.

immunity.<sup>40</sup> Discretionary acts are those that require personal judgment and the exercise of discretion, as opposed to "ministerial" acts where statutory or regulatory guidance is clear and no personal judgment is involved. Improper performance of a ministerial act can result in absolute liability—that is, liability without regard to the presence or absence of good faith. But an official or employee who performs a discretionary act in good faith and within the scope of his employment may be protected by qualified immunity against the risk of personal liability for injuries resulting from his actions. Thus, in damage suits against criminal justice personnel based upon alleged mismanagement or mishandling of records, the presence or absence of good faith and the reasonableness of the official's action or inaction are usually the key issues.

This is evident in the decision in *Testa v. Winquist*, discussed in the previous section. As noted, that case was a civil damage action growing out of an arrest based upon an erroneous NCIC report indicating that the car the arrestees were driving was stolen. The arresting officers relied upon the NCIC response and a confirmation provided by the police department that had originally reported the vehicle as stolen. They allegedly failed to make inquiries to confirm the authenticity of the certificate of title produced by the vehicle's occupants. Had they made such inquiries, they might have learned that, in fact, the vehicle had been reported stolen but subsequently had been recovered and thereafter sold to the plaintiffs. In discussing the liability of the arresting police officers, the court said that although they were performing discretionary duties and were entitled to a defense of qualified immunity, this immunity could be overcome by a showing that they had unreasonably relied on the NCIC computer check and the confirmation of the originating agency as the sole basis for probable cause to detain the plaintiffs, without making further pertinent inquiries. Conceding that the computer check and the confirmation normally would constitute reasonable grounds for arrest, the court said:

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<sup>40</sup>*Walkowski v. Macomb County Sheriff*, 64 Mich. App. 460, 236 N.W. 2d 516 (1975).



... the initial detention or arrest is not the only crucial point in time. Plaintiffs claim that third-party plaintiff Winquist failed to make any inquiry into the authenticity of the certificate of title to the vehicle. Assuming the truth of this allegation, it is certainly conceivable that the previously reasonable reliance is stripped of its reasonableness in light of this *prima facie* evidence of title and the diminished necessity for quick decisions once at the station house. [Citations omitted.]

Thus, third-party plaintiffs could be indeed liable to plaintiffs for illegal arrest following presentation of the certificate of title.<sup>41</sup>

As pointed out in the previous section, the court in *Testa* also concluded that the state NCIC administrator and officials of the police department that originally reported the vehicle stolen and subsequently confirmed its status could be liable for breach of their duty to take reasonable steps to maintain accurate records if they failed to implement appropriate procedures to keep NCIC entries accurate and current.

Another federal court decision suggesting that officials of entering agencies may be found liable for inaccurate NCIC entries is *Maney v. Ratcliff*,<sup>42</sup> a civil damage action brought under 42 U.S.C. §1983, alleging that the defendant prosecutor twice failed to clear an NCIC wanted person entry naming the plaintiff as a fugitive after deciding each time not to extradite him from another jurisdiction. In both instances, the plaintiff was again arrested in another jurisdiction on the basis of the invalid NCIC entry. The court said that although the decisions not to extradite the plaintiff were discretionary decisions normally entitled to protection under the doctrine of immunity—

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<sup>41</sup>*Id. op. cit.*, note 36, *supra.*, at p. 392.

<sup>42</sup>399 F.Supp. 760 (D. Wis. 1975).

The conduct of leaving the entry on the NCIC system after having decided not to extradite plaintiff is not within the prosecutorial function and is outside the scope of prosecutorial immunity.<sup>43</sup>

In summary, the courts have sustained theories of civil damage liability for record malpractice involving criminal justice officials at every stage of the process of record entry, maintenance and utilization. System administrators may be held liable for breach of their duty to implement procedures reasonably designed to keep hot file information accurate and current, including procedures for regular validation and updating of records. Entering agencies may be held liable for breach of a duty to take reasonable steps to maintain accurate records, including failure to institute procedures reasonably designed to ensure the clearance of invalid records. The courts have indicated that these activities usually will be considered to be discretionary in nature and that criminal justice officials will be protected from civil liability claims based on such activities so long as their actions are reasonable under the circumstances. However, the decision in *Maney v. Ratcliff* clearly suggests that *nondiscretionary* duties, such as the duty to remove invalid records from NCIC, may not be protected by the defense of qualified immunity. Thus, failure to discharge a specific duty imposed by law or regulation to remove records from NCIC or related state systems under specified circumstances may well be the basis for absolute liability in a suit for damages based upon a showing of actual injury resulting directly from use of the invalid record.

Finally, police officers who act upon information obtained from NCIC and related state systems may face liability if the information turns out to be inaccurate and they fail to make other reasonably-available inquiries that might have revealed the inaccuracy. Where circumstances do not permit such inquiries, however, the courts have been consistent in holding that an NCIC response or similar information from a state information system may alone constitute adequate grounds for arrest. The

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<sup>43</sup>*Id.*, at p. 765.

general rule was stated by the U.S. Court of appeals for the Fifth Circuit in *United States v. McDonald*, as follows:

While NCIC printouts are not sufficient *evidence* to permit *conviction*, the cases uniformly recognize that NCIC printouts are reliable enough to form the basis of the reasonable belief which is needed to establish probable cause for arrest.<sup>44</sup>

In such cases, there is no basis for a finding of personal liability on the part of the arresting officer. No decision has been found in which a court sustained an action for liability growing out of an arrest made in good faith reliance on NCIC information or information from state systems when circumstances did not permit the arresting officer to obtain any other information.<sup>45</sup> This is true even if the information subsequently proves to be inaccurate. The prevailing view governing this situation was stated by the Pennsylvania Superior Court in *Commonwealth v. Riley*,<sup>46</sup> in which the court sustained the legality of an arrest made in reliance on an NCIC wanted person report based upon a warrant that had been satisfied four days earlier, but had not been cleared from the NCIC system. The court said:

Probable cause for a warrantless arrest must be determined on the basis of the knowledge of the arresting officer at the time of arrest. \* \* \* Although the arrest was indeed made in reliance upon the inaccurate information from the NCIC,

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<sup>44</sup>606 F. 2d 552 (5th Cir. 1979), at pp. 553-554. See also *Commonwealth v. Evans*, 494 A.2d 383 (Pa. Super. 1985); *Mitchell v. Windham*, 469 So.2d 381 (La. App. 1985); *State v. Boudreaux*, 467 So.2d 1335 (La. App. 1985).

<sup>45</sup>See *Mitchell v. Windham*, cited in note 44, where the court reversed a damage judgment based on wrongful arrest arising from an arrest made on the basis of a telephone call and teletype message from law enforcement officials in another state.

<sup>46</sup>425 A.2d 813 (Pa. Super. 1981).

the arresting officer did not know, and could not reasonably be expected to have known, that the information was wrong when he made the arrest.<sup>47</sup>

## SUPPRESSION OF EVIDENCE

Even though the arresting officer normally does not face personal liability for an arrest made in good faith reliance on a computer response that turns out to be inaccurate, the arrest may be declared invalid and any evidence seized as an incident of the arrest may be suppressed. Although the cases are not entirely consistent, the prevailing view is that the arrest will be held to be valid and seized evidence will be held to be admissible if the NCIC data has been invalid for no more than a few days. For example, in *Commonwealth v. Riley*, mentioned above, the warrant on which the NCIC entry was based had been satisfied only four days earlier. In other cases, motions to suppress seized evidence were denied where the arrests were made in reliance on NCIC reports based on traffic warrants that had been satisfied four days earlier<sup>48</sup> and stolen auto plates that had been recovered 15 hours earlier.<sup>49</sup>

But if the delay in cancelling invalid entries has been a long one, or if the entries were wrong initially, the courts generally will declare the arrest to be invalid and will suppress any evidence seized as an incident of the arrest. For example, the Supreme Court of California in 1983 invalidated an arrest based on a police computer system warrant check where it was subsequently discovered that the warrant had been recalled six

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<sup>47</sup>*Id.*, at p. 816.

<sup>48</sup>*Childress v. U.S.*, 381 A.2d 614 (D.C. App. 1977).

<sup>49</sup>*Patterson v. U.S.*, 301 A.2d 67 (D.C. App. 1973).

months earlier.<sup>50</sup> And a New York County Criminal Court in a 1981 case invalidated an arrest made in reliance on a stolen vehicle alarm communicated over a police computer network where it subsequently developed that the vehicle had been recovered three months earlier but the alarm had never been cancelled.<sup>51</sup>

Finally, in a case decided in 1984, the Supreme Court of Colorado suppressed evidence seized as an incident to an arrest based upon information obtained over a police radio network relating to an arrest warrant that subsequently was shown to have been issued in error.<sup>52</sup> Conceding that the arrest resulted from a good faith mistake by the arresting officer for which he could not be held personally liable in a civil action or disciplinary proceedings, the court nonetheless found that, since the warrant was void from its inception, the arrest was made without probable cause in violation of the Fourth Amendment to the United States Constitution and a similar provision in the Colorado Constitution, and any evidence seized as an incident of the arrest was subject to suppression.

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<sup>50</sup>*People v. Ramirez*, 34 Cal. 3d 541; 668 P.2d. 761 (Cal. 1983). Similar holdings resulted in cases where arrest warrants had been served five months earlier (*U.S. v. Mackey*, cited in note 34 above) and 14 months earlier (*People v. Decuir*, 84 Ill. App. 3d 531 (1980)).

<sup>51</sup>*People v. Jones*, 443 N.Y.S. 2d 298 (1981).

<sup>52</sup>*People v. Mitchell*, 678 P.2d 990 (Colo. 1984).

## CONCLUSION

There appears to be little question that the hot files maintained by NCIC and the parallel systems maintained by the states are important to the effective functioning of the criminal justice system. Law enforcement officers throughout the country rely upon the systems for immediate responses to inquiries from the field in many situations ranging from routine to extremely dangerous. Criminal justice information system managers give high priority to the hot files and many of them consider these files to be the most valuable records they maintain.

The value of the NCIC system was supported by the results of FBI surveys to assess the benefits of the stolen vehicle file in 1982 and the wanted person file in 1984.<sup>53</sup> Based upon responses from user agencies to survey questions concerning a systematic random sample of file inquiries during a 30-day period, quantified benefits of the files for a full year were projected by the FBI. These projections indicated that the vehicle file would yield approximately 210,000 hits per year and would lead to the recovery of 196,000 vehicles worth \$687 million. The hits would also result in the arrest of some 52,000 persons and the recovery of some \$38 million in contraband and other property. The projections for the wanted persons file survey in 1984 indicated that the file would yield approximately 83,000 hits in 12 months, including hits relating to some 70,000 wanted persons and 13,000 missing persons.

As impressive as these figures are, they also underscore the importance of the efforts undertaken by NCIC, the state Control Terminal Agencies and participating law enforcement agencies to maintain the accuracy and currency of the files. It is apparent that even a modest percentage of inaccuracy or invalidity in these two large and heavily used NCIC files may result in the potential for thousands of inaccurate hits each year and possibly a large number of wrongful arrests and wrongful seizures of vehicles and other property. No known studies or surveys have yet attempted to document the number of wrongful arrests and improper vehicle seizures that result from invalid and inaccurate hot file responses, but it is known that they do occur.

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<sup>53</sup>See footnotes 8 and 9.

Research revealed over a dozen recent court decisions involving issues of personal liability or challenges to the admissibility of evidence seized in connection with arrests based on invalid or inaccurate NCIC responses or inaccurate or invalid state system responses. Experience in other areas of criminal record mismanagement indicates that only a small fraction of actual incidents reach court and result in reported decisions. Thus, the reported decisions may not indicate the full extent of the problem.

It should be emphasized that the NCIC system incorporates data quality procedures that, if properly followed by criminal justice personnel who enter records into the system and utilize information obtained from the system, would ensure a high level of accuracy and validity of the files and would preclude reliance upon invalid or inaccurate information obtained from the files. Of particular importance are the requirements for regular validation of the files to identify and cancel outdated records and for confirmation of hits with the entering agencies before relying on the information as the grounds for arrest or seizure. However, experience and the results of the NCIC audits suggest that some agencies do not faithfully follow these procedures. Indeed, some state and local agencies object to the burden imposed by the monthly validation procedures and some system officials question the cost-effectiveness of the validation process.

Ultimately, high national standards of accuracy and validity are essential if the NCIC files and related state files are to meet the standard of reliability necessary to support the trust placed in the systems by courts and law enforcement personnel and to reduce the risk of errors and the consequent invasion of the rights of innocent citizens. It is extremely important, therefore, that efforts continue—and increase, if possible—to audit user agencies on a regular basis and to provide training to user agency personnel in proper utilization of the NCIC system. It is also important for the states to implement their own training programs and field audit programs. In addition, it seems appropriate for state officials to consider the development of state legislation to expressly authorize the establishment of hot files, where such authority is now lacking, and to make mandatory the reporting of appropriate information for inclusion in such files and the removal from the files of information that is no longer valid.

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(revised December 1986)

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