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DON'T COUNT ON YOUR FINGERPRINTS

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INTRODUCTION

This report is about missing and incomplete fingerprint (or "arrest") records: how many are missing, why they are missing, and what can be done about the problem. Criminal history records are a vital part of the functioning of the criminal justice system in Pennsylvania. They have always been important for criminal sentencing, but with the introduction of mandatory sentencing and sentencing guidelines in 1982, they have become even more important. Some mandatory sentences apply only when the offender has a prior criminal record; while under the guidelines, the offender's prior history is a major component in determining his guideline sentence. Criminal histories are also used to identify serious repeat offenders for "career criminal" units in some prosecutors' offices.

Criminal history records are also used outside of the criminal justice system for things such as background checks for persons applying for sensitive jobs, including police officers and child day care workers.

Pennsylvania law (Title 18, §9112, PCS) mandates that arrest information with fingerprints be submitted to the State Police within 48 hours for all persons arrested for felonies, misdemeanors and those summary offenses that escalate into misdemeanors or felonies on the second and subsequent offense. Some defendants receive a summons from the court system instead of being arrested. District Justices are required by law to order such defendants to submit for fingerprinting, and defendants are required to complete this within 5 days.

A criminal record for a specific crime begins at the time of arrest and "booking" of the defendant at the

About one-third of all judicial dispositions received by the State Police have no matching arrest record to which the disposition can be posted.

police department. In most cases, the suspect is fingerprinted; and the name, offenses and other pertinent information are placed on the fingerprint card, which is sent to the Pennsylvania State Police Central Repository. The fingerprints are the only established way of positively establishing, for legal purposes, the identity of the defendant. If the defendant has been arrested previously, even under a different name and date of birth, the arrest is added to the defendant's criminal history. If no previous record exists for the fingerprint set, a new criminal history record is created.

In some instances, it is difficult or impossible to obtain fingerprints at

the time of arrest. When defendants are issued court summonses instead of being arrested, police often do not have the opportunity to fingerprint the defendants, even when the cases are held for trial at the Common Pleas Court level.

When a case is disposed by the judicial system, the disposition and sentence are forwarded to the State Police. If the defendant's fingerprints had been taken and forwarded to the State Police, the disposition can be added to the criminal history record.

MISSING RECORDS: THE PROBLEM

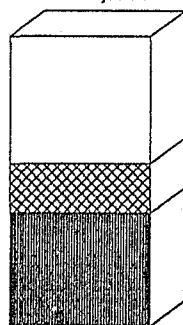
About one-third of all judicial dispositions received by the State Police have no matching arrest record to which the disposition can be posted. Many of these dispositions are convictions — some for serious offenses — that will never appear on the offender's criminal history record. In 1987 the courts reported the dispositions of 118,859 fingerprintable defendants statewide, of whom 37,248 or 31.3% had no recorded arrest for the incident at the State Police. One thousand eight hundred eighty (1,880) of the defendants were charged with first degree felonies, and 14,583 or 39% of the missing arrest records involved convictions (see Figure 1). Of the 14,583 convicted without arrest records, 4,841 or 33% were sentenced to incarceration.

The court data by itself cannot be used to create a criminal history record because there is no fingerprint to provide positive identification of the defendant/offender. Because many offenders use a variety of false names and identification records, fingerprints are the only reliable way to determine identity.

Figure 1:

NO. OF 1987 COURT DISPOSITIONS
MISSING FINGERPRINT RECORDS
BY DISPOSITION: STATEWIDE

37,248



NOT GUILTY
16,266 OR 44%

A R D
6,399 OR 17%

GUILTY
14,583 OR 39%

The focus of this report is missing fingerprint/ arrest records. However, it must be noted that problems with the central repository data base are not limited to missing records. Arrests that are on file at the Pennsylvania State Police and which result in convictions cannot be used for future sentencing decisions unless the court dispositions are added to the arrest records; and a large number (about 30%) of dispositions are missing after two to four years following the arrests.¹

Data was collected at six police departments, and a survey was mailed to 390 randomly-selected police departments throughout the Commonwealth in order to understand the reason(s) for missing prints and to develop strategies that might be effective in reducing the problem. A major portion of the problem involves defendants who are not immediately arrested but who are instead issued citations or sent summonses by district justices. Defendants who appear before a district justice in response to a summons are often not ordered to be

fingerprinted. Even when the district justice does issue a fingerprint order, many defendants ignore the order; and police are not empowered to make an arrest on the basis of failure to comply with the order. When a defendant appears for preliminary hearing, police officers in some departments feel they have the authority to take the defendant to the police station for fingerprinting if necessary. Officers in other departments, however, do not feel they have the authority to do this under the law.

COURT DISPOSITIONS WITHOUT FINGERPRINTS

Each entry of a defendant into the judicial system following arrest or summons results in the assignment of an offense tracking number (OTN) to the case. The OTN is pre-printed on the docket transcript used by the judiciary and is transferred to the fingerprint card by the arresting or fingerprinting officer. The arrest information that is entered into the central repository from the fingerprint card includes the OTN. When the disposition is completed by the courts, it is sent to the State Police along with the OTN, which identifies the arrest record within the criminal history file. Since 1984, when this automated process began, only two-thirds of the disposition records contained a matching OTN in the criminal history file — meaning that one third were missing fingerprint/ arrest records.

Philadelphia County, which accounts for 25-35% of annual court dispositions, fortunately has a very high rate of fingerprinting. Only 11.8% of Philadelphia court dispositions have no fingerprint in the repository compared to 38.9% for the rest of the state in 1987. For felonies of the first degree, Philadelphia was missing only 4.1%

compared to 25.0% for the rest of the state (see Figure 2). Therefore, because of Philadelphia's size and the quality of their arrest reporting, the analysis which follows will not include Philadelphia but will focus on the other 66 counties.

CRIME SERIOUSNESS:

Fortunately, the rate of missing fingerprints is highest for cases in which the offense is the least serious. Figure 2 shows that the percent of missing prints drops from 51.2% for third degree misdemeanors to 25% for first degree felonies outside of

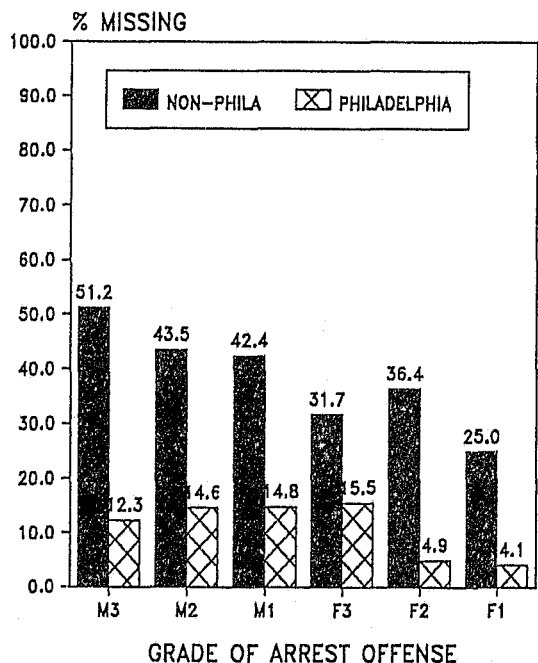
Fortunately, the rate of missing fingerprints is highest for cases in which the offense is the least serious.

Philadelphia. With respect to offense categories, Figure 3, page 3 shows that reporting is best for the category of retail theft at 14.0% missing, followed by homicide at 15.6%. The arrest reporting rate is worst for the offenses of fraud and embezzlement, possibly because these offenses are more often handled as private complaints to the district attorney. In such cases only convicted offenders need to be fingerprinted, and the defendant must respond to a court order in a process similar to the handling of summonses. The most likely reason that fingerprinting of retail theft is so complete is that district justices must order fingerprinting in order to receive a retail theft history from the State Police and determine the grade of the crime. (For more information on this point, see the discussion "Arrest or Summonses," page 3.)

The quality of reporting is also statistically related to the number of felony offenses charged. Cases in which no felonies are charged are missing fingerprint reports in 41.0% of the cases. This percentage drops as the number of felonies increases, down to 20.8% when four or more felonies are charged.

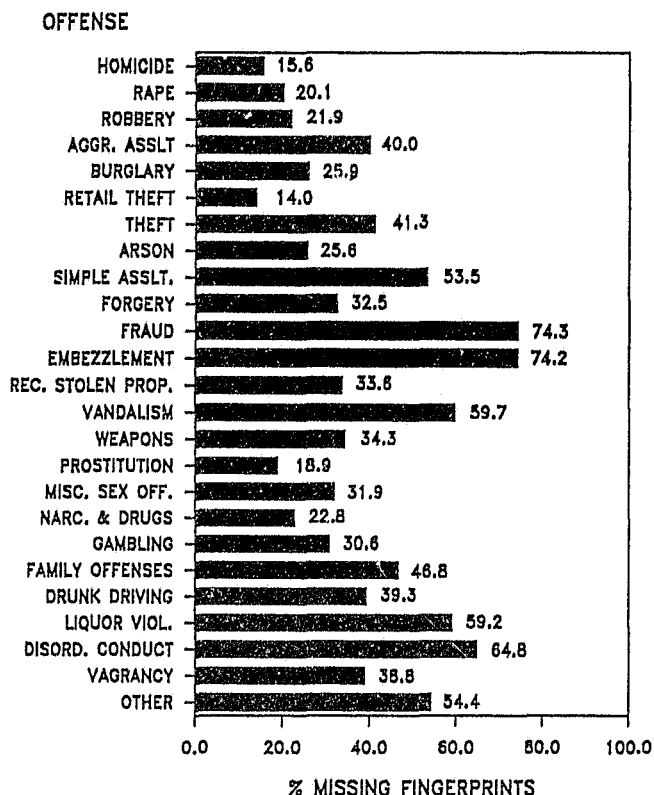
COURT DISPOSITION is also a factor. Fingerprinting rates seem to correlate highly with the seriousness

Figure 2:
PERCENT OF 1987 COURT DISPOSITIONS MISSING FINGERPRINT RECORDS BY OFFENSE GRADE: PHILA & OTHERS



GRADE OF ARREST OFFENSE

Figure 3:
PERCENT OF 1987 COURT DISPOSITIONS MISSING FINGERPRINTS — BY OFFENSE



of the eventual outcome of the case. Fingerprints are missing in 56.8% of "non-conviction" cases, 35.6% of cases handled as ARDs,² and 29.6% of cases ending in conviction. This information is shown in Figure 4, with convictions further broken down according to the type of sentence. Among the sentences, missing prints are highest (at 48.4%) among miscellaneous sentence types which include mental health transfers and other transfers out of the criminal justice system. Reporting is best for cases that are sentenced to state correctional institutions, with 18.5% missing.

Based on interviews at several police departments, it is clear that a major part of the "disposition effect" is due to a delay in fingerprinting. In some police departments it is common practice not to forward prints to the PSP for cases dismissed at preliminary hearing or reduced to only summary offenses. For cases in

ARREST OR SUMMONS: A major factor associated with non-fingerprinting rates is whether the defendant was arrested or proceeded against by citation or summons. Cases begun by arrest are missing fingerprints in 30.2% of the cases, while records involving summonses are missing 48.7% of the time. This pattern is typical regardless of the grade or category of the offense. The offense category which uses the summons the most (44.1% of

which a non-printed defendant is dismissed following a response to a summons — a common situation — it is often difficult for the arresting officer to justify fingerprinting the "former" defendant. In the above explanations, all or part of the court process, except for sentencing, has been completed prior to the decision to fingerprint. Better fingerprinting for incarceration sentences compared to that for probation sentences can possibly be explained by the fact that the arresting officer knows the defendant's prior record. If that record is serious, perhaps the defendant is both more likely to be printed and more likely to be incarcerated if convicted.

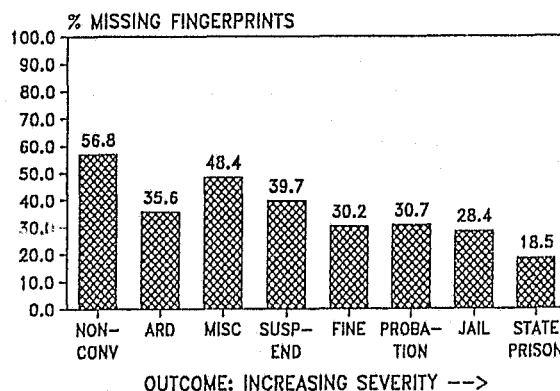
the time) is drunk driving (see Figure 5, page 5). Interestingly, this is the only category for which the rate of missing prints in 1987 was the same for both arrests and summonses (see Figure 6, page 5).

The offense category with the lowest rate of missing prints for summonses is retail theft. This also is

Cases begun by arrest are missing fingerprints in 30.2% of the cases, while records involving summonses are missing 48.7% of the time.

the only offense category for which the district justice has a direct responsibility to obtain fingerprints in order to determine the grade of the offense. If there is no prior record, the offense is a summary, and the case can be tried by the district justice; but if it is a second or subsequent offense, it becomes a misdemeanor, and a preliminary hearing is required instead of a trial. For retail thefts, cases begun by arrest were missing prints 12% of the time, and cases initiated by summonses were missing prints only 15% of the time. These relatively low rates suggest that in cases where district justices have a direct responsibility for ordering fingerprints, defendants are more likely to be printed and reported to the central repository. However, there is another reasonable

Figure 4:
PERCENT OF 1987 COURT DISPOSITIONS MISSING FINGERPRINTS BY CASE OUTCOME



OUTCOME: INCREASING SEVERITY -->

explanation for the observed results: the possibility that when district justices do not know the grade because no fingerprints were taken, they frequently do not adjudicate the case. If that were true, there would be no court disposition; and without a court disposition there would be no record to be matched to an arrest record, and our analysis would not reveal the problem. In other words, it is possible that a higher-than-usual number of both prints and dispositions are missing in retail theft cases. If so, that would artificially reduce our measure of missing fingerprints.

STUDY IN SIX POLICE DEPARTMENTS

In order to obtain greater detail on the nature of the problem of arrest reporting, six police departments were selected for in-depth study. Through collecting data, observing procedures, and interviewing key personnel, it was possible to develop a deeper understanding of why cases in various categories were missing fingerprint/arrest reports to a significantly higher degree.

Departments with at least 200 fingerprintable arrestees per year were eligible to be included in the study. An effort was made to select from those eligible departments some that were thought to have good reporting records and some thought to have poor reporting records based upon court data.

MISSING PRINTS: When data from the six municipalities were analyzed as a whole, fingerprints were not submitted to the State Police in 28.7% of the 1,089 arrests recorded. The pattern of non-reporting with respect to offense, grade, summons vs. arrest, etc. was very similar to the results obtained from analysis of court data. This similarity of findings between the two methods gives support to the validity of the findings. Since court dispositions and sentences were largely unknown by police or unrecorded at the time of data collection, these factors could not be compared with court data.

The rate of missing fingerprints varied somewhat according to the defendant's age. Defendants aged 18

and 19 were missing prints in only 19.5% of cases, increasing to 33.2% for defendants aged 25 to 29 years. Discussions with police personnel suggest that for some departments the main payoff for submitting a print set to the State Police is getting back a RAP or criminal history identifying the arrestee. If this were the major motivation for submitting prints, then printing repeat offenders (who would tend to be older than first-timers) would add little to the police files

... the most common reason for not submitting prints (34.7%) was that the case was dismissed at preliminary hearing.

since police already know who they are.

For those cases where the time of day at arrest was known, the rate of missing prints varied by the shift. Arrests made between 5:00 a.m. and 1:00 p.m. were missing prints 18.5% of the time, 1:00 p.m. to 9:00 p.m., 24.0% of the time, and 9:00 p.m. to 5:00 a.m., 27.8% of the time. The rate of non-reporting also seemed to follow a weekly cycle, with the lowest rate of non-reporting on Wednesday at 21.5%, increasing to 35.5% on Sunday and then decreasing through Wednesday.

REASONS: During data collection, if we found that no fingerprint had been taken for a given arrest, every effort was made to determine what the reason or reasons were for not fingerprinting the defendant. Sometimes this could be determined from the records themselves, and on other occasions arresting officers were interviewed to discover the reasons. The primary reason for not fingerprinting was determined through interviews in 38% of missing-fingerprint cases. Of those cases where the reason was determined, the most common reason for not submitting prints was that the case was dismissed at preliminary hearing (34.7%). The second most common reason was that the defendant was too violent or belligerent (19.5%), usually due to intoxication. The third most common reason was that the charges were

reduced to a summary level at preliminary hearing (11.9%). This reason is similar to the first in that action at preliminary hearing made fingerprinting seem unnecessary, and the combination of these two reasons accounts for 46.6% of all the reasons known. By law, these are not acceptable reasons. If a police officer charges a person with a fingerprintable offense, that person should be fingerprinted even if a District Justice decides to dismiss all charges or at least all those that would require fingerprinting. Such defendants otherwise avoid the arrest record that they would have had if the police had been able to fingerprint at time of arrest or in response to a fingerprint order and summons. This situation raises the issue of fairness even though dismissals on a criminal history do not seriously affect future action by the criminal justice system or the person's ability to obtain future employment. In many cases the dismissal is, or would be, the person's only arrest and would give him a "criminal record" that could affect him or her in some ways.

Since issuance of summonses is known to create a problem, data indicating that cases were handled via summons was merged with the reasons discussed above for not fingerprinting. For analysis purposes, if there were no fingerprint, and no reason were given, and the case was a summons case, then the reason was assumed to be the summons. Using this method, "summons or citation issued" rose in rank to the leading reason at 44.1% of known reasons.³

The above reasons for the central repository at the State Police not having an arrest record apply only at the front end of the process — the taking of the prints. Between the time the prints are taken and the time the print card is accepted and put into the records at the State Police, several other steps must occur. First, of course, the prints must be submitted to the State Police. In 14% of the cases studied in the six departments, prints were taken but were never submitted. The six-department average was increased dramatically by problems in one of the six departments, which had 57% of its fingerprints still on file because a shortage in secretarial support staff

Figure 5
PERCENT OF DEFENDANTS ISSUED SUMMONSES IN LIEU OF ARREST IN 1987 BY OFFENSE

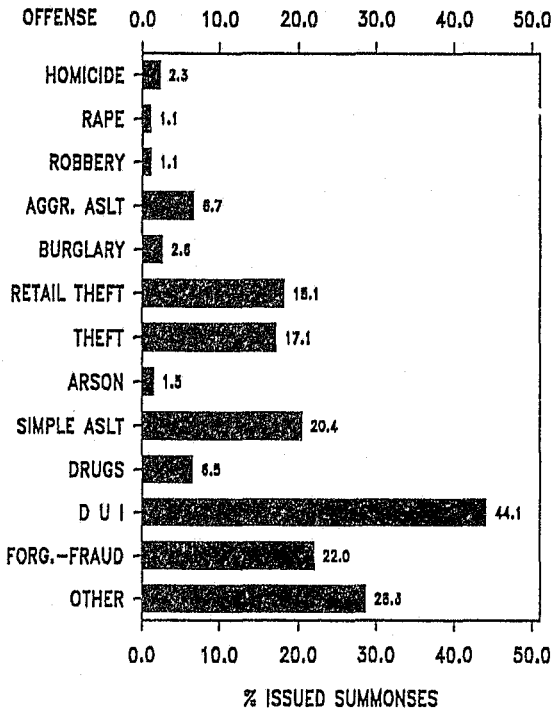
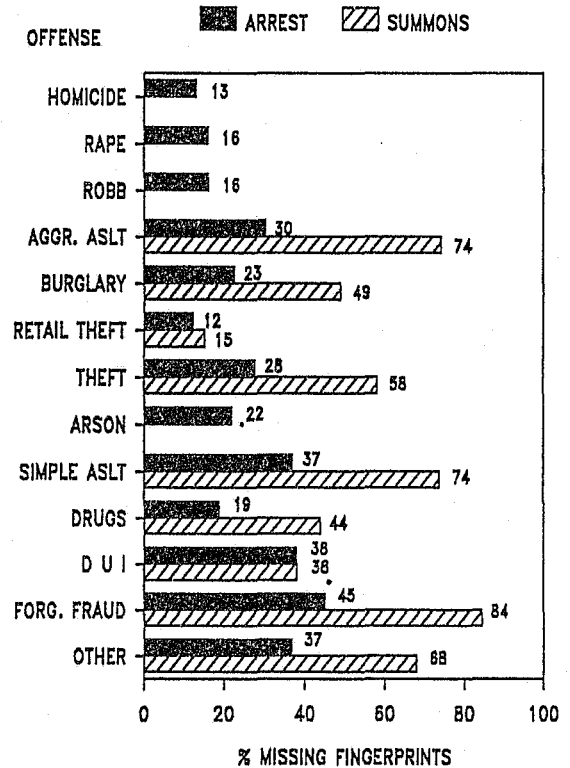


Figure 6
PERCENT OF 1987 COURT DISPOSITIONS MISSING FINGERPRINTS BY ARREST VS. SUMMONS BY OFFENSE



made it difficult for the department to place the necessary information on the cards to be submitted to the State Police. In three of the six departments this was not a problem at all, and in the other two, missing submissions accounted for only 6.3% and 14.4% of the cases studied.

The second necessary step is review and acceptance of the print cards by the PSP. In 14.4% of all cases studied in all departments, it was impossible to determine whether the prints which were taken and submitted were actually accepted by the State Police or whether they had been returned. In another 1.4% of cases studied (based upon data from three departments) fingerprint cards were returned. We were not aware of any instance among the arrests studied in which fingerprints were able to be retaken and resubmitted following rejection by the State Police.

SURVEY RESULTS

Survey forms were mailed to 390 police departments randomly chosen from all police departments throughout the Commonwealth. Responses were received from 180 departments — a response rate of 46%. Of the departments responding, 62 had five or fewer full-time police officers, 64 had 6 to 10 full-time officers, and 53 had over 10 full-time

officers. Thus, the responding departments represented a cross-section of sizes.

Eighty-one percent (81%) of the departments reported that they were mostly or very familiar with the fingerprinting and arrest reporting statutes regarding who should be reported to the Pennsylvania State Police central repository. In response to the question, "What percent of all legally printable defendants (including those receiving a summons or citation) do you estimate your department actually fingerprints for the State Police?" the average response was 82%. The survey also asked the same question for three offense categories: drunk driving 80%; retail theft 85%; others 71%. The survey also asked for an estimate of defendants that were: a) "Immediately printed," b) "Arrested, not immediately printed," or c) "Issued a

Of the cases handled by summons, the district justice ordered the defendant to be printed in 89% of retail theft cases, 84% of drunk driving cases, and 70% of the other cases according to the survey.

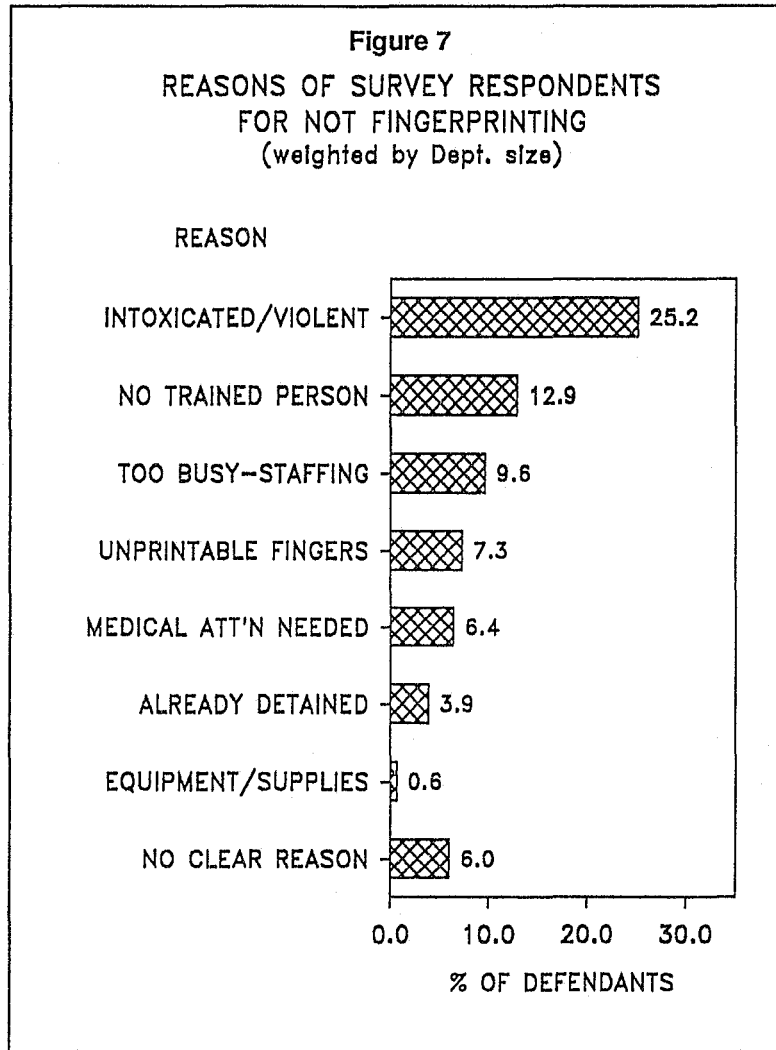
citation or summons only, and not immediately printed." The responding departments estimated that only 39% of drunk driving defendants were immediately fingerprinted at the time of arrest. This figure was somewhat higher for retail theft (44%) and higher yet for "other offenses" at 56%. Drunk drivers not immediately printed were issued summonses only 23% of the time; with 43% not immediately printed but not issued a summons either.⁵ On the other hand, retail theft defendants not immediately printed were primarily issued summonses or citations (38%), with a lesser number (25%) arrested but not immediately printed according to respondents' estimates.

SUMMONSES:

Respondents were asked some detailed questions about the fingerprinting of cases that were initiated through summonses. Respondents reported that 80% of their summons cases eventually resulted in a fingerprint. Of the cases handled by summons, the district justice ordered the defendant to be printed in 89% of retail theft cases, 84% of drunk driving cases, and 70% of the other cases. In only 50% to 70% of the cases handled by summons and resulting in release was fingerprinting made an explicit condition of release according to the survey. From discussions with police personnel, it was learned that in cases of release with conditions, the defendant would have to submit for prints within one or two days to remain eligible for release. If the defendant failed to be printed, the district justice would have the authority to issue a bench warrant for his arrest.

REASONS: Police departments surveyed were asked the reasons why printable defendants in their custody might not be printed. They were asked to estimate the percent of arrests for the last year for which each reason applied. Because some cases would have multiple reasons, the percentages recorded by a single department were not expected to total 100%.

departments. The result of this process should give a closer estimate of the reasons behind the average of cases missing fingerprints in Pennsylvania. The weighted average for the responses to the reason choices offered in the question appear in Figure 7. The highest scoring reason (25.2% weighted average) was that the defendant was too intoxicated by alcohol or drugs or too violent. This is consistent with the results of the six department study, which also indicated violent behavior as a major reason. The next most common reason cited, with a weighted average of 12.9%, was "trained personnel were not available." The response coming in third at 9.6% was, "With the staff on hand we were too busy with other more urgent business." Notice that both the second and third ranking reasons deal with department resources. The availability of trained personnel to take prints was reported to be a problem, especially during the late night (early morning) shift, when only 51% of the departments reported "nearly always" having trained staff available to take prints. The average for the evening shift was better at 76%, and the day still better at 86%. As expected, this problem was more acute in the smaller



Averaging the responses from the responding departments gives us a picture of reasons in the average department. This is the type of analysis done above. However, in the analysis that follows, weight was given to each department's response depending on the number of officers the department employed. This was done because large departments handle more cases than do small

departments.

CONCLUSIONS AND RECOMMENDATIONS

1. For a state criminal justice system that relies upon accurate criminal history records for appropriate sentencing, the problem of missing fingerprints is serious. It is estimated that 15,000 convictions per year are not recorded in the Commonwealth's criminal history file due to missing prints.
2. Often police have a severe problem fingerprinting violent, belligerent and intoxicated defendants. If not fingerprinted at the first opportunity, it is often difficult or impossible to get prints later. Either ways need to be found for police departments to fingerprint those who are "acting out" in spite of their physical resistance, or, fingerprinting on a short-term delay basis needs to be made more a matter of routine for violent and intoxicated offenders. Electronic fingerprinting, currently being tested as an alternative to ink, offers some promise as a solution for printing uncooperative defendants.
3. Laws regarding fingerprinting should be revised to make it a criminal offense to fail to respond to a fingerprint order. All defendants issued summonses in appropriate cases (i.e., those requiring prints) should routinely be sent a fingerprint order card as current law would seem to require. A violation of law would mean the addition of the charge of "willful failure to respond to fingerprint order" to the offenses charged in the case and would give police the right to detain and print offending persons after their preliminary hearing — even if all original charges were dismissed. Just as other actions that interfere with the lawful operation of the criminal justice system — such as resisting arrest or violating the conditions of probation — are violations of law, a strong case can be made that it should also be illegal to willfully violate the fingerprint laws.
4. Court proceedings initiated by summons instead of arrest do not provide police with a convenient —

and sometimes even a possible — means of obtaining a fingerprint set under current laws. When a defendant fails to come to the police department to be printed, in violation of the order accompanying the summons, police must inform the district justice and otherwise follow-up at court proceedings. If fingerprints were not ordered along with the summons (and the officer often cannot be certain of this) the police officer must ask the district justice to issue a fingerprint order or must ask that continued release from detention be made conditional upon the defendant submitting for fingerprints within a definite period of time.

District justices do not typically consider fingerprinting to be their responsibility aside from retail theft cases.⁶ This places most of the information burden on police. The arresting or citing officer may be unable to attend the court proceedings; and when he does, he still may not be aware of whether someone else took the defendant's fingerprints. Ways need to be found for police departments to track fingerprinting and to identify easily those cases which have not been fingerprinted by the time of preliminary hearing. Many departments seem to lack this tracking capability.

5. Since fingerprints and criminal history records are an important part of the sentencing process used by the judiciary, serious consideration should be given by the judiciary to accepting more responsibility for the system of obtaining fingerprints. This might include routine ordering of fingerprints when none have been taken, with continued release from detention routinely conditioned upon fingerprinting within three days. District Justices should bear a responsibility of checking at time of preliminary hearing on the status of fingerprinting. If none have been taken, the defendant should be ordered to accompany the arresting officer to the police department following the hearing. If the defendant refuses, the District Justice should be required to revoke

his release. This procedure would be possible under current law.

6. With advancements in technology regarding matching of fingerprints, especially automated fingerprint identification systems (AFIS), consideration should be given to accepting arrest fingerprint sets that have fewer than ten classifiable prints. This would allow some flexibility for printing offenders who have some damaged fingers and offenders for whom one or two prints out of the ten were unclassifiable because of their own resistance or because of lack of proper skill on the part of the fingerprinter.
7. The delay and incompleteness in posting dispositions from the court system to arrest records is a serious problem. While the judicial system is currently upgrading its data processing equipment in a very significant way, it will be more than five years before common pleas dispositions are fully automated. Interim steps are urgently needed to speed the existing process and insure complete reporting.

NOTES

- ¹Our analysis of criminal history records at the end of 1989 examined only missing dispositions for persons arrested from 1984 through 1987. During the 4-year study period 444,443 arrests were reported to the Central Repository. Thirty percent (30.0%) of these, or 133,208 arrests (affecting 91,703 individuals), had no disposition by the end of 1989. The rate of missing dispositions was highest for 1987 arrests (46.7%) and lowest for 1984 arrests (17.8%). Records received by the PSP from state and local correctional institutions indicate that at least 5,537 of the 133,208 arrest records with no disposition resulted in incarceration sentences; and of these, 2,145 were charged with a felony.
- ²Accelerated Rehabilitative Disposition, a form of probation in lieu of trial.
- ³This result was due in part to the fact that more cases had information available on "summons vs. arrest" than was available for the other reasons.
- ⁴Two part-time were counted as one full-time.
- ⁵Choices do not sum exactly to 100% due to the estimating process.
- ⁶Special provisions under §9112 require district justices to obtain a grading of retail and library theft based on criminal histories provided by the Pennsylvania State Police upon submission of fingerprints.