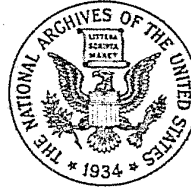


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PART IV



DEPARTMENT OF JUSTICE
JUSTICE



CRIMINAL JUSTICE
INFORMATION SYSTEMS

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Title 28—Judicial Administration
CHAPTER I—DEPARTMENT OF JUSTICE
 [Order No. 601-75]
PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

This order establishes regulations governing the dissemination of criminal record and criminal history information and includes a commentary on selective sections as an appendix. Its purpose is to afford greater protection of the privacy of individuals who may be included in the records of the Federal Bureau of Investigation, criminal justice agencies receiving funds directly or indirectly from the Law Enforcement Assistance Administration, and interstate, state or local criminal justice agencies exchanging records with the FBI or these federally-funded systems. At the same time, these regulations preserve legitimate law enforcement need for access to such records.

Pursuant to the authority vested in the Attorney General by 28 U.S.C. 509, 510, 534, and Pub. L. 92-544, 86 Stat. 1115, and 5 U.S.C. 301 and the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197 (42 U.S.C. § 3701 et seq. (Aug. 6, 1973)), this addition to Chapter I of Title 28 of the Code of Federal Regulations is issued as Part 20 by the Department of Justice to become effective June 19, 1975.

This addition is based on a notice of proposed rule making published in the FEDERAL REGISTER on February 14, 1974 (39 FR 5636). Hearings on the proposed regulations were held in Washington, D.C. in March and April and in San Francisco, California in May 1974. Approximately one hundred agencies, organizations and individuals submitted their suggestions and comments, either orally or in writing. Numerous changes have been made in the regulations as a result of the comments received.

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Subpart A—General Provisions

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the completeness; integrity, accuracy and security of such information and to protect individual privacy.

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197, 42 U.S.C. 3701, et seq. (Act), 28 U.S.C. 534, and Pub. L. 92-544, 86 Stat. 1115.

§ 20.3 Definitions.

As used in these regulations:

- (a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.
- (b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.
- (c) "Criminal justice agency" means: (1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.
- (d) The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.
- (e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information

disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetence, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(f) "Statute" means an Act of Congress or State legislature of a provision of the Constitution of the United States or of a State.

(g) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) An "executive order" means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701 et seq. as amended.

(j) "Department of Justice criminal history record information system" means the Identification Division and the Computerized Criminal History File systems operated by the Federal Bureau of Investigation.

Subpart B—State and Local Criminal History Record Information Systems

§ 20.20 Applicability.

- (a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973; pursuant to Title I of the Act.
- (b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) original records of entry such as police plotters maintained by criminal justice agencies, compiled chronologically and required by law or

long standing custom to be made public, if such records are organized on a chronological basis; (3) court records of public judicial proceedings compiled chronologically; (4) published court opinions or public judicial proceedings; (5) records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses; (6) announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section.

§ 20.21 Preparation and submission of a Criminal History Record Information Plan.

A plan shall be submitted to LEAA by each State within 180 days of the promulgation of these regulations. The plan shall set forth operational procedures to—

- (a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.
- (1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination, except in those cases where time is of the essence (and the repository is technically incapable of responding within the necessary time period. (2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic

audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

(b) *Limitations on dissemination.* Insure that dissemination of criminal history record information has been limited, whether directly or through any intermediary only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Such other individuals and agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof;

(5) Agencies of State or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and

(6) Individuals and agencies where authorized by court order or court rule.

(c) *General policies on use and dissemination.* Insure adherence to the following restrictions:

(1) Criminal history record information concerning the arrest of an individual may not be disseminated to a non-criminal justice agency or individual (except under § 20.21(b) (3), (4), (5), (6)) if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

(2) Use of criminal history record information disseminated to non-criminal justice agencies under these regulations shall be limited to the purposes for which it was given and may not be disseminated further.

(3) No agency or individual shall confirm the existence or non-existence of criminal history record information for

employment or licensing checks except as provided in paragraphs (b) (1), (b) (2), and (b) (5) of this section.

(4) This paragraph sets outer limits of dissemination. It does not, however, mandate dissemination of criminal history record information to any agency or individual.

(d) *Juvenile records.* Insure that dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or supervision (or the equivalent) to non-criminal justice agencies is prohibited, unless a statute or Federal executive order specifically authorizes dissemination of juvenile records, except to the same extent as criminal history records may be disseminated as provided in § 20.21 (b) (3), (4), and (6).

(e) *Audit.* Insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Such records shall include, but are not limited to, the names of all persons or agencies to whom information is disseminated and the date upon which such information is disseminated.

(f) *Security.* Insure confidentiality and security of criminal history record information by providing that wherever criminal history record information is collected, stored, or disseminated, a criminal justice agency shall—

(1) Institute where computerized data processing is employed effective and technologically advanced software and hardware designs to prevent unauthorized access to such information;

(2) Assure that where computerized data processing is employed, the hardware, including processor, communications control, and storage device, to be utilized for the handling of criminal history record information is dedicated to purposes related to the administration of criminal justice;

(3) Have authority to set and enforce policy concerning computer operations;

(4) Have power to veto for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;

(5) Select and supervise all personnel authorized to have direct access to such information;

(6) Assure that an individual or agency authorized direct access is administratively held responsible for (i) the physical security of criminal history record information under its control or in its custody and (ii) the protection of such information from unauthorized accesses, disclosure, or dissemination;

(7) Institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;

(8) Provide that each employee working with or having access to criminal history record information should be made

familiar with the substance and intent of these regulations; and

(9) Provide that direct access to criminal history records information shall be available only to authorized officers or employees of a criminal justice agency.

(g) *Access and review.* Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that—

(1) Any individual shall, upon satisfactory verification of his identity be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;

(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;

(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;

(4) Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to whom the data has been given;

(5) The correcting agency shall notify all criminal justice recipients of corrected information; and

(6) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3 (b).

§ 20.22 Certification of Compliance.

(a) Each State to which these regulations are applicable shall with the submission of each plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.

(b) The certification shall include—

(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;

(3) A description of the steps taken to overcome any fiscal, technical, and administrative barriers to the development of complete and accurate criminal history record information;

(4) A description of existing system capability and steps being taken to up-

grade such capability to meet the requirements of these regulations; and

(5) A listing setting forth all non-criminal justice dissemination authorized by legislation existing as of the date of the certification, showing the specific categories of non-criminal justice individuals or agencies, the specific purposes or uses for which information may be disseminated, and the statutory or executive order citations.

§ 20.23 Documentation: Approval by LEAA.

Within 90 days of the receipt of the plan, LEAA shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by LEAA will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by December 31, 1977, except that a State, upon written application and good cause, may be allowed an additional period of time to implement § 20.21(f) (2). Certification shall be submitted in December of each year to LEAA until such complete compliance. The yearly certification shall update the information provided under § 20.21.

§ 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

§ 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a fine not to exceed \$10,000. In addition, LEAA may initiate fund cut-off procedures against recipients of LEAA assistance.

Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal history record information system that serves criminal justice agencies in two or more states and to Federal, state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal history record information systems. These regulations are applicable to both manual and automated systems.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall operate the National Crime Information Center (NCIC), the computerized information system which includes telecommunications lines and

any message switching facilities which are authorized by law or regulation to link local, state and Federal criminal justice agencies for the purpose of exchanging NCIC-related information. Such information includes information in the Computerized Criminal History (CCH) File, a cooperative Federal-State program for the interstate exchange of criminal history record information. CCH shall provide a central repository and index of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

(b) The FBI shall operate the Identification Division to perform identification and criminal history record information functions for Federal, state and local criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (86 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States.

(c) The FBI Identification Division shall maintain the master fingerprint files on all offenders included in the NCIC/CCH File for the purposes of determining first offender status and to identify those offenders who are unknown in states where they become criminally active but known in other states through prior criminal history records.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in any Department of Justice criminal history record information system shall include serious and/or significant offenses.

(b) Excluded from such a system are arrests and court actions limited only to nonserious charges, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run). Offenses committed by juvenile offenders shall also be excluded unless a juvenile offender is tried in court as an adult.

(c) The exclusions enumerated above shall not apply to Federal manual criminal history record information collected, maintained and compiled by the FBI prior to the effective date of these Regulations.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in any Department of Justice criminal history record information system will be made available:

(1) To criminal justice agencies for criminal justice purposes; and

(2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order.

(3) Pursuant to Public Law 92-544 (86 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination

is authorized by Federal or state statutes and approved by the Attorney General of the United States. When no active prosecution of the charge is known to be pending arrest data more than one year old will not be disseminated pursuant to this subsection unless accompanied by information relating to the disposition of that arrest.

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses:

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

§ 20.34 Individual's right to access criminal history record information.

(a) Any individual, upon request, upon satisfactory verification of his identity by fingerprint comparison and upon payment of any required processing fee, may review criminal history record information maintained about him in a Department of Justice criminal history record information system.

(b) If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information. If the contributor corrects the record, it shall promptly notify the FBI and, upon receipt of such a notification, the FBI will make any changes necessary in accordance with the correction supplied by the contributor of the original information.

§ 20.35 National Crime Information Center Advisory Policy Board.

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, FBI, general policies with respect to the philosophy, concept and operational principles of NCIC, particularly its relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal history record information contained in the CCH File.

(a) (1) The Board shall be composed of twenty-six members, twenty of whom are elected by the NCIC users from across the entire United States and six who are appointed by the Director of the FBI. The six appointed members, two each from the judicial, the corrections and the prosecutive sectors of the criminal justice community, shall serve for an indeterminate period of time. The twenty elected members shall serve for a term of

two years commencing on January 5th of each odd numbered year.

(2) The Board shall be representative of the entire criminal justice community at the state and local levels and shall include representation from law enforcement, the courts and corrections segments of this community.

(b) The Board shall review and consider rules, regulations and procedures for the operation of the NCIC.

(c) The Board shall consider operational needs of criminal justice agencies in light of public policies, and local, state and Federal statutes and these Regulations.

(d) The Board shall review and consider security and privacy aspects of the NCIC system and shall have a standing Security and Confidentiality Committee to provide input and recommendations to the Board concerning security and privacy of the NCIC system on a continuing basis.

(e) The Board shall recommend standards for participation by criminal justice agencies in the NCIC system.

(f) The Board shall report directly to the Director of the FBI or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770.

(h) The Director, FBI, shall not adopt recommendations of the Board which would be in violation of these Regulations.

§ 20.36 Participation in the Computerized Criminal History Program.

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency.

It shall be the responsibility of each criminal justice agency contributing data to any Department of Justice criminal history record information system to assure that information on individuals is kept complete, accurate and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

The services of Department of Justice criminal history record information systems are subject to cancellation in regard to any agency or entity which fails

to comply with the provisions of Subpart C.

EDWARD H. LEVI,
Attorney General.

MAY 15, 1975.

RICHARD W. VELDE,
Administrator, Law Enforcement
Assistance Administration.

MAY 15, 1975.

APPENDIX—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

Subpart A—§ 20.3(b). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet" such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g. suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history information.

§ 20.3(c). The definitions of criminal justice agency and administration of criminal justice of 20.3(c) (d) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order. The above subunits of non-criminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

§ 20.3(e). Disposition is a key concept in the section 524(b) of the Act and in § 20.21 (a) (1) and § 20.21(b) (2). It, therefore, is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other unspecified transactions concluding criminal proceedings within a particular agency.

Subpart B—§ 20.20(a). These regulations apply to criminal justice agencies receiving Safe Streets funds for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA's authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulations of manual systems, therefore, is authorized by section 524(b) when coupled with Section 501 of the Act which authorizes the Administration to establish rules and regulations "necessary to the exercise of its functions . . ."

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

§ 20.20(b)(c). Section 20.20(b)(c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know.

Section 20.20(b)(1) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus announcements of arrest, convictions, new developments in the course of an investigation may be made within a few days of their occurrence. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1952" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal agency may respond to the inquiry.

§ 20.21. Since privacy and security considerations are too complex to be dealt with overnight, the regulations require a State plan to assure orderly progress toward the objectives of the Act. In response to requests of those testifying on the draft regulations, the deadline for submission of the plan was set at 180 days. The kind of planning document anticipated would be much more concise than, for example, the State's criminal justice comprehensive plan.

The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor.

§ 20.21(a)(1). Section 524(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

It is, however, economically and administratively impractical to maintain complete criminal histories at the local level. Arrangements for local police departments to keep track of dispositions by agencies outside of the local jurisdictions generally do not exist. It would, moreover, be bad public policy to encourage such arrangements since it would result in an expensive duplication of files.

The alternatives to locally kept criminal histories are records maintained by a central State repository. A central State repository is a State agency having the function pursuant to statute or executive order of maintaining comprehensive statewide criminal history record information files. Ultimately, through automatic data processing the State level will have the capability to handle all requests for in-State criminal history information.

Section 20.21(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at a State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most non-criminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

§ 20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the "privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes." The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

§ 20.21(b)(2). This subsection is intended to permit public or private agencies to have access to criminal history record information where a statute or executive order:

(1) Denies employment, licensing, or other civil rights and privileges to persons convicted of a crime;

(2) Requires a criminal record check prior to employment, licensing, etc.

The above examples represent statutory patterns contemplated in drafting the regulations. The sine qua non for dissemination under this subsection is statutory reference to criminal conduct. Statutes which contain requirements and/or exclusions based on "good moral character" or "trust worthiness" would not be sufficient to authorize dissemination.

The language of the subsection will accommodate Civil Service suitability investigations under Executive Order 10450, which is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

§ 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

§ 20.21(b)(4). Under this subsection, any good faith researchers including private individuals would be permitted to use criminal history record information for research purposes. As with the agencies designated in § 20.21(b)(3) researchers would be bound by an agreement with the disseminating criminal justice agency and would, of course, be subject to the sanctions of the Act.

The drafters of the regulations expressly rejected a suggestion which would have limited access for research purposes to certified research organizations. Specifically "certification" criteria would have been extremely difficult to draft and would have inevitably led to unnecessary restrictions on legitimate research.

Section 524(a) of the Act which forms part of the requirements of this section states:

"Except as provided by Federal law other than this title, no officer or employee of the Federal Government, nor any recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings."

LEAA anticipates issuing regulations pursuant to Section 524(a) as soon as possible.

§ 20.21(b)(5). Dissemination under this section would be permitted not only in cases of investigations of employment suitability, but also investigations relating to clearance of individuals for access to information which is classified pursuant to Executive Order 11652.

§ 20.21(c)(1). "Active prosecution pending" would mean, for example, that the case is still actively in process, the first step such as an arraignment has been taken and the case docketed for court trial. This term is not intended to include any treatment alternative-type program which might defer prosecution to a later date. Such a deferral prosecution is a disposition which should be entered on the record.

§ 20.21(c)(3). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

§ 20.21(c)(4). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in § 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished.

§ 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language or statute or Federal executive order specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§ 20.21(a). Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies.

§ 20.21(f)(2). In the short run, dedication will probably mean greater costs for State and local governments. How great such costs might be is dependent upon the rapidly advancing state of computer technology. So that there will be no serious hardship on States and localities as a result of this requirement, § 20.23 provides that additional time will be allowed to implement the dedication requirement. For example, where local systems now in place contain criminal history information of only that State, used purely for intrastate purposes, in a shared environment, consideration will be given to

granting extensions of time under this provision.

§ 20.21(f)(5), (6). "Direct access" means that any non-criminal agency authorized to receive criminal justice data must go through a criminal justice agency to obtain information.

§ 20.21(g)(1). A "challenge" under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge.

The drafters of the subsection expressly rejected a suggestion that would have called for a satisfactory verification of identity by fingerprint comparison. It was felt that states ought to be free to determine other means of identity verification.

§ 20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under § 20.21(e) must be kept so that notification can be made.

§ 20.21(g)(6). This section emphasizes that the right to access and review extends only to criminal history information and does not include other information such as intelligence or treatment data.

§ 20.22(a). The purpose for the certification requirement is to initiate immediate compliance with these regulations wherever possible. The term "maximum extent feasible" acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Report #2; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum #3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum #4.

Subpart C—§ 20.31. Defines the criminal history record information system operated by the Federal Bureau of Investigation. Each state having a record in the Computerized Criminal History (CCH) file must have a fingerprint card on file in the FBI Identification Division to support the CCH record concerning the individual.

Paragraph b is not intended to limit the identification services presently performed

by the FBI for Federal, state and local agencies.

§ 20.32. The grandfather clause contained in the third paragraph of this Section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses which were stored prior to February, 1973.

In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will appear in the arrest segment of the CCH record.

§ 20.33. Incorporates the provisions of a regulation issued by the FBI on June 28, 1974, limiting dissemination of arrest information not accompanied by disposition information outside the Federal government for non-criminal justice purposes. This regulation is cited in 28 CFR 50.12.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are particularized in 28 CFR 16.30-34.

The procedures by which an individual may obtain a copy of his Computerized Criminal History record are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH file, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH file. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C., by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or, possibly, in the State's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracies in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the CCH file. One of the requirements is that hardware, including processor, communications control and storage devices, to be utilized for the handling of criminal history data must be dedicated to the criminal justice function.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in Subpart D in order to allow for processing time which may be needed by the states before forwarding the disposition to the FBI.

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[Order No. 602-75]

PART 50—STATEMENTS OF POLICY

Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings

This order amends the Department of Justice guidelines concerning release of information by personnel of the Department of Justice relating to criminal and civil proceedings by deleting the provision permitting disclosure of criminal history record information on request.

By virtue of the authority vested in me as Attorney General of the United States, § 50.2(b)(4) of Chapter I, Title 28 of the Code of Federal Regulations is amended to read as follows:

§ 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.

(b) * * *

(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

MAY 15, 1975.

EDWARD H. LEVI, Attorney General.

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END