

State of New York

CRIMINAL HISTORY RECORD INFORMATION PLAN

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ACQUISITIONS

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## INTRODUCTION

The Division of Criminal Justice Services (DCJS) was created by statute in 1972 by Article 35 of the Executive Law and given among other tasks all of the duties which were formerly the responsibility of the New York Identification and Intelligence System (NYSIIS). NYSIIS had been created in 1963 to develop an automated system for the collection, maintenance, use, and dissemination of criminal history records pertaining to all New York State defendants arrested for a fingerprintable crime (in New York, all felonies and most misdemeanors). DCJS, through its Bureau of Identification and Information Services (IIS), currently maintains an automated data base of roughly one million records and a manual file of three million records, some of which are duplicated by the automated data base.

While DCJS has historically had the responsibility for the operation of the central criminal history record system, the Office of Court Administration (OCA) in 1965 took over the responsibility for collecting court disposition information from courts in New York City and supplying it to DCJS. Since that time, OCA has collected and forwarded more than 1,056,000 court dispositions to DCJS. In December 1972, this responsibility was extended to cover all courts in the State.

In 1973, by amendment to the Omnibus Crime Control and Safe Streets Act of 1968, the U.S. Congress enacted Section 524b (42 USC 3771b) which establishes certain ground rules for the collection, storage and dissemination of criminal history record information maintained in automated systems which receive financial support under Title I of the amended Act. On May 20, 1975,

after holding hearings on the subject across the country, the U.S. Department of Justice, through the Law Enforcement Assistance Administration, published Regulations implementing Section 524b in the Federal Register. The Regulations became effective one month after publication on June 19, 1975, and may be found in Part 20 of Chapter 1 of Title 28 in the Code of Federal Regulations.

In brief, the new Regulations spell out a broad set of standards applying to all criminal justice information systems (Federal, State and local) which store criminal history record data and which have received the assistance of LEAA funds since July 1, 1973. These systems are expected to fully comply with the Regulations by December 31, 1977.

Because it operates the central state repository for criminal history records, DCJS was formally designated by Governor Carey as the agency which would prepare the plan for achieving compliance required by the Regulations. This document presents the required plan. It specifies the extent to which New York State is presently in compliance with the Regulations and defines the steps which the State will take to comply with all regulatory requirements (except for hardware dedication) on or before December 31, 1977.

Although the manual and automated systems of DCJS operate with dedicated hardware, the OCA computer system which collects, processes, and disseminates court dispositions is dedicated not to the administration of criminal justice but to court purposes. As such it complies with the spirit - but not letter - of the LEAA regulations.

Other computerized information systems serving criminal justice agencies meet neither the spirit nor the letter of the requirement for dedicated hardware. These systems, local police and court information systems and the information system of the Division of Correctional Services, operate on the hardware of county data processing services and the State Office of General Services, respectively, which are used principally to perform operational and management information functions. Because of this situation, New York State feels that the requirement of complete hardware dedication to criminal justice purposes is not currently cost-justified. However, in keeping with the intent of the Federal Regulations, New York will insure both the privacy and security of criminal history record information without total hardware dedication using acceptable alternative means.

Consistent with the Federal Regulations and the division of responsibility which exists under New York Law, this Plan and Certification Statement is concerned primarily with the steps which the central state repository will take to meet all Federal requirements. DCJS has already conferred with all major law enforcement agencies in the State and all State-level criminal justice agencies to explain the scope of the Regulations and their applicability to all systems which have received LEAA funding since July 1, 1973. All agencies have assured DCJS that they will submit their certifications before December 16, 1975, and DCJS will continue to work with all covered agencies to assist them with their certifications in order to meet the

December 16th submission date.

Obviously the success of the plans outlined herein depends largely on the continuing cooperation between all criminal justice agencies within the state. Each has its own separate and important role, yet none can function effectively without the others. Thus, since 1972, DCJS has depended on the Office of Court Administration to supply it with the court dispositions it needs to complete its records while the courts, in turn, have used DCJS-furnished criminal histories for arraignment and sentencing decisions. DCJS has every reason to believe that the good will and mutual respect which has characterized inter-agency relationships among the criminal justice community will continue in the future. With such cooperation, DCJS anticipates a minimum of difficulty in implementing all Federal requirements (except for hardware dedication) by December 31, 1977.

## CHAPTER 1

### AUTHORITY OF THE CENTRAL STATE REPOSITORY

Among other duties, DCJS has the statutory responsibility to:

"Establish, through electronic data processing and related procedures, a central data facility with a communication network serving [criminal justice] agencies anywhere in the state, so that they may, upon such terms and conditions as the commissioner, and the appropriate officials of such [criminal justice] agencies shall agree, contribute information and have access to information contained in the central data facility, which shall include but not be limited to such information as criminal record, personal appearance data, fingerprints, photographs, and handwriting samples...."

(Sec. 837(6) Executive Law)

With respect to the foregoing duties, DCJS is also directed to "adopt appropriate measures to assure the security and privacy of identification and information data." (Sec. 836(8) Executive Law).

With one exception, Article 35 of the Executive Law provides DCJS with sufficient authority to enable it to perform those functions required of a central state repository by the Federal Regulations. Part of the DCJS data base is derived from Section 160.20 of the Criminal Procedure Law which directs that, after fingerprinting a defendant for a felony or a penal law misdemeanor, "the appropriate police officer or arresting agency must without unnecessary delay forward two copies of such fingerprints to

DCJS". When arrest fingerprints arrive at DCJS, the agency is directed to "receive, process and file" them "for the purpose of establishing identity and previous criminal record...." (Sec. 837(7) Executive Law). The present authority to require disposition reporting rests primarily in Section 837(6) quoted above. Although a combined reading of Sections 837-b(1) and 835(4) Executive Law might appear to give DCJS power to require timely disposition reporting, such an interpretation is historically unjustified as these sections were meant to apply only to statistical figures. Thus while arrests are reported "without unnecessary delay", dispositions arrive only "upon such terms and conditions" as can be agreed upon by the Commissioner of DCJS and the reporting agency. To rectify this situation, DCJS, in consultation with the Office of Court Administration, intends to suggest to the Governor's Office that legislation be introduced requiring mandatory disposition reporting by all criminal justice agencies within 90 days of the date of occurrence. The legislation will require that dispositions be reported to the central state repository and will be binding on all components of the criminal justice system in New York. Additionally, the Office of Court Administration will ask the Administrative Board of the Judicial Conference for appropriate rules governing the reporting of court dispositions to OCA in a timely manner so as to enable OCA to comply with the 90 day reporting requirement to DCJS. Reporting will normally be direct from the recording agency to DCJS except in the case of the courts where OCA

will forward court dispositions to DCJS as they are received. Appropriate sanctions will be included in the legislation and rules to insure enforcement.

DCJS has recently completed a revision of its regulations and procedures relating to the processing of criminal history records. This effort culminated in the draft Privacy Regulations (hereinafter referred to as DCJS Regulations) which can be found in Appendix A. DCJS now plans to hold public hearings on its proposed regulations after which they will be revised appropriately and promulgated. A tentative date for promulgation has been set for December 16, 1975. Once these regulations become effective, they will bind all users of criminal histories through the execution of a new Use and Dissemination agreement, the tentative form of which can be found in Appendix B. In general, the DCJS Regulations are more restrictive than the new Federal requirements. Insofar as they are less restrictive, they will be modified to conform to the Federal standard before promulgation.

If the disposition reporting legislation and rules referred to previously are not enacted, DCJS will continue to work with all criminal justice agencies in the State to endeavor to obtain all dispositions within 90 days after the time when they occur and will continue to press for the necessary changes in legislation and court rules. Should the proposed Privacy Regulations not be promulgated as intended, DCJS will itself

adopt all the procedures required by the Federal Regulations and will instruct local and state agencies of their similar obligations. Such procedures will be enforced through the mechanism of a Use and Dissemination agreement.

CHAPTER 2COMPLETENESS AND TIMELINESS OF CRIMINAL HISTORY RECORD DATA

Section 524(b) of the Safe Streets Acts of 1973 requires that automated criminal history record information be kept current and that disposition data be included with arrest data to the maximum extent feasible. The Federal Regulations define these standards by requiring that with respect to arrests occurring after June 19, 1975, "to the maximum extent feasible" dispositions must be reported to the central state repository within 90 days of the time when they occur. Dispositions must also be reported as quickly as possible to any other facility which disseminates criminal history records. As a further measure to insure that only the most complete data is disseminated, the Federal Regulations require that, except in cases where "time is of the essence" and the requisite response cannot be obtained with sufficient speed, disseminators must query the central state repository with regard to open or new arrests prior to disseminating criminal history data outside the agency.

As the Instructions<sup>1</sup> indicate (p. 22) Sec. 524(b) of the Crime Control Act of 1973 was intended to insure that criminal history records whose collection, storage, or dissemination was funded in whole or in part by LEAA funds be complete and accurate wherever they are stored. As local criminal justice agencies in New

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<sup>1</sup>Privacy and Security Planning Instructions, published June 30, 1975 by LEAA.

York do store and do disseminate criminal history record information, it is clear that the Federal Regulations require that they include all dispositions available - at least all which occur within the jurisdiction corresponding to the area for which they are directly responsible - and that they must develop and implement procedures to comply with the query before dissemination rule to insure transmittal of current information.

Where such local repositories of criminal history data remain in operation beyond December 16, 1975, DCJS procedures will require that disposition data be obtained directly from the central state repository rather than from a local recording agency. DCJS has already advised most major criminal justice agencies at both the state and local levels of the existence of the Federal Regulations and of their implications for all DCJS users. In addition, DCJS will prepare model operational procedures to assist local users in developing their own internal regulations in compliance with the Federal standards pertaining to completeness and query before dissemination. These model procedures will be available by February of 1976.

This chapter of the Plan describes the disposition reporting system currently used in New York to post criminal history data with DCJS; it also reports on modifications to the current system which will enable New York to fully comply with the 90 day rule by or before December 31, 1977. A final

section describes procedures which will enable local agencies to comply with the requirement for query before dissemination.

### 1. Preliminary Definitions

The word "disposition" is defined in Sec. 20.3(e) to mean "information disclosing that criminal proceedings have been concluded...." Without repeating the entire section verbatim, a fair paraphrase of its intent is that everything of a final nature which could happen to a defendant following his arrest is a disposition. However, the setting of bail or holding for a grand jury indictment, being interim steps in the criminal justice process, are not dispositions.

The word "dissemination" is not defined in the Federal Regulations; however, the Instructions to the Regulations define the word to mean a transmission of criminal history data to "agencies other than the criminal justice agency which maintains the criminal history record information." (p. 23). Thus, intra-agency transfers of information would not normally constitute a dissemination except in the unusual case where there is an intra-agency transfer of data from a criminal justice sub-component to a non-criminal justice sub-component of the same agency. For purposes of the query-before dissemination rule, the Instructions also indicate (p. 21) that transfers of information relating only to a charge in process do not constitute dissemination provided that in the particular circumstances "it is clear...that no disposition has occurred."

The term "criminal justice agency" means either a court or governmental agency (or sub-unit thereof) "which per-

forms the administration of criminal justice pursuant to [state] statute or [state] executive order and which allocates a substantial part of its annual budget to the administration of criminal justice." (Sec. 20.3(c).) The word "substantial" has been defined to mean in excess of 50 percent of the annual budget. (Instructions, P. 5). Whatever accounting methods may be used to reach the 50 percent figure, the commentary to the Federal Regulations indicates that to qualify as a criminal justice agency an agency must perform, as its principal function, one of the functions comprising the administration of criminal justice defined in Sec. 20.3(d).

As the definition of criminal history record in Sec. 20.3(b) indicates, the term refers to information collected by criminal justice agencies relating to individuals "consisting of identifiable descriptions and notations of arrest...indictments, information or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release." On page 7 the Instructions state that the definition was intended to cover all of the standard OBTS/CCH (Offender Based Transaction Statistics/Computerized Criminal History) data elements. Of perhaps greater significance, the Instructions indicate that even when the relevant data elements occur outside their normal CCH setting, they

nevertheless fall within the scope of the Federal Regulations. Thus, all agencies which maintain records containing "notations" of citizens' prior criminal involvement may - particularly if they have received financial help from LEAA for the collection, storage, or dissemination of such records since July of 1973 - be subject to the regulatory requirements. Readers should refer to the chart in Appendix D for further clarification on this point.

## 2. Current Disposition Reporting

The following is a brief narrative of procedures now in use for supplying disposition data to DCJS.

### A. Police

When an arrest is made for a misdemeanor or felony, the defendant's fingerprints are taken in triplicate. One set of prints stays with the arresting agency; two go to DCJS which, in turn, forwards one to the FBI. The DCJS-2 form on which the fingerprints are taken provides all arrest data elements required under New York law and also meets the needs of the arrest segment of the OBTS program and of the CCH program of the National Crime Information Center (NCIC). One of the three forms contains a unique pre-printed "Court Control Number" and has attached to it a second form, the JC-501 "Initial Report of Criminal Cases", which carries the same Court Control Number as the fingerprint card. This Court Control Number is the basis of the tracking of an arrest through the courts.

### B. Prosecution

At the time of booking, the JC-501 carrying the Court Control Number is detached from the fingerprint card and is transmitted by the arresting officer to the district attorney's office.

If the district attorney declines prosecution, that fact

is noted on the JC-501 which is then signed by an Assistant District Attorney and transmitted to the Office of Court Administration. Every week OCA receives from DCJS a computer tape, listing all arrests processed by DCJS during the preceding seven days along with appropriate identifying information, and arrest charges. OCA matches data received from the district attorney with arrest data obtained from DCJS and forwards the completed records of dismissed charges to DCJS for posting to its file.

### C. Courts

When the prosecutor indicates he does intend to prosecute, the JC-501 with the unique "Court Control Number" is hand carried to the arraignment court where the court name and docket number are entered. From there, it is forwarded to the OCA which prints and mails to the arraignment court another form, the JC-500 "Criminal Disposition Report" which lists the defendant's name, New York State identification number, and other identifying data, the arrest charges, the date of arrest, and the arresting agency. If no JC-501 is received by OCA within 60 days after receipt by OCA of the notification of an arrest from DCJS, OCA prints a JC-500 form and mails it to the court indicated in the arrest record. At each point in the case history from initial arraignment through bail, adjournments, transfers, etc., information reporting case transactions are logged on a JC-500 form and forwarded (through OCA) to the next court responsible for the case until the final court disposition is obtained when the form is again returned to OCA. When OCA receives a completed JC-500 from the courts, it correlates dispositions by means of the NYSID number and date of arrest and provides updates to DCJS for posting. Where

multiple arrests occur for the same defendant on the same day, OCA assigns an arrest sequence number which is printed on the JC-500 to identify the arrest uniquely.

As presently constituted, the foregoing system is not able to report dispositions resulting from the appellate process, modifications in sentences, or sentences assessed against probation violators. Situations involving deferred prosecutions or deferred sentences - usually in cases where the defendant has agreed to participate in a rehabilitation program - also are not captured by the JC-500 approach.

#### D. Corrections, Probation and Parole

Within 90 days of a prisoner's arrival at a state or local correctional institution, DCJS receives a fingerprint card which indicates the name of the institution, the date and period of commitment, the reason for commitment and the inmate's identification number. All such data is posted to the individual's criminal history record. Data pertaining to the release of an inmate is received within 90 days of the fact of release from State correctional institutions; local institutions, however, presently do not report release data.

Probation sentences are reported to DCJS by the courts. Probation periods are of fixed length in New York depending on the classification of crime. Thus, the termination date for a probation period is fixed by sentence. At present, re-sentencing information is not reported to DCJS by the courts. However, when a defendant is sentenced to prison for a probation violation, DCJS receives incarceration prints and data as described in the preceding paragraph. DCJS is now working with the Division of Probation to develop and expand a probation registrant system which will also report probation disposition data to DCJS.

When a former prisoner is paroled, the Division of Parole prepares keypunch cards containing data on the new parolee. This information is transmitted to DCJS at irregular intervals. Data respecting discharges from parole is also provided irregularly.

### 3. Critique of the Current Disposition Reporting System

There are three deficiencies in the current disposition reporting system: an incomplete set of data elements; incomplete reporting; and lack of timely reporting. These problems are discussed below.

#### A. Incomplete Data Elements

The current JC-500 system of prosecutorial and court-related disposition reporting collects nearly all the data elements required by the Federal Regulations. In addition to final prosecutorial and court dispositions for each individual charge, the system reports certain interim disposition data such as adjournments in contemplation of dismissal, mistrials, the suspension of proceedings due to defendant's mental incapacity, referrals to grand jury, consolidations, transfers and bench warrants. It also reports other items of analytical interest including the name of the judge, the defendant's bail status, the amount of bail, the type of legal counsel, the type of trial, and the length of the trial. However, of all the data reported by the JC-500 under the present system, only final dispositions, bench warrants, adjournments in contemplation of dismissal and suspension of proceedings due to defendant's mental incapacity are sent to the central state repository by OCA. As noted previously, the system does not capture appellate

data, sentence modifications, sentences given parole violators and certain cases in which prosecution or sentencing is deferred.

As indicated above, the major shortcomings of the corrections element is the absence of release data from local institutions.

#### B. Incomplete Reporting

Since 1967, the Office of Court Administration JC-500 criminal disposition reporting system used to report prosecutorial and court dispositions has sent out over 1,485,000 JC-500 forms and has received and transmitted over 1,056,000 final dispositions to DCJS. In addition, about 82,000 non-final dispositions (warrants, mental commitments and adjournments in contemplation of dismissal) have been forwarded to DCJS. This leaves 346,000 dispositions pending of which as many as 100,000 may be awaiting court action while the remainder may constitute unreported dispositions. OCA is also holding 50,000 JC-500s which cannot be traced to the proper case because of the lack of a docket number, an incorrect name or similar error on the JC-500 form. For reasons that are not entirely clear, OCA estimates that historically 25% of all dispositions have not been actually reported. OCA is endeavoring to determine the exact causes of incomplete reporting and to recover all missing dispositions.

#### C. Lack of Timely Reporting

There are three identifiable and correctable sources of delay in reporting dispositions covered by the Federal Regulations.

The first is the fact that arrests are reported by mail to DCJS in jurisdictions which do not have access to

facsimile terminals for the transmission of fingerprint cards. About thirty percent of all arrests are reported by mail; this fact introduces a two to three week delay in the reporting of these arrests to OCA and, consequently, in the transmission of a JC-500 to the courts by OCA.

The second stems from the practice of arraigning a defendant prior to fingerprinting or without the JC-501 form which is a stub of the fingerprint card. Unless the court name and docket number is entered on a JC-501 form, there is an automatic 60 day delay before a JC-500 form is transmitted to the court. When cases are not disposed of by the arraigning court, it is also true that the JC-500 (when it is received by the arraigning court) is often not forwarded from the arraigning court to the court where the case will actually be heard. This is particularly true in the case of town or village justice courts which lack sufficient clerical staff to keep up with paper work.

Both of these factors contribute to the result that only about 70% of all reported prosecutorial and court dispositions are reported within 90 days of the time that they occur.

The third source of delay is the sporadic reporting of parole data.

4. Proposed Modifications to Disposition Reporting System Through Implementation of the OBTS/CCH System

The need to obtain further legislation and court rules to clarify the responsibilities of the courts and all criminal justice agencies to report criminal dispositions promptly has already been noted. DCJS intends to submit such legislation to the Governor's office in the fall of 1975. Beyond Legislation and court rules, however, the current system for reporting dispositions can be improved. --

To this end, DCJS and OCA have recently received a grant from LEAA to enable them, under the Comprehensive Data System Program, to develop an OBTS/CCH system. This system will involve the participation of every segment of the criminal justice community. The grant anticipates work in the following areas:

- Development of an improved court disposition reporting system in all 62 counties of the State;
- Expansion of the present data communications network to DCJS;
- Enhancement of the computerized criminal history data base;
- Development of a Probation Information System; and
- Enhancement of the parole and correctional system which currently captures data for the criminal history system.

In order to develop a comprehensive Offender-based Transaction Statistics System, DCJS, under the auspices of the CDS grant, will provide for a complete redesign of the current criminal justice data collection system within New York State. Those New York State agencies concerned with the current

methods of data collection and reporting are in agreement that a new system must be implemented and have in principle agreed to a system similar to the one described above.

The OBTS system will provide the foundation around which a number of necessary satellite systems will be constructed. Some of these are currently in existence and will be enhanced by the proposed OBTS system; others are entirely new applications. These satellite systems are as follows:

- An identification system which will provide for more timely updating and return of prior criminal history by DCJS based on the submission of an arrest report (including fingerprints) via an expanded facsimile network;
- An upgraded court disposition reporting system which will provide for more timely and complete reporting;
- A system relative to probation functions to provide for the collection and reporting of data (special programs, referrals, etc.);
- An enhancement relative to parole functions of the present method of reporting data;
- An enhancement relative to corrections functions of the present method of reporting data;
- A system which will provide for the implementation of management information studies and statistics measuring the effectiveness of the criminal justice system (new application).

The proposed OBTS/CCH system is envisioned as being implemented as a series of individual modules. Some of these modules are required in the initial implementation phase (e.g., the identification, court disposition, and probation phases) while others, such as the parole and corrections phases, may be initiated after the base system has been established. Still other modules, particularly those relating to research statistics and management data, will be implemented at a later date.

The proposed OBTS/CCH system will use a tracking system based on positive identification resulting from fingerprint identification and the court control number imprinted on all arrest fingerprint cards. This number will serve as a unique identifier for the arrest of an individual and all subsequent criminal justice actions occurring as a result of the arrest. It will appear on any DCJS criminal history print-outs of the arrest, and it will be used in the on-line reporting of dispositions to OCA and DCJS. It will also be printed with the NYSID number and personal descriptors on forms used by district attorneys, courts, corrections, probation, and parole.

The OBTS system will be initiated with the receipt by DCJS of an arrest fingerprint card from a law enforcement agency. The fingerprints will be processed to identify the individual. If an identification is made, the individual's current arrest event and prior criminal history will be transmitted to the arresting agency. If the individual is not identified, a new record will be created on the criminal history file, and only the current arrest event will be transmitted to the arresting agency.

Expansion of the existing facsimile network under the OBTS/CCH program to cover 90% of the reported arrests will reduce one source of delay in disposition reporting.

Concurrent with the transmission of the complete criminal history record, an extract of the current arrest event will be transmitted to OCA. This extract will contain sufficient data to provide the OCA with a base record for

recording future judicial decisions regarding the offender. The record will be identified by a variety of control data elements to insure accurate reporting related to the event. The control elements will include a State Identification Number (NYSID No.), court control number, name, and arrest date.

The arresting officer, upon receipt of a criminal history record, will present the facts and allegations surrounding the arrest to an Assistant District Attorney (ADA). The ADA will then make one of three possible decisions which will determine the subsequent processing of the case. The ADA may:

1. Dismiss the entire event: the arrestee will drop out of the system;
2. Accept the case as presented: processing of the arrestee continues;
3. Dismiss portions of the event and retain others or modify charges: processing of the arrestee continues.

If alternative (1) occurs, the ADA will record this decision and the necessary data will be transmitted to DCJS.

If alternative (2) or (3) occurs, the officer will deliver the defendant to be arraigned. The arrest identification data (name of defendant - charges - arresting officer's name) and court control number will be entered in the court docket.

Upon conclusion of the arraignment phase, the court clerk will enter data about the results of the arraignment process. Data entered will include docket numbers, arraignment date, arraignment charges, defendant status, etc., all prefaced by suitable control information. This information will be

transmitted to OCA and by OCA to DCJS. Provision for mandatory reporting of the outcome of arraignment will eliminate a second source of delay and of incomplete disposition reporting by insuring that the court control number is transmitted from the arraignment court.

As the court case proceeds through the remaining phases of the court process, additional decisions will be reached and reported to OCA and by OCA to DCJS. At this time, the proposed system does not provide for inclusion of data relative to the appeal process. An analysis of this segment will be undertaken by OCA, and a suitable and responsive method for data collection at the appellate level will be designed and implemented to the maximum extent feasible by December 31, 1977.

At the completion of adjudication, the final court disposition of the arrest event will be sent to DCJS through OCA for posting to the criminal history file. If the defendant is convicted, DCJS will automatically transmit a current criminal history to the court for use in the pre-sentence investigation phase. This will eliminate the current need for the submission of a fingerprint inquiry card by the Department of Probation to DCJS to obtain a criminal history record.

The results of sentencing will next be reported to OCA and by OCA to DCJS. Should the sentence include the incarceration of the defendant, DCJS will automatically transmit a criminal history to the facility indicated in the sentence record.

At the time of an offender's entry into a correctional facility, positive identification will occur by fingerprinting for a second time. The recording of subsequent corrections-related data relative to the inmate will be reported to DCJS by the Department of Correctional Services (DOCS) via magnetic tape. Eventually, it is anticipated that an on-line link will be developed between these two agencies. However, due to the lack of suitable computer hardware at DOCS, this application is not feasible at present. Control information will include the NYSID number and the court control number referred to above. The inmate data received by DCJS will consist of data elements such as: NYSID number, name of facility, length of sentence, and type of commitment. Prison release data, parole data, and probation information would also be reported to DCJS via magnetic tape.

When fully operational in five years, the OBTS/CCH system anticipates incorporating dispositions from appellate courts, resentences, parole violations and deferrals which, as indicated, are now omitted and will process and report all court disposition data to the central state repository well within the 90 days required by the Federal Regulations. While the entire OBTS/CCH system will not be operational by December 31, 1977, DCJS expects that those portions of it required to meet the timeliness and completeness requirements of the Federal Regulation will be operational by that date to the maximum extent feasible.

5. Proposed Interim Modifications to Disposition Reporting System

In the interim period, until the OBTS/CCH system is fully operational, some improvements will be made to existing disposition reporting systems.

OCA plans to modify the JC-500 court disposition reporting system by:

- establishing and adhering to definite schedules for the processing of DCJS-supplied arrest tapes and for editing and coding JC-500 data sent to DCJS;
- reducing the suspense period for arrests lacking JC-501's from 60 days to 30;
- printing JC-500 forms at least once a week and attempting to print twice a week;
- updating and clarifying the JC-500 instructional manual;
- providing further instruction in completion of the JC-501;
- providing a means of insuring that the requisite JC-501 is on hand at the arraignment court;
- directing that courts report court dispositions to OCA within two weeks of their occurrence or the receipt of the JC-500, whichever occurs later;
- directing that all courts in the State comply with OCA's procedures for completing JC-500's;
- formalizing procedures to monitor compliance by the courts and arresting agencies with the JC-500 and 501 systems;

- establishing procedures for the notification of the State Administrative Judge and the appropriate local administrative judge of the names of non-complying courts;
- eliminating non-essential data items from the JC-500;
- writing a procedural manual formalizing editing and coding operations for the JC-500;
- improving verification and monitoring procedures for manual coding and editing of JC-500's;
- expanding automatic edits to flag apparently illegal or improper sentences;
- facilitating OCA's access to DCJS automated arrest and disposition records to cross-check dispositional information; and
- formalizing procedures for responding to requests from DCJS for individual case dispositional information.

Some of the work with respect to the foregoing is already under way; remaining portions will be implemented by July 1976. In this way the operation of the JC-500 court disposition reporting system will be improved until such time as OBTS is functional.

In order to obtain release data from local correctional institutions, DCJS has discussed with the local sheriffs the possibility of their completing a form similar to the one now completed by State institutions on release of a prisoner. The sheriffs have indicated their willingness to cooperate with this approach. DCJS expects to distribute the forms before December of 1975. The auditing procedures described in the

chapter on audits will enable DCJS to check that it is, in fact, receiving all release notices as prisoners are released.

DCJS is working together with the Department of Correctional Services and the Division of Probation to design an information system which will report parole and probation disposition data to DCJS consistent with the 90 day rule. This design effort is occurring along with both the OBCIS and OBTS programs and should be operational by the fall of 1977.

#### 6. Query Before Dissemination

As a further guarantee that decisions about individuals who have previously been arrested are based on current information, the Regulations require that The Central State Repository establish procedures to permit inquiry of its files prior to dissemination and further require that inquiries "shall be made prior to any dissemination except...where time is of the essence and the repository is technically incapable of responding" with sufficient speed.

Inquiries pursuant to this requirement would normally be made by supplying the record subject's name and NYSID number to DCJS to search against its files. DCJS currently has the capability to perform automated in-house searches of this nature. DCJS is now establishing linkages to remote users both through the NYSPIN network and through regional criminal justice informa-

tion systems which will allow the rapid, real-time response needed to implement the query before dissemination rule. This system should be fully operational by March of 1977. Until that time, local users will be asked to limit pre-dissemination inquiries to situations in which a 24 hour turn-around is not inconvenient.

When the prior query capability is operational, all users will be obligated to query DCJS whenever dissemination is intended and, judging by the circumstances, it is possible that new information pertaining to the defendant could have arrived at DCJS. Thus, if during the course of a police investigation, agency A asks agency B whether B has any criminal history data on X (the subject of the investigation) and B responds affirmatively, B must inquire of DCJS - unless the criminal history record was received in the last 24 hours - to ascertain whether there has been any further activity before disseminating to A. In post-arrest situations, query will be required whenever an agency disseminates a criminal history which has been in its possession longer than 48 hours. The foregoing standards will be enforced by means of the DCJS Use and Dissemination agreement.

Before implementing the pre-dissemination inquiry capability, DCJS will develop appropriate procedures to insure the protection of both the security and privacy of its data base. These procedures will include rules regarding terminal logs, validation of users and terminals, physical security of remote

terminals and limitations on dissemination. Software configurations will be developed by IIS to increase protection against unauthorized use. These include passwords, matrices for authorization by terminal ID, or person ID, as well as a system audit capability to detect suspicious or inappropriate activity on the system.

CHAPTER 3LIMITATIONS ON DISSEMINATION

The limits on access to and dissemination of criminal history records which DCJS proposes to implement through promulgation of its Privacy Regulations are found in Article III Sections 300-335. They cover all the items listed in Section 20.21(b) of the Federal Regulations and are generally more restrictive than the Federal requirements. A brief synopsis of New York's response to the requirements of Section 20.21 (b1-6) shows the following: \_\_\_\_\_

1. Criminal Justice Agencies:

The DCJS Regulations permit primary access to DCJS data for three purposes: (1) performance of a criminal justice function imposed by statute, (2) consideration of an application for a license or employment under conditions contemplated by Section 20.21(b)(2) of the Federal Regulations or for criminal justice agency employment when authorized by statute, (3) for research. The term "criminal justice function" is virtually synonymous with the "administration of criminal justice" in the Federal Regulations except that it does not include the collection, storage and dissemination of criminal histories. The latter functions will be included in the New York definition before the DCJS Regulations are promulgated. The requirements pertaining to licensing were included because the police are the

designated agents for the granting of certain kinds of licenses - particularly pistol permits - which are granted only after a criminal history search. In keeping with our basic policy that all accessors should have a clear statutory base, we intend to require all criminal justice agencies to obtain statutory authority to enable them to conduct pre-employment criminal history checks. However, in order to avoid undue hardship before these statutes are enacted, the DCJS Regulations permit the Commissioner, on the advice of the Security and Privacy Advisory Committee (SPAC), to permit access for pre-employment checks when the particular employment is "so related to the public welfare and safety" that the agency should be aware of the applicant's prior record. The September 1, 1975, cut-off date for this authority was set in December, 1974, when the DCJS Regulations were first written. It will, in all likelihood, be advanced to September 1, 1976, to allow adequate lead time from the anticipated promulgation date in December of 1975 for affected agencies to obtain the requisite legislation.

## 2. Licensing and Employment:

The principal access standards for licensing and employment checks are found in Section 300(2)&(3) of the DCJS Regulations. Under these provisions DCJS would allow a State non-criminal justice agency access in two cases: when a statute specifically requires DCJS to furnish data to the agency or when a direction to furnish data is necessarily implied from statutory references to the consequences of conviction for a crime. In

the case of a local non-criminal justice agency, the DCJS Regulations would permit access only where there was a specific statutory direction to do so. Thus the "necessary implication" approach applies only in the case of State agencies. Like the Federal Regulations, DCJS would not permit access based on a local ordinance.

### 3. Agencies under Contract with Criminal Justice Agencies

Section 300(6)(b) would allow access to a private agency which is performing a "criminal justice function" under contract with the State or a political subunit of the State with the approval of the DCJS Commissioner on a finding that the agency was acting in a "quasi-public capacity". This section was inserted primarily to accommodate organizations like the Vera Institute's Pre-Trial Services Agency which performs various ROR functions that otherwise would be the responsibility of local probation agencies. Both the contract between VERA and DCJS and the Use and Dissemination Agreement between PTSA and DCJS provide for all the restrictions on access, use and dissemination, as well as the standards for data security and sanctions for misuse required by Section 20.21(b)(3) of the Federal Regulations.

### 4. Researchers

All individuals and agencies which access DCJS pursuant to Section 300 of the DCJS Regulations may use the data base for research projects subject to the restrictions of Section 405. The most important provisions of that section are the insistence

on the signing of a non-disclosure agreement before undertaking any project and the rule that only statistical data which does not identify individuals will be routinely provided for research purposes. Data which does identify an individual may be provided when such data "are essential to achieve a lawful and valuable criminal justice objective".

A sample Non-Disclosure Agreement is attached hereto as Appendix C. It contains all of the restrictions required by the Federal Regulations.

5. Pre-employment Investigations by State Agencies

The DCJS Regulations do not distinguish between pre-employment checks by State agencies and those conducted in other situations. Consequently, the restrictions discussed previously under licensing and employment are applicable here. DCJS intends to undertake a comprehensive analysis of the authority of state and local civil service commissions to conduct pre-employment background checks on their employees using the DCJS data base. Similarly, DCJS will conduct another study to identify those Federal agencies which currently access the DCJS data base for pre-employment purposes. The authority of each agency to so access will be carefully reviewed and the DCJS Regulations will be modified to define New York policy respecting Federal access to New York records consistent with the Federal regulations.

6. Court Order or Rule

The DCJS Regulations are silent on this point. However, DCJS

will comply with a court order or rule to disseminate criminal histories. DCJS will seek appellate review of those orders which appear to violate any provision of law or applicable regulations and will seek stay orders when appropriate.

From the foregoing analysis, it can thus be seen that, once the DCJS Regulations are implemented, DCJS will be in substantial compliance with all the requirements of Section 20.21(b).

The requirements of Section 20.21(c)&(d) have been met as follows:

1. Validation of Right to Access

Appropriate DCJS employees are supplied with lists of all agencies which have been cleared for access to the DCJS data base. Employees are instructed to consult the list if they are uncertain whether or not a particular request should be serviced. When the requesting agency is not listed among those authorized access, employees are instructed to refer the request to their supervisor for eventual consideration by the Counsel's office.

2. Confirmation of Record for Licensing or  
Employment Purposes

As noted above Sections 300(2)&(3) establish the exclusive means of handling records checks for license and employment purposes. As these procedures equal or exceed the protections required by Section 20.21(b)(2)&(5); they also meet the standard required by Section 20.21(c)(3).

### 3. Limitations on Use and Secondary Dissemination by Non-Criminal Justice Agencies

Section 320 of the DCJS Regulations prohibits secondary dissemination of criminal history records by non-criminal justice agencies. This position is consistent with Section 20.21(c)(2) of the Federal Regulations. Restrictions on permissible use of criminal history records supplied to non-criminal justice agencies are incorporated in the terms of the standard Use and Dissemination agreements described earlier generally by means of language indicating that use is restricted to the purposes for which the record was supplied. Sanctions for violation of the agreement are also provided in the Use and Dissemination agreement. A Use and Dissemination agreement must be signed by all accessors whether access is temporary or for long term agency involvement.

DCJS will provide instructions to all criminal justice agencies to which it disseminates criminal history records detailing restrictions on internal agency use, validation of statutory authority of non-criminal justice agencies, and security procedures. These instructions will fully explain the restrictions imposed on dissemination of open arrests more than one year old and will provide specific guidance to clerical personnel receiving and disseminating criminal histories on both manual and automated systems.

### 4. Dissemination without Disposition

Section 20.21(c)(1) of the Federal Regulations forbids the dissemination of open arrests over one year old to non-criminal

justice agencies unless prosecution is still pending. Section 335(2) of the DCJS Regulations would suppress open arrests over two years old without active prosecution. The two year standard was selected after considering the average time currently required to prosecute both felony and misdemeanor cases in New York. However, as this standard is less restrictive than the Federal rule, New York will amend its Regulations to conform with the Federal standard with respect to non-criminal justice agencies.

#### 5. Juvenile Records

As of the writing of this plan, DCJS does not maintain records on juveniles. The major state agency which does so is the New York State Division for Youth. The Division has already promulgated Regulations (see Appendix E) pertaining to the privacy of juvenile records which meet the Federal requirement that juvenile records not be disseminated to non-criminal justice agencies except pursuant to statute.

From the foregoing it can be seen that DCJS will be in compliance with Section 20.21(b)(c)&(d) on the promulgation of its Privacy Regulations.

CHAPTER 4INSPECTION & CHALLENGE

Section 410 of the DCJS Privacy Regulations reflects DCJS' position with respect to challenges to records in its data base. For the most part the section is consistent with Section 20.21(g) of the Federal regulations except in the area of administrative review and appeals which will have to be modified to meet the Federal requirements. DCJS will make appropriate modifications and promulgate this section by December 16, 1975. Taking the Federal requirements one by one, the DCJS Regulations provide as follows:

1. Verification of Identity

The individual must provide identification which is satisfactory to DCJS. The only satisfactory methods of identification for purposes of access for inspection are fingerprints or visual recognition attested to by the criminal justice agency handling the inquiry.

2. Manner of Review

The DCJS Regulations prescribe that review shall occur at a DCJS facility except that "for good cause" review may be permitted elsewhere. The lack of a reasonably convenient DCJS facility would be a good cause. To accommodate situations in which it is difficult for an individual to visit a DCJS facility,

DCJS will designate at least one criminal justice agency in each county of the State as its agent for the purpose of inspecting a DCJS record locally. DCJS will issue specific instructions to each designated agency by December 16, 1975 detailing the procedures to be followed in providing individuals with the right to access and review their records including such matters as the times and places for inspection, applicable fees, appropriate forms and rules for submission of supporting material in the event of a challenge.

A record may normally be reviewed only by the record subject. However, for "good cause" (such as physical or mental incapacitation) the subject's attorney may conduct the review. The DCJS Regulations do not specify a fee for inspecting a record, and DCJS currently does not impose such a charge.

### 3. Obtaining a Copy

The DCJS Regulations will be modified to provide that the individual or his attorney may obtain a copy of his record for the purpose of challenge only.

### 4. Making a Challenge

The DCJS Regulations provide that when an individual challenges the completeness or accuracy of data pertaining to him that he "shall indicate the precise nature of the alleged omission or error and shall submit any documentation he possesses or which he may be required by DCJS to submit in support of his

challenge". Additional procedures will be incorporated into this section to explain what must be done when inspection occurs outside a DCJS facility.

The DCJS Regulations will also be modified to identify the office and title of the persons who will conduct initial and secondary reviews.

#### 5. Internal Agency Review

The DCJS Regulations provide that DCJS will review all documentation submitted to it and, within five days of receipt of the necessary papers, make a determination with respect to the challenge. If the challenge is upheld, the record will be modified appropriately and the challenger notified of the decision. If the challenge is not sustained, the challenger will also receive prompt notification. As currently drafted, the DCJS Regulations do not allow for a secondary intra-agency review. Such a procedure will be inserted to comply with the Federal requirement.

#### 6. Administrative Appeal

DCJS will request that the Governor designate an administrative body to hear appeals from a final agency decision against a record challenger. One possibility is that the Governor's Counsel may be selected for this purpose. It is anticipated that an appeals body will be designated by December 1, 1975.

Upon designation of the appellate body, procedures will be developed and promulgated to all designated review

bodies, explicitly defining the conditions of appeal, including: appearances, time limits, representation by counsel, preservation of a record of the proceeding and implementation of any appellate decision. These procedures will be developed and promulgated by December 16, 1975.

Final judicial review of any administrative action can always be had under New York law pursuant to Article 78 of the Civil Procedure Law and Rules.

7. Notification of Prior Recipients in the Event of a Successful Challenge

The DCJS Regulations provide that an individual whose record has been corrected pursuant to challenge "shall be entitled to ascertain from DCJS the names of those agencies known to it to whom the erroneous records had previously been disseminated". Thus, the DCJS Regulations are currently broader than the Federal requirement to provide a successful challenger only with the names of the non-criminal justice agencies to which his erroneous record had been sent. The DCJS Regulations further provide that after corrections are made in the DCJS files, DCJS "shall immediately notify every disseminee of the subject data, known to it, of said corrections and shall require such disseminees to conform their record to the corrected data". DCJS expects to revise these sections to restrict their applicability to the Federal standards e.g., automatic notice to all criminal justice agencies in the event of a correction and a

list, on demand, of all non-criminal justice dissemines to the successful record challenger.

8. Instructions to Criminal Records Repositories

By October 15, 1975 DCJS will inform all criminal justice agencies in the State which maintain criminal history record information of the requirements contained in the Federal regulations to provide individuals with the right to access and review their records.

9. Public Notice of Rights to Access

DCJS will give public notice of the procedures for inspection of and challenge to criminal history records by press releases distributed to the public news media. In addition, DCJS will publish these procedures in the public notice sections of all major newspapers and will send notices to the Commissioner of the Department of Correctional Services and the head of all local correctional agencies for posting on bulletin boards. These notices will include the time and places for review, applicable fees, procedures for verification of identity, the rules regarding counsel and submission of explanatory materials. The public notification will be completed prior to December 16, 1975.

CHAPTER 5SECURITY

The Federal Regulations establish comprehensive security standards to protect criminal history records from unauthorized access, loss, or physical damage. All repositories of such records are required to devise procedures which will meet the Federal standards and all such procedures, with the exception of the requirement for dedicated hardware, must be fully operational not later than December 31, 1977. This section of the Plan details the ways in which DCJS has met or will meet the Federal standards at the central state repository. Other agencies which are subject to the Federal Regulations will submit their security procedures with their certification statements.

1. Dedicated Hardware and Related Software

- A. DCJS

The DCJS information system is completely dedicated to criminal justice uses and processes no data which does not relate to the administration of criminal justice. While nearly all of the current data load is related to specific DCJS responsibilities, DCJS is evaluating the possibility of performing the processing for certain State-level criminal justice information systems in other non-court agencies to provide them with better service than they now receive.

IIS maintains an on-line entry, update, and inquiry system with teleprocessing capabilities largely confined to in-house agency use. All entry and update to the system is processed by IIS in-house terminals except that Court dispositions are received on tape from OCA. In addition to the in-house terminals, IIS prints out criminal histories at receive-only terminals located at several remote sites.

The system incorporates telecommunications interfaces with one regional criminal justice facility in Erie County, with NCIC and with the State Police Information Network (NYSPIN). To date, these connections have not involved the transfer of criminal history record information (warrants only); however, such transfers are planned for the immediate future.

The system configuration for teleprocessing includes a programmable front-end computer and leased lines. Switched (dial-up) lines will not be utilized. In-house terminal equipment includes video devices and printers. The NYSPIN and Erie County systems include similar keyboard entry equipment.

System software includes the capability of designating terminal functions to specified terminals (by terminal ID). Thus, terminals can be restricted to inquiry only, update only, etc. This restriction is extended to the use and access of specified files so that, for example, NYSPIN terminals can access the wanted persons file directly but cannot access the CCH file. These controls will be extended to all inter-

faces with the CCH file limiting access to qualified criminal justice agencies. Management control procedures for all update functions will be implemented shortly and will require operators to sign on using a valid and functionally-appropriate badge number.

A major flaw in system security stems from the fact that no procedures for user security have yet been issued by IIS. The great majority of user agencies are interfaced to IIS through NYSPIN which also has a NCIC interface for CCH. Therefore, most users are required to comply with NCIC's standards for remote terminal security. However, for additional protection, IIS will issue its own procedures for user security covering such subjects as:

- physical security of terminal areas;
- sign-on and sign-off procedures;
- terminal logs for tracking disseminations;
- query before dissemination procedures;
- limitations on dissemination;
- secure disposal requirements;
- restrictions on maintenance of criminal history records;
- personnel clearance and selection.

User agencies, including those interfaced through the NYSPIN system, will be bound to these requirements through the Use and Dissemination agreement.

## B. Other Criminal Justice Agencies

There are seven local/regional automated systems in New York which are subject to the Federal Regulations. There are also two state-level operational systems in addition to DCJS. Of these systems, only one is operating on dedicated hardware, a local regional CJIS in Erie County Central Police Services.

As stated in the Introduction, the Statewide computer system of the Office of Court Administration serves a variety of court purposes and is, therefore, not dedicated to criminal justice applications.

The Department of Correctional Services system is run on the Office of General Services computer which supplies computer services to various state agencies. The remaining local systems operate on city or county central systems which supply computer services for the various departments in each locality. In all cases, however, the terminals or access devices which input criminal justice data to the computer are located in areas controlled by criminal justice personnel.

The following is a list of regional systems of which DCJS is aware which received LEAA funds and which operate or are being developed with shared computers:

1. Rochester PD Information System
2. Monroe County Courts System
3. Onondaga Law Enforcement Information System
4. Nassau County Law Enforcement System
5. Suffolk County Law Enforcement System

6. Westchester County DA System

7. New York County DA System

DCJS recognizes its responsibility as the central state repository to insure that security provisions are implemented at all remote user locations. Since direct terminal access to CCH via computer-to-computer interface to a shared computer is not permitted under the Federal Regulations, DCJS will advise those agencies wishing such access and any others planning to develop computer interfaces that computers used to transmit CCH data must be dedicated to criminal justice purposes. Prior to December 31, 1976, all criminal justice agencies will be advised that two methods are available to affect compliance with the dedicated requirement: (1) dedication of the computer used, or (2) installation of separate terminals used only for criminal justice purposes:

- (a) under the physical control of a criminal justice agency;
- (b) with password sign-on procedures required to gain access to the teleprocessing system;
- (c) with terminals having access only to selected data files; and
- (d) with all other non-criminal justice terminals blocked from access to the CCH system.

Agencies will be asked to indicate their intentions in this regard before December 31, 1977. Where, because of workload and terminal distribution factors, computer-to-computer access is the only reasonable solution, agencies will be advised to

request an extension of time for compliance until computer dedication can be achieved.

2. Management Control

DCJS maintains full management control of its computerized and non-computerized criminal history file. Through its authority under Sections 836(4), 837(6)&(8) Executive Law DCJS sets standards for use and access, determines eligibility for

direct access, applies sanctions for misuse of the system, selects and dismisses staff, has instituted physical security measures, and performs other administrative functions normally associated with management of operations.

### 3. Personnel

All personnel having access to the computerized or manual criminal histories stored by DCJS are employed by DCJS. These employees are screened prior to employment by means of background checks and a full fingerprint search of the DCJS files. However, the mere existence of a criminal record by a DCJS employee-applicant is not an automatic disqualification for employment. Each such applicant's background is examined individually to determine whether the particular crime is sufficiently relevant to DCJS activities to merit disqualification.

In order to properly develop recruitment and placement procedures with respect to security of potential employees, DCJS will develop a Security Review Board staffed by appropriate Division employees. The Security Review Board will prepare an objective statement of criteria for employment of persons with conviction records. In preparing this statement, the Security Review Board will undertake an indepth study of recent court decisions relating to civil rights and constitutional guarantees of citizens as they apply to employment practices.

Since employees may be used in any area of the facility, all employees must meet the same screening criteria.

When employees are hired they receive an orientation class which includes a presentation by the security manager. Employees are informed of their responsibilities with respect to security and their obligation to protect the privacy of the individuals whose records are on file with the agency. DCJS will develop a comprehensive security and privacy training program for all its employees to alert them to the requirements of both Federal and State Regulations. Field training will be provided as a cooperative effort by DCJS and OCA for the benefit of user agencies.

Each DCJS employee now receives a booklet entitled: THE DCJS EMPLOYEE SECURITY GULDE, which highlights his responsibilities and obligations respecting security and privacy. In addition, all supervisors receive a security manual which is more comprehensive than the employees' manual. Both manuals will be expanded to include more comprehensive information regarding Federal and DCJS Regulations. In addition, DCJS will develop a statewide training manual to be used by local agencies in instructing their employees with respect to the processing of criminal history information. All of these manuals will be prepared by March of 1976.

The following penalties may be imposed by the Commissioner of DCJS under Section 75 of the Civil Service Law after appropriate hearings on stated charges of misconduct including any serious violation of DCJS Regulations:

- a) a reprimand
- b) a fine not to exceed \$100
- c) suspension without pay for a period not exceeding two months
- d) demotion in grade and title
- e) dismissal from service

DCJS will inform employees of these penalties and will impose them when, after hearings required by Section 75 Civil Service Law, the Commissioner, or his designee finds the accused guilty of knowing violations of DCJS Regulations.

#### 4. Physical Security

The Identification and Information System of DCJS is located on the top six floors of a ten story building. Access to these floors is obtained by three elevators all of which are programmed to stop at the fifth floor. The building itself is open only during regular working hours and is locked between 6 p.m. and 6 a.m. weekdays and for 24 hours on weekends.

DCJS maintains a security desk at the fifth floor. All employees are required to display a badge bearing their picture and name in order to proceed above the fifth floor. This badge must be worn while the employee remains in the facility. Visitors to the facility are required to sign in at the fifth floor and are issued a temporary badge which they must wear. Visitors are required to be escorted by an employee

they are in the facility; however, this practice has not  
urgently enforced. DCJS will issue a bulletin to re-  
size this requirement and will oversee its enforcement.  
Upon completion of a visit, visitors are escorted to the fifth  
floor where they sign out and return the badge.

In order to improve our physical security, DCJS is  
investigating the following areas:

1. The hiring of guards to man the security desk  
and patrol the physical plant.
2. The installation of TV cameras to monitor the  
sensitive areas of the building. Monitor screen  
would be located at fifth floor security desk.

DCJS is in the process of rewriting its security  
manual which will define the procedures to provide full security  
for criminal history records maintained at DCJS.

Employees have access to all but two areas of the  
facility: the computer room and the central file area. Whereas  
in the past the computer room was sometimes unlocked and  
accessible, DCJS will strictly enforce the locking of the com-  
puter room henceforth and will limit accessibility to opera-  
tions and programming staff whose work requires access. The  
central file area, where all manual files are maintained, has  
limited accessibility. When a record is removed from this area,  
the employee removing the record must sign a log indicating

the time of removal and reason for removal of the file.

The Computer Room is located on the 7th floor of the building. It has smoke detectors which, if activated will cause the building fire alarm to sound which in turn will cause evacuation of the building. There is also a heat detector located in the computer equipment which will set off a light indicator when the temperature reaches 72 degrees and automatically shut down the computer system when the temperature reaches 78 degrees.

DCJS is presently installing a new battery-operated electrical system which will supply the computer room with a steady flow of electricity. This will prevent electrical problems such as drops in power or surges in power from affecting the computer system. The new battery system will also be able to maintain a constant flow of electricity for 15 minutes in case of a power failure which is sufficient time to allow DCJS personnel to shut down the system without damage to hardware or software.

CHAPTER 6AUDITS and QUALITY CONTROL

The Federal Regulations (Secs. 20.21(a)&(e)) require two kinds of audits: a systematic internal audit performed regularly by all criminal history repositories intended primarily to maximize accuracy and completeness and an annual audit of State and local criminal justice users to test compliance with all regulatory requirements. This section of the Plan details the conduct of DCJS' systematic audits of the central repository's internal procedures and DCJS/OCA cooperative audits of all users. Local criminal history repositories, such as the Bureau of Criminal Investigation in New York City, will submit their plan for systematic audits with their certification statements.

Field staff and liaison personnel will play a key factor in the audit process by collecting and analyzing information as well as discussing problems and corrections with local and state agencies. DCJS and OCA will cooperatively provide this support for the audit plan. In order to perform the functions prescribed by Section 21.21(a)&(e), DCJS will have to enlarge its staff. Negotiations with the Bureau of the Budget to permit the necessary increases will begin shortly. OCA will receive the initial funding for an audit and quality control group under the OBTS/CCH program.

### 1. Systematic Audit

A continuous systematic audit will be designed by IIS staff to automatically edit and monitor the automated segment of IIS in order to:

- check all incoming data for completeness;
- locate delinquent dispositions;
- check offense codes and sentencing for appropriateness;
- edit correctness and sequence of dispositions;
- check all designated, required information for entry;
- monitor appropriateness of terminal requests;
- notify management of inappropriate errors or request activity;
- prevent non-criminal justice dissemination where appropriate; and
- provide an audit trail which will permit tracking of individual data elements back to source documents.

The systematic audit will involve field personnel who will act as a liaison between DCJS, OCA and other user agencies. The field staff will verify the status of delinquent dispositions, collect information on system functions and use and monitor local operations to insure adherence to the Federal Regulations. The procedures for the systematic audit function

will be designed and implemented by July, 1977.

### 1.1 Edit and Verification Procedures

At present when arrest fingerprints arrive at DCJS via facsimile transmission or mail, they are subjected to a complete manual quality check which includes all necessary coding, editing and transcription. When essential data elements are missing or incorrect, the contributor is contacted by dataphone (in the case of facsimile prints), telephone or mail (for low priority items) and the errors or omissions are rectified. Following manual checking, all arrest data is key-verified before entry and further automatic edits scan for other possible errors in data entry or sequencing. These include insuring the presence of required fields, checking field lengths, and alphanumeric composition. The system also edits charge codes for appropriateness. Where errors occur, messages will instruct operators to re-enter, or in some cases return the document to a previous process for additional research and recoding. Where certain operator errors are made more than once the terminal becomes inoperative, and a supervisory terminal is notified of inappropriate error activity.

### 1.2 Delinquent Dispositions

The instructions supplementing the Federal Regulations suggest the desirability of creating a delinquent disposition monitoring system to oversee the timely submission of disposition data. DCJS wholeheartedly supports the concept of such a

system; however, the extreme contrast in processing times which exists among the courts of the State must be considered in constructing, in consultation with OCA and other state agencies, an effective algorithm for this function.<sup>1</sup> With the adoption by the New York State courts during July, 1975, of a series of Standards and Goals for timely case disposition (to be fully effective by January 1, 1979), it will become considerably easier to determine when court dispositions of felony indictments are delinquent. Starting on October 1, 1976, all felony indictments must be disposed of or trial commenced within one year of indictment, and sentencing must occur within 30 days of disposition. Thus, it will be possible as of October 1, 1977 to monitor delinquent reporting of final court dispositions and sentencing, and DCJS will design and implement a delinquent disposition system which will generate a monthly "Exception Report" listing possible delinquent dispositions and identifying the agencies from which reporting is expected. DCJS field personnel (or OCA staff in the case of court dispositions) will be utilized to check individual cases to verify their status and institute corrective training or sanctions as appropriate.

In addition, a program will be written to permit the flagging of all teleprocessing output which contains potentially

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<sup>1</sup>For example, analysis of Appendix D pp. 1-4 of the DCJS Felony Indictment Quarterly Report published in July, 1975 shows that for the first half of the year, the median times required to progress from indictment to disposition in the four New York Judicial Departments were 216 days in the 1st Department, 152 in the 2nd, 74 in the 3rd and 99 in the 4th.

delinquent dispositions or (in the case of dissemination to a non-criminal justice agency) which may be subject to restrictions on further dissemination by reason of the "one year" rule. Criminal history records requested by non-criminal justice agencies containing open arrests more than one year old would be automatically withheld unless permitted under the exceptions to Section 20.21(c)(1).

### 1.3 Dissemination Tracking Procedures

In order to meet its obligation with respect to record correction, DCJS will maintain a complete dissemination log of all criminal history records showing: the identification number of the requesting agency, the identification number of the individual to whom the record was sent, the date sent, the NYSID number of the record subject, the type of the request and the type of agency (criminal justice or non-criminal justice). This log will be maintained for five years on each dissemination. In addition, DCJS will write a program enabling it to identify all agencies which have received a specific record during each calendar year. This information will permit DCJS to notify all criminal justice agencies which have received a record of a subsequent correction or addition as well as to provide a successful challenger with a list of all non-criminal justice dissemines. DCJS will maintain a record of all corrections which are disseminated by it during the calendar year showing the agency which received the corrected record, the name or NYSID number of the record subject and the date that the corrected copy was transmitted. Both of these latter logs will be maintained for five years from the date of dissemination for each record.

State and local agencies receiving criminal histories from DCJS will be required through execution of a Use and Dissemination agreement to maintain dissemination logs also listing elements identical to those on the DCJS log.

#### 1.4 Audit Trails

IIS records will be modified to include all data elements required for a complete audit trail. Currently DCJS does receive adequate data for audit trail purposes from the law enforcement and prosecutorial segments of the criminal justice community. Additional data elements, including the name and number of the report, the entering individual and the date of entry for all dispositions must be obtained from the courts, probation, corrections and parole.

#### 1.5 Manual System

The foregoing procedures apply strictly to the automated segment of the DCJS data base which includes approximately one million records. Of the roughly 3 million records in manual status, some are duplicated in the automated data base while others have never been computerized. Dispositions received pertaining to individuals whose records are not computerized are immediately updated by hand. DCJS does not, however, manually update manual records which have been completely automated. Where records are fully automated, the old manual records are not disseminated outside DCJS.

#### 2. Annual Audit

To meet the requirement of Section 20.21(e), IIS staff together with staff from the OCA will design and implement an annual audit utilizing random sampling procedures to test compliance by all user agencies both at the State and local level with all

applicable provisions of Federal Regulations, New York State law, and DCJS and OCA regulations pertaining to the processing of criminal history records. All users will agree by signing a Use and Dissemination agreement to hold themselves open to such audits and to maintain such documents as are determined to be necessary to facilitate adequate auditing. At a minimum all user agencies which contribute data to DCJS must maintain source documents from which such contributions were derived plus full and complete dissemination logs. The annual auditing system will be designed and implemented by July, 1977.

The annual audit will be conducted in three basic parts as follows:

### 2.1 Procedural Audit

This audit will examine the extent to which procedures have been implemented to insure compliance with the Federal and State Regulations. This section of the audit will cover:

- completeness of records and disposition reporting procedures;
- accuracy of records;
- dissemination practices (Query, limitations, tracking);
- security (hardware, software, personnel, physical); and
- individual's right of inspection.

Methods used in conducting this audit will include:

- reviews of written procedures and manuals;
- personnel interviews to evaluate understanding and practice;
- observation of the site and operations.

## 2.2 Records Audit

This audit will evaluate the completeness and accuracy of DCJS files as measured against records of original entry. It will be conducted by taking a random selection of source documents at local agencies to evaluate:

- the percentage of entry of arrests or dispositions into DCJS and/or local files;
- the accuracy of data entry to provide the error rate for critical field data;
- the percentage of delinquent dispositions entered;
- delays in disposition reporting.

All evaluations will be based on statistically significant samples of original entry records.

## 2.3 Audit of Activity Logs

This audit will evaluate the effectiveness of the system's tracking mechanisms. Records to be examined include dissemination logs, record corrections logs, and physical and terminal access logs. Besides inspection of logs, the

audit team will:

- review logging procedures;
- interview personnel handling records or processing records corrections; and
- observe each system's daily operations.

For purposes of the annual audit, all users of DCJS criminal history records will be divided among three groups: State agencies, large local agencies (in cities with populations over 50,000) and small local agencies (under 50,000). Within each group agencies will be selected randomly so that 20% of all State agencies and large local agencies and 10% of all small local agencies are audited annually. DCJS itself will be subject to random audits with respect to the foregoing subjects on an average of once every three years conducted by another section of the Executive Department, possibly the Comptroller's office. Discussions will be held with the Governor's office to assign definite responsibility for this latter function.

### 3. Sanctions

DCJS will utilize the information developed through the annual and systematic audits to evaluate adherence to both Federal and DCJS Regulations. When an agency is found to be in error, DCJS and/or OCA will immediately provide technical assistance and guidance in an effort to correct inappropriate procedures. As indicated in both the Use and Dissemination and Non-Disclosure agreements, DCJS reserves the right to suspend the services of the IIS system to any user agency, whether federally funded or

not, which violates any Federal or State law or regulation respecting the processing of criminal history records.

Through the Governor's office, DCJS will seek State legislation providing penalties against individuals and criminal justice and non-criminal justice agencies for violation of laws or regulations pertaining to the use, storage, collection, and dissemination of criminal history record information.

TIMETABLE FOR IMPLEMENTATION OF STATE PLAN

<u>1975</u>	<u>Task</u>	<u>Responsible Agency</u>
September 15	Final Intra-Agency Review of DCJS Privacy Regulations	DCJS-IIS
September 15	Issue instructions to all state and local criminal history repositories explaining obligations respecting inspection and challenge of records	DCJS
September 15 - December 1	Hearings on DCJS Privacy Regulations	DCJS
December 1	Designation of office to hear challenge appeals	DCJS
December 1	All certifications due at DCJS	State & Local Agencies
December 16	All certification statements due at LEAA	"
December 16	Promulgation of procedures respecting appeals of challenge decisions	DCJS
December 16	Issue instructions to local agencies chosen to facilitate inspections of DCJS records outside DCJS	DCJS
December 16	Promulgate DCJS Privacy Regulations with appropriate changes in section on inspection and challenge	DCJS
December 16	All inspection and challenge procedures to be operational at state and local repositories in full conformance with Federal Regulations	State & Local Agencies
December 16	Notice to news media regarding inspection and challenge procedures	DCJS
December 31	Inclusion of release data from local correctional institutions	DCJS-DOCS

1976

January 15	Introduction of legislation regarding Disposition reporting	DCJS-OCA
February 25	Issue procedures to local criminal history repositories respecting completeness and query before dissemination	DCJS
March 25	Issuance of Instructional Manuals for DCJS employees regarding security and processing of criminal history record information; issuance of state-wide training manual	IIS
March 25	Implementation of state-wide probation registry file	DCJS-DOCS
July 2	Interim revision of JC 500 and 501 complete	OCA
September 21	Cut-off services to all agencies lacking adequate statutory authority to access criminal history records	DCJS
December 21	Issue instructions to users explaining security requirements for direct interface between local agencies and IIS	DCJS
December 31	Parole dispositions included in data base consistent with 90 day rule	DCJS-Parole

1977

March 21	Full implementation of remote inquiries and query before dissemination procedures.	DCJS
July 30	Procedures for systematic and annual audits implemented	IIS
December 31	Full implementation of 90 day reporting rule in courts and probation	DCJS-OCA

APPENDIX A

DRAFT PRIVACY REGULATIONS

# DRAFT

STATE OF NEW YORK

## DIVISION OF CRIMINAL JUSTICE SERVICES

In accordance with the provisions of subdivision 13 of Section 837 of the Executive Law, I, Commissioner of the Division of Criminal Justice Services, do hereby promulgate the following regulation:

### PROCESSING OF CRIMINAL HISTORY INFORMATION

[Statutory Authority: Executive Law, Section 837(13)]

#### ARTICLE I - GENERAL PROVISIONS

Section 100: Purpose of Regulation

Section 105: Definitions

#### ARTICLE II - DCJS DATA BASE

Section 200: Data Collection and Retention

Section 205: Criminal History Data

Section 210: Wanted and Missing Persons Data

Section 230: Data Pertaining to Licensing or Employment

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ARTICLE III - ACCESS AND DISSEMINATION

- Section 300: Primary Access Permitted
- Section 305: Conditions of Access - Reliable Identification
- Section 307: Conditions of Access - Use and Dissemination Agreement
- Section 308: Conditions of Access - Sister State Criminal Justice Agency
- Section 310: Data Furnished by DCJS
- Section 315: Restrictions on Use of Data by Disseminees
- Section 320: Restrictions on Further Dissemination of Data
- Section 325: Sealed Records; Youthful Offender Data
- Section 330: Sealed Records; Dismissals Pursuant to CPL Section 170.56
- Section 335: Suppression of Certain Arrest Data

ARTICLE IV - MISCELLANEOUS PROVISIONS

- Section 400: Return of Fingerprints and Expungement of Records
- Section 405: Dissemination of Data for Research Purposes
- Section 410: Individual's Right to Review Own Record; Right to Challenge
- Section 420: Security and Privacy Advisory Committee

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ARTICLE I

GENERAL PROVISIONS

Section 100: Purpose of Regulation

This regulation establishes the methods and procedures for the collection, exchange, storage, use and dissemination of criminal history data identifiable to specific persons, in furtherance of the duty of the Division of Criminal Justice Services to assure the privacy of such information pursuant to section 837 of the Executive Law.

Section 105: Definitions

For the purpose of this regulation:

1. "DCJS" means the New York State Division of Criminal Justice Services.
2. "Commissioner" means the Commissioner of DCJS.
3. "Criminal history data" means criminal record data together with identification data.
4. "Criminal record data" means
  - (a) Arrest data, including the date and place of arrest, the date and place of the alleged crime, the arresting officer or agency; and the nature of the charge or charges by reference to the particular statute or statutes defining the same;

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- (b) Disposition data, including intermediate dispositions if any, and the final disposition of the charge or charges, including post-judgment and appellate proceedings, if any; and
- (c) Corrections and probation data, including the name of the correctional facility, the dates of commitment and release, the date and term of parole, and parole violation data, if any.

5. "Identification data" means

- (a) Name, including aliases, if any;
- (b) address at time of arrest;
- (c) Date of birth;
- (d) Fingerprints;
- (e) Photographs and palmprints, if any;
- (f) Physical description data; and
- (g) New York State identification (NYSID) number, Federal Bureau of Investigation number, local police department or case file numbers, or any other unique identifier.

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6. "Criminal justice agency" means an agency of the State of New York or a political subdivision thereof which is a qualified agency defined in subdivision 9 of Section 835 of the Executive Law as: courts in the unified court system; the Administrative Board of the Judicial Conference; probation departments; sheriffs' offices; district attorneys' offices; the State Department of Correctional Services; the State Division of Probation; the department of correction of any municipality; and the police forces and departments having responsibility for enforcement of the general criminal laws of the State.

7. "Non-criminal justice agency" means a private agency or a public agency of the State of New York or a political subdivision thereof which is not a criminal justice agency as that term is defined in subdivision 6 of this section.

8. "Criminal justice function" means, as defined in subdivision 10 of section 835 of the Executive Law: the prevention, detection and investigation of the commission of an offense; the apprehension of a person for the alleged commission of an offense; the detention, release on recognizance or bail of a person charged with an offense prior to disposition of the charge; the prosecution and defense of a person charged with an offense; the detention, release on recognizance or bail of a person convicted of an offense

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prior to sentencing; and the sentencing of offenders, probation, incarceration, parole, and proceedings in a court subsequent to a judgment of conviction relating thereto.

9. "Arrest warrant" means a process issued by a criminal court within the State of New York directing a police officer to arrest a defendant charged with a crime and designated in an accusatory instrument filed with such court, and to bring him before such court in connection with such instrument.

10. "Bench warrant" means a process of a criminal court within the State of New York in which a criminal action is pending wherein the defendant is charged with a crime directing a police officer to take into custody a defendant in such action who has previously been arraigned upon the accusatory instrument by which the action was commenced, and to bring him before the court.

11. "Wanted person" means a person concerning whom an arrest warrant or bench warrant has been issued for execution.

12. "Missing person" means a person who is reported to a police agency to be absent from his home or from such other place or places at which he would normally be expected to be present, provided that: (a) such person is under 18 years of age; or (b) such person, regardless of his age, appears to be involuntarily absent or is allegedly so mentally or physically ill as to be unable to care for himself.

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13. "Statute" means a statute enacted by the Legislature of the State of New York.

14. "Primary access" means access or the right to access by an agency or individual to data maintained by DCJS, whether by electronic data processing or otherwise, but without the intervention of another and independent agency or individual.

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ARTICLE II

DCJS DATA BASE

Section 200: Data Collection and Retention

DCJS shall, as prescribed in this Article, collect or accept only such data items concerning persons as are authorized by statute. Except as otherwise provided in section 230(1)(b) of this Article, such data items shall be retained by DCJS only pursuant to a statutory requirement to do so. In the absence of such a requirement DCJS shall return all data items collected or accepted by it to the forwarding agency promptly after they have served their statutory purpose, and such data items shall not become part of the data maintained by DCJS.

Section 205: Criminal History Data

1. Collection or Acceptance of Criminal History Data -

Criminal history data shall be collected or accepted by DCJS only from criminal justice agencies and the Federal Bureau of Investigation and only for the purpose of assisting such agencies to perform a criminal justice function.

2. Retention of Criminal History Data - All criminal

history data collected or accepted pursuant to subdivision 1 of this section shall be retained by DCJS, except that identification data received by DCJS pursuant to subdivision 2 of section 160.10 of the Criminal Procedure Law shall, after being processed in accordance with sections 160.20 through 160.40 of the Criminal Procedure Law, be promptly returned to the forwarding police agency.

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Section 210: Wanted and Missing Persons Data

1. Collection or Acceptance of Wanted and Missing Persons Data - For the purpose of locating wanted or missing persons, DCJS shall accept only the following data and only from criminal justice agencies and the Federal Bureau of Investigation:

(a) Wanted persons data containing all of the following:

- (i) the name and location of the issuing court;
- (ii) the name of the person sought to be arrested;
- (iii) the nature of the charge or charges;
- (iv) the date and place of the crime or crimes charged;
- (v) the date of the issuance of the warrant and the name of the issuing judge;
- (vi) the name of the police agency to which the warrant was delivered for execution; and
- (vii) the name of the police officer to be notified if the warrant is executed.

In addition to the foregoing, the following data may be supplied:

- (viii) other identification data concerning the wanted person; and
- (ix) if such be the case, an indication of the willingness of the requesting agency to extradite the wanted person in the event of his arrest pursuant to the warrant.

(b) Missing persons data containing all of the following:

- (i) the name and address of the missing person;
- (ii) descriptive data to aid in identification of the missing person; and
- (iii) the name of the police agency to be notified concerning such missing person.

2. Retention and Review of Wanted Persons Data - Wanted persons data shall be retained by DCJS and periodically reviewed and processed as follows:

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(a) All wanted persons data shall be reviewed by DCJS six months after its original filing with DCJS to determine whether its continued retention is necessary. DCJS shall forward to each contributing agency a listing of the wanted persons submitted by such contributing agency, indicating the date each such item was filed with DCJS. Each contributing agency shall, within thirty (30) days thereafter, take the following action: (i) review the listing to determine which of the warrants remain unexecuted and for which of them the agency desires DCJS to retain wanted persons data; (ii) expunge the data with respect to those persons for which they are no longer required or desired; and (iii) notify DCJS of the decision or action with respect to each person on the list.

(b) All wanted persons data not expunged pursuant to paragraph (a) of this subdivision shall be retained for an additional period of six months, at which time DCJS shall forward a listing of the wanted persons retained pursuant to paragraph (a) to each contributing agency. Each such agency shall, within 30 days thereafter, take the following action: (i) review the listing to determine which of the warrants remains unexecuted and for which of them the agency desires DCJS to retain wanted persons data; (ii) submit to DCJS a certification by the head of the contributing agency or his designee with respect to those persons concerning whom data is to be retained, that the subject warrant continues to be valid process of the issuing court and remains unexecuted; (iii) submit

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with respect to each wanted person listing to be retained, a validation of the data concerning such person in such form as DCJS shall prescribe for each such contributing agency; and (iv) notify DCJS of the decision with respect to each wanted person on the list.

(c) DCJS shall expunge all wanted persons data with respect to which it does not receive a certification and validation, as prescribed in paragraph (b) of this subdivision. Wanted persons data, properly certified and validated in accordance with said paragraph (b), shall be processed by DCJS as if it were newly submitted pursuant to subdivision 1 of this section.

3. Retention and Review of Missing Persons Data - Missing persons data shall be retained by DCJS and periodically reviewed and processed as follows:

(a) All missing persons data shall be reviewed by DCJS six months after its original filing with DCJS to determine whether its continued retention is necessary. DCJS shall forward to each contributing agency a listing of the missing persons filed by such contributing agency, indicating the date of submission. Each contributing agency shall, within thirty (30) days thereafter take the following action: (i) review the listing to determine which of the listed entries the agency desires DCJS to retain; (ii) expunge the data with respect to those persons for which they are no longer required or desired; and (iii) notify DCJS of the decision or action with respect to each person on the list.

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(b) All missing persons data not expunged pursuant to paragraph (a) of this subdivision shall be retained for an additional period of six months, at which time DCJS shall forward a listing of the missing persons retained pursuant to paragraph (a) to each contributing agency. Each such agency shall, within thirty (30) days thereafter, take the following action: (i) review the listing to determine which of the listed entries the agency desires DCJS to retain; (ii) submit to DCJS a certification by the head of the contributing agency or his designee with respect to those persons concerning whom data is to be retained that, on the date of certification, the subject continues to be a missing person; (iii) submit, with respect to each missing person listing to be retained, a validation of the data concerning him in such form as DCJS shall prescribe for each such contributing agency; and (iv) notify DCJS of the decision with respect to each missing person on the list.

(c) DCJS shall expunge all missing persons data with respect to which it does not receive a certification and validation, as prescribed in paragraph (b) of this subdivision. Missing persons data, properly certified and validated in accordance with said paragraph (b), shall be processed by DCJS as if it were newly submitted pursuant to subdivision 1 of this section.

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Section 230: Data Pertaining to Licensing or Employment

1. Retention of Data

(a) Except as otherwise provided in paragraph (b), identification and other data with respect to an applicant for a license or employment, submitted to DCJS pursuant to section 300 of this regulation, shall be retained by DCJS only if a statute specifically so requires or if such retention is necessarily implied from an express statutory direction that DCJS inform the forwarding agency of subsequent criminal record data with respect to such applicant; and

(b) identification and other data submitted to DCJS pursuant to section 300(1)(b)(ii) of this regulation may be retained by DCJS with respect to an applicant for employment as a police officer or for the performance of such other criminal justice functions as the Commissioner, upon the advice of the Security and Privacy Advisory Committee, determines are so related to the welfare and safety of the people of this State that the agency should be aware of the applicant's criminal record; provided, however, that the retention of such data pursuant to this exception shall not continue beyond September 1, 1975.

2. Return of Data - Unless required or permitted to be retained in accordance with subdivision 1 of this section, data with respect to an applicant for a license or employment, submitted to DCJS pursuant to section 300 of this regulation, shall, promptly after the processing thereof, be returned by DCJS to the forwarding agency.

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ARTICLE III

ACCESS AND DISSEMINATION

Section 300: Primary Access Permitted

DCJS may permit primary access to its data only to the following agencies and individuals and only for the purposes specified herein:

1. Criminal Justice Agency - When the data requested is for one of the following purposes:

(a) to perform a criminal justice function imposed by statute;

(b) to consider an application for a license or employment and (i) a statute specifically requires DCJS to process data from or furnish data to such agency; or (ii) the direction that DCJS furnish data to such agency for its use is necessarily implied from a statute which provides that conviction of a crime is or may constitute a disqualification from obtaining such license or employment; or (iii) in the case of employment only, although there is no statutory authority therefor, the Commissioner, upon the advice of the Security and Privacy Advisory Committee, determines that the particular employment involves a function which is so related to the welfare and safety of the people of this State that the agency should be aware of the applicant's criminal record; provided, however, that the furnishing of such data pursuant to this subparagraph (iii) shall not continue beyond September 1, 1975; or

(c) to conduct research in accordance with the provisions of section 405 of this regulation.

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2. Public Non-Criminal Justice Agency of the State of New York - When the data requested is for one of the following purposes:

(a) to consider an application for a license or employment and either (i) a statute specifically requires DCJS to process data from or furnish data to such agency; or (ii) the direction that DCJS furnish data to such agency for its use is necessarily implied from a statute which provides that conviction of a crime is or may constitute a disqualification from obtaining such license or employment;

(b) to conduct research in accordance with the provisions of section 405 of this regulation;

(c) to perform any other function imposed by statute where said statute specifically requires DCJS to process data from or furnish data to such agency;

(d) to conduct an investigation authorized by law, other than an investigation for licensing or employment, when, although there is no statutory authority for DCJS to provide such data, the Commissioner, upon the advice of the Security and Privacy Advisory Committee, determines that such investigation is so related to the performance of a criminal justice function that the agency should receive the same data as would be available to a criminal justice agency conducting a criminal investigation; provided, however, that the furnishing of such data pursuant to this subdivision shall not continue beyond September 1, 1975.

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3. Public Non-Criminal Justice Agency of a Political Subdivision of the State of New York - When the data requested is for one of the following purposes:

(a) to consider an application for a license or employment where a statute specifically requires DCJS to process data from or furnish data to such agency;

(b) to conduct research in accordance with section 405 of this regulation;

(c) to perform any other function imposed by statute where said statute specifically requires DCJS to process data from or furnish data to such agency.

4. Federal Criminal Justice Agency - When the data requested is for one of the following purposes:

(a) to perform a criminal justice function and the Commissioner, upon the advice of the Security and Privacy Advisory Committee, determines that such agency is performing substantially the same function as a criminal justice agency in the State of New York; or

(b) to conduct research in accordance with section 405 of this regulation.

5. Sister State Criminal Justice Agency - When the data requested is for one of the following purposes:

(a) to perform a criminal justice function; or

(b) to conduct research in accordance with section 405 of this regulation.

6. Private Agency - When the data requested is for one of the following purposes:

(a) to conduct research in accordance with the provisions of section 405 of this regulation; or

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(b) to perform a criminal justice function, and the Commissioner, upon the advice of the Security and Privacy Advisory Committee, determines that such function is being performed in a quasi-public capacity under the authority of or contract with this State or a political subdivision thereof.

7. Individuals - When the data requested is for one of the following purposes:

(a) to conduct research in accordance with the provisions of section 405 of this regulation; or

(b) to review data maintained by DCJS which pertains to said individual in accordance with the provisions of section 410 of this regulation.

Section 305: Conditions of Access - Reliable Identification

1. DCJS shall furnish data, as authorized pursuant to section 300 of this Article, only upon reliable identification of the subject person, as hereinafter provided in this section.

2. Except as otherwise permitted in subdivision 3 of this section, all requests for data shall be accompanied by the fingerprints of the subject person together with as many other items of identification data as are available to the requesting agency.

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3. DCJS may furnish data pursuant to subdivision 1 of this section, without the submission of fingerprints, as follows:

(a) Except as otherwise provided in paragraph (b) of this subdivision, when the data are required for the conduct of an investigation authorized by law, other than an investigation for licensing or employment, upon submission of all the following information: (i) as many items of identification data as are available; (ii) the name of the supervising official of the requesting agency making the request who, in the instance of a police department or force, must be of the rank of sergeant or higher; and (iii) the identifying number assigned by the requesting agency to the case being investigated. If the records of more than one person appear to relate to the items of identification data supplied, DCJS shall request further items. If all the items of identification data supplied match the records of more than one person, DCJS shall forward the data concerning the person to whom the identification data reliably applies.

(b) When the data are required only for the purpose of determining whether a person is a wanted or missing person, upon submission of the identification data required in subparagraph (a)(i) of this subdivision and subject to the requirements of reliable identification contained in paragraph (a).

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Section 307: Conditions of Access - Use and Dissemination  
Agreement

1. Except as otherwise provided in subdivision 2 of this section, data shall be furnished by DCJS, as authorized pursuant to Section 300 of this Article, only when a Use and Dissemination Agreement has been entered into between DCJS and the requesting agency and such Agreement remains in full force and effect. Such Use and Dissemination Agreement shall contain the terms and conditions governing the collection, exchange, storage, use and dissemination of data between and among DCJS and dissemines of such data, consistent with the provisions of this regulation.

2. Data may be furnished by DCJS without the execution of a Use and Dissemination Agreement, as follows:

(a) to a person who requests an opportunity to review data maintained by DCJS pertaining to such person in accordance with the provisions of section 410 of this regulation;

(b) when only wanted or missing persons data is requested;

(c) when the data is requested to conduct research in accordance with the provisions of section 405 of this regulation.

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Section 308: Conditions of Access - Sister State Criminal  
Justice Agency

In addition to the requirements of sections 305 and 307 of this Article, DCJS shall furnish data to a criminal justice agency of a sister state, pursuant to subdivision 5 of section 300 of this Article, only where the request for data is made through that state agency which maintains a control terminal with the National Crime Information Center. In response to such a request, DCJS shall forward the data to such state agency for transmittal to the criminal justice agency for which the request was made.

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Section 310: Data Furnished by DCJS

DCJS shall furnish only the following data to recipients authorized pursuant to section 300 of this Article:

1. Criminal Justice Function - DCJS shall furnish the requesting agency all criminal history data concerning the subject person, except (a) data that has been sealed in accordance with statutory requirements; and (b) certain arrest data lacking dispositions, as prescribed in section 335 of this Article. When, however, the request is for the purpose of conducting an investigation authorized by law, except an investigation for licensing or employment, DCJS may furnish criminal record data in an abbreviated form, as follows: when the criminal record data contains more than five separate events, only five need be reported in detail; the balance may be referred to by the type of crime charged. In all instances, however, the most recent event shall be reported in detail.

2. Wanted and Missing Persons - DCJS shall furnish the data received by DCJS pursuant to subdivision 1 of section 210 of this regulation.

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3. Licensing or Employment - DCJS shall furnish only such criminal history data as the Commissioner, upon the advice of the Security and Privacy Advisory Committee, determines the requesting agency needs in order to evaluate the applicant's eligibility for the license or employment, in accordance with the statutory standards prescribed therefor.

4. Research - DCJS shall furnish only such data as the Commissioner determines is essential to achieve a lawful and valuable criminal justice objective, in accordance with the provisions of section 405 of this regulation.

5. Review of Own Record - DCJS shall furnish data in accordance with the provisions of section 410 of this regulation.

Section 315: Restrictions on Use of Data by Dissemines

1. Processing of Data - The processing of data received from DCJS in accordance with this Article shall be subject to all the following restrictions:

(a) Such data may be used and viewed only by those persons whose work relates directly to the purpose for which the data was furnished;

(b) Criminal history data shall not be transmitted by radio; and

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(c) When data is furnished, pursuant to subdivision 3(a) of section 305 of this Article, for the purpose of investigation of a crime, such data shall be made available to the investigating officer only within a facility of the requesting agency and under the control of a supervising official thereof.

2. Retention of Data - Subject to the conditions contained in subdivision 3 of this section, data received from DCJS may be retained only for such period as serves the specific purpose for which they were required. In the instance of data received by a criminal justice agency pursuant to Article 160 of the Criminal Procedure Law, such period may be deemed to extend indefinitely if, within 30 days after final disposition of the charge or charges, such disposition is appropriately entered in the retained records.

3. Storage of Data

(a) Data received from DCJS in accordance with this Article shall be stored only in secure facilities and access to such data shall be limited in the manner prescribed in subdivision 1 of this section.

(b) Data received from DCJS for the purpose of conducting an investigation authorized by law shall be stored in such manner as permits the retrieval thereof by manual means only.

(c) Data received from DCJS by a criminal justice agency pursuant to Article 160 of the Criminal Procedure Law, if retained indefinitely as authorized in subdivision 2 of this section, shall be stored in secure facilities in such manner as permits the retrieval thereof by manual means only.

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Section 320: Restrictions on Further Dissemination of Data

1. Further Dissemination Permitted

(a) Except as otherwise provided in paragraph (b) or (c) of this subdivision, data received from DCJS in accordance with this Article may not be further disseminated, except upon all of the following conditions:

(i) that the data was received by primary access to DCJS; and

(ii) that the data may be further disseminated only by a criminal justice agency to another criminal justice agency; and

(iii) that the purpose of such further dissemination is the performance of a criminal justice function imposed by statute.

(b) Notwithstanding the provisions in paragraph (a) of this subdivision, a criminal court, pursuant to section 20.14 of the Rules of the Administrative Board of the Judicial Conference, may disseminate criminal history data to a defendant's counsel or to a defendant.

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(c) Paragraph (a) shall not apply to data furnished by DCJS if the data originated with the disseminating agency; nor shall paragraph (a) be construed to prohibit or restrict the exchange of information between law enforcement officers and agencies of this State and those of other states or of the United States, as provided in section 621 of the Correction Law.

2. Conditions for Further Dissemination - An agency permitted to further disseminate data pursuant to subdivision 1 of this section, may do so only upon the following conditions:

(a) When the dissemination is pursuant to the provisions of paragraph (a) of subdivision 1 of this section, that the secondary disseminee has executed a Use and Dissemination Agreement in accordance with section 307 of this Article;

(b) When the dissemination is pursuant to the provisions of paragraph (c) of subdivision 1 of this section, that it will receive written assurances from the agency to which it disseminates data that such recipient agency is familiar with the provisions of this regulation and agrees to abide therewith;

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(c) That it will make and retain a record of such dissemination. Such record shall include the date of dissemination, the name and address of the disseminee, a description of the data disseminated, and the purpose for which the data was requested. Dissemination records shall be filed and kept in such manner as to make them readily available for inspection at all times by DCJS;

(d) That it will disseminate only such data as is described in subdivision 1 of section 310 of this regulation, and only on the same conditions of access as DCJS would apply pursuant to section 305(3) of this regulation;

(e) That such data will be transmitted only by non-electronic means which, however, shall not prohibit oral transmission by telephone; and

(f) That when, pursuant to the requirements of Article 530 of the Criminal Procedure Law, data previously furnished by DCJS in the form known as a "Summary Criminal History" is submitted to a criminal court, the agency which does so shall place the applicable cautionary statement on the face of said "Summary Criminal History," as follows:

(i) If said "Summary Criminal History" was previously obtained without submission of the subject's fingerprints, the statement shall read:

"This Summary Criminal History was not furnished pursuant to fingerprint identification. It may, therefore, relate to a person other than the

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defendant in whose case it is being submitted to the court. It may also lack current data received by the Division of Criminal Justice Services since its issuance."

(ii) If said "Summary Criminal History" was previously obtained pursuant to a fingerprint submission, the statement shall read:

"This Summary Criminal History may lack current data received by the Division of Criminal Justice Services since its issuance."

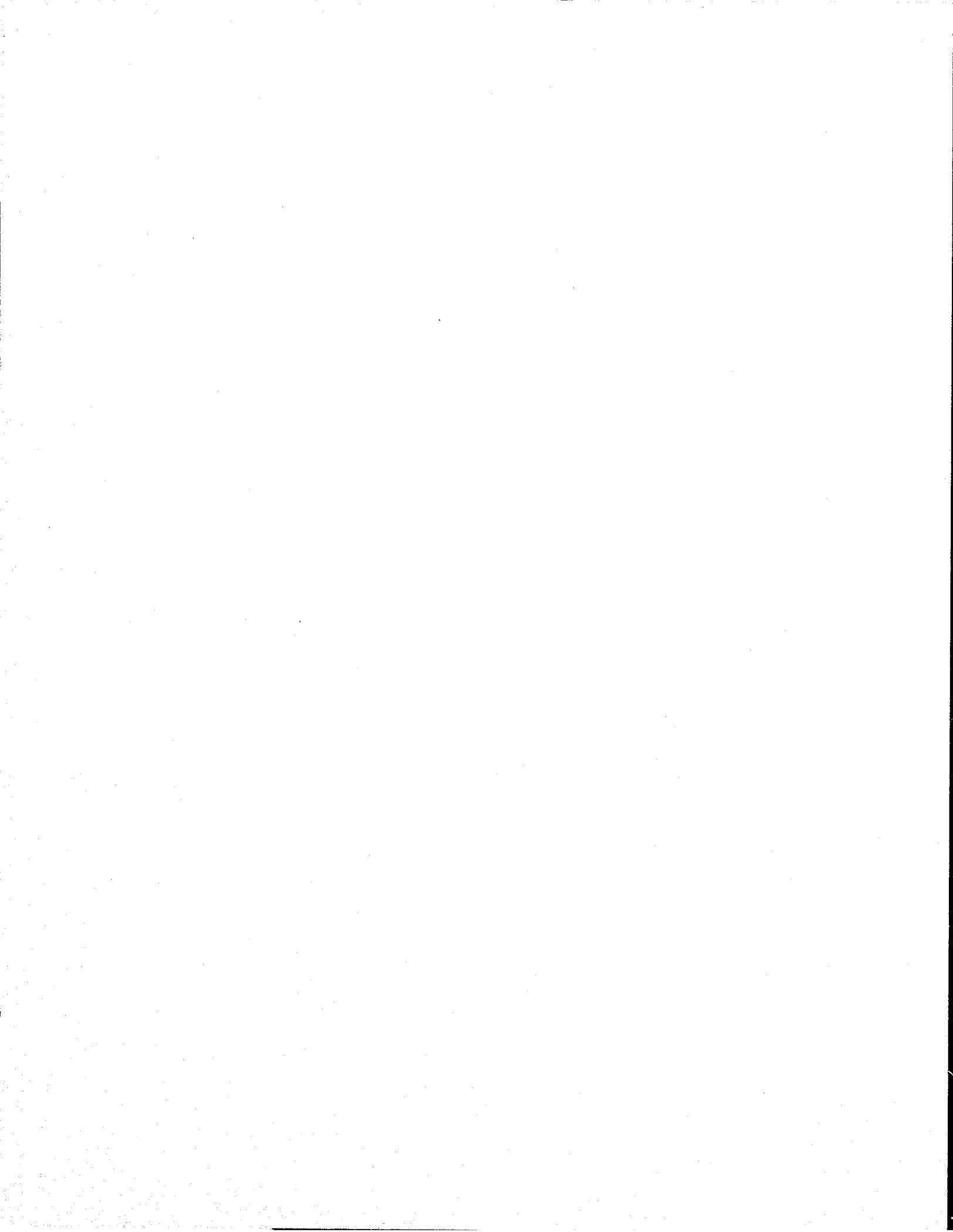
Section 325: Sealed Records: Youthful Offender Data

In accordance with the requirements of section 720.35 of the Criminal Procedure Law, criminal history data relating to the adjudication of a person as a youthful offender shall not be disseminated by DCJS, except as follows:

1. Where dissemination thereof is specifically duly authorized by order of a court of competent jurisdiction;
2. Where dissemination thereof is specifically required or permitted by statute;
3. To an institution to which the subject person has been committed, provided that such institution is, or is a component part of, a criminal justice agency; or
4. To a probation department of this State that requires such data for the purpose of carrying out duties specifically authorized by statute.

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Section 330: Sealed Records; Dismissals Pursuant to  
CPL Section 170.56

Upon receipt of a sealing order duly issued by a court pursuant to subdivision 3 of section 170.56 of the Criminal Procedure Law, criminal history data maintained by DCJS relating to the arrest, prosecution and disposition of the charge concerning the subject person shall be sealed by DCJS and shall not be disseminated to any person or public or private agency, except upon the order of a court of competent jurisdiction. In the event of the issuance of such an unsealing order, the data disseminated by DCJS pursuant thereto shall be used only for the purpose of determining whether, in subsequent proceedings, the subject person qualifies, under section 170.56 of the Criminal Procedure Law, for a dismissal or adjournment in contemplation of dismissal of the accusatory instrument.

Section 335: Suppression of Certain Arrest Data

1. Requests by Criminal Justice Agencies - Commencing two years after the date on which these regulations shall have become effective, DCJS, in response to requests from criminal justice agencies and the Federal Bureau of Investigation for criminal history data, shall disseminate arrest data concerning an arrest of the subject person only as follows:

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(a) Where its records contain the disposition of the charges resulting from said arrest; or

(b) Where the records of DCJS do not contain the disposition: (i) only if the arrest occurred not more than two years preceding the date of the request for information concerning it; or (ii) notwithstanding the fact that the arrest occurred more than two years preceding the date of the request, DCJS has information indicating that the action is still pending.

2. Requests by Non-Criminal Justice Agencies

(a) Except as otherwise provided in paragraph (b) of this subdivision, commencing ninety days after the date on which these regulations shall have become effective, DCJS, in response to requests from non-criminal justice agencies for criminal history data, shall disseminate data concerning an arrest of the subject person only as follows: (i) where its records contain the disposition of the charges resulting from said arrest, or (ii) where the records of DCJS do not contain the disposition, (A) only if the arrest occurred not more than two years preceding the date of the request for information concerning it; or (B) notwithstanding the fact that the arrest occurred more than two years preceding the date of the request, DCJS has information indicating that the action is still pending.

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(b) Where the Commissioner, upon advice of the Security and Privacy Advisory Committee, determines that a non-criminal justice agency's request for arrest data is so related to the welfare and safety of the people of this State that it should have the same arrest data as would be available to a criminal justice agency, such requests shall be processed in accordance with subdivision 1 of this section.

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ARTICLE -IV-

MISCELLANEOUS PROVISIONS

Section 400: Return of Fingerprints and Expungement of Records

1. When Returnable - Except as otherwise provided in subdivision 2 of this section, a person shall be entitled to the return from DCJS of his fingerprints, photographs and palmprints maintained by DCJS, taken in conjunction with the filing in a criminal court of this State of an accusatory instrument charging him with a criminal offense, when:

- (a) He has been acquitted of the charge or charges; or
- (b) The charge or charges have been dismissed; or
- (c) He was convicted solely of an offense which, if he had been originally charged therewith, would not have required the taking of his fingerprints pursuant to section 160.10 of the Criminal Procedure Law; or
- (d) No accusatory instrument was actually filed following the taking of his fingerprints.

2. Exceptions to Return - Notwithstanding the provisions of subdivision 1 of this section, DCJS shall not return fingerprints, photographs and palmprints when:

- (a) The subject person was previously convicted in this State of a crime or of the violation of loitering as defined in subdivision 3 of section 240.35 of the Penal Law or was previously convicted of an offense in any other jurisdiction which would constitute a crime if committed in this State; or

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(b) There is currently pending against the subject person another criminal action in a court of this State; or

(c) The charge or charges against the subject person resulted in a conviction which was replaced by a youthful offender finding; or

(d) The charge or charges against the subject person resulted in the dismissal of the accusatory instrument pursuant to section 170.56 of the Criminal Procedure Law or section 81.25 of the Mental Hygiene Law.

3. Procedure for Return - A person may obtain the return of his fingerprints, photographs and palmprints pursuant to subdivision 1 of this section upon application therefor to the Commissioner and submission of such supporting evidence of his entitlement thereto as the Commissioner may require.

4. Time of Return - DCJS shall return fingerprints, photographs and palmprints as promptly after application therefor as practicable. When the ground for return is the dismissal of the accusatory instrument and the order of dismissal is appealable by the People, no return shall be made until the ultimate affirmance of said order or the expiration of the time to appeal such order, whichever shall first occur.

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5. F.B.I. Copy of Fingerprints - Upon the return of fingerprints pursuant to this section DCJS shall, if a copy of such fingerprints was forwarded to the Federal Bureau of Investigation, request said Bureau to return the fingerprints.

6. Expungement of DCJS Records

(a) Except as provided in paragraph (b) of this subdivision, upon returning fingerprints, photographs and palmprints pursuant to this section, DCJS shall promptly expunge from its records all criminal history data pertaining to the subject person.

(b) When the ground for return is an order dismissing the accusatory instrument and such order has been appealed by the People, DCJS shall seal the criminal history data pertaining to the subject person pending such appeal. If the order appealed from is affirmed and DCJS returns the fingerprints, photographs and palmprints, all criminal history data pertaining to the subject person shall be promptly expunged from the records of DCJS. If the order appealed from is reversed, DCJS shall unseal the record.

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Section 405: Dissemination of Data for Research Purposes

1. Access Permitted - DCJS may furnish, for research purposes, data which identifies or may identify a person only when the Commissioner, upon advice of the Security and Privacy Advisory Committee, determines that: (a) such data are essential to achieve a lawful and valuable criminal justice objective; (b) the applicant has the background and resources to successfully accomplish the proposed research; and (c) DCJS possesses the available time, personnel and fiscal resources necessary to furnish such data.

2. Condition of Access - DCJS may furnish such data only upon the submission of such identification data or other information as the Commissioner may require.

3. Non-Disclosure Agreement - Data may be furnished by DCJS pursuant to this section only upon the execution by the applicant of a Research Use and Non-Disclosure Agreement, as prescribed by the Commissioner. Where the applicant is a public or private agency, such agreement shall be signed by the chief executive officer thereof.

4. Data Furnished - DCJS shall furnish only such data, other than data which has been sealed in accordance with statutory requirements, as the Commissioner determines are essential to achieve the purposes of the proposed research.

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5. Restrictions on Use of Data - Data received from DCJS pursuant to this section, shall be subject to all the provisions of Sections 315 and 320 of this regulation.

Section 410: Individual's Right to Review Own Record; Right to Challenge

1. A person, upon satisfactorily identifying himself, may review all the data maintained by DCJS pertaining to such person, and may challenge the completeness or accuracy of such data.

2. Review pursuant to subdivision 1 of this section shall take place at a DCJS facility except that, for good cause, the Commissioner may permit such review at a place other than a DCJS facility.

3. The data may be reviewed only by the subject in person except that, for good cause, the Commissioner may permit such review by the subject person's attorney, duly authorized in writing, without requiring the presence of the subject person.

4. For the purpose of review or challenge, the subject person or, when permitted pursuant to subdivision 3 of this section, such person's attorney, shall be entitled, upon request, to a copy of the record containing such data.

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5. When a person or, where permitted pursuant to subdivision 3 of this section, a person's attorney challenges the completeness or accuracy of data pertaining to such person, he shall indicate the precise nature of the alleged omission or error and shall submit any documentation he possesses or which he may be required by DCJS to submit, in support of his challenge.

6. DCJS shall promptly investigate challenges made pursuant to subdivision 5 of this section and shall decide such challenge within five working days after receipt of documentation in support of the challenge. If found to be substantiated, DCJS shall immediately make the appropriate corrections in its records. Upon making such corrections or, upon determining after investigation that a challenge is unsubstantiated, as the case may be, DCJS shall notify the subject person accordingly. When corrections in its files are made, DCJS shall immediately notify every disseminee of the subject data, known to it, of said corrections and shall require such disseminees to conform their records to the corrected data.

7. A person whose records have been corrected pursuant to subdivision 6 shall be entitled to ascertain from DCJS the names of those agencies known to it to whom the erroneous records had previously been disseminated.

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Section 420: Security and Privacy Advisory Committee

1. Function of Committee - The Security and Privacy Advisory Committee, appointed by the Commissioner pursuant to the authority contained in subdivision 4 of section 836 of the Executive Law, shall consult with and advise the Commissioner on those matters relating to the use, dissemination and other particulars concerning data and records maintained by DCJS as are required by this regulation. In addition, the Commissioner may solicit or the Committee may offer advice on other matters contained in this regulation which are not expressly predicated on the advice of said Committee.

2. Determinations by Commissioner - A determination by the Commissioner upon the advice of the Security and Privacy Committee shall be binding, notwithstanding that it is at variance with such Committee's advice.

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APPENDIX B

USE AND DISSEMINATION AGREEMENT

(Criminal Justice Agency)

USE & DISSEMINATION AGREEMENT

between

the NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES

and

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Pursuant to Sec. 837(6) of the Executive Law, the New York State Division of Criminal Justice Services (hereinafter DCJS) and \_\_\_\_\_, a criminal justice agency of New York State or a political subdivision thereof, (hereinafter the "User Agency") hereby agree to exchange data pertaining to the administration of criminal justice, including such criminal history information, wanted persons information and missing persons information as may be contained in the files of the User Agency, DCJS or the National Crime Information Center (hereinafter NCIC), on the following terms and conditions:

1. Duties of DCJS:

Upon receipt of inquiries for information from the User Agency which contain all data elements required by DCJS Administrative Regulations, DCJS will promptly search its files and return, in as expeditious manner as possible consistent with delivery systems available to it, such criminal history record information, wanted persons information or missing persons information as may be contained in its files.

2. Duties of the User Agency;

The User Agency agrees to collect, receive, store, use and exchange all information covered by the terms of this agreement in strict compliance with all present and future Federal and State laws and regulations. In particular, the User Agency will familiarize its personnel with and fully adhere to Sec. 524(b) of the Crime Control Act of 1973 (42 USC 3771(b)) and regulations issued pursuant thereto, regulations issued by DCJS entitled Processing of Criminal History Information and the State Plan submitted pursuant to 42 USC 3771(b). Federal and DCJS regulations referred to above are attached hereto and incorporated herein by reference.

3. Audits:

The User Agency hereby agrees to make its records available to DCJS for the purpose of conducting periodic audits of the User's compliance with all laws and regulations regarding the processing of information furnished to the User Agency under the terms of this agreement. The User Agency agrees to keep such records as DCJS may from time to time direct to facilitate such audits. At a minimum the User Agency shall record all disseminations of criminal history records received from DCJS on a log showing the date of the dissemination, the purpose, the authority and the name of the requesting agency.

4. Executory Clause:

It is understood by and between the parties hereto that DCJS is obligated to provide the services described in paragraph

1 above to the User Agency only to the extent that public funds are made available to DCJS for that purpose. DCJS shall incur no liability on account of the undertakings described in paragraph 1 above beyond the money made available to it for such purposes.

5. Suspension of Service, Cancellation, Fires:

DCJS may immediately suspend furnishing all or part of the information covered by the terms of this agreement to the User Agency for violation of any Federal law or regulation or any New York State law or administrative regulation. The User hereby agrees that knowing violation of Sec. 42 USC 3771(b) and regulations issued pursuant thereto by the User or its employees will subject the User to fines of up to \$10,000 and may result in suspension of all federal funds. DCJS shall resume furnishing any information authorized hereunder when it is satisfied that all violations have been eliminated. Either DCJS or the User Agency may, on 30 days written notice, terminate this agreement for any reason.

6. Indemnification of DCJS:

The User Agency agrees to indemnify and save harmless DCJS, its officers and employees, from and against any and all claims, demands, actions, suits and proceedings brought by others arising out of the terms of this agreement or founded upon the negligence or other tortious conduct of the User Agency including but not limited to, any liability for loss or damages by reason of any claim of false imprisonment or false arrest.

7. Effective Date:

This agreement shall become effective when signed by the Commissioner of DCJS or his designee and the official having legal authority to bind the User Agency.

Division of Criminal Justice Services

by: \_\_\_\_\_

User Agency

by: \_\_\_\_\_

APPENDIX C

NON-DISCLOSURE AGREEMENT

## Non-Disclosure Agreement

WHEREAS, \_\_\_\_\_ (hereinafter "Researcher") has requested permission from the NYS Division of Criminal Justice Services (hereinafter DCJS) to analyze certain criminal history data maintained by DCJS in connection with a project defined in a letter to DCJS dated \_\_\_\_\_; and

WHEREAS, the Commissioner of DCJS or his authorized designee has approved said request by a letter to Researcher dated \_\_\_\_\_;

NOW, THEREFORE, in consideration of DCJS' furnishing such information to Researcher, the parties agree as follows:

1. The following items of information shall be supplied by DCJS to Researcher, to the extent that such items are contained in the files of DCJS:

2. Researcher acknowledges the confidential nature of the criminal history data to be supplied to it and agrees to not disclose any such data in a form which is identifiable to an individual to anyone not immediately concerned with the research project pursuant to which such data is furnished.

3. In order to conceal the identity of persons whose criminal history records are supplied to Researcher, Researcher agrees:

(a) to use the information furnished under this agreement only for the purpose described in a letter from Researcher to DCJS dated \_\_\_\_\_;

(b) to, so far as possible, replace the name and address of any record subject with an alphanumeric or other appropriate code;

(c) to restrict access to all data supplied to DCJS to those employees whose responsibilities cannot be accomplished without such access;

(d) to store all data received from DCJS in secure, locked containers;

(e) to refrain from copying any data furnished by DCJS and to retain such data only so long as may be necessary to effectuate the purposes of the project referred to in a letter from Researcher to DCJS dated \_\_\_\_\_; and

(f) to permit DCJS to monitor, audit and review the activities and policies of Researcher in implementing this agreement in order to assure compliance therewith.

4. Researcher agrees to insert in the preface to any report of the study conducted pursuant to this agreement, whether published or unpublished, a statement of the nature of the data furnished to Researcher by DCJS, the form in which such data was furnished to it and a disclaimer of DCJS' responsibility for the methods of statistical analysis as well as the conclusions derived therefrom contained in such report.

5. Researcher will hold DCJS harmless from any damages or other liability which might be assessed against DCJS as a result of disclosure by Researcher of any information received from DCJS pursuant to the terms of this agreement and the letter referred to in paragraph 3 above.

6. Researcher will pay to DCJS the sum of \$4.64 for each search for a criminal history which DCJS performs at Researcher's request. Payment shall be made once every three months beginning at the time when Researcher first requests DCJS to search its records.

7. In the event that Researcher fails to comply with the terms of this agreement, DCJS may cease to supply criminal histories to Researcher and may demand the return of all criminal histories previously furnished to Researcher and take such other actions as it deems appropriate.

In witness whereof the parties have signed their names hereto  
this \_\_\_\_\_ day of \_\_\_\_\_, 1975.

State of New York  
Division of Criminal Justice Services

by: \_\_\_\_\_  
Name:  
Title:

by: \_\_\_\_\_  
Name:  
Title:

APPENDIX D

APPLICABILITY and IMPACT CHART

APPLICABILITY AND IMPACT OF REGULATIONS

Possible Combinations of Criteria

APPLICABILITY CRITERIA:	1	2	3	4	5	6	7	8	9	10	11	12	13
Received LEAA Funds	-	-	-	-	-	-	-	X	X	X	X	X	X
Collects/Maintains CHRI	-	X	X	-	X	X	-	-	X	-	X	X	X
Disseminates CHRI	-	-	X	-	-	X	X	-	-	X	-	X	X
CHRI Recipient	-	-	-	X	X	X	X	X	-	X	X	-	X
<p>Totally Unaffected By Regulations</p>									<p>Required to Comply Only As Specified in CHRI Use Agreements</p>				
									Y	Y	Y	Y	Y
<b>OPERATIONAL PROCEDURES REQUIRED:</b>													
Required to submit certification									X	X	X	X	X
Completeness (Disposition Reporting)												X	X
Query before dissemination										X		X	X
Accuracy--quality control and audit									X		X	X	X
Prepare procedures/agreements limiting dissemination										X		X	X
Maintain dissemination logs										X		X	X
Technical provisions limiting access									X	X	X	X	X
Dedicated hardware									X	X	X	X	X
Control of computer operations									X	X	X	X	X
Physical security/protection									X	X	X	X	X
Individual right of access									X		X	X	X

APPENDIX E

DIVISION FOR YOUTH CONFIDENTIALITY REGULATIONS

their services, but shall receive actual and necessary traveling and other expenses, to be paid after audit as other current expenditures of the institutions.

#### Historical Note

Sec. filed Dec. 11, 1974 eff. Dec. 11, 1974.

**168.6 Reporting to counsel's office.** (a) All incidents which could give rise to claims against the State shall be reported in writing to the deputy director of rehabilitation services and to the office of general counsel within 48 hours. Incidents to be reported shall include but not be limited to the following: damage to property by students, death of any student in program, commission of criminal acts by staff or students, use of physical force by staff and injury of staff in line of duty.

(b) General counsel shall review the incident reports and supporting material to determine those incidents which have a substantial likelihood of giving rise to a claim or proceeding against the State. He shall then give notice of these claims to the Attorney General as required pursuant to section 72 of the Public Officers Law.

#### Historical Note

Sec. filed Dec. 13, 1974 eff. Dec. 13, 1974.

**168.7 Confidentiality of Division for Youth records.** (a) Records or files of children who are or have been under the care or supervision of the Division for Youth may not be disclosed in whole or part to any person, agency or institution, other than the Division for Youth and New York State family courts with the following exceptions:

(1) Records or pertinent parts thereof must be disclosed pursuant to Supreme Court order as authorized by Social Services Law, article 6, section 372.

(2) Educational records may be disclosed to the extent that when a child is attending or has attended a school located on the premises of a Division for Youth facility:

(i) All school records may be visually displayed to a child's parent, in person only.

(ii) The child's name, a list of subjects studied, grades received, record of attendance, last grade level achieved, previous school attended, and standardized test scores only may be forwarded to the principal or guidance counsellor of a school to which a child may be sent or desires to attend.

(3) Medical records may be disclosed to a physician at the written request of the physician and with the written approval of the child's parent or guardian; however, if the child is over the age of 18 years at the time of the request, only his or her approval shall be necessary, in addition to the physician's request.

(4) Records, or summaries of records, may be disclosed to the probation department of a Family Court of the State of New York, on request for use in accord with Family Court Act, article 1, section 166, article 7, sections 746(b), 783.

(5) The division is prohibited from making records available to a county probation department, pursuant to section 312.3 of the Social Services Law.

(6) Information concerning a child's date of admission, release, revocation of release, and discharge only may be forwarded to the director of a New York Social Welfare district or State or Federal agency on request, when such information is necessary to enable said district or agency to determine that the child is under its jurisdiction thereby enabling it to provide for a child's welfare and the necessities of life.

(7) Records pertaining to the vital statistics of children may be disclosed to

law enforcement authorities when a child is absent from an institution without proper authorization or has violated a condition of release.

(8) Records may be made available to authorized child caring agencies, within and without the State, which have actual custody of the youth and request specific information in writing for the purpose of developing a program to meet his needs. However, when the request is made by an out-of-State child caring agency the division shall request written confirmation, from the juvenile compact administrator for the State in which the requesting agency is located, that the agency is authorized to provide child care within that State and is in good standing. No record shall be made available until such information is received by the division in writing.

(9) Division records shall be made available to the Attorney General or his designee in furtherance of the duties of that office.

(10) Records pertaining to youths referred to the division as a condition of probation or pursuant to a continuance authorized by section 502 of the Executive Law shall be made available to the referring court or its probation department upon written request during the period of referral.

(b) When requests for records or other information concerning a child is received by any agent of the Division for Youth, and when such information is not included in the exceptions listed in paragraph (1) through (10) of subdivision (a) of this section, the correct response shall be, "We are not authorized by law to disclose whether or not any individual was ever under our jurisdiction."

(c) No part of this section shall be construed to prohibit the free exchange of information within the Division for Youth, or between the division and New York Family Courts, when the best interest and treatment of the child is at issue, nor shall it serve to prohibit a bona fide study of information, with the approval of the executive deputy director and the deputy director for research of the Division for Youth and when guided by the superintendent or director of the institution, agency, or facility at which the study is being conducted, with the stipulation that the name of no child shall be disclosed by the study group. In addition all such study groups shall sign an agreement to this effect before approval for such study shall be granted.

(d) When any child who has been under the care of the Division for Youth, according to title II, article 19-G, of the Executive Law, reaches the age of 20 years, and a child cared for by the Division for Youth, according to title III, article 19-G, of the Executive Law, reaches the age of 21, all records possessed by said division shall be sealed and shall only be revealed by the division, pursuant to an order to the Supreme Court of the State of New York, except such records may be made available to the Attorney General of the State of New York in furtherance of the duties of that office.

#### Historical Note

Sec. filed Dec. 13, 1974 at Dec. 13, 1974

CERTIFICATION OF COMPLIANCE

by

THE STATE OF NEW YORK

pursuant to

TITLE 28 CODE OF FEDERAL REGULATIONS,

CHAPTER 1, PART 20

**CERTIFICATION OF COMPLIANCE**

by

**THE STATE OF NEW YORK**

pursuant to

Title 28 Code of Federal Regulations,  
Chapter 1, Part 20

	Now Implemented	Reasons For Non-Implementation			Estimated Implementation Date
		Cost	Technical	Lack of Authority	
<u>OPERATIONAL PROCEDURES</u>					
<u>Completeness and Accuracy</u>					
Central State Repository:					
Statutory/Executive Authority	X				
Facilities and Staff	X				
Complete Disposition Reporting in 90 days from:					
Police	X				
Prosecutor		X	X	X	12/31/77
Trial Courts		X	X	X	12/31/77
Appellate Courts		X	X	X	12/31/77
Probation		X	X	Y	12/31/77
Correctional Institutions		X	X	Y	12/31/77
Parole		X	X	X	12/31/76
Query Before Dissemination:					
Notices/Agreements--Criminal Justice		X	X		3/21/77
Systematic Audit:					
Delinquent Disposition Monitoring		X	X		7/30/77
Accuracy Verification		X			7/30/77
Notice of Errors		X	X		7/30/77
<u>Limits on Dissemination</u>					
Contractual Agreements/Notices and Sanctions in Effect For:					
Criminal Justice Agencies				X	12/16/75
Non-Criminal Justice Agencies Granted Access by Law or Executive Order				X	9/21/76
Service Agencies Under Contract	X				
Research Organizations	X				
Validating Agency Right of Access Restrictions On:					
Juvenile Record Dissemination	X				
Confirmation of Record Existence	X				
Secondary Dissemination by Non-Criminal Justice Agencies				X	12/16/75
Dissemination Without Disposition				X	12/16/75
<u>Audits and Quality Control</u>					
Audit Trail:					
Recreating Data Entry		X	X		7/30/77
Primary Dissemination Logs		X	X		7/30/77
Secondary Dissemination Logs		X	X		7/30/77
Annual Audit		X	X		7/30/77

OPERATIONAL PROCEDURES

Security

Executive/Statutory Designation of Responsible Criminal Justice Agency

Prevention of Unauthorized Access:

Hardware Design

Software Design

Dedicated Hardware:

Terminals

Communications Control

Processor

Storage Devices

Criminal Justice Agency Authority:

Computer Operations Policy

Access to Work Areas

Selection and Supervision of Personnel

Assignment of Administrative Responsibility:

Physical Security

Unauthorized Access

Physical Protection Against:

Access to Equipment

Theft, Sabotage

Fire, Flood, Other Natural Disaster

Employee Training Program

Individual Right of Access

Rules for Access

Point of Review and Mechanism

Challenge by Individual

Administrative Review

Administrative Appeal

Correction/Notification of Error

	Now Implemented	Reasons For Non-Implementation			Estimated Implementation Date
		Cost	Technical	Lack of Authority	
Executive/Statutory Designation of Responsible Criminal Justice Agency	X				
Prevention of Unauthorized Access:					
Hardware Design		X			12/31/77
Software Design		X	X		12/31/77
Dedicated Hardware:					
Terminals	X				
Communications Control	X				
Processor	X				
Storage Devices	X				
Criminal Justice Agency Authority:					
Computer Operations Policy	X				
Access to Work Areas		X			12/31/76
Selection and Supervision of Personnel	X				
Assignment of Administrative Responsibility:					
Physical Security	X				
Unauthorized Access	X				
Physical Protection Against:					
Access to Equipment		X			12/31/76
Theft, Sabotage	X				
Fire, Flood, Other Natural Disaster	X				
Employee Training Program		X	X		12/31/76
Individual Right of Access					
Rules for Access	X		as of		12/16/75
Point of Review and Mechanism	X				12/16/75
Challenge by Individual	X				12/16/75
Administrative Review	X				12/16/75
Administrative Appeal	X				12/16/75
Correction/Notification of Error	X				12/16/75

I certify that to the maximum extent feasible action has been taken to comply with the procedures set forth in the Privacy and Security Plan of the State of New York.

Signed   
 Frank J. Rogers  
 Commissioner, Division of  
 Criminal Justice Services

CERTIFICATION STATEMENT # 2

Checklists for each other manual or automated criminal history record information system in New York State covered by the Federal Regulations will be submitted by the Division of Criminal Justice Services on or before December 16th, 1975.

CERTIFICATION STATEMENT # 3

A complete discussion of all problems impeding the implementation of the completeness and accuracy section of the Federal Regulations is presented in Chapter 2 of the Plan.

CERTIFICATION STATEMENT # 4

## DISSEMINATION TO NON-CRIMINAL JUSTICE AGENCIES

Criminal history record information is disseminated from DCJS to non-criminal justice agencies in New York pursuant to state statute in the following circumstances:

Applicants for Pistol Permits, Gunsmith licenses, Firearms Dealerships - Licensing barred if applicant: is not of good moral character; has been convicted anywhere of a felony or serious offense; fails to state if he or she ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness. Penal Law § 400.00 (1).

Corporations, referees, judges, professional boxers, wrestlers, etc. - Licensing may be barred if applicant, or any person who is a partner, agent, employee, stockholder or associate of applicant, has been convicted of a crime in any jurisdiction or jurisdictions, or is associating or consorting with any person who has or persons who have been convicted of a crime or crimes in any jurisdiction, or is consorting or associating with or has consorted or associated with bookmakers, gamblers or persons of similar pursuits, or has been guilty of or attempted any fraud or misrepresentation in connection with boxing or wrestling, or has violated or attempted to violate any law with respect to boxing or wrestling. Unconsolidated Laws § 8917 (b)

Grand Jurors - A person is not eligible to serve as a grand juror if he or she has been convicted of a felony or a misdemeanor involving moral turpitude. Judiciary Law § 596 (4) and 609 (1).

Harness Racing Official - Employment may be barred if: convicted of a crime involving moral turpitude; engaged in bookmaking or form of illegal gambling; guilty of any fraud or misrepresentation in connection with racing or breeding; found guilty of any violation or attempt to violate any law, rule or regulation of racing in any jurisdiction for which suspension from racing might be imposed in such jurisdiction. Unconsolidated Laws § 8010 (2).

Applicants to be private investigators or watchguard or patrol agencies - No licenses issued to persons convicted of a felony or of offenses listed. Licensee cannot hire persons convicted of a felony or of offenses listed. General Business Law § 74 (2), 81 (1).

Applicants to be independent public adjustors - Eligibility proscribed if applicant has been convicted of a felony, or of any crime or offense involving fraudulent or dishonest practices. Licensee cannot employ a person with a similar record. Insurance Law § 123 (9).

Purchasers, users, possessors, owners or transporters of explosives - Licensing barred if convicted of a crime for which applicant was sentenced to serve one or more years in prison, or if applicant has evidenced disloyalty or hostility to the United States, or if applicant has been confined as a patient or inmate in a public or private institution for the treatment of a mental disease. Labor Law § 459 (1).

Male employees of manufacturers or wholesalers of alcoholic beverages - Licensees (manufacturers or wholesalers) cannot employ a person who has been convicted of a felony or of any enumerated offenses. Alcoholic Beverage Control Law § 102 (2).

Applicants for Migrant Labor Contractor Licenses - Licensing may be barred if applicant has been convicted of a crime or offense, except traffic infractions. Labor Law § 212-a (5a)

Partners, officers, directors, salesmen of national security exchanges and the Securities and Exchange Commission - Upon a showing by the attorney-general, in an application for an injunction, that any person engaged in the purchase, sale, offer to purchase or sell, issuance, exchange, promotion, negotiation, advertisement as distribution within this state of any security or securities, either as principal, partner, officer, agent, employee or otherwise, has ever been convicted by a court of competent jurisdiction in any state or country of any felony; or of any other criminal offense by any such court, whether or not constituting a felony, involving securities, the supreme court after a hearing may issue a permanent injunction restraining such person from selling or offering for sale to the public within this state, as principal, broker or agent, or otherwise, any securities issued or to be issued. General Business Law § 353.

Applicants for license as professional bondsmen - Licensing may be barred if applicant convicted of any offense involving moral turpitude or of any crime. Insurance Law § 331 (3b)

Applicants for license to operate an employment agency - If the Industrial Commissioner of New York State or the Commissioner of New York City Department of Consumer Affairs determines applicant is not a person of good character or responsibility, licensing will be denied. General Business Law § 174.

Applicants as pier superintendents, hiring agents, stevedores, longshoremen, port watchmen, checkers - Licensing or registration may be barred if applicant has been convicted of a felony, or of high misdemeanor, or of any of specific offenses (listed). Unconsolidated Laws § § 9814 (b), 9821 (e), 9829 (a), 9841 (b), 9941 (b), 9918 (3a).

Applicants for license as check cashiers, owners, partners, employees, associates of check cashing business - Application rejected if applicant convicted of a felony, may be barred if convicted of a crime in any jurisdiction, or if applicant is associating or consorting with a person or persons who have been convicted of a crime or crimes in any jurisdiction. Banking Law § 369 (6).

Executives, directors and principals of insurance companies - Persons convicted of any crime involving fraud, dishonesty, or like moral turpitude, or is an untrustworthy person, may not be eligible for such employment. Insurance Law § 48 (8c)

Licenses for horse owners, trainers, jockeys, jockey agents or stable employees - Applicant may not be licensed if convicted of a crime in any jurisdiction, or is consorting or associating with bookmakers, touts or persons of similar pursuits, or is self engaged in similar pursuits, or has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, or has violated or attempted to violate any law with respect to racing in any jurisdiction. Unconsolidated Laws § 7915 (2).

Applicants for bingo license - License may be denied if convicted of a crime. Executive Law § 435 (2c).

Employees of bottle clerk licensees under ABC law - A person convicted of a felony or of any of enumerated offenses may not be so employed. Alcoholic Beverage Control Law § 102 (2).

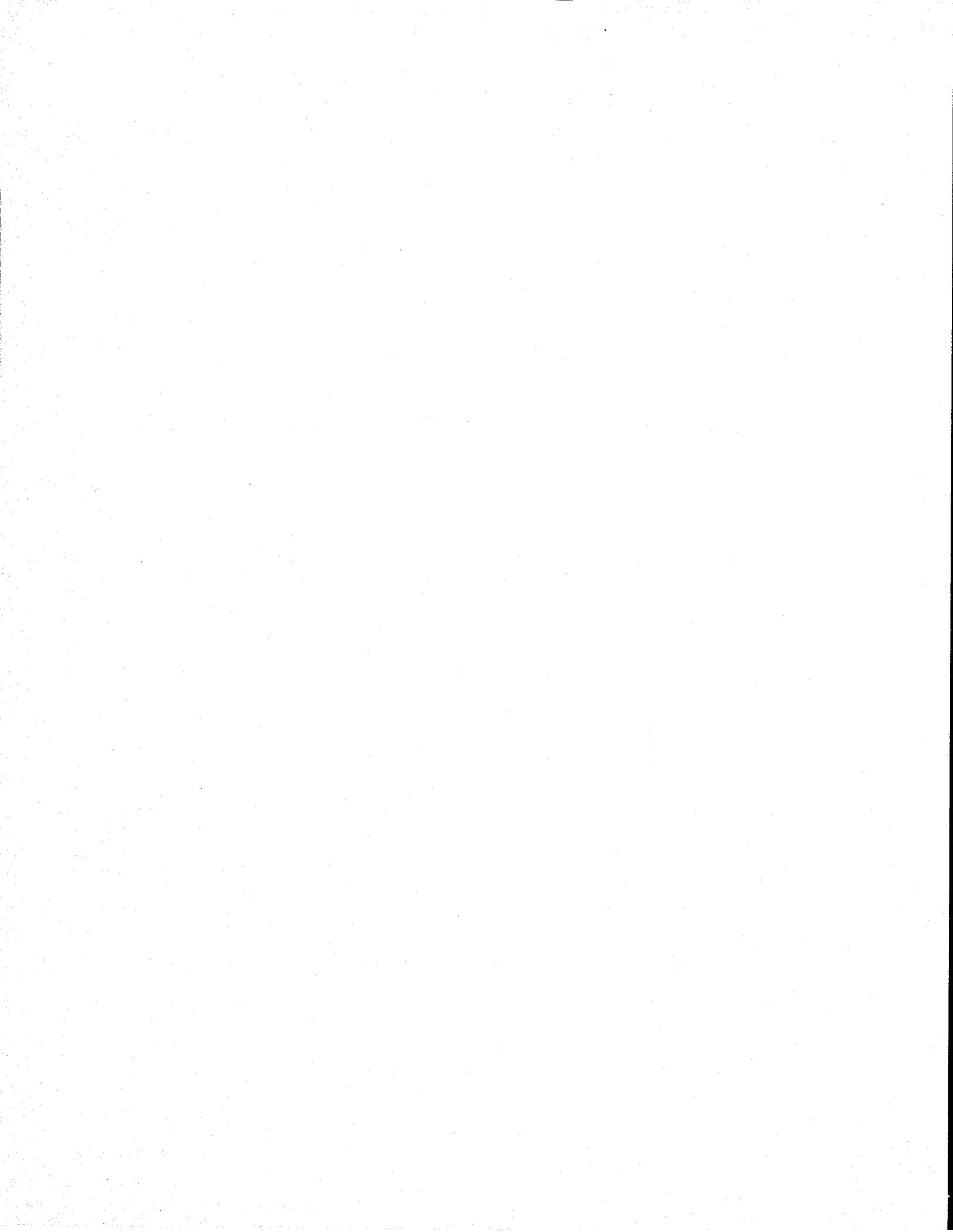
Owners, partners, directors, officers, major stockholders applying for bottle club license - No such license will be issued to a person convicted of a felony, or of promoting prostitution in the third degree, as defined by § 230.20 of the Penal Law, or of permitting prostitution, as defined by § 230.40 of the Penal Law. Alcoholic Beverage Control Law § 126 (1).

Applicants for licenses as funeral directors - A person may not be eligible for such license if convicted of a felony or of a misdemeanor. 10 NYCRR 77.2, Dept. of Health, -Rules for Funeral Directors.

Applicants for tavern and package store licenses - No such license will be issued to a person convicted of a felony, or of promoting prostitution in the third degree, as defined by § 230.20 of the Penal Law, or of permitting prostitution, as defined by § 230.40 of the Penal Law. Alcoholic Beverage Control Law § 126 (1).

CERTIFICATION STATEMENT # 5

A complete list and description of all current state legislation related to the implementation of the Federal Regulations and of legislation which will be sought in the future is presented in Chapter 1 of the Plan except that one reference to additional legislation appears on the last page of the Plan: -



**END**