

**U.S. Department of Justice**  
Office of Justice Programs

**Bureau of Justice Statistics**

**Report of the National Focus Group on  
the Retention of Civil Fingerprints by  
Criminal History Record Repositories**

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Report of the work prepared under Cooperative Agreement number 2007-RU-BX-K011, awarded to SEARCH Group, Incorporated, 7311 Greenhaven Drive, Suite 145, Sacramento, California 95831. Contents of this document do not necessarily represent the views or policies of the Bureau of Justice Statistics or the U.S. Department of Justice.

**U.S. Department of Justice**  
Bureau of Justice Statistics

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## Foreword □

The growing use of fingerprints for employment background checks and other purposes improves public safety beyond the increased security provided by the checks.

Fingerprints submitted for background checks, known as civil or applicant prints, are often retained and used in programs that notify employers should an employee be subsequently arrested. They are also matched against databases of latent fingerprints, which are those of unknown individuals obtained from crime scenes and other sources.

Through these efforts, individuals who pose safety risks – whether through proximity to vulnerable populations, holding positions of trust, access to sensitive information, or through possible participation in unsolved crimes – are identified and removed from sensitive positions or prosecuted for the crimes to which they are connected.

The ability to quickly react when an employee runs afoul of the law has taken public safety to new heights. However, issues that may arise when civil fingerprints are used beyond their intended purpose threaten to negatively impact, and could limit or eliminate, these beneficial uses.

The following report of the National Focus Group on the Retention of Civil Fingerprints by Criminal History Record Repositories examines the civil fingerprint environment and highlights key issues that law- and policymakers should consider if they wish to introduce or support the continued practice of retaining applicant fingerprints after a background check has been completed.

## Name- vs. fingerprint-based background checks: A comparison

Criminal record checks for civil purposes come in two basic types: Fingerprint- and name-based, although the term “name-based” is a bit of a misnomer, as the check may also include identifiers such as birth date, gender, race, physical description, and Social Security Number.

This *Report of the National Focus Group on the Retention of Civil Fingerprints by Criminal History Record Repositories* deals almost exclusively with fingerprint-based civil background checks, although there are some references to name-based checks in the **Background** section of the report.

There are benefits and drawbacks to either fingerprint- or name-based background checks. For example, name-based civil background checks are far less costly to conduct than fingerprint-based checks, and can be conducted much more quickly.

Such checks can often be accomplished, sometimes for free but usually for a fee, simply by making a telephone call or visiting a Web site, as many states and courts now provide telephone or on-line access to some types of official criminal history record information. A number of private vendors also provide name-based background check services.

However, name checks cannot ensure a positive, verified connection to a record subject. Queries submitted for individuals with common names, for example, may return multiple “hits,” none of which may actually apply to the search subject.

Those with common names sometimes lose out on jobs, volunteer opportunities, and other needs and services because of their incorrect and unfair association with criminal history records. Commercial criminal history databases may maintain these incor-

rect associations even after they have been corrected at the official level, inflicting long-term suffering on individuals who lose out on job and volunteer opportunities and other needs and services because of their connection to criminal history information that does not relate to them.

Further, someone with a criminal background may simply use an alias and a forged identification document to escape the consequences of his or her past. Also, there is no current method for noncriminal justice agencies and private organizations to submit name-only criminal record queries to the FBI.

Fingerprint-based civil background checks are far more reliable than name checks in positively connecting an individual to his or her criminal history record, if one exists. Fingerprint images are also valuable when used in conjunction with rap-back programs, through which fingerprint images submitted for employment, volunteer suitability, or licensing are retained and matched against subsequently submitted arrest fingerprints.

Employers can then be notified in near real-time of an arrest, which may serve to disqualify an applicant, employee, or volunteer from holding a position of trust based on the arrest or, more likely, depending upon the outcome of the case.

Fingerprint-based criminal record queries allow noncriminal justice agencies and private organizations to obtain access to FBI-maintained criminal history record information through such provisions as Public Law 92-544 and the National Child Protection Act (NCPA)/Volunteers for Children Act (VCA).

Public Law 92-544 allows noncriminal justice governmental agencies and private entities within states to obtain criminal record information from the FBI if the state's legislature, or in some states a city council, board of supervisors, or other local legislative body, has passed a statute authorizing access, and if the statute is approved by the U.S. Attorney General.

Under NCPA/VCA, criminal record query results may, in some instances, be disseminated from the FBI through a state agency and directly to the requesting entity, which makes its own suitability determination.

However, as noted previously, fingerprint-based civil background checks can be far more costly than name-checks, and can take far longer to complete if hard cards are used to collect inked fingerprint images, which are then mailed to the criminal record repository.

This process has been significantly accelerated through the use of livescan devices, which transmit electronic fingerprint images captured on glass platens to the repositories, and automated fingerprint identification systems, which electronically process the submitted images, but the return of the query response may still take several days.

According to a survey of the states conducted by SEARCH for its "Survey of State Criminal History Information Systems, 2006" report, criminal history record repositories in 51 states and territories reported processing slightly more than 7 million sets of fingerprint images submitted that year for civil criminal record background checks.

For that same survey, criminal history record repositories in 37 states and territories reported conducting more than 14.3 million name-based civil background check queries.

Significant differences in name- versus fingerprint-based civil background check queries were noted in –

- **Arkansas:** 158,568 name checks versus 52,600 fingerprint checks
- **Colorado:** 347,080 name checks versus 111,300 fingerprint checks
- **Iowa:** 257,450 name checks versus 2,300 fingerprint checks
- **Kansas:** 229,605 name checks versus 25,800 fingerprint checks
- **Maine:** 230,902 name checks versus 11,000 fingerprint checks
- **Michigan:** approximately 1 million name checks versus 229,600 fingerprint checks
- **Pennsylvania:** more than 1.17 million name checks versus 161,300 fingerprint checks
- **Texas:** more than 3.74 million name checks versus 323,600 fingerprint checks
- **Washington:** 856,146 name checks versus 111,000 fingerprint checks
- **Wisconsin:** 625,176 name checks versus 59,200 fingerprint checks.

In contrast, California conducted more than 3.45 million fingerprint-based checks and zero name checks, which are prohibited by state law. The number of name-based civil background checks conducted by private vendors each year is unknown.

## I. Introduction

State and federal authorization of fingerprint-supported criminal record checks to determine suitability for employment, licenses, volunteering, and other needs and services has grown dramatically in recent years, to the extent that in fiscal year 2007, civil transactions processed by the Federal Bureau of Investigation (FBI) grew by 30% in just one year, representing 62% of all fingerprints processed during that fiscal year. (The remaining 38% were associated with criminal justice purposes.)

One consequence for criminal history repositories is a substantial growth in workload, resulting in the processing of larger numbers of fingerprint images. Besides the background checks for which the fingerprints are primarily collected, these prints can be utilized in a variety of other ways to improve public safety.

Many states use these “civil fingerprints” – or “applicant prints,” as they are often referred to – to help solve crimes by matching them against databases of latent fingerprints, which are partial or complete fingerprint images of unknown individuals collected from

crime scenes, stolen property, and other sources.

Some states retain applicant fingerprints in automated databases. This practice allows newly received, unidentified latent fingerprints to be searched against the retained applicant fingerprints. Latent fingerprint matches may help solve crimes that would otherwise remain unsolved had the previously submitted civil fingerprint images not been retained.

In a growing number of states, retained civil fingerprints support “rap-back” or “hit-notice” programs through which employers and licensing agencies are notified when current or potential employees who have successfully passed a background check are subsequently arrested.

Here, the retained applicant fingerprints are compared against the newly received arrest fingerprints. This supports the matching of individuals to new arrest information, which may cause them to be disqualified from jobs that provide access to vulnerable populations, finances, transportation, and other sensitive situations. This may allow the removal of the arrested individual from an occu-

pation or volunteer situation through which he or she might present a danger to the public; for example, a school bus driver who is arrested for drunk driving.

Rap-back programs may also relieve employers or employees from paying for statutorily required, periodic recertification or license renewal programs of specific groups such as teachers and health care workers. Also, individuals who commit crimes that might disqualify them from holding certain jobs can be identified much sooner through almost-immediate rap-back notification, compared to those whose crimes may remain unknown to the employer until recertification efforts are undertaken, which can be several years after the arrest.

The FBI currently retains limited numbers of civil fingerprints, such as those collected for certain types of federal employment, immigration, and a few other purposes. This will change with the implementation of the Bureau’s new identification technology initiative, titled Next Generation Identification (NGI), which envisions a series of enhanced identification services including a robust rap-back feature.

The variety of uses for retained applicant fingerprints prompted the Bureau of Justice Statistics, U.S. Department of Justice (hereafter BJS), and SEARCH, The National Consortium for Justice Information and Statistics (hereafter SEARCH), to bring together a focus group of subject matter experts to inform law- and policymakers of the various beneficial practices and legislation governing civil fingerprint use that individual states have implemented.<sup>1</sup>

The focus group was also assembled to examine and address concerns expressed about the public's awareness of practices involving the use of retained applicant fingerprints, and the potential negative impact on their use that could occur if the public is not informed about how prints are used after the initial criminal record check for which they are collected is complete.

The focus group's discussions and deliberations served as the basis for developing this report.

By exploring the implications of these practices and guiding legislation, it is hoped that the use of civil

<sup>1</sup> The focus group participant list is included at appendix 1.

fingerprint retention can expand in a manner consistent with prudent public policy.

The effort included a survey to determine how states process, retain, and use civil fingerprints, and to identify what services are being offered to agencies that submit them. Survey findings were provided to a focus group of representatives from federal, state, and local justice agencies, which examined the civil fingerprint environment to identify best print retention practices, highlight effective legislative models, and examine privacy and confidentiality protections that should be considered by law- and policymakers.

The survey, the results of which were released in November 2007, found that only 10 of the 45 responding states did not retain any of the fingerprints they processed for civil purposes.<sup>2</sup>

There were wide variations in the types of civil fingerprints retained by the 35 states that did keep the submitted prints; some states reported retaining nearly all submitted civil fingerprints, while others retained only specific categories of submitted fin-

<sup>2</sup> This survey is included at appendix 2.

gerprints, such as those used to determine suitability for law enforcement employment.

Using the survey results as a starting point for its discussions, the National Focus Group on the Retention of Civil Fingerprints by Criminal History Record Repositories met in Indianapolis, Indiana, in November 2007 to examine the civil fingerprint retention environment and to consider ways that applicant prints could be retained and utilized more effectively.

The focus group identified a series of questions that policymakers should answer when crafting effective laws, policies, and procedures to govern the retention of civil fingerprints and their use for purposes beyond the reasons for which they are initially collected.

The questions included:

- Should there be a more concerted effort to notify applicants that their fingerprints may be used beyond the reasons for which they were captured?
- Would it be useful to establish uniform definitions across the states to define categories of fingerprint-based civil background

check subjects for employment, licensing, volunteer opportunities, and other purposes?

- How long should civil fingerprints be retained?
- Should individuals be able to request the removal of their fingerprints once their association with the submitting entity ends?

Questions about rap-back or hit-notice programs included:

- Are there potential conflicts between various state and federal laws that permit or prohibit the dissemination of criminal history record information (CHRI) to support rap-back or hit-notice programs, and are existing laws accounted for when new laws, policies, or procedures are instituted?
- Should there be a clearly identified entity responsible for ensuring that a rap-back subject was hired or is still employed by the entity to whom subsequent arrest information would be sent?
- Is it fair to disseminate arrest-only information to potential or existing employers, or to licens-

ing or volunteer agencies, when the arrested individual may not ultimately be charged with, or convicted of, the crime for which he or she is arrested? (In some states, only conviction information may be disclosed during the initial background check, while open arrest information may be provided as part of a rap-back process.)

- Are rap-back features such as allowing applicants to review records before they are supplied to employers feasible and advisable?
- Which is preferable when establishing rap-back or hit-notice programs – a flat enrollment fee with no charge for subsequent services, or a per-use fee?

These and other pertinent questions associated with the collection, retention, and use of civil fingerprints will be considered in greater detail within this report, which includes a more in-depth examination of the civil fingerprint environment, its current status, and developments that could significantly affect state practices for utilizing civil prints.

## II. Background

The existence of a “criminal history record” associated with a specific individual was unknown during much of America’s early history. Justice information as it existed then consisted primarily of informal notes jotted down by police in some of the Nation’s larger cities.<sup>3</sup> The creation of more formal criminal records connected to specific offenders would have to wait until the early 20<sup>th</sup> century, when criminal justice agencies started using fingerprints to establish identification.

The first attempts to identify individuals through unique physical characteristics, and to create a classification system so collected data could be effectively retrieved, focused on a process called “anthropometry,” which involved the measurement of limbs and other human features.

The use of fingerprints for identification and the development of a system to classify them began with British colonizers in India

in the mid-1800s, although anthropometric systems were the preferred method for criminal justice identification until the end of the 19<sup>th</sup> century.

It is generally acknowledged that the widespread use of fingerprints for noncriminal justice identification purposes in the United States began in the early 1900s. The New York Civil Service Commission began the first systematic use of fingerprint identification in 1902 to prevent impersonators from taking tests for less qualified job applicants.<sup>4</sup> This practice, however, did not involve the routine classifying, searching, and comparing of the fingerprints.

The New York state prison system began using fingerprint identification in 1903, and a year later, the U.S. Penitentiary at Leavenworth, Kansas, and the St. Louis, Missouri, police department both established fingerprint bureaus.<sup>5</sup> Fingerprint use for criminal justice identification began to gain momentum and would soon render other processes for

criminal identification obsolete.

The widespread, authorized use of fingerprint-supported criminal record checks for civil purposes is a more relatively recent phenomenon. Throughout much of the 20<sup>th</sup> century, criminal history records were perceived as the property of the police agencies that collected them, and decisions about their use were generally left to their discretion.

Criminal records in most states were exempt from open record laws well into the mid-1960s.<sup>6</sup> A 1971 survey conducted by a University of Chicago researcher found that courts generally declined to interfere in the police practice of withholding or circulating arrest records at their discretion.

That’s not to say that criminal history record information, also known as CHRI, was not used at the time for suitability determinations. Historians describe what has been called an “information-buddy” system in which employers would pay the police a dollar or two for a record check; agencies that collected large amounts of information, such as credit bureaus, licensing agen-

<sup>3</sup> Robert R. Belair, *Public Access to Criminal History Record Information*, Criminal Justice Information series, NCJ 111458 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, November 1988). Hereafter, Public Access report.

<sup>4</sup> Federal Bureau of Investigation, Criminal Justice Information Services Division, “Fingerprint Identification” (January 2001). Available at <http://www.fbi.gov/hq/cjisd/ident.htm> and <http://www.fbi.gov/hq/cjisd/ident.pdf>.

<sup>5</sup> *Ibid.*

<sup>6</sup> Public Access report, *supra* note 3.

cies, and employers, would, in return, share it with police.<sup>7</sup>

In November 1970, news media in the Kansas City, Missouri, area reported on a police chief in a local suburb who shared Kansas City's criminal history information with local businessmen and landlords.<sup>8</sup>

The public's trust in government institutions — including law enforcement agencies — began to erode in the late 1960s and early 1970s, fueled by several factors. These included the questioning of government authority and motives that accompanied the war raging in Vietnam, the emergence of an American counterculture that challenged convention, and the government's perceived abuse of power exemplified by incidents such as the Watergate break-in and the spying on lawfully assembled opponents of the war.

<sup>7</sup> "Keynote Address," Dr. Alan F. Westin, Professor of Public Law and Government, Columbia University, at Access to Criminal Justice Information, a Forum on Criminal Justice Information Policy and Law, Chicago, Illinois, June 22-25, 1977, in *Technical Memorandum No. 14: Access to Criminal Justice Information, Summary Proceedings of the Forum on Criminal Justice Information Policy and Law* (SEARCH Group, Inc.: Sacramento, CA, October 1977).

<sup>8</sup> Public Access report, *supra* note 3.

Another contributing factor was the expanding capabilities of computers which allowed the gathering of large amounts of information and the ability to utilize and manipulate the information in large databases.

Congress took its first steps toward regulating CHRI dissemination with passage of the Crime Control Act of 1973 (sometimes referred to as the Kennedy Amendment), which limited the dissemination of such information by state and local justice systems that were funded, at least in part, by federal monies.

At that time, this included virtually all state and large local justice systems.<sup>9</sup> During the next several years, efforts by Congress to establish regulations prohibiting the release of criminal history record information to the public were defeated due to fierce opposition, primarily from the news media.

In 1975, SEARCH released model standards for state and local criminal history systems which, if embodied in law, would prohibit public access to criminal history records except when required by federal or state law. The Law En-

<sup>9</sup> *Ibid.*

forcement Assistance Administration (LEAA) followed a year later with final regulations for complying with the Kennedy Amendment. The SEARCH standards and LEAA regulations stimulated the development of criminal history record legislation in the states, only 24 of which had statutes addressing criminal history record dissemination in 1974. One decade later, 52 states and territories had such statutes.<sup>10</sup>

Another stimulus was the U.S. Supreme Court's landmark 1976 decision *Paul v. Davis*,<sup>11</sup> which essentially "deconstitutionalized" arrest records, giving the states and the Federal Government more control over their dissemination. The case involved the distribution of a flyer of "known shoplifters" by law enforcement agencies in the Louisville, Kentucky, area during the 1972 Christmas season. The name and photograph of the plaintiff, whose shoplifting charge from an arrest 18 months earlier was still pending, appeared in the flyer. The plaintiff sued, claiming his right to due process had been denied, but the court ruled that arrest records did not constitute the type

<sup>10</sup> *Ibid.*

<sup>11</sup> 424 U.S. 693 (1976).

of private conduct that would qualify for constitutional privacy protections.

States and the Federal Government subsequently took a more active role in regulating CHRI dissemination. Several states, most notably Florida (1980)<sup>12</sup> and Oklahoma (1985),<sup>13</sup> adopted open record policies that allowed the public to access almost all CHRI, including arrest and conviction information without requiring the submission of fingerprints. Most other states pursued more measured policies, limiting CHRI dissemination to select groups comprised primarily of governmental entities.

Still, most state criminal history record repositories witnessed significant increases in the volume of applicant fingerprint work associated with conducting criminal record background checks for civil purposes.

In the mid-1980s states authorized access to state criminal history records for civil record checks for a variety of positions and organizations. Among these were childcare providers, volunteer organiza-

tions that provided services to children, private detective agencies, organizations employing security guards, prospective licensees to run family daycare homes, teachers, operators of substance abuse clinics, adoptive or foster parents, applicants for citizenship, and service companies whose employees interacted with the public.<sup>14</sup>

One manager of a state criminal history repository reported at the time that his facility was processing more fingerprints for civil background checks than for those related to criminal activity.<sup>15</sup>

Such dramatic workload increases were particularly stressful for repositories in light of the fact that most of the work associated with the applicant fingerprint identification process was performed manually. Fingerprints, whether for criminal or civil purposes, were captured on 10-fingerprint cards, which also provided space for textual descriptive information about the card subject such as name, physical description, address, and offense committed (or reason for the card submission if for civil purposes).

The cards were then mailed to the state criminal history repository, where they were processed. Trained technicians using magnifying glasses examined the fingerprints' minutiae, which are ridge configurations, and other features to classify the prints and then looked for matches among existing fingerprint databases. Submitting agencies were notified by mail that either a match was found or that no record existed. These were the same processes and, in most instances, the same staff charged with classifying and searching criminal fingerprints

For national criminal record searches, the state repository mailed the fingerprint cards to the FBI, which conducted the same type of search, albeit on a larger scale, and then mailed the results to the state repository, which forwarded them by mail to the local jurisdiction that initially submitted the fingerprints.

In either case, weeks routinely passed before the criminal record check results were returned to the agencies that submitted requests. Given the increase in the number of instances authorized by lawmakers for criminal record checks, it was not uncommon for criminal

<sup>12</sup> Laws 1980, c. 80-409 § 5; codified at Fla. Stat. Ann. § 943.053(3) (West).

<sup>13</sup> Laws 1985, c. 355, § 8, eff. Nov. 1, 1985; codified at Okla. Stat. Ann. Title § 24A.8 (West).

<sup>14</sup> Public Access report, *supra* note 3.

<sup>15</sup> *Ibid.*

record repositories to develop significant backlogs in the number of fingerprint cards that awaited processing.

By 1989, the FBI reported a backlog of 750,000 fingerprint cards (representing 5 weeks' worth of peak processing effort) and several million criminal history data submissions.<sup>16</sup>

A solution to backlog problems caused by the growing demand for fingerprint-based criminal background check services arrived in the form of the automated fingerprint identification system, or AFIS, which allowed fingerprints to be searched against digitized fingerprint databases much more quickly.

In 1977, the Royal Canadian Mounted Police became the first justice agency to operate an AFIS. In 1984, the city of San Francisco, California, became the first U.S. jurisdiction to operate one. Two years later, Pierce County and the city of Tacoma in the state of Washington began using the first joint AFIS in the United States.

<sup>16</sup> Peter Komarinski and Peter T. Higgins, Kathleen M. Higgins, and Lisa K. Fox, contributing authors, *Automated Fingerprint Identification Systems (AFIS)* (Burlington, MA: Elsevier Academic Press, 2005).

Many states had implemented automated fingerprint systems by the early 1990s, but their interaction was limited by proprietary restrictions; one system could only interact with another if it was built by the same manufacturer.

Acting upon the recommendations of its National Crime Information Center Advisory Policy Board (APB),<sup>17</sup> the FBI began an effort in 1989 to upgrade its fingerprint processing capabilities by pursuing an AFIS. One recommendation called for the creation of a common fingerprint specification standard that all entities wishing to interact with the FBI AFIS would use.

The development of the *ANSI/NIST-CSL 1-1993 American National Standard for Information Systems – Data Format for the Interchange of Fingerprint Information*, developed by the National Institute of Standards and Technology (NIST) and adopted by the American National Standards Institute (ANSI) in 1993, significantly advanced the utility of the national automated fingerprint network. All AFIS-managing entities would be required to utilize the same specification

<sup>17</sup> Since renamed the Criminal Justice Information Services (CJIS) APB.

no matter which manufacturer built their system if they wished to send data to the FBI's AFIS.

The FBI continued with its AFIS development and implementation throughout the 1990s, installing and using various components of the system until the completed Integrated Automated Fingerprint Identification System, or IAFIS, went online in July 1999.

Another important technological development was the "livescan," a device that captured digitized fingerprint images and electronically transmitted them to a printer and later interfaced to an AFIS, eliminating the need for inked fingerprint cards. Working in tandem, a livescan device and an AFIS could, when interfaced with a criminal history database, process and return in hours the criminal record queries that once took weeks to complete.

This evolution of fingerprint technology increased the desirability of civil criminal record checks, as positions requiring such checks would no longer remain unfilled for weeks while awaiting record-check results.

The terrorist attacks of September 11, 2001, also provided significant impetus to the increase in civil criminal record checks, as federal initiatives required the criminal record backgrounding of hazardous materials transporters, and port and airport workers.

The combination of these various factors resulted in a steady increase in the number of criminal record checks performed for a variety of occupations, license applications, and volunteer opportunities throughout the 2000s. Some criminal history record repositories began to process more background checks for civil queries than for criminal purposes.

For example, about 6.7 million, or about 44%, of the 15.3 million criminal record queries processed by the FBI in fiscal year 2000 were for civil purposes; by fiscal year 2007, civil checks accounted for 18.7 million transactions handled by the FBI.<sup>18</sup>

An unintended consequence of the growing number of checks was the acquisition of a significant number of sets of civil fingerprint images by crimi-

nal history repositories. As noted previously, some states chose not to retain the fingerprints, but a number of others decided to use them beyond the purposes for which they were originally submitted.

Thirty-one of the 44 states that responded to a June 2001 SEARCH survey of state repositories reported using at least some of the fingerprints initially submitted for civil purposes for subsequent criminal justice purposes.<sup>19</sup> Seventeen of the responding states compared all submitted civil fingerprints to latent fingerprint collections, and 14 others compared at least some of the submitted fingerprints, primarily those submitted for law enforcement employment or concealed weapons permits, to those in latent print databases.

According to the 2001 survey results, civil fingerprints were retained after background checks were completed in 31 of the 44 responding states, and 29 of these states compared the prints to subsequently submitted arrest fingerprints.

<sup>18</sup> Presentation by Assistant FBI Director Tom Bush, before the CJIS Advisory Policy Board, June 11, 2008, Little Rock, Arkansas.

<sup>19</sup> See appendix 3 for the survey summary.

### III. Current civil fingerprint environment

SEARCH's November 2007 survey on state practices regarding civil fingerprint retention and use was more expansive than the civil print survey distributed 6 years previously, but enough of the same questions appeared on both surveys to allow a comparison of some of the results.<sup>20</sup>

The more recent survey found a somewhat different civil fingerprint environment compared to the one captured by the survey distributed to the states in 2001:

- In 2001, civil fingerprints were searched against latent fingerprint databases in 14 states. That number grew to 21 states in the more recent survey.
- Twenty-four states that retained civil fingerprints in 2001 matched them to subsequently submitted arrest fingerprints. Thirty states do so today.
- Twenty-two states in the older survey offered rap-back or hit-notice services in some

fashion compared to 26 states offering such services as of November 2007.

- Twenty-five of the states that retained civil fingerprints in 2001 compared them to subsequently submitted latent prints in some fashion; this compared to 29 states in the more recent survey.

One similarity shared by the two surveys' results concerns notification of how fingerprints would be used. In 2001, no state's fingerprint cards contained a notice indicating how the fingerprints would be used beyond the reason for which they were submitted. Only two states notified applicants of potential subsequent uses in 2007.<sup>21</sup>

Also, no states responding to the earlier survey sought to obtain the applicant's signature indicating that he or she had been informed about the possible subsequent use of his or her fingerprints beyond the reason for which they are submitted. In the more

<sup>21</sup> The two states are North Carolina and Virginia. SEARCH, The National Consortium for Justice Information and Statistics, "Civil Print Retention Survey Summary of Responses" (Sacramento, CA, November 2007). Available at <http://www.search.org/files/pdf/CivilFingerprintRetentionSurvey.pdf>.

recent survey, only one state indicated that it sought to obtain signatures for that purpose.<sup>22</sup>

Criminal history repositories in 51 states and territories responding to another recent SEARCH survey reported processing more than 7 million sets of fingerprints submitted for noncriminal justice purposes in 2006.<sup>23</sup> Thirty-four repositories reported retaining more than 4.6 million of these sets of fingerprints.<sup>24</sup> Seven state repositories reported processing more fingerprints for civil purposes than for criminal justice purposes.<sup>25</sup>

#### State statutes

A review of various state statutes found virtually none that would proactively inform the subject of a civil criminal record background check about how his or her fingerprints would be used once the reason for which the prints are initially submitted had been completed.

<sup>22</sup> The state is Virginia. Ibid.

<sup>23</sup> This results of this survey, along with interpretive commentary, will be published separately in a forthcoming report titled "Survey of State Criminal History Information Systems, 2006."

<sup>24</sup> Ibid.

<sup>25</sup> Ibid. The seven states are Alaska, Arizona, Mississippi, Nevada, New Jersey, West Virginia, and Wyoming.

<sup>20</sup> The 2007 survey results are included at appendix 2, and the 2001 survey results at appendix 3.

California law addresses the issue of sending rap-back information to an employer for which the record subject no longer works. The law requires that an agency which submits an individual's fingerprints for determinations of suitability for "licensing, employment, certification or approval," and which enters into agreement with the state's Department of Justice to receive rap-back notification if the individual is subsequently arrested, to "immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certification is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated."

The California Department of Justice then terminates arrest notification upon the request of the licensing, employment, certifying, or approving authority.<sup>26</sup> Agencies that fail to provide such notification to the department in a timely manner may be denied future arrest notification services.

<sup>26</sup> California Penal Code 11105.2.

In Colorado, individuals wishing to work as licensed bail bonding agents must undergo a fingerprint-based criminal record check conducted by the Colorado Bureau of Investigation. While state law doesn't specifically authorize the retention of the prospective agent's fingerprints, it does require the bureau to "establish and maintain files regarding the criminal backgrounds of persons seeking to provide bail recovery services."<sup>27</sup>

In Florida, state law permits the retention of "fingerprints submitted by criminal and noncriminal justice agencies" and their entry "in the statewide automated fingerprint identification system ...." The fingerprints are "available for all purposes and uses authorized for arrest fingerprint cards," including being matched against "all subsequently submitted arrest fingerprint cards."

Rap-back services are available to interested parties for a fee. Agencies utilizing rap-back services are directed by law to inform "the department of any change in the affiliation, employment, or contractual status of place of af-

<sup>27</sup> Colorado Revised Statutes 12-7-105.5.

iliation, employment or contracting of the persons whose fingerprints are retained."<sup>28</sup>

In Idaho, the law requires the destruction of fingerprints submitted for civil criminal record checks for certificated and noncertificated school employees, and for applicants to those positions. The law also requires the state Department of Education to notify the fingerprint submitter that the prints were destroyed.<sup>29</sup>

Illinois law indicates that fingerprints submitted for certain civil background checks, such as individuals seeking to adopt children, would be checked against criminal history records and then be "hereafter filed" in databases maintained by the state police and the FBI.<sup>30</sup>

Kansas has a number of statutes that direct the capture of fingerprints for civil purposes. Typical is a law covering the backgrounding of gubernatorial appointees subject to Senate confirmation, whose fingerprints are to be submitted to the Kansas Bureau of Investigation

<sup>28</sup> 2007 Florida Statutes, Title XLVII, Criminal Procedure and Corrections, 943.05.

<sup>29</sup> Idaho Statutes 33-130.

<sup>30</sup> 750 Illinois Compiled Statutes 50/6 (from Ch. 40, par. 1508).

and the FBI “for the identification of the appointee and to obtain criminal history record information ....” While the statute doesn’t authorize the retention or use of fingerprints collected under these circumstances for other purposes, it doesn’t restrict such uses either.<sup>31</sup>

It appears that only one Kansas statute specifically restricts the use of fingerprints to the purposes for which they are collected. The statute, covering applicants seeking to practice law in Kansas, reads, “The state board of law examiners and the supreme court may use the information obtained from fingerprints and the applicant’s criminal history only for purposes of verifying the identification of any applicant and in the official determination of character and fitness of the applicant for admission to practice law in this state.”<sup>32</sup>

Michigan law allows the use of “fingerprint impressions obtained under a law or rule for noncriminal identification purposes” to be “used for criminal identification purposes unless prohibited by law or rule.”<sup>33</sup> State law also re-

<sup>31</sup> Kansas Statute 75-712.

<sup>32</sup> Kansas Statute 7-127.

<sup>33</sup> Michigan Compiled Laws Section 28.248.

quires that fingerprints submitted for full- or part-time public and nonpublic school employees and contractors be maintained in the Michigan State Police’s AFIS, and that they be matched against subsequently submitted criminal arrest fingerprints for rap-back notification.<sup>34</sup>

Michigan has also established rap-back programs under law for adult foster care facilities,<sup>35</sup> and for childcare and daycare centers, family childcare or group childcare homes, licensed child placing agencies, and foster family homes or foster family group homes.<sup>36</sup>

Under Nebraska law, any fingerprints provided by individuals seeking civil service positions “shall not be a public record ... and shall only be released to those lawfully entitled to the possession of such fingerprints ....”<sup>37</sup>

New York law calls for the destruction of fingerprint images submitted for civil purposes under certain conditions; for example, the fingerprints of individuals who apply for reg-

<sup>34</sup> Michigan Compiled Laws Section 380.1230f.

<sup>35</sup> Michigan Compiled Laws Section 400.734b.

<sup>36</sup> Michigan Compiled Laws Section 722.115k.

<sup>37</sup> Nebraska Code Section 19-1831.

istration cards to work as security guards but who do not receive the cards within 6 months are to be destroyed. The same applies to fingerprints of security guards who do not renew registration cards, 6 months after the cards expire.<sup>38</sup>

A broad New York law which applies to civil criminal record checks for employment in childcare, in certain official city positions, as judges, and for certain licenses in New York City requires that “all fingerprints supplied by the applicant shall be returned to the applicant upon termination or denial of the license, certificate of approval, class A photo identification card, contract to provide services, or employment in connection with which such fingerprints were obtained.”<sup>39</sup>

A New York law requiring the fingerprint-based criminal record backgrounding of bus drivers requires the development of procedures whereby a school bus driver who has terminated employment can apply for the return of his or her fingerprints.<sup>40</sup>

<sup>38</sup> Laws of New York, Executive Law § 99.

<sup>39</sup> Laws of New York, Executive Law § 837-M\*2.

<sup>40</sup> Laws of New York, Vehicle and Traffic Law § 509-D.

State law also requires the fingerprint-based civil backgrounding of prospective public and nonpublic school employees, whose fingerprints are to be destroyed 12 months after their employment is terminated. Such employees can have their fingerprints destroyed without waiting for the 12-month period to expire if they apply for such action.<sup>41</sup>

Oregon law forbids the state police and the FBI from retaining fingerprint cards submitted for civil criminal record checks. Both agencies are required to return or destroy the cards once the civil check is completed. Further, Oregon law requires state police to discontinue sending fingerprint cards to the FBI if Bureau policy on fingerprint retention changes. The law reads, “If the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to the federal bureau but shall continue to process the information through other available resources.”<sup>42</sup>

Under state law, the Virginia State Police maintain

<sup>41</sup> Laws of New York, Education Law § 305.

<sup>42</sup> Oregon Revised Statutes 181.534.

an Applicant Fingerprint Database.<sup>43</sup> Fingerprints in the database are maintained “separate and apart from all records maintained by the Department [of state police].” The database is maintained to “allow those agencies and entities who require a criminal background check as a condition of licensure, certification, employment, or volunteer service to be advised when an individual subject to such screening is arrested for, or convicted of, a criminal offense which would disqualify that individual from licensure, certification, employment or volunteer service with that entity.”<sup>44</sup>

Washington state law requires fingerprint-based criminal record checks of state and FBI CHRI databases for employees and contractors of school districts, educational service districts, and state schools for the deaf and the blind, but prohibits the retention of fingerprint records by both the Washington State Patrol and the Bureau once the checks are completed.<sup>45</sup>

<sup>43</sup> Virginia Statutes § 52-46.

<sup>44</sup> Ibid.

<sup>45</sup> Washington Revised Code 28A.400.306.

## The FBI

On a national level, the FBI currently destroys or returns most of the millions of sets of fingerprints it receives annually for civil criminal record checks.

In November 2007, IAFIS held more than 70 million sets of digitized fingerprints – around 55 million for criminal purposes and 17 million for civil purposes.<sup>46</sup> Retained civil fingerprints include those belonging to members of the military and to employees of certain federal agencies; those submitted for registered aliens and for immigration and naturalization purposes; and fingerprints retained at the request of individuals, such as identity theft victims, for personal identification purposes.

The Bureau is currently engaged in an ambitious effort to develop and implement a massive biometric database to expand the capabilities of its IAFIS. Termed “Next Generation Identification,” or NGI, the system will greatly expand the size of the FBI’s existing fingerprint database

<sup>46</sup> Source: Ms. Rachel Tucker, Liaison Specialist, Biometrics Services Section, Criminal Justice Information Services Division, FBI, meeting of the National Focus Group on the Retention of Civil Fingerprints by Criminal History Record Repositories, Indianapolis, Indiana, November 14-15, 2007.

capacity and also permit the capture of other biometric identifiers such as palm prints, iris patterns, and facial features.

In February 2008, the FBI awarded Lockheed Martin a 10-year contract to develop and maintain NGI. In addition to the new NGI functionalities described above, it is expected that the system will also offer rap-back services. As the availability of these services is several years away, many of its features – such as whether there will be a fee for rap-back services – are still under consideration.

As part of its plan to offer rap-back services, the FBI may develop a prenotification function through which participating agencies will be queried to determine if they still have interest in the record subject prior to the rap-back information being provided. If implemented, this could prevent the dissemination of criminal history information to agencies with which the record subject is no longer associated.

Prenotification may not be feasible for organizations that will have large numbers of fingerprints retained by the FBI. The U.S. Office of Personnel Management (OPM), which

conducts about 90% of the Federal Government's employment-related civil background checks, or about 1.5 million such checks each year, may have fingerprints retained for more than 10 million individuals and receive 10,000 to 12,000 prenotifications each day, far too many to process in an efficient and timely manner.

In these situations, organizations such as OPM are exploring the possibility of submitting a monthly list of the names of individuals in whom they are still interested, thereby refreshing the retention database with current information on a regular basis and obviating the need for prenotification.

Also, annual fees or other charges for participating in the FBI's rap-back service may be cost prohibitive for organizations such as OPM that oversee large numbers of individuals.

It is expected that the FBI will also require states that wish to participate in its rap-back program to sign memoranda of understanding (MOU) allowing the Bureau to retain their submitted civil fingerprints. The MOU is expected to require participating states to notify the individuals submitting fingerprints that

their prints will be retained and used for rap-back and other services, such as being matched against latent fingerprint databases.

The purposes for which fingerprints will be retained will be at a state's discretion; for example, states will be able to decide if they want fingerprints retained only for certain professions or licenses, and for how long. States may direct the FBI to retain fingerprints submitted for civil purposes even if they do not participate in the rap-back program. Such fingerprints can be used for humanitarian purposes such as identifying amnesia victims or unidentified deceased persons, and for matching unsolved latent prints. States may also direct the Bureau to retain civil fingerprints for use in the rap-back program at some future date.

The rap-back program will likely follow the same protocol currently used to disseminate criminal history record information to the states through the state identification bureau that submits the fingerprints.

## IV. The focus group deliberations

Given this variety of approaches taken by states and federal justice jurisdictions to utilize civil fingerprints for public safety purposes other than those for which the fingerprints are obtained, BJS and SEARCH decided to convene a focus group to examine the various processes to determine whether best practices or other benefits for justice jurisdictions could be gleaned from them.

The National Focus Group on the Retention of Civil Fingerprints by Criminal History Record Repositories met in Indianapolis, Indiana, in November 2007. Present were representatives from state criminal history record repositories throughout the country and also from federal agencies, including the FBI (see appendix 1 for roster).

Group members shared their jurisdictions' processes, procedures, and philosophies for processing civil fingerprints and then for retaining or not retaining them. From these discussions emerged the following questions that were discussed and deliberated upon by focus group members. They included:

*Should there be a more concerted effort to notify applicants that their fingerprints may be used beyond the reasons for which they were captured?*

The focus group discussed the appropriateness of informing applicants that their fingerprints may be used for purposes beyond those for which they are submitted, such as in rap-back programs and matches against latent fingerprint databases and subsequently submitted arrest fingerprints.

The group identified several hurdles that would have to be overcome before such notice could be provided. For example, the increased capture of civil fingerprints on livescan devices, which currently do not facilitate the electronic collection of authorizing consent from print submitters, requires that a written record of notification and consent be kept.

It was suggested that livescans could be programmed to capture applicant signatures electronically to indicate consent for the civil background check, and for the retention and further use of their fingerprints.

Several focus group members suggested that consent forms could be

provided to prospective employees along with employment applications during the job application process. The signed consent form would then be returned by the applicant along with his or her completed employment application. This process could be particularly effective, they explained, because the applicant's fingerprints are usually not captured at the application site, but rather at law enforcement agencies or at commercial fingerprint capturing centers after the initial application process is completed.

Other focus group members sensed that the public would be more supportive of providing consent today than in past years, having become more aware of, and comfortable with, the concept of conducting fingerprint-based criminal record checks for civil purposes.

The public often believes that fingerprints are retained even when they are not, said several group members; one related an experience during which an individual who requested the fingerprints of a missing family member was surprised and disappointed to learn that they had not been retained.

Other members of the focus group felt that applicants who provide consent for civil backgrounding may not be so supportive of the subsequent retention and use of their fingerprints for purposes not related to determining suitability for employment.

*Would it be useful to establish uniform definitions across the states to define categories of fingerprint-based civil background check subjects for employment, licensing, volunteer opportunities, and other purposes?*

The focus group discussed the potential benefit of uniformly defined background check categories so state and federal justice agencies can better monitor the types of workers, volunteers, and other individuals for whom fingerprint-based civil background checks using official records are authorized, and can more efficiently calculate the number of checks conducted.

These categorizations would allow law- and policymakers to determine how many checks are being conducted and for what specific purposes, such as for school-related employment, childcare, eldercare, healthcare, secu-

rity, law enforcement, the practice of law, gaming, alcohol distribution, and other groups in the growing numbers of workers subject to the checks.

The group noted that counting the number of checks accomplished under the broad statutory authority of such national initiatives as the National Child Protection Act/Volunteers for Children Act and Public Law 92-544 does not provide the level of detail needed for an accurate number of the types being conducted.

Checks conducted by one state under the National Child Protection Act, for example, could include preschool caregivers, teachers from kindergarten through college, and caregivers for the disabled and the elderly. In another state, checks conducted for licensing could include such disparate groups as attorneys and exotic dancers.

The focus group considered whether defining specific categories of background checks would provide the opportunity to determine who exactly is being checked and in what numbers, and may allow law- and policymakers to determine whether the checks are accomplishing the public safety goals for

which they were established.

It was learned during discussions that some states represented on the focus group already have the capability to break down background check numbers into more specific categories of record check subjects. The group discussed how civil background check numbers from these states could persuade legislators in other states, and in Congress, to implement checks on similar groups of workers.

*How long should civil fingerprints be retained?*

As noted previously, some justice agencies retain fingerprints submitted for civil background checks and use them for a variety of other purposes, such as rap-back programs and comparison to latent fingerprint databases.

This being the case, the focus group sensed a wide divergence of fingerprint retention practices and procedures among the states and Federal Government. The group recognized that many justice jurisdictions retain fingerprints without statutory authority to do so.

One group member noted that some states believe

the absence of statutory language relating to a specific activity permits them to proceed with the activity, while others interpret the same absence of statutory language relating to a specific activity as a restriction to move forward with that activity.

As previously noted, some states, such as Florida and Michigan, have broad statutory authority to retain civil fingerprints and to use them for purposes beyond those for which they are collected, while others, such as Oregon and Washington, require that the prints be returned or destroyed as soon as the checks are completed.

Referenced during discussions was *The Attorney General's Report on Criminal History Background Checks*,<sup>47</sup> which includes an examination of justice agency fingerprint retention practices and which recommends that limits should be placed on such retention, but that the decision on what those limits are should be left to lawmakers.

The focus group similarly felt that open-ended fingerprint retention would

<sup>47</sup> U.S. Department of Justice, Office of the Attorney General, June 2006. Available at [http://www.justice.gov/olp/ag\\_bgchecks\\_report.pdf](http://www.justice.gov/olp/ag_bgchecks_report.pdf).

not sit well with the public, but that developing retention limits – which, perhaps, should include the need to obtain the consent of the fingerprint submitter before his or her prints are retained – should be the responsibility of legislators rather than justice agency officials.

It was recognized that, where fingerprint retention services are made available, the election to opt in may effectively fall to the employer, who could make this practice a condition of employment.

There may also be individuals who want their fingerprints retained simply for the convenience of not having to be fingerprinted every time they encounter a situation, such as for employment in industries where job changes are frequent or for volunteering activities, which require fingerprint-based civil background checks.

For others, the possibility that fingerprints submitted for the opportunity to coach a three-month soccer season will be retained forever may discourage individuals for volunteering, said some focus group members.

It was also noted that the growing participation of

commercial entities in the collection and processing of fingerprints for civil background checks should prompt lawmakers to consider and deliberate upon protections, including retention limits, for those whose fingerprints are obtained.

*Should individuals be able to request the removal of their fingerprints once their association with the submitting entity ends?*

As with the previous topic, the focus group recognized a wide variety of practices among the states in allowing individuals to request the return of fingerprints submitted for civil purposes. It was also noted that practices for requesting the return of prints may vary even within states.

As referenced previously, New York law permits bus drivers to request the return of their fingerprints once their association with the industry ends. Also in New York, fingerprints submitted for public and nonpublic school employment are to be destroyed 12 months after the employee's association with the school ends, although individuals can petition to have the prints destroyed before the 12-month period expires if they wish. It is unclear

how rigorous school districts and nonpublic employers are in notifying the state repository that they no longer have an interest once an employee moves on.

However, in many other states, it appears that once fingerprints are entered into a criminal justice agency's AFIS, they are there for good.

The focus group noted that many states destroy or return fingerprints obtained from criminal suspects if charges are dropped or if the suspects are found not guilty. Criminal justice fingerprints may also be returned or destroyed if an individual successfully petitions a court to have his or her criminal record expunged.

One focus group member observed that the ultimate destination of stored civil fingerprints may determine whether an individual seeks their return. Someone may be less inclined to request prints stored in a database limited to civil prints (such as Virginia's), as opposed to those commingled with fingerprints in a criminal print database.

The permanent retention of civil fingerprints and its possible dampening affect

on enthusiasm for volunteering was again noted.

*Are there potential conflicts between various state and federal laws that permit or prohibit the dissemination of criminal history record information (CHRI) to support rap-back or hit-notice programs?*

The focus group identified and discussed instances during which various state and federal laws governing civil background checks may conflict. Lawmakers were advised to be aware of these potential conflicts when crafting laws governing the use and dissemination of CHRI for noncriminal justice purposes.

The Legal Action Center of New York City reports that five states forbid employers from having total bans on the hiring of individuals with criminal records.<sup>48</sup> Legal standards in 14 states govern the consideration of applicants' criminal history records by employers.<sup>49</sup> An example is Michigan's Elliott-Larsen Civil Rights Act,<sup>50</sup>

<sup>48</sup> "Enforce Anti-Discrimination Laws" at [http://www.lac.org/toolkits/titlevii/title\\_vii.htm-how](http://www.lac.org/toolkits/titlevii/title_vii.htm-how).

<sup>49</sup> Ibid.

<sup>50</sup> Michigan Act No. 453, Public Acts of 1976, available at [http://www.michigan.gov/documents/act\\_453\\_elliott\\_larsen\\_8772\\_7.pdf](http://www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf).

which prohibits employers, employment agencies, or labor organizations from making or maintaining "a record of information regarding a misdemeanor arrest, detention, or disposition where a conviction did not result."

The focus group identified federal laws that could impact the dissemination of criminal record information for civil background checks, such as Public Law 92-544, the National Child Protection Act (NCPA) as amended by the Volunteers for Children Act (VCA), and Title VII of the Civil Rights Act of 1964.

Public Law 92-544, passed by Congress in 1972, allows states to obtain access to FBI-maintained criminal history records for civil background checks as long as the U.S. attorney general has approved an authorizing statute enacted by a state's legislature or, in some states, a statute enacted by a city council, board of supervisors, and other local legislative body.

Public Law 92-544 stipulates that a state statute enacted under the law:

- exist as a result of legislative enactment
- require that the criminal background check be fingerprint-based
- authorize the submission of fingerprints to the state identification bureau for forwarding to the FBI for a national criminal history check
- identify the categories of licensees amenable to backgrounding
- provide that an authorized government agency be the recipient of the results of the record check.

The government agency then makes the suitability determination for the inquiring entity without revealing to that entity the contents of the criminal record query response.

There are currently somewhere between 1,350 and 1,400 Public Law 92-544 statutes.<sup>51</sup> It was learned during focus group discussions that some states have repealed Public Law 92-544 statutes in favor of conducting civil back-

<sup>51</sup> Source: Ms. Marilyn Walton, Paralegal Supervisor, Access Integrity Unit, FBI Criminal Justice Information Services Division.

ground checks under the authority of the more flexible NCPA/VCA.

The NCPA was passed by Congress in 1993 to provide qualified entities with a process through which national fingerprint-based background checks could be accomplished.<sup>52</sup> “Qualified entities” were described in the act as certain business or organizations that provide care or placement services for children, the elderly, and the disabled. NCPA encouraged states to enact statutes supporting the checks. As with Public Law 92-544, record reviews and suitability determinations would be conducted by state-level agencies.

The NCPA’s language encouraged rather than required states to pass implementing legislation, resulted in few states taking advantage of it.<sup>53</sup> As a result, Congress passed the VCA in 1998, amending the NCPA so qualified entities could obtain access to FBI criminal history records for civil background checks even if the states in which they were located

<sup>52</sup> Public Law 103-209.

<sup>53</sup> Congress cannot require states to pass laws, but it frequently uses the awarding or withholding of federal funds as an incentive for states to do so.

didn’t pass authorizing legislation.<sup>54</sup>

The NCPA/VCA is perceived by some as more flexible than Public Law 92-544 in obtaining fingerprint-based criminal history record check information from the FBI because it allows the query response to be disseminated to the inquiring organization that requested the check, rather than requiring a state-level agency to make a suitability determination, as required by Public Law 92-544.

Some observers contend that the inquiring organization is better suited to make a suitability determination than a state agency which is following strict statutory dictates that may automatically disqualify individuals who have committed certain crimes from certain jobs, volunteering, licensing, and other needs and services. An example of this might be an inner-city organization utilizing the services of a reformed gang member with a prior criminal record who could provide valuable counseling to dissuade impressionable youth from following in his or her path.

<sup>54</sup> Public Law 105-251.

The flexibility exhibited by civil background checks conducted under NCPA/VCA, as opposed to Public Law 92-544, is demonstrated by the Florida Department of Law Enforcement's Volunteer and Employee Criminal History System or VECHS (pronounced "vecks"), through which access to state and federal records is provided for civil record checks.

Agencies and organizations that qualify for VECHS participation are allowed to view criminal history record information provided directly from the FBI; under Public Law 92-544, the information would go to an official state agency, which would review the information, make a suitability determination, and inform the inquiring agency of its decision without revealing the contents of the criminal query response.

Title VII of the Civil Rights Act prohibits private employers and state and local governments from employment discrimination based on race, color, gender, national origin, or religion.<sup>55</sup> The Equal Employment Opportunity Commission (EEOC) has ruled that employment policies that exclude ap-

<sup>55</sup> 42 USC 2000e.

plicants based on their criminal histories may violate the Civil Rights Act because the policies disproportionately impact minorities, who are arrested and convicted at a significantly higher rate than their percentage in the population.

Employers must also demonstrate a "business justification" for not hiring individuals based upon records of arrest that never led to conviction, or for excluding applicants for criminal convictions.

The EEOC guidelines also require employers to allow applicants the opportunity to explain their arrest records before deciding whether to offer or deny them employment.

*Should there be a clearly identified entity responsible for ensuring that a rap-back subject was hired or is still employed by the entity to whom subsequent arrest information would be sent?*

The focus group discussed an issue that should be considered when establishing a rap-back program; namely, who is responsible for ensuring the currency of lists of individuals for whom rap-back notices are sent when arrests occur.

The group noted that this will become more critical as commercial contractors become involved in the civil background check process, and as criminal record information is provided to nongovernmental entities such as nonprofits, volunteer organizations, and private sector employers.

It was the focus group's sense that both the repository, as the criminal record information provider, and the information recipient are equally responsible for ensuring that rap-back lists are current.

As noted in the discussion on the FBI's Next Generation Identification initiative, that system may send a prenotification query to determine whether interest remains in the rap-back subject before the follow-up arrest information is sent. A state represented on the focus group sends a notice along with the actual rap-back information, asking the recipient to contact the repository if it is no longer interested in the record subject.

A focus group member observed that, in both instances, a rap-back event must occur before attempts are made to determine whether the notification is necessary. Several members indicated

that programming a prenotification service could be beyond the current technical capabilities of most states, and further, if not quickly acknowledged, could delay the delivery of critical justice information.

Another state represented on the focus group prepares and sends a list of rap-back registrants annually to all agencies within the state enrolled for rap-back services, and recipients are asked to contact the repository to indicate which registrants are still valid.

Charging fees for rap-back services, which would provide a financial incentive for rap-back recipients to keep subject lists current, was one solution discussed by the focus group.

Concerns were expressed about sending information on still-active rap-back subjects to contractors initially authorized to perform noncriminal justice administrative functions for certain repositories which no longer had contractual relationships with them. This is likely to be a growing issue as more authorized recipients of criminal justice information outsource the handling of the decision-making process to private sector service providers.

Additional concerns were raised about the possibility of disseminating information on arrests, which are allegations of criminal behavior that have not been adjudicated, to recipients no longer authorized to receive it, and the damaging impact this could have on individual's livelihood, not to mention his or her reputation.

Further discussed was whether it was fair, or even legal in some states, to dispense arrest-only information to those legally authorized to receive it. Issues relating to arrest-only information will be discussed in greater detail in the next section.

*Is it fair to disseminate arrest-only information to potential or existing employers, or to licensing or volunteer agencies, when the arrested individual may not ultimately be charged with, or convicted of, the crime for which he or she is arrested?*

As noted in the previous section, issues relating to the fairness and legality of disseminating arrest-only information through rap-back programs, or through civil background check programs generally, were raised by the focus group. Some group members noted that Title VII of the Civil Rights Act of 1964

and the related EEOC guidelines would prohibit employers from letting arrest-only information influence their hiring decisions, and would also require employers to provide applicants with the opportunity to explain their arrest records.

It was observed, however, that an employer may not always inform an applicant or employee that an arrest notification was the justification for a denied application or employee's dismissal.

Other members said laws that restrict the dissemination of arrest-only information could conflict with federal requirements for states to provide all available criminal history record information, including notations of arrests, to specified federal agencies for national security-related background checks.<sup>56</sup>

Lawmakers were advised by some focus group members to carefully consider the potential damaging consequences for an individual's continued employment that could result from legislation that would allow arrest-only information to be provided to employers, espe-

<sup>56</sup> 5 USC 9101, Access to criminal history records for national security and other purposes.

cially when trends are toward making more criminal history record information available to the private sector, both as conduits and end-users of the information.

To perhaps alleviate the negative consequences of uninformed decisions being made by employers, the focus group discussed the possible benefits of programs that would educate end-users of criminal record information on how to read criminal history records (known colloquially as “rap sheets”) and to interpret results.

Questions concerning the role of state laws governing the dissemination of criminal record information were raised by some focus group members, who wondered whether such laws would restrict the types of information that could be legally disseminated by rap-back programs, and which also might limit the response options available to those who received the rap-back information.

They pointed out that many states’ laws control what types of information can be released – for example, conviction-only information or information on arrests less than a year old – and often also define offenses that disqualify

individuals from certain activities.

Questions were also raised about the participation of National Fingerprint File (NFF) states in the FBI’s rap-back program. Under the NFF process, participants only send information on an individual’s first arrest within the participating state to the FBI, which uses the arrest information to establish a record of the offender.<sup>57</sup>

Any information beyond that, including a disposition of that arrest, is maintained by the state. Other states or federal agencies seeking information on the offender are referred by the FBI to the state where the arrest took place, or the FBI sends an electronic request for the record information, which is then forwarded with the FBI response to the requestor.

Some focus group members pointed out that, pending details of the FBI’s future rap-back program, it is conceivable that information on an individual arrested for a second time in an NFF state would not be forwarded to

<sup>57</sup> An individual arrested in multiple states would have arrest fingerprints on file at the FBI for his or her first arrest in each NFF state at the FBI, while fingerprints and most other information about any subsequent arrests would not be forwarded to the FBI.

the FBI. If the arrested individual was a subject in the FBI’s rap-back program, information on the arrest may not be available to notify the agency for which the rap-back process was established, depending on the still-to-be-determined mechanics of the program.

Final discussions on this topic focused on the needs of smaller employers and agencies that may not have personnel experts to assist in interpreting notices that employees or volunteers have been arrested. It was felt that education opportunities might be particularly helpful for these entities to help them maximize the value of participation in rap-back programs. Education is discussed in greater detail in the next section of this report, **General observations**.

*Are rap-back features such as allowing applicants to review records before they are supplied to employers feasible and advisable?*

The focus group discussed the feasibility of such privacy protections as those recommended in the U.S. attorney general’s report on criminal history record checks. These would allow civil background check subjects to review record check results, and to chal-

lenge their accuracy, if necessary, before they are provided to employers.<sup>58</sup>

Some focus group members wondered how difficult it would be to contact the applicant, and whether introducing notification delays to employers would have the unintended consequence of employers making alternate hiring decisions, which would clearly be contrary to the intended purpose of the applicant's review of his or her record.

They also felt that delays could extend the criminal record query response beyond statutorily established time limits, and could prevent repository personnel from performing due diligence by allowing serious offenders to remain in sensitive situations; for example, a police officer with a firearm and an arrest on a domestic violence charge.

Other focus group members observed that the use of fingerprints to establish identity, and the growing use of fingerprints to accompany disposition information, lessens significantly the likelihood that an individual will be tied to the wrong record. Some also noted that record challenge processes

already exist in every state for applicants who contend that background check information is inaccurate, incomplete, or not related to them.

*Which is preferable when establishing "rap-back" or "hit-notice" programs – a flat enrollment fee with no charge for subsequent services, or a per-use fee?*

The focus group discussed various ways to charge fees for rap-back services, including a one-time flat fee, an annual registration fee, or a minimal registration fee with an additional per-use fee. It was felt that the flat fee may be the most workable.

It was observed that repositories have experience in collecting fees upfront for services. A rap-back fee could be incorporated into the fee an agency or applicant paid for the background check. One focus group member added that a flat fee is a known commodity, whereas the repositories won't know how much money they will receive – and employers what the ultimate cost would be – from a per-use fee approach.

Also, it was felt by some focus group members that lawmakers would look askance at attempts to charge users additional fees in amounts that could not be quantified at the time a payment requirement was set.

It was also observed by the focus group that per-use fee programming costs could be significant, as could the cost of incorporating the FBI's rap-back service.

Some focus group members thought programming costs associated with establishing rap-back services, including the incorporation of the FBI's pending service, would be significant.

Other focus group members thought a per-use fee for rap-back services would motivate end-users to keep their lists of rap-back subjects as current as possible.

States were also advised not to indicate a dollar amount in statutes governing background check fees so applicable laws don't have to be revised every time there is a fee change.

<sup>58</sup> *Supra* note 47.

## V. Other considerations

The focus group deliberations served to identify other considerations for policymakers.

### Financial

Group deliberations on financial matters extended beyond the discussion of whether flat or per-use fees were more appropriate for rap-back programs. One group member noted, for example, that it would be difficult for states to commit to the FBI's planned rap-back program until the Bureau is able to identify what costs will be associated with it.

FBI representatives on the focus group responded that participation in the program is dependent on the cost being palatable to the states.

Some focus group members representing state repositories observed that funds for new programs are in short supply, so new repository services would most likely have to be self supporting. In some other states represented, additional funds obtained from a rap-back program could be deducted from money allotted by the legislature from the state's general fund.

### Technological

It was further observed that, whereas networks are in place to disseminate information from national justice information databases to local justice jurisdictions, there are few such networks to disseminate justice information to noncriminal justice recipients should they gain authorization to receive the information. Establishing such networks will add additional costs to those associated with programming and other necessities as a rap-back infrastructure is built, although Internet-based approaches are certainly a possibility.

### Demand

The continued, dramatic growth in the number of civil criminal record checks was a phenomenon witnessed by a number of the focus group members. States represented on the focus group that initially checked public school employees reported the expansion of the checks to contractors who gained access to the schools and also to private school employees.

One example provided was Florida's Jessica Lunsford Act,<sup>59</sup> which requires the backgrounding of "non-instructional school

district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds." Affected personnel include "any vendor, individual or entity under contract with the school board."

Another focus group member reported that civil record check requirements were established in almost every recent legislative session in the member's state. The member said that the last big surge of civil record checks hasn't even been felt yet because administrative rules and procedures are still being developed to accomplish the checks.

A surge is also expected in the number of civil background checks for Federal Government purposes, such as those associated with Homeland Security Presidential Directive 12,<sup>60</sup> which calls for "a government-wide standard for secure and reliable forms of identification," and other federal initiatives. The surge could significantly impact states as federal investigators reach back for dispositions and other information missing

<sup>60</sup> See

<http://www.whitehouse.gov/news/releases/2004/08/20040827-8.html>.

<sup>59</sup> 1012.465 Florida Statutes.

from the criminal history records.

Many of the justice agencies represented on the focus group said that the number of civil criminal record checks grew dramatically after the 9/11 terrorist attacks, although, surprisingly, not just for national security purposes. Some group members speculated that the increase was caused by a growth in awareness that state and national criminal history records, although limited in access by legislation, were perhaps more readily available than previously thought.

### **Workload**

Focus group members observed that the work associated with processing civil background checks may exceed that associated with processing criminal checks, noting that, in some states, up to 75% of those arrested for criminal offenses already have established criminal records, whereas only about 10% or fewer of certain applicant populations have arrest histories.

The focus group also speculated that the use of rap-back programs could actually reduce the number of civil background checks, citing as an example the number of states that have laws requiring

the recredentialing, with an accompanying civil criminal record check, of all teachers after a specified number of years.

A rap-back program that alerts school officials shortly after a teacher is arrested would eliminate the need to repeat the background check process on every teacher during the recredentialing process.

### **Education/Outreach**

Finally, concerning the education of end-users of criminal record information received through civil background checks, some focus group members felt that the states were going to have to take responsibility for educating employers and others who may be gaining access to the information for the first time.

One state representative reported that auditors and trainers in the member's state provided education to noncriminal justice end-users on rap sheet components, but did not provide direction on making decisions about which crimes should disqualify applicants from jobs, volunteering, and other activities for which the background checks are conducted.

In another state, where government agencies are the only noncriminal justice entities authorized to obtain criminal record information, repository trainers describe to new recipients how rap sheets are put together, identifying the various components, and detailing at which point each is added to the record.

One focus group member shared a process used in her state to educate noncriminal justice recipients who receive criminal history record information. In this case, a repository staffer calls first-time rap sheet recipients to explain its components and to provide assistance on interpreting notations.

Another group member relayed information on requirements in the member's state for training and certification for agencies that want to obtain an Originating Agency Identifier or ORI, which is a series of letters and numbers that serve as a password when gaining access to state and federal criminal record information. There are no private sector entities authorized to receive rap sheet information in this focus group member's state.

## VI. Conclusion

The increase in fingerprint-based criminal record checks for civil purposes resulted in public safety benefits beyond the background checks for which the fingerprints were initially collected: namely, use of the prints in rap-back programs and their match against latent fingerprint databases and against subsequently submitted latent and arrest fingerprints.

Through these efforts, individuals who pose safety risks to the public — whether through continued access to vulnerable populations, holding a position of trust, or possible participation in unsolved crimes — are identified and may be removed until a case disposition is arrived at or they are prosecuted for the crimes to which they are connected.

The ability to react so quickly to a situation where an individual may be disqualified by an arrest (or at the very least to be informed that the arrest took place even if there is no immediate consequence for the arrested individual), has taken public safety to heights that could not have been imagined in the recent past. However, unresolved issues related to rap-back programs and

other civil fingerprint uses threaten to negatively impact such uses if they are not addressed.

As the focus group discussed, in many jurisdictions, these supplementary uses of civil fingerprints occur without statutory authority, and often without the knowledge or the consent of the individuals whose fingerprints are submitted for civil purposes.

The focus group advised law- and policymakers to consider whether a more proactive approach should be taken to notify those who submit fingerprints for civil background checks that their prints may be used for purposes other than those for which they are submitted.

State justice jurisdictions may wish to consider an approach being contemplated by the FBI, which may opt to require this type of notification as a condition for participation in the Bureau's Next Generation Identification services.

A process that keeps fingerprint-based civil background check subjects informed about the potential uses of their prints for background checks and other purposes will allow the continued, unimpeded use of these valuable tools in support of public safety.

## **Appendix 1: Focus group participants**

## Focus group participants

### Chair

**Mr. Daniel M. Foro**  
Deputy Commissioner  
New York State Division of Criminal Justice Services

### Members

**Mr. Kenneth Blue**  
Fingerprint Training Supervisor  
Federal Bureau of Investigation

**Mr. Timothy Bolles**  
Criminal History Section Manager  
Criminal Justice Information Center  
Michigan State Police

**Mr. Frank A. Campbell**  
Deputy Assistant Attorney General  
Office of Legal Policy  
U.S. Department of Justice

**Mr. Todd C. Commodore**  
Supervisory Management Analyst  
Criminal Justice Information Services Division  
Federal Bureau of Investigation

**Mr. Mike Lesko**  
Deputy Administrator  
Crime Records Service  
Texas Department of Public Safety

**Mr. William Marosy**  
Program Manager  
Records Access and Research Development  
U.S. Office of Personnel Management

**Captain Ruben Martí**  
Assistant Commander  
Records Division  
Illinois State Police

**Ms. Dawn Peck**  
Manager  
Bureau of Criminal Identification  
Idaho State Police

**Ms. Susan Rico**  
Criminal Justice Information Systems  
Network Manager  
Bureau of Criminal Apprehension  
Minnesota Department of Public Safety

**Major Douglas E. Shelton**  
Assistant Division Commander  
Records Division  
Indiana State Police

**Mr. Michael Timmerman**  
Manager  
Applicant Processing Group  
Licensing and Regulatory Bureau  
Arizona Department of Public Safety

**Ms. Rachel Tucker**  
Liaison Specialist  
Biometrics Services Section  
Criminal Justice Information Services Division  
Federal Bureau of Investigation

**Ms. Patricia Whitfield**  
Director  
Identification Services Section  
Oregon State Police

**Ms. Martha Wright**  
Bureau Chief  
Criminal Justice Information Services  
User Services Bureau  
Florida Department of Law Enforcement

### **Bureau of Justice Statistics, U.S. Department of Justice**

**Dr. Gerard F. Ramker**  
Chief  
Criminal Justice Statistics Improvement Program

### **SEARCH, The National Consortium for Justice Information and Statistics**

**Mr. Owen M. Greenspan**  
Director  
Law and Policy Program

**Mr. Eric C. Johnson**  
Justice Information Services Specialist  
Law and Policy Program

**Mr. Kevin M. Romero**  
Research Analyst  
Law and Policy Program

**Appendix 2:  
“Civil Print Retention Survey Summary of Responses,  
November 21, 2007”**

Francis X. Aumand III  
Chairman



Ronald P. Hawley  
Executive Director

## **Civil Print Retention Survey Summary of Responses**

November 21, 2007,

SEARCH, under the auspices of the Bureau of Justice Statistics, U.S. Department of Justice, has collected information on the processing of fingerprints submitted to state repositories for noncriminal justice screening (referred to as civil fingerprints).

A total of 45 responses have been received following the release of the survey on September 6, 2007. The data shows sixteen states retaining nearly all licensing, private sector/volunteer and law enforcement/government agency related fingerprints.

Eight states retain only law enforcement or government agency related fingerprints. An additional six states retain licensing related prints along with those of law enforcement and government agencies. Five states report a very small number of retained fingerprints, with limitations to concealed weapons permit holders, public utilities employees, or school district employees only. Ten states retain no fingerprints of any category (GA, HI, IN, IA, KY, MA, NH, SD, WI, WY). Of those states not retaining fingerprints, seven have plans to begin the process of retaining civil fingerprint submissions (AR, D.C., ID, IA, MA, SC, WI).

The responses summarized below illustrate the wide variety of approaches the states have taken in processing, retaining and using fingerprints. Many states have established workable civil fingerprint retention policies arising from established laws authorizing background screenings which require the capture and submission of fingerprints. Other states offer additional services to assist the public and government justice agencies.

## Civil Print Retention Survey with Totals

(Released September 6, 2007)

1. Does your state take/retain fingerprints submitted for any of the following civil purposes?  
(Please check all that apply.)

Take	Retain
<input type="checkbox"/> Licensing. < 33 >	<input type="checkbox"/> Yes < 20 > <input type="checkbox"/> No < 21 > <b>Some &lt; 4 &gt;</b>
<input type="checkbox"/> Private sector employment involving vulnerable populations such as children, the elderly and the disabled. < 31 >	<input type="checkbox"/> Yes < 15 > <input type="checkbox"/> No < 28 > <b>Some &lt; 2 &gt;</b>
<input type="checkbox"/> Volunteers who work with vulnerable populations. < 31 >	<input type="checkbox"/> Yes < 15 > <input type="checkbox"/> No < 29 > <b>Some &lt; 1 &gt;</b>
<input type="checkbox"/> Private sector employment <u>not</u> related to vulnerable populations. < 25 >	<input type="checkbox"/> Yes < 13 > <input type="checkbox"/> No < 30 > <b>Some &lt; 2 &gt;</b>
<input type="checkbox"/> Police officers. < 34 >	<input type="checkbox"/> Yes < 27 > <input type="checkbox"/> No < 16 > <b>Some &lt; 2 &gt;</b>
<input type="checkbox"/> Employment by government justice agencies other than police officers. < 32 >	<input type="checkbox"/> Yes < 23 > <input type="checkbox"/> No < 20 > <b>Some &lt; 2 &gt;</b>
<input type="checkbox"/> Employment by government noncriminal justice agencies. < 29 >	<input type="checkbox"/> Yes < 19 > <input type="checkbox"/> No < 23 > <b>Some &lt; 3 &gt;</b>
<input type="checkbox"/> Contract personnel for state repository. < 34 >	<input type="checkbox"/> Yes < 22 > <input type="checkbox"/> No < 22 > <b>Some &lt; 1 &gt;</b>
<input type="checkbox"/> Contract personnel for other state agencies. < 23 >	<input type="checkbox"/> Yes < 16 > <input type="checkbox"/> No < 28 > <b>Some &lt; 1 &gt;</b>
<input type="checkbox"/> Other (please describe): < 12 >	<input type="checkbox"/> Yes < 9 > <input type="checkbox"/> No < 36 >
	<input type="checkbox"/> No, my state does not retain any civil fingerprints. < 10 > <b>GA, HI, IN, IA, KY, MA, NH, SD, WI, WY</b>

If your state *does not* retain civil fingerprints for any purpose, please complete the survey by answering questions 2, 3 and 4. If your state *does* retain civil fingerprints for *any* purpose, please continue the survey by skipping to question 4.

2. Why doesn't your state retain any fingerprints submitted for civil purposes?

- Technical limitations, such as lack of processing capacity. < 0 >
- Statutory limitations, such as laws, rules or policies prohibiting retention. < 12 >
- No individual or constituency has expressed a desire for civil fingerprints to be retained. < 1 >
- Other: **Combination of above < 4 >**
- NA (Not Applicable): < 28 >**

3. (a) Does your state plan to begin retaining civil fingerprints at some point?

Yes < 7 > AR, D.C., ID, IA, MA, SC, WI     No < 10 >    NA (Not Applicable): < 28 >

(b) If you answered yes to Question 3(a), on what date will your state begin retaining civil fingerprints? D.C. 2008/2010, ID 2009, SC 2008, WI 2011

4. (a) As part of the processing of incoming civil fingerprints in your state, are any civil fingerprints searched against an unsolved latent fingerprint file?

All < 21 >     None < 15 >     Some < 5 >    NA (Not Applicable): < 4 >

(b) If “some” are searched, under what circumstances are incoming civil fingerprints searched against latent fingerprints?

**If you answered “no” to Question 1 (State does not retain any civil fingerprints), it is not necessary to continue with the survey after Question 4.**

5. Are retained civil fingerprints searched for any of the following purposes?

Identifying a deceased individual < 24 >  
 Inquiry fingerprints (identifying a person in custody) < 26 >  
 Other

No: < 6 >

NA (Not Applicable): < 12 >

6. (a) Are later incoming *arrest* fingerprints searched against retained civil fingerprints?

Always < 30 >     Never < 0 >     Sometimes < 1 >

NA (Not Applicable): < 14 >

(b) If civil fingerprints are “sometimes” searched, under what circumstances are newly received *arrest* fingerprints searched against retained civil fingerprints?

7. (a) If retained civil prints are searched against subsequently submitted arrest fingerprints, is the entity that submitted the civil fingerprints notified of subsequent arrests, a process sometimes referred to as “rap back” or “hit notice”?

Always < 16 >     Never < 7 >     Sometimes < 10 >

NA (Not Applicable): < 12 >

(b) Under what circumstances are entities that submit retained civil fingerprints “sometimes” notified of subsequent arrests?

(c) By what means are entities that submit civil fingerprints notified of subsequent arrests?

(d) Is there an additional fee for this service?

Yes < 4 > CO: \$1, NJ: \$10, UT \$5, VA \$7  No < 22 >

NA (Not Applicable): < 19 >

8. (a) Are newly received latent fingerprints searched against retained civil fingerprints?

Always < 27 >  Never < 5 >  Sometimes < 2 >

NA (Not Applicable): < 11 >

(b) If latent fingerprints are “sometimes” searched against retained civil fingerprints, under what circumstances does this occur?

9. Are civil fingerprints retained in the state Automated Fingerprint Identification System (AFIS) assigned a State Identification Number, retained in the state AFIS without an assigned SID, or retained in a separate database?

State AFIS with SID < 24 >  
 State AFIS without SID < 5 >  
 Separate database (please describe) < 4 >

No: < 1 >

NA (Not Applicable): < 11 >

10. Is the existence of a retained civil fingerprint disclosed on the rap sheet that is returned in response to a criminal inquiry?

Yes < 5 > D.C., LA, NY, NC, OR

No < 26 >

Only under certain circumstances

NA (Not Applicable): < 11 >

Other: < 3 >

11. When a civil fingerprint submitted by one agency is retained by your repository and a second agency submits a civil fingerprint check for the same person ...

(a) Is the second agency notified that a fingerprint for the individual is being retained by the repository?

Yes < 2 > IL, NY  No < 26 >

NA (Not Applicable): < 17 >

(b) Is the agency that initially submitted the retained civil fingerprint notified that a second agency has also submitted a fingerprint?

Yes < 0 >  No < 28 >

NA (Not Applicable): < 17 >

(c) Are both agencies notified of the multiple inquiries?

Yes < 0 >       No < 28 >

NA (Not Applicable): < 17 >

(d) Can a single civil criminal record check/fingerprint retention suffice for multiple agencies, e.g., a school teacher who also volunteers with the Boy Scouts?

Yes < 4 > GU, MD, OR, TX       No < 27 >

NA (Not Applicable): < 14 >

12. (a) Under what circumstances is a retained civil fingerprint no longer retained?

(b) Does your state notify the civil applicant and/or the submitting entity that the fingerprint is no longer retained?

Civil applicant < 0 >

Submitting entity < 1 > VA

Neither < 21 >

NA (Not Applicable): < 18 >

13. Does the civil fingerprint card used by your state contain:

(a) A notice that the fingerprints will be retained?

Yes < 2 > NC, WV       No < 32 >

NA (Not Applicable): < 11 >

(b) A notice that retained fingerprints may be used for criminal searches other than the background search for which the fingerprints were submitted?

Yes < 2 > NC, VA       No < 31 >

NA (Not Applicable): < 12 >

(c) A space for the search subject's signature acknowledging that the fingerprints will be retained?

Yes < 2 > VA, WV       No < 31 >

NA (Not Applicable): < 12 >

(d) A space for the search subject's signature acknowledging that retained fingerprints may be used for criminal searches in addition to the background search for which the fingerprints were submitted?

Yes < 1 > VA       No < 32 >

NA (Not Applicable): < 12 >

14. Number of civil fingerprints retained by your state as of August 31, 2007: \_\_\_\_\_

QUESTION	1) Licensing		Private Sector / Vulnerable Pop.		Volunteers / Vulnerable Pop.		Private Sector / Non-Vulnerable Pop.		Police Officers	
	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining
Alabama	--	--	--	--	--	--	--	--	--	--
Alaska	no	YES	no	YES	no	YES	no	YES	no	YES
Arizona	no*	no*	no*	no*	no*	no*	no*	no*	no	YES
	*only persons applying for an AZ Fingerprint Clearance Card have print images stored digitally.									
Arkansas	YES	some	YES	some	some	some	no	no	YES	some
California	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Colorado	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Connecticut	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Delaware	--	--	--	--	--	--	--	--	--	--
District of Columbia	YES	no	YES	no	YES	no	YES	no	YES	no
Florida	YES	no	YES	some	YES	no	YES	some	YES	YES
Georgia	YES	no	YES	no	YES	no	YES	no	YES	no
Guam	no	YES	no	no	no	no	no	no	no	YES
Hawaii	no	no	no	no	no	no	no	no	no	no
Idaho	YES	no	YES	no	YES	no	YES	no	YES	YES
Illinois	YES	YES	YES	YES	YES	YES	YES	no	YES	YES
Indiana	YES	no	YES	no	YES	no	YES	no	YES	no
Iowa	YES	no	YES	no	YES	no	YES	no	YES	no
Kansas	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Kentucky	no	no	no	no	no	no	no	no	no	no
Louisiana	no	YES	no	YES	no	YES	no	YES	no	YES
Maine	YES	YES	YES	no	YES	no	YES	no	YES	no
Maryland	no	YES	no	YES	no	YES	no	YES	no	YES
Massachusetts	no	no	no	no	no	no	no	no	YES	no
Michigan	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Minnesota	YES	no	YES	no	YES	no	YES	no	YES	YES
Mississippi	--	--	--	--	--	--	--	--	--	--
Missouri	no	YES	no	YES	no	YES	no	YES	no	YES
Montana	--	--	--	--	--	--	--	--	--	--

QUESTION	1) Licensing		Private Sector / Vulnerable Pop.		Volunteers / Vulnerable Pop.		Private Sector / Non-Vulnerable Pop.		Police Officers	
	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining
Nebraska	--	--	--	--	--	--	--	--	--	--
Nevada	YES	some	YES	no	YES	no	YES	no	YES	no
New Hampshire	YES	no	YES	no	YES	no	no	no	YES	no
New Jersey	YES	YES	YES	YES	YES	no	no	no	YES	some
New Mexico	YES	YES	no	no	YES	YES	no	no	YES	YES
New York	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
North Carolina	YES	some	YES	no	YES	no	YES	no	YES	no
North Dakota	no	no	no	no	no	no	no	no	YES	no
Ohio	--	--	--	--	--	--	--	--	--	--
Oklahoma	YES	YES	no	no	no	no	no	no	YES	YES
Oregon	YES	some	YES	no	YES	no	YES	no	YES	YES
Pennsylvania	--	--	--	--	--	--	--	--	--	--
Puerto Rico	--	--	--	--	--	--	--	--	--	--
Rhode Island	YES	YES	YES	no	YES	no	YES	no	YES	YES
South Carolina	YES	no	YES	no	YES	no	no	no	YES	YES
South Dakota	no	no	no	no	no	no	no	no	no	no
Tennessee	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Texas	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Utah	YES	no	YES	no	YES	no	YES	no	YES	no
Vermont	YES	no	YES	no	YES	no	no	no	YES	YES
Virgin Islands	--	--	--	--	--	--	--	--	--	--
Virginia	no	no	no	no	no	no	no	no	no	no
Washington	YES	no	YES	no	YES	no	YES	no	YES	YES
West Virginia	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Wisconsin	YES	no	YES	no	YES	no	no	no	YES	no
Wyoming	YES	no	YES	no	YES	no	YES	no	no	no

QUESTION	Employment: CJ Agencies		Employment: Non-CJ Agencies		Repository Contract Personnel		Other State Contract Personnel		Other	
	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining
Alabama	--	--	--	--	--	--	--	--	--	--
Alaska	YES	YES	no	YES	YES	YES	no	YES	YES	YES
Arizona	no*	no*	no*	no*	YES	YES	no*	no*	no*	no*
	*only persons applying for an AZ Fingerprint Clearance Card have print images stored digitally.									
Arkansas	some	some	some	some	YES	some	no	no	no	no
California	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Colorado	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Connecticut	YES	YES	YES	YES	YES	YES	YES	YES	no	no
Delaware	--	--	--	--	--	--	--	--	--	--
District of Columbia	no	no	no	no	YES	YES	no	no	no	no
Florida	YES	YES	YES	some	YES	YES	YES	no	YES	no
Georgia	YES	no	YES	no	YES	no	no	no	no	no
Guam	no	YES	no	no	no	YES	no	no	no	no
Hawaii	no	no	no	no	no	no	no	no	no	no
Idaho	YES	YES	YES	no	YES	no	YES	no	no	no
Illinois	YES	YES	YES	YES	YES	YES	YES	YES	no	no
Indiana	YES	no	YES	no	YES	no	YES	no	no	no
Iowa	no	no	YES	no	YES	no	no	no	no	no
Kansas	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Kentucky	no	no	no	no	no	no	no	no	no	no
Louisiana	no	YES	no	YES	no	YES	no	no	no	no
Maine	YES	no	YES	YES	YES	no	YES	no	no	no
Maryland	no	YES	no	YES	no	YES	no	YES	YES	no
Massachusetts	YES	no	no	no	no	no	no	no	no	no
Michigan	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Minnesota	YES	YES		YES	YES	YES	no	no	no	no
Mississippi	--	--	--	--	--	--	--	--	--	--
Missouri	no	YES	no	YES	no	YES	no	YES	no	no
Montana	--	--	--	--	--	--	--	--	--	--

QUESTION	Employment: CJ Agencies		Employment: Non-CJ Agencies		Repository Contract Personnel		Other State Contract Personnel		Other	
	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining	Taking	Retaining
Nebraska	--	--	--	--	--	--	--	--	--	--
Nevada	YES	no	YES	no	YES	no	some	no	YES	YES
New Hampshire	no	no	YES	no	YES	no	no	no	no	no
New Jersey	YES	YES	YES	YES	YES	no	YES	YES	no	no
New Mexico	YES	YES	YES	YES	YES	YES	no	no	no	no
New York	YES	YES	YES	YES	YES	YES	YES	YES	no	no
North Carolina	YES	no	YES	no	YES	no	YES	no	no	no
North Dakota	YES	no	YES	no	YES	no	YES	no	YES	YES
Ohio	--	--	--	--	--	--	--	--	--	--
Oklahoma	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Oregon	YES	some	YES	some	YES	YES	YES	some	no	no
Pennsylvania	--	--	--	--	--	--	--	--	--	--
Puerto Rico	--	--	--	--	--	--	--	--	--	--
Rhode Island	YES	YES	YES	no	no	no	no	no	no	no
South Carolina	YES	no	YES	no	YES	no	YES	no	no	no
South Dakota	no	no	no	no	no	no	no	no	no	no
Tennessee	YES	YES	YES	YES	YES	YES	YES	YES	no	no
Texas	YES	YES	YES	YES	YES	YES	YES	YES	no	no
Utah	YES	no	YES	no	YES	no	YES	no	YES	YES
Vermont	YES	no	no	no	YES	no	no	no	no	no
Virgin Islands	--	--	--	--	--	--	--	--	--	--
Virginia	no	no	no	no	no	no	no	no	YES	no
Washington	YES	YES	YES	no	YES	YES	YES	YES	no	no
West Virginia	YES	YES	YES	YES	no	no	YES	YES	no	no
Wisconsin	YES	no	no	no	YES	no	no	no	no	no
Wyoming	YES	no	YES	no	YES	no	YES	no	no	no

**Question 1 (continued): No, my state does not retain any civil fingerprints:**

Georgia, Hawaii, Indiana, Iowa, Kentucky, Massachusetts, New Hampshire, South Dakota, Wisconsin, Wyoming

<b>QUESTION</b>	<b>2) Why No Retention of Submitted Civil Fingerprints?</b>	<b>3a) Plans to Begin Retention of Civil Fingerprints?</b>	<b>3b) Date to Begin Retention of Civil Fingerprints?</b>	<b>4a) Incoming Civil Prints Searched Against Unsolved Latent Print File?</b>	<b>4b) If "Some" are Searched, Under What Circumstances?</b>	<b>5) Retained Civil Prints Searched for Any Purpose?</b>
Alabama	--	--	--	--	--	--
Alaska	NA	NA	NA	Some	new applicants	Identifying deceased and Inquiry prints
Arizona	NA	NA	NA	Some	AZ Print Clearance Card	All
Arkansas	Statutory limitations	YES	Unspecified	All	NA	All
California	NA	NA	NA	None	NA	All
Colorado	NA	NA	NA	All	NA	No
Connecticut	NA	NA	NA	All	NA	All
Delaware	--	--	--	--	--	--
District of Columbia	Tech and Statutory Limitations, No Desire	YES	2008 / 2010	All	NA	Identifying deceased and Inquiry prints
Florida	NA	NA	NA	None	NA	No
Georgia	Statutory Limitations, No Desire	NO	NA	All	NA	No
Guam	NA	NA	NA	None	NA	No
Hawaii	Statutory Limitations	No	NA	None	NA	No
Idaho	All	YES	2009	None	NA	No
Illinois	NA	NA	NA	All	NA	NA
Indiana	Statutory Limitations	NO	NA	None	NA	NA
Iowa	Statutory Limitations	YES	No Date	None	NA	NA
Kansas	NA	NA	NA	All	NA	All
Kentucky	Statutory Limitations	NO	None	None	NA	NA
Louisiana	NA	NA	NA	All	NA	All
Maine	NA	NA	NA	Some	one source searched	Unsolved Latent
Maryland	NA	NA	NA	All	NA	All
Massachusetts	Statutory Limitations	YES	NA	NA	NA	NA
Michigan	NA	NA	NA	All	NA	All
Minnesota	NA	NA	NA	--	--	Inquire Prints, Latent Prints
Mississippi	--	--	--	--	--	--
Missouri	NA	NA	NA	All	NA	All

<b>QUESTION</b>	<b>2) Why No Retention of Submitted Civil Fingerprints?</b>	<b>3a) Plans to Begin Retention of Civil Fingerprints?</b>	<b>3b) Date to Begin Retention of Civil Fingerprints?</b>	<b>4a) Incoming Civil Prints Searched Against Unsolved Latent Print File?</b>	<b>4b) If "Some" are Searched, Under What Circumstances?</b>	<b>5) Retained Civil Prints Searched for Any Purpose?</b>
Montana	--	--	--	--	--	--
Nebraska	--		--	--	--	--
Nevada	NA	NA	NA	None	NA	Identifying deceased and Inquiry prints
New Hampshire	Statutory Limits	NO	NA	NA	NA	NA
New Jersey	NA	NA	NA	All	NA	All
New Mexico	NA	NA	NA	NA	NA	Identifying deceased and Inquiry prints
New York	NA	NA	NA	None	NA	Identifying deceased and Inquiry prints
North Carolina	NA	NA	NA	All	NA	All
North Dakota	NA	NA	NA	All	NA	Identifying deceased and Inquiry prints
Ohio	--	--	--	--	--	--
Oklahoma	NA	NA	NA	All	NA	Identifying deceased and Inquiry prints
Oregon	NA	NA	NA	None	NA	Identifying deceased and Inquiry prints
Pennsylvania	--	--	--	--	--	--
Puerto Rico	--	--	--	--	--	--
Rhode Island	Statutory Limits: LE and Firearm Licenses Only	NO	NA	None	NA	Retained Prints not in AFIS
South Carolina	Currently Only Police and SLED	YES	Jan 2008	All	NA	Identifying deceased and Inquiry prints
South Dakota	Statutory Limits	NO	NA	None	NA	AFIS Upgrade Dec 2007
Tennessee	NA	NA	NA	All	NA	Inquiry prints
Texas	NA	NA	NA	All	NA	All (and Reverse)
Utah	NA	NA	NA	None	NA	NA
Vermont	NA	NA	NA	Some	Retained Prints Only	NA
Virgin Islands	--	--	--	--	--	--
Virginia	Statutory Limits	NO	NA	All	NA	Identifying deceased and Inquiry prints
Washington	Statutory Limits, No Desire	NO	NA	Some	If Retained or a Hit to Record	Identifying deceased and Inquiry prints
West Virginia	NA	NA	NA	All	NA	All
Wisconsin	No Desire	YES	Possibly 2011	All	NA	NA
Wyoming	Statutory Limits	NO	NA	None	NA	NA

<b>QUESTION</b>	<b>6a) Incoming Arrest Prints Searched Against Civil Retained Prints?</b>	<b>6b) If “Sometimes”, Under What Circumstances?</b>	<b>7a) Notifications or “rap back / hit notice”?</b>	<b>7b) If “Sometimes”, Under What Circumstances?</b>	<b>7c) Subsequent Arrest Notification via What Means?</b>
<b>Alabama</b>	--	--	--	--	--
<b>Alaska</b>	Sometimes	Incoming Arrest not Identified by Name Search	Sometimes	Gov Agencies must Subscribe	Elec Notice, Agency Must Follow up
<b>Arizona</b>	Always	NA	Always	NA	Daily Report with Agency Contact
<b>Arkansas</b>	Always	NA	No	NA	NA
<b>California</b>	Always	NA	Always	NA	Elec Notification, Fax, Email
<b>Colorado</b>	Always	NA	Sometimes	State Statute Req	Elec or Email
<b>Connecticut</b>	Always	NA	Always	NA	NA
<b>Delaware</b>	--	--	--	--	--
<b>District of Columbia</b>	Always	NA	Always	NA	Written
<b>Florida</b>	Always	NA	Always	NA	Email
<b>Georgia</b>	NA	NA	NA	NA	NA
<b>Guam</b>	Never	NA	NA	NA	NA
<b>Hawaii</b>	NA	NA	NA	NA	NA
<b>Idaho</b>	NA	NA	NA	NA	NA
<b>Illinois</b>	Always	NA	Sometimes	Based on Convictions from Court	Via Agency Preferred Network
<b>Indiana</b>	NA	NA	NA	NA	NA
<b>Iowa</b>	NA	NA	NA	NA	NA
<b>Kansas</b>	Always	NA	Never	NA	NA
<b>Kentucky</b>	NA	NA	NA	NA	NA
<b>Louisiana</b>	Always	NA	Sometimes	Integrity of Licensing	Rapsheet or Letter
<b>Maine</b>	Never	NA	Sometimes	For Some Entities	NA
<b>Maryland</b>	Always	NA	Sometimes	If Allowed by Statute	US Mail
<b>Massachusetts</b>	NA	NA	NA	NA	NA
<b>Michigan</b>	Always	NA	Sometimes	Leg Authority and User Agreement	Email
<b>Minnesota</b>	Always	NA	Always	NA	Writing or Phone
<b>Mississippi</b>	--	--	--	--	--
<b>Missouri</b>	Always	NA	Never	NA	NA
<b>Montana</b>	--	--	--	--	--

<b>QUESTION</b>	<b>6a) Incoming Arrest Prints Searched Against Civil Retained Prints?</b>	<b>6b) If "Sometimes", Under What Circumstances?</b>	<b>7a) Notifications or "rap back / hit notice"?</b>	<b>7b) If "Sometimes", Under What Circumstances?</b>	<b>7c) Subsequent Arrest Notification via What Means?</b>
<b>Nebraska</b>	--	--	--	--	--
<b>Nevada</b>	Always	NA	Only for School Dist. Sheriff Notified for CCW permits	NA	Letter with Criminal History
<b>New Hampshire</b>	NA	NA	NA	NA	NA
<b>New Jersey</b>	Always	NA	Always	NA	Elec via Wide Area Network
<b>New Mexico</b>	Always	NA	Never	New AFIS w/ RB May 2007	NA
<b>New York</b>	Always	NA	Always	NA	Elec via eJustice NY
<b>North Carolina</b>	Always	NA	Always	NA	Sheriff Office Contact for CCW Permits
<b>North Dakota</b>	Always	NA	Always	NA	Permits Issued / Resolved In-House
<b>Ohio</b>	--	--	--	--	--
<b>Oklahoma</b>	Always	NA	Always	NA	US Mail with Rapsheet
<b>Oregon</b>	Always	NA	Sometimes	Elec Notice if Flagged in CCH System	Elec or Phone
<b>Pennsylvania</b>	--	--	--	--	--
<b>Puerto Rico</b>	--	--	--	--	--
<b>Rhode Island</b>	Never	NA	Never	NA	NA
<b>South Carolina</b>	Always	NA	Always	NA	Elec, Phone, US Mail
<b>South Dakota</b>	NA	NA	NA	NA	NA
<b>Tennessee</b>	Always	NA	Never	NA	NA
<b>Texas</b>	Always	NA	Sometimes	If Entity Wants to be Notified	Elec, US Mail with Rapsheet
<b>Utah</b>	Always	NA	Always	NA	Via US Mail After Conviction
<b>Vermont</b>	Always	NA	Always	NA	Phone
<b>Virgin Islands</b>	--	--	--	--	--
<b>Virginia</b>	Always	Search Against Incoming Arrests	Always	NA	US Mail
<b>Washington</b>	Always	NA	Never	NA	NA
<b>West Virginia</b>	Always	NA	Sometimes	If Statutory Req	US Mail
<b>Wisconsin</b>	NA	NA	NA	NA	NA
<b>Wyoming</b>	NA	NA	NA	NA	NA

<b>QUESTION</b>	<b>7d) Any Additional Fee for this Service?</b>	<b>8a) New Latent Prints Searched Against Civil Retained Prints?</b>	<b>8b) If “Sometimes”, Under What Circumstances?</b>	<b>9) Are Retained Civil Prints in AFIS Assigned a SID?</b>	<b>10) Is a Civil Print Retention Disclosed on a Returned Rap Sheet?</b>
Alabama	--	--	--	--	--
Alaska	No	Always	NA	State AFIS with SID	No
Arizona	No	Always	NA	State AFIS without SID	No
Arkansas	NA	Always	NA		No
California	No		Via U.S. Attorney General	State AFIS with SID	No
Colorado	\$1	Always	NA	State AFIS with SID	No
Connecticut	No	Always	NA	State AFIS with SID	No
Delaware	--	--	--	--	--
District of Columbia	No	Always	NA	State AFIS without SID	
Florida	No (expected)	No (expected)	NA		No
Georgia	NA		NA		
Guam	NA		NA		No
Hawaii	NA		NA		
Idaho	NA		NA		
Illinois	No	Always	NA	State AFIS with SID	No
Indiana	NA	NA	NA	NA	NA
Iowa	NA	NA	NA	NA	NA
Kansas	NA	Always	NA	State AFIS with SID	No
Kentucky	NA	NA	NA	NA	NA
Louisiana	No	Always	NA	State AFIS with SID	Yes
Maine	No	Never	NA	Separate IDs Only for Civil Prints	No
Maryland	No	Always	NA	State AFIS with SID	No
Massachusetts	NA	NA	NA	NA	NA
Michigan	No	Always	NA	State AFIS with SID	No
Minnesota	No	Always	NA	State AFIS without SID	No
Mississippi	--	--	--	--	--
Missouri	NA	Always	NA	State AFIS with SID	No
Montana	--	--	--	--	--

<b>QUESTION</b>	<b>7d) Any Additional Fee for this Service?</b>	<b>8a) New Latent Prints Searched Against Civil Retained Prints?</b>	<b>8b) If "Sometimes", Under What Circumstances?</b>	<b>9) Are Retained Civil Prints in AFIS Assigned a SID?</b>	<b>10) Is a Civil Print Retention Disclosed on a Returned Rap Sheet?</b>
<b>Nebraska</b>	--	--	--	--	--
<b>Nevada</b>	No	Sometimes	Latent Prints go to Crime Lab	State AFIS with SID	No
<b>New Hampshire</b>	NA	NA	NA	NA	NA
<b>New Jersey</b>	\$10	Always	NA	State AFIS with SID	No
<b>New Mexico</b>	NA	Always	NA	State AFIS with SID	No
<b>New York</b>	No	Never	NA	State AFIS with SID	Yes
<b>North Carolina</b>	No	Always	NA	State AFIS with SID	Yes
<b>North Dakota</b>	No	Always	NA	State AFIS without SID	No
<b>Ohio</b>	--	--	--	--	--
<b>Oklahoma</b>	No	Always	NA	State AFIS with SID	Sometimes
<b>Oregon</b>	No	Always	NA	State AFIS with SID	Yes
<b>Pennsylvania</b>	--	--	--	--	--
<b>Puerto Rico</b>	--	--	--	--	--
<b>Rhode Island</b>	NA	Never	NA	No	Firearm Permits Only
<b>South Carolina</b>	No	Always	NA	State AFIS with SID	No
<b>South Dakota</b>	NA	NA	NA	NA	NA
<b>Tennessee</b>	NA	Always	NA	State AFIS with SID	No
<b>Texas</b>	No	Always	NA	State AFIS with SID	No
<b>Utah</b>	\$5	Always	NA	State AFIS with SID	No
<b>Vermont</b>	No	Always	NA	State AFIS without SID (LE SID #)	No
<b>Virgin Islands</b>	--	--	--	--	--
<b>Virginia</b>	\$7	Always	NA	State AFIS with SID	No
<b>Washington</b>	NA	Always	NA	State AFIS with SID	Sometimes
<b>West Virginia</b>	No	Always	NA	State AFIS with SID	No
<b>Wisconsin</b>	NA	NA	NA	NA	NA
<b>Wyoming</b>	NA	NA	NA	NA	NA

<b>QUESTION</b>	<b>11a) Civil Retention Notification to Second Agency?</b>	<b>11b) Notification to Initial Submitting Agency?</b>	<b>11c) Both Agencies Notified of Multiple Inquiries?</b>	<b>11d) Single Civil Print Retention for Multiple Agencies?</b>	<b>12a) When is a Retained Civil Print no Longer Retained?</b>
Alabama	--	--	--	--	--
Alaska	No	No	No	No	None
Arizona	NA	NA	NA	No	99 Yrs of Age or 1 Yr After Death
Arkansas	No	No	No	No	When Required by Law
California	No	No	No	No	Termination of Agency Need
Colorado	No	No	No	No	None
Connecticut	No	No	No	No	None
Delaware	--	--	--	--	--
District of Columbia	No	No	No	No	Deceased
Florida	No	No	No	No	None
Georgia	NA	NA	NA	NA	NA
Guam	NA	NA	NA	Yes	NA
Hawaii	NA	NA	NA	NA	NA
Idaho	NA	NA	NA	NA	NA
Illinois	Yes	No	No	No	NA
Indiana	NA	NA	NA	NA	NA
Iowa	NA	NA	NA	NA	NA
Kansas	No	No	No	No	None
Kentucky	NA	NA	NA	NA	NA
Louisiana	No	No	No	No	NA
Maine	No	No	No	No	Per Request
Maryland	No	No	No	Yes	Based on 99 Yr Policy
Massachusetts	NA	NA	NA	NA	NA
Michigan	No	No	No	No	If notified of End of License or Empl.
Minnesota	No	No	No	No	Termination of Employment
Mississippi	--	--	--	--	--
Missouri	No	No	No	No	NA
Montana	--	--	--	--	--

<b>QUESTION</b>	<b>11a) Civil Retention Notification to Second Agency?</b>	<b>11b) Notification to Initial Submitting Agency?</b>	<b>11c) Both Agencies Notified of Multiple Inquiries?</b>	<b>11d) Single Civil Print Retention for Multiple Agencies?</b>	<b>12a) When is a Retained Civil Print no Longer Retained?</b>
Nebraska	--	--	--	--	--
Nevada	No	No	No	No	30 Yrs for School Dist Empl and CCW; 3 Yrs for Other Civil
New Hampshire	NA	NA	NA	NA	NA
New Jersey	No	No	No	No	Notice From Agency
New Mexico	No	No	No	No	NA
New York	Yes	No	No	No	Request From Applicant or Submitting Agency
North Carolina	NA	NA	NA	NA	Upon Notification (CCW Permit)
North Dakota	NA	NA	NA	NA	CCW Permit Schedule
Ohio	--	--	--	--	--
Oklahoma	No	No	No	No	None
Oregon	No	No	No	Yes (via Interagency Agreement)	Deceased or End of Empl / License Expire
Pennsylvania	--	--	--	--	--
Puerto Rico	--	--	--	--	--
Rhode Island	NA	NA	NA	No	NA
South Carolina	No	No	No	No	
South Dakota	NA	NA	NA	NA	NA
Tennessee	No	No	No	No	NA
Texas	No	No	No	Yes	Deceased (Prints Retained Beyond Rapback Notification)
Utah	No	No	No	No	Via Agency Request
Vermont	NA	NA	NA	NA	State Police Employment Ends
Virgin Islands	--	--	--	--	--
Virginia	No	No	No	No	Fee Unpaid or by Owner Request
Washington	No	No	No	No	NA
West Virginia	No	No	No	No	NA
Wisconsin	NA	NA	NA	NA	NA
Wyoming	NA	NA	NA	NA	NA

<b>QUESTION</b>	<b>12b) Notification of Print no Longer Retained?</b>	<b>13a) Does Civil Print Card Contain Notice of Retention?</b>	<b>13b) Notice of Retained Prints Subject to Additional Criminal Searches?</b>	<b>13c) Acknowledging Signature that Prints Will be Retained?</b>	<b>13d) Acknowledging Signature that Prints are Subject to Additional Criminal Searches</b>	<b>14) Number of Civil Prints Retained as of 8/31/07?</b>
Alabama	--	--	--	--	--	--
Alaska	NA	No	No	No	No	250,000 +
Arizona	Neither	No	No	No	No	669,000
Arkansas	No	No	No	No	No	Unknown
California	Neither	No	No	No	No	4,973,352
Colorado	Neither	No	No	No	No	1,165,247
Connecticut	No	No	No	No	No	602,738
Delaware	--	--	--	--	--	--
District of Columbia	Neither	No	No	No	No	379
Florida	No	No	No	No	No	895,919
Georgia	NA	NA	NA	NA	NA	0
Guam	Neither	No	No	No	No	5,000
Hawaii	NA	NA	NA	NA	NA	NA
Idaho	NA	NA	NA	NA	NA	0
Illinois	NA	No	No	No	No	CY05-191,000 CY06-206,000
Indiana	NA	NA	NA	NA	NA	NA
Iowa	NA	NA	NA	NA	NA	NA
Kansas	NA	No	No	No	No	Unknown
Kentucky	NA	NA	NA	NA	NA	NA
Louisiana	Neither	No	No	No	No	343,804
Maine	No	No	No	No	No	101,226
Maryland	Neither	No	No	No	No	144,820
Massachusetts	NA	NA	NA	NA	NA	NA
Michigan	Neither	No	No	No	No	440,000
Minnesota	Neither	No	No	No	No	2,700
Mississippi	--	--	--	--	--	--
Missouri	No	No	No	No	No	500,000 +
Montana	--	--	--	--	--	--

<b>QUESTION</b>	<b>12b) Notification of Print no Longer Retained?</b>	<b>13a) Does Civil Print Card Contain Notice of Retention?</b>	<b>13b) Notice of Retained Prints Subject to Additional Criminal Searches?</b>	<b>13c) Acknowledging Signature that Prints Will be Retained?</b>	<b>13d) Acknowledging Signature that Prints are Subject to Additional Criminal Searches</b>	<b>14) Number of Civil Prints Retained as of 8/31/07?</b>
<b>Nebraska</b>	--	--	--	--	--	--
<b>Nevada</b>	Neither	No	No	No	No	Unknown
<b>New Hampshire</b>	NA	NA	NA	NA	NA	NA
<b>New Jersey</b>	Neither	No	No	No	No	1,752,627
<b>New Mexico</b>	Neither	No	No	No	No	11,000
<b>New York</b>	Neither	No	No	No	No	2,900,000 +
<b>North Carolina</b>	Neither	Yes	Yes	No	No	125,000
<b>North Dakota</b>	Neither	No	No	No	No	9,000
<b>Ohio</b>	--	--	--	--	--	--
<b>Oklahoma</b>	NA	No	No	No	No	264,484
<b>Oregon</b>	Neither	No (Notice in Civil Application Process)	No	No (Notice in Civil Application Process)	No	347,147
<b>Pennsylvania</b>	--	--	--	--	--	--
<b>Puerto Rico</b>	--	--	--	--	--	--
<b>Rhode Island</b>	Neither	No	NA	NA	NA	Unknown
<b>South Carolina</b>	Neither	No	No	No	No	29,500
<b>South Dakota</b>	NA	NA	NA	NA	NA	NA
<b>Tennessee</b>	NA	No	No	No	No	180,000
<b>Texas</b>	Neither	No	No	No	No	1,471,426 (10/01/07)
<b>Utah</b>	Neither	No	No	No	No	104
<b>Vermont</b>	Neither	No	No	No	No	696
<b>Virgin Islands</b>	--	--	--	--	--	--
<b>Virginia</b>	Sub Entity	No	Yes	Yes	Yes	7,600
<b>Washington</b>	NA	No	No	No	No	132,434
<b>West Virginia</b>	NA	Yes	No	Yes	No	200,000
<b>Wisconsin</b>	NA	NA	NA	NA	NA	NA
<b>Wyoming</b>	NA	NA	NA	NA	NA	NA

NA = not applicable

**Appendix 3:  
“Civil Print Retention Survey and Summary of  
Responses, 2001”**



## SEARCH

### The National Consortium for Justice Information and Statistics

The purpose of this survey is to obtain information concerning repository practices associated with fingerprints submitted to the state repositories for noncriminal justice screening purposes (referred to as applicant fingerprints). Please answer the questions based upon your knowledge of practices in your state.

1. (a) As part of the processing of incoming applicant fingerprints in your state, are any of applicant prints searched against latent fingerprints in your files?

a-All            b-None            c-Some

- (b) If “some” are searched, under what circumstances are incoming applicant fingerprints searched against latent fingerprints?

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2. (a) Are any applicant fingerprints retained in your files after the criminal history checks are completed?

a-All            b-None            c-Some \_\_\_\_

- (b) If “some” are retained, what are the criteria for retention? \_\_\_\_\_

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3. (a) If applicant fingerprints are retained, are later incoming criminal fingerprints searched against them?

a-Always      b-Never      c-Sometimes

(b) If applicant fingerprints are “sometimes” searched, what are the circumstances under which newly received criminal fingerprints are searched against retained applicant fingerprints? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. (a) If applicant prints are retained and later are part of the search population of incoming criminal fingerprints, is the entity that submitted the applicant prints notified of subsequent arrests?

a-Always      b-Never      c-Sometimes

(b) What are the circumstances and by what means (for example, CA rap back, NY hit notice) are entities that submit applicant prints notified of subsequent arrests? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Is the information that applicant fingerprints are retained, included with information that is distributed or available to other entities that submit applicant prints (for example, a school bus driver may require separate clearances from both the school district and the state motor vehicle bureau or an applicant might require screening for both a prospective job and as a child care volunteer)?

a-Always      b-Never      c-Sometimes

(d) If “sometimes,” under what circumstances does this occur? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) Is the information that applicant fingerprints are retained included on the rap sheet or available for criminal justice purposes? (For example., is the information included on the rap sheet where a criminal record exists; or where no criminal record exists, is the information made available on a document similar to a rap sheet that is created to display the retained noncriminal justice information?)

a-Always      b-Never      c-Sometimes

(f) If this information is “always” or “sometimes” included on the rap sheet available, under what circumstances is the information made available for criminal justice purposes?

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5. If applicant fingerprints are retained, are newly received latent fingerprints searched against them?

a-Always      b-Never      c-Sometimes

6. (a) Does the processing of applicant fingerprints include name search of want/warrant files?

a-Always      b-Never      c-Sometimes

(b) If “sometimes,” under what circumstances does this occur?

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(c) Who is notified of a possible hit of an applicant inquiry against a want/warrant file entry? (For example, applicant entity submitting fingerprints? local law enforcement agency? agency that entered the warrant, etc.?)

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7. Does the applicant fingerprint card in use in your state contain:

(a) A notice that the fingerprints will be retained and may be used for criminal searches other than the background search for which the fingerprints were submitted?

a-Yes      b-No

(b) A space for the applicant’s signature acknowledging that the fingerprints will be retained and may be used for criminal searches in addition to the background search for which the fingerprints were submitted?

a-Yes      b-No

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8. (a) Has any court in your state ruled on the issue of retaining applicant fingerprints and using them for criminal searches in addition to the background search for which they were submitted?

a-Yes

b-No

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(b) If yes, please summarize what the court said about the issue (or give case name and citation).

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<b>Question</b>	<b>1a</b>	<b>1b</b>	<b>2a</b>	<b>2b</b>	<b>3a</b>	<b>3b</b>	<b>4a</b>	<b>4b</b>	<b>4c</b>
Alabama	a	n/a	c	Mandated by state	a	n/a	a	Arrest report sent to submitting agency	b
Alaska	a	n/a	a	n/a	a	n/a	c	Electronic interface with foster parents licensing agency to notify of arrest or conviction	a*
Arizona	c	ACCT program participants*	c	ACCT program	a	n/a	c	Record flagged; submitter notified if disqualifying arrest occurs	c
Arkansas	c	Law enforcement applicants	c	Law enforcement applicants	a	n/a	b	n/a	b
California	b	n/a	c	Specified by statute	a	n/a	a	Submitting Agency notified elec. or by mail if card retained	c
Colorado	a	n/a	a	n/a	a	n/a	c	Flagged agencies are notified	a
Connecticut	c	Prints matched to AFIS	c	Newest applicant card retained	c	When a match isn't found in the criminal file	c	Some automatic notifications	a
Delaware									
Dist. Columbia									
Florida	b	n/a	b	n/a	n/a	n/a	n/a	n/a	n/a
Georgia	a	n/a	b	n/a	n/a	n/a	n/a	n/a	n/a
Hawaii	b	n/a	b	n/a	n/a	n/a	n/a	n/a	n/a
Idaho	b	n/a	b	n/a	n/a	n/a	n/a	n/a	n/a
Illinois	a	n/a	c	All cards retained except UCIA*	a	n/a	c	Automatically provided with revised rap sheet	b
Indiana									
Iowa	b	n/a	b	n/a	n/a	n/a	n/a	n/a	n/a
Kansas	a	n/a	a	n/a	a	n/a	b	n/a	b
Kentucky	b	n/a	b	n/a	b	n/a	b	n/a	n/a
Louisiana									
Maine	b	n/a	c	Prints submitted for Bd of Education checks	a	n/a	a	Manual notification	b
Maryland	a	n/a	c	State statute	a	n/a	c	Based on state law. MD arrests only	b
Massachusetts									
Michigan									

<b>Question</b>	<b>1a</b>	<b>1b</b>	<b>2a</b>	<b>2b</b>	<b>3a</b>	<b>3b</b>	<b>4a</b>	<b>4b</b>	<b>4c</b>
Minnesota	a	n/a	c	BCA staff/state technical staff that accesses BCA databases	a	n/a	a	By telephone	b
Mississippi									
Missouri									
Montana									
Nebraska	a	n/a	a	n/a	a	n/a	b	n/a	c
Nevada	c	Concealed weapons permits/school personnel	c	See 1b	c	See 1b	a	By mail	b
New Hampshire									
New Jersey	c	Trooper applicants*	c	State agency option	a	n/a	c	Flagged records/electronic notification	b
New Mexico	b	n/a	c	State police applicants only	c	New arrests searched only against state police applicants	c	State police applicants only	b
New York	c	Police officer applicants only	a	n/a	a	n/a	a	"Hit notice" sent to contributor	b*
North Carolina	b	n/a	c	Concealed weapon applicants	a	n/a	a	Local agency notified electronically	b
North Dakota	c	Concealed weapon applicants	c	See 1b	a	n/a	a	No. Dakota rap sheet/FBI's IDIS	b
Ohio	a	n/a	b	n/a	n/a	n/a	n/a	n/a	n/a
Oklahoma	a	n/a	c	If national fingerprint search required by state law	a	n/a	b	*	b
Oregon	c	All retained prints are searched	c	CJ applicants; those identified by state statute	a	n/a	c	Specified occupations; teletype notification	a
Pennsylvania	*								
Puerto Rico									
Rhode Island									
South Carolina									
South Dakota	c	Law enforcement applicants	c	LE applicant prints retained	a	n/a	c	Training/Cert Office notified; rap sheet printed*	b
Tennessee	a	n/a	b	n/a	b	n/a	b	n/a	c
Texas	a	n/a	c	Specified by state statute	a	n/a	a	Rap sheets mailed to applicant agencies	b
Utah	b	n/a	b	n/a	n/a	n/a	n/a	n/a	n/a
Vermont	c	Law enforcement applicants	b	n/a	n/a	n/a	n/a	n/a	n/a

<b>Question</b>	<b>1a</b>	<b>1b</b>	<b>2a</b>	<b>2b</b>	<b>3a</b>	<b>3b</b>	<b>4a</b>	<b>4b</b>	<b>4c</b>
Virgin Islands									
Virginia	c	Applicants added to database	c	Criminal justice applicants, firearms employees, racing commissioners	a	n/a	a	Form letter	b
Washington	c	Law enforcement applicants	c	CJ employees, contractor cards, personal ID, on-site vendors	a	n/a	b	n/a	b
West Virginia	c	10-print applicant cards	c	State police applicants who are eventually hired	a	n/a	a	Internal notification only	b
Wisconsin	b	n/a	b	n/a	b	n/a	b	n/a	b
Wyoming	a	n/a	c	Concealed weapon permit; CJ applicant	a	n/a	a	Central repository manages permits; CJ applicant and contributor	b

<b>Question</b>	<b>4d</b>	<b>4e</b>	<b>4f</b>	<b>5</b>	<b>6a</b>	<b>6b</b>	<b>6c</b>	<b>7a</b>	<b>7b</b>
Alabama	n/a	b	n/a	a	b	n/a	n/a	b	b
Alaska	n/a	a	Rap sheet shows "finger-prints on file"	a	a	n/a	Depends on circumstances such as severity of crime	b	b
Arizona	ACCT program	b	n/a	a	c	All accept ACCT program	Fingerprint submitter/DPS Fugitive Detail	b	b
Arkansas	n/a	b	n/a	a	a	n/a	Agency holding warrant	b	b
California	Peace officers	a	For peace officer applicant sub-missions	b	b	n/a	n/a	b	b
Colorado	n/a	b	n/a	a	a	n/a	Agency with warrant/CBI Fugitive Unit	b	b
Connecticut	n/a	b	n/a	a	b	n/a	n/a	b	b
Delaware									
Dist. Columbia									
Florida	n/a	n/a	n/a	n/a	a	n/a	Applicant agency/ entering agency	b	b
Georgia	n/a	n/a	n/a	n/a	b	n/a	n/a	b	b
Hawaii	n/a	n/a	n/a	n/a	b	n/a	n/a	b	b
Idaho	n/a	n/a	n/a	n/a	a	n/a	Confirm with originating agency/local agency enforces	b	b
Illinois	n/a	b	n/a	a	b	n/a	n/a	b	b
Indiana									
Iowa	n/a	n/a	n/a	n/a	b	n/a	n/a	b	b
Kansas	n/a	b	n/a	a	b	n/a	n/a	b	b
Kentucky	n/a	n/a	n/a	n/a	b	n/a	n/a	b	b
Louisiana									
Maine	n/a	b	n/a	b	b	n/a	n/a	b	b
Maryland	n/a	a	Ident/ Index System	a	b	n/a	n/a	b	b
Massachusetts									
Michigan									
Minnesota	n/a	b	n/a	c	c	BCA/state technical staff	Agency responsible for warrant	b	b
Mississippi									
Missouri									
Montana									
Nebraska	Upon request	b	n/a	a	a	n/a	Local police, requesting party	b	b

Question	4d	4e	4f	5	6a	6b	6c	7a	7b
Nevada	n/a	b	n/a	c	a	n/a	Felony, applicant agency & local LE; misdemeanor, applicant agency	b	b
New Hampshire									
New Jersey	n/a	b	n/a	c	b	n/a	n/a	b	b
New Mexico	n/a	b	n/a	a	a	n/a	State police chief's office	b	b
New York	n/a	a	Retained NCJ fingerprint transaction included on rap sheet response for any subsequent CJ print transaction	c*	a	n/a*	Fingerprint submitter and agency that entered the warrant	b	b
North Carolina	n/a	b	n/a	a	a	n/a	Local LE & agency w/ warrant	b	b
North Dakota	n/a	b	n/a	a	c	Concealed weapon applicants	Agency that entered warrant	b	b
Ohio	n/a	n/a	n/a	n/a	b	*	*	b	b
Oklahoma	n/a	a	Open record state	a	b	*	n/a	b	b
Oregon	n/a	a	All circumstances	a	b	n/a	n/a	b	b
Pennsylvania									
Puerto Rico									
Rhode Island									
South Carolina									
South Dakota	n/a	b	n/a	a	c	LE and gaming applicants	LE Training/Cert; Gaming Commission	b	b
Tennessee	n/a	b	n/a	b	c	Dictated by statute; currently only handgun permits	Dept. of Safety	b	b
Texas	n/a	c	Special inquiries	a	a	n/a	Issuing agency	b	b
Utah	n/a	n/a	n/a	n/a	a	n/a	Submitting entity	b	b
Vermont	n/a	n/a	n/a	n/a	c	LE applicants	Submitting CJ agency	b	b
Virgin Islands									
Virginia	n/a	b	n/a	a	b	n/a	n/a	b	b

<b>Question</b>	<b>4d</b>	<b>4e</b>	<b>4f</b>	<b>5</b>	<b>6a</b>	<b>6b</b>	<b>6c</b>	<b>7a</b>	<b>7b</b>
Washington	n/a	a*	LE employ- ment	a	b	n/a	n/a	b	b
West Virginia	n/a	b	n/a	a	c	Criminal justice purposes within agency only	Within agency	b	b
Wisconsin	n/a	b	n/a	b	c	All dept. new hires/ employees	Mgmt staff of division where new employee works	b	b
Wyoming	n/a	b	n/a	a	a	n/a	Agency holding warrant, applicant and contributor	b	b

<b>Question</b>	<b>8a</b>	<b>8b</b>
Alabama	b	n/a
Alaska	b	n/a
Arizona	b	n/a
Arkansas	b	n/a
California	b	n/a
Colorado	b	n/a
Connecticut	b	n/a
Delaware		
Dist. Columbia		
Florida	b	n/a
Georgia	b	n/a
Hawaii	b	n/a
Idaho	b	n/a
Illinois	b	n/a
Indiana		
Iowa	b	n/a
Kansas	b	n/a
Kentucky	b	n/a
Louisiana		
Maine	b	n/a
Maryland	b	n/a
Massachusetts		
Michigan		
Minnesota	b	n/a
Mississippi		
Missouri		
Montana		
Nebraska	b	n/a
Nevada	b	n/a
New Hampshire		
New Jersey	b	n/a
New Mexico	b	n/a
New York	b	n/a
North Carolina	b	n/a
North Dakota	b	n/a
Ohio	b	n/a
Oklahoma	b	n/a
Oregon	b	n/a
Pennsylvania		
Puerto Rico		
Rhode Island		
South Carolina		
South Dakota	b	n/a
Tennessee	b	n/a
Texas	b	n/a
Utah	b	n/a
Vermont	b	n/a
Virgin Islands		
Virginia	b	n/a
Washington	b	n/a
West Virginia	b	n/a
Wisconsin	b	n/a
Wyoming	b	n/a