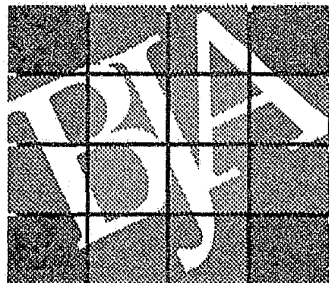


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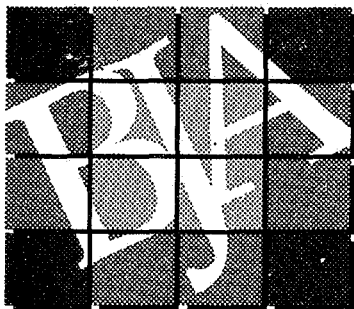
U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance



Bureau of Justice Assistance

Guidance for the Improvement of Criminal Justice Records

133015



Bureau of Justice Assistance

Guidance for the Improvement of Criminal Justice Records

133015

U.S. Department of Justice
National Institute of Justice

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December 10, 1991
NCJ 133015

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

Dear Colleague:

The Bureau of Justice Assistance is pleased to present the Guidance for the Improvement of Criminal Justice Records. This document contains guidance for the implementation of two provisions related to improving criminal justice records and reporting. The need for accurate and timely criminal justice records and reporting has become increasingly important as criminal justice and non-criminal justice agencies place greater reliance on these records as the basis for making decisions.

Section I provides guidance for the implementation of the provision enacted by the Crime Control Act of 1990 which requires that, beginning in FY 1992, States allocate five percent of their total formula grant award for the improvement of criminal justice records. The guidance defines the goals for this provision through the criteria for obtaining a waiver. A four step process for the development of the plan to meet those goals is outlined.

Section II provides guidance for the implementation of a requirement enacted through the Immigration Act of 1990 which requires the States to provide the Immigration and Naturalization Service with records of conviction of aliens. The implementation of this provision should benefit the States by removing criminal aliens from the country, thus reducing opportunities for recidivism and decreasing the costs of correctional supervision.

Appendix F contains a response to comments from the States on the draft guidelines. The responses provide an explanation of a number of provisions in the guidance and are included in the document to assist the user with the interpretation of the guidelines.

The Bureau of Justice Assistance looks forward to working in partnership with the States to implement these very important provisions.

Sincerely,

A handwritten signature in cursive script, reading "Jerry Regier".

Gerald (Jerry) P. Regier
Acting Director

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INTRODUCTION

The accuracy and completeness of criminal justice records has become an issue of national importance in recent years, driven in large part by the search for an effective means of limiting the sale of handguns to individuals with criminal records. Although the handgun issue has brought national attention to the need to improve criminal justice records, criminal justice and non-criminal justice agencies in the States are increasingly relying on these records as the basis for making decisions. The improvement of criminal justice records has often been a low priority for resources. Thus, many States must significantly improve the accuracy, completeness and timeliness of their record systems in order to meet the current and future demands being placed on them.

STATE LEGISLATION RELATED TO USE OF CRIMINAL HISTORY RECORDS

The importance of upgrading criminal justice records is underscored by the number of State laws which require or allow the use of information on an offender's past criminal behavior in making decisions. Criminal justice records, particularly criminal history records, are increasingly relied upon by the criminal justice system to make release and sentencing decisions, and by those outside the criminal justice system to make decisions regarding licensing, purchase of firearms and employment. Many States allow or require the use of criminal history information in making the following types of decisions:

- Pretrial release
- Upgrading of charges
- Sentence enhancements
- Eligibility for probation
- Correctional classification and supervision
- Eligibility for parole
- Purchase of firearms

FEDERAL LEGISLATION RELATED TO USE OF CRIMINAL HISTORY RECORDS

Federal legislation is also placing greater reliance on the use of criminal justice records in making decisions. For example, Section 6213 of the Anti-Drug Abuse Act of 1988 requires the Attorney General to develop a system for the immediate and accurate identification of felons who attempt to purchase firearms but who are ineligible to do so pursuant to Federal law. Those ineligible to ship, transport, possess or receive any firearm or ammunition affected by interstate or foreign commerce are defined by the Gun Control Act of 1968 (18 U.S.C. 922(g)) as any person who:

- has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year
- is a fugitive from justice
- is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act)

- has been adjudicated as a mental defective or who has been committed to a mental institution
- being an alien, is illegally or unlawfully in the United States
- has been discharged from the Armed Forces under dishonorable conditions
- having been a citizen of the United States, has renounced his citizenship

In November 1989, the Attorney General advised Congress of his recommendations for implementing this statute, based on a range of options developed by the Attorney General-appointed Task Force on Felon Identification in Firearm Sales. The Attorney General also noted that problems of inaccurate, incomplete and inaccessible criminal history records created a major obstacle to implementing the legislation. The Attorney General directed the Federal Bureau of Investigation (FBI), in conjunction with the Bureau of Justice Statistics (BJS), to develop voluntary reporting standards for State and local law enforcement. The Attorney General directed that since the most urgent need is to identify criminals, these standards should emphasize enhanced record-keeping for all arrests and convictions made within the last five years and in the future. The standards, which were published in the Federal Register on February 13, 1991, at page 5849-50, are found in Appendix A.

The Attorney General also implemented a nationwide Criminal History Record Improvement (CHRI) program to:

- Assist the States in improving the accuracy, completeness and timeliness of criminal history information residing at State central repositories
- Provide information to the FBI according to voluntary reporting standards
- Identify ineligible felons who attempt to purchase firearms.

The CHRI program, which provides \$27 million of the Bureau of Justice Assistance's (BJA) discretionary funds over a three year period, is administered by BJS. The new requirement for a five percent set-aside to improve criminal justice records complements and enhances the work initiated under the CHRI program.

STATUS OF STATE CRIMINAL JUSTICE RECORDS

Although the need for accurate criminal justice records is critical to the functioning of the criminal justice system, the quality of these records varies significantly across the country. A Survey of Criminal History Information Systems, published by BJS in March 1991, describes the status of State repository criminal history record files in 1989. The following is a sample of the findings from this survey:

- | | |
|----|---|
| 47 | States and the District of Columbia have automated some records in their criminal history records file or master name index |
| 10 | States have a fully automated criminal records file and master name index |
| 3 | States have no automated criminal history information |

- 23 States have final dispositions for at least 70 percent of arrests within the past five years
- 13 States currently flag some or all felony convictions
- 23 States and DC require prosecutors to report decisions to decline prosecution in criminal cases
- 41 States and DC require felony courts to report dispositions of felony cases
- 36 States require correctional agencies to report prison admission and release information on felony cases

PURPOSE OF THE GUIDANCE

This document provides guidance for the implementation of two requirements enacted in November 1990, which will help to focus attention and resources on the improvement of criminal justice records. The first provision requires the States to set aside five percent of the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant funds for the improvement of criminal justice records. The second provision requires the reporting of convictions of aliens to the Immigration and Naturalization Service (INS). Since both requirements address issues related to criminal justice records and should involve a coordinated planning effort, the guidance for the implementation of both requirements is presented in this document. Section I provides guidance for implementation of the five percent set-aside and Section II provides guidance for the INS reporting requirement.

SECTION I: GUIDANCE FOR IMPROVEMENT OF CRIMINAL JUSTICE RECORDS

INTRODUCTION

Section I of this document was prepared by BJA, in consultation with BJS, with input from State and local criminal justice practitioners, to provide guidance to the States on the effective implementation of the improvement of criminal justice records provision added to the Omnibus Crime Control and Safe Streets Act of 1968 as amended in FY 1990.

REQUIREMENT

The Crime Control Act of 1990 amended Part E of the Omnibus Crime Control and Safe Streets Act to require that each State which receives Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant funds allocate at least five percent of its total award for the improvement of criminal justice records. The improvements include the following:

- Completion of criminal histories to include the final dispositions of all arrests for felony offenses
- Full automation of all criminal justice histories and fingerprint records
- Frequency and quality of criminal history reports to the Federal Bureau of Investigation

This requirement for the five percent set-aside applies to the FY 1992 and subsequent Formula Grant awards.

In addition to the above improvements of criminal justice records, there are a variety of provisions which are of interest and concern to criminal justice practitioners as well as to public safety, such as criminal history checks for those wishing to purchase firearms or those who apply for jobs as day care workers. It is important to realize that the improvement of criminal justice records will lay the foundation for an increased reliance on these records for making decisions in the future. Section II of this document provides guidance for one such provision which was enacted into law in 1990.

IMPLEMENTATION

In order to make the most effective use of the five percent set-aside for the improvement of criminal justice records and to facilitate the implementation of both State and Federal legislation related to the use of criminal justice records, States must have a clear understanding of the current condition of their records systems and the problems associated with incomplete or inaccurate data and must have a commitment to and plan for the improvement of criminal justice records. The States are required to develop a criminal justice records improvement plan which must include the steps described below, although not necessarily in the order outlined. Planning and records improvement activities initiated under the Criminal History Record Improvement

Program or through State efforts should be built upon and incorporated into the planning process outlined below. States with an existing plan may submit that plan, with a supplement which addresses implementation of any new requirements not addressed in the current plan.

STEP I - ESTABLISHMENT OF A CRIMINAL JUSTICE RECORDS IMPROVEMENT TASK FORCE

Since complete and accurate criminal history records can only be achieved through the cooperative efforts of all components of the criminal justice system, BJA recommends that the States establish a Criminal Justice Records Improvement Task Force to guide the development and implementation of the records improvement plan. The Task Force should include representatives from the central repository and source agencies including: State and local law enforcement, prosecuting attorneys, the courts, local jails, State correctional facilities, and probation and parole agencies.

A Task Force with wide representation from throughout the system will provide a forum for exploring the range of possible options for improving criminal justice records in the State. The Task Force should review the results of the assessment and the problem identification phases described in steps II and III and should develop recommendations for the achievement of complete and accurate criminal justice records. Current legislation and administrative procedures related to reporting, maintenance and use of criminal justice records should be reviewed to determine if they are adequate. The Task Force should also review the use of an identification number or other means of tying disposition information to the appropriate arrest.

A list of Task Force members and the agencies they represent should be included in the plan. If components of the system listed above are not included in the Task Force, the plan should describe how input and participation was achieved. If a Task Force is not established, the State should institute other mechanisms to provide for the input and participation of all affected components of the criminal justice system. These mechanisms must be described in the plan.

STEP II - ASSESSMENT OF THE COMPLETENESS AND QUALITY OF CRIMINAL JUSTICE RECORDS

Each State must have a comprehensive data quality audit or assessment to serve as the basis for making informed decisions regarding improvements to the State's criminal justice records. The assessment must include a review of data quality and procedures related to the maintenance and reporting of criminal history information at the central repository and the source agencies, including law enforcement agencies, prosecuting attorneys, courts, probation, parole, departments of corrections and jails. In many States, the State Audit Office may be able to conduct the audit or assessment. Other States may want to consider contracting with an independent organization to perform the work. In some States the central repository may conduct all or part of the assessment under the guidance of the Criminal Justice Records Improvement Task Force. Information on conducting a data quality audit is available from BJS. Please refer to the list of reference documents found in Appendix B.

The assessment must result in a clear understanding of the following: how criminal history information is transmitted to the central repository; which agencies report regularly; how complete, accurate and timely the information is; and, what happens to it when it reaches the central repository. The assessment must be sufficient to show that the State has accurately measured the general level of data quality against the user requirements established by the Task Force and

has identified the data quality problems. Complete criminal history records must include the following types of information, which should be reviewed for completeness and accuracy during the assessment:

- Arrests
- Dispositions
- Correctional Status
- Felony Identification

To expedite this step, States which have an assessment completed under the Criminal History Records Improvement Program administered by the BJS or with State resources should use the assessment, if complete, or modify it to include new requirements.

For many States, the first step in the data quality assessment should be a users' needs assessment to identify the criminal history information requirements of criminal justice practitioners in the State. The users' needs assessment provides an opportunity for representatives from all components of the criminal justice system to become involved at the beginning of the planning process and offers them assurances that the enhancement of the records will enable them to obtain the information they need to do their jobs and that it will be complete and accurate. States which have not conducted a users' needs assessment within the past two years should incorporate this step into their required assessment.

BJA also recommends that throughout the assessment and planning process, States consider modifications and enhancements to their criminal records to implement the National Incident Based Reporting System (NIBRS) which will eventually replace the Uniform Crime Reporting (UCR) System administered by FBI.

STEP III - IDENTIFICATION OF THE REASONS FOR INCOMPLETE OR INACCURATE RECORDS

Criminal justice records may be incomplete or inaccurate for a variety of reasons which must be identified before solutions can be developed. The reasons for a particular agency or component of the system not reporting information to the central repository may be as varied as: a lack of resources; manual records which make information retrieval difficult; a need to modify automated systems; a need for training those who submit the information; a failure to see the benefits of complete records or a concern that the information will be used to compare the performance of individuals or agencies. The State must identify the reasons for incomplete or inaccurate records so that they can be addressed in the plan.

STEP IV - DEVELOPMENT OF A RECORDS IMPROVEMENT PLAN

Each State is required to develop a records improvement plan, which should serve as the blueprint for the implementation of the recommendations developed by the Task Force and as the basis for the distribution of funds. The plan must include the following elements:

- Description of the present criminal history system and the current status of criminal justice records in the State in terms of completeness, accuracy and timeliness
- Description of the problems and obstacles to complete criminal history records

- Recommendations for improving criminal justice records and addressing problems and obstacles to complete records
- Implementation strategy and schedule

The implementation strategy and schedule should specifically outline the steps that will be followed to implement the recommendations, the timeline for implementation and the allocation of resources. The plan should project the time and resources required to achieve complete criminal justice records and what will be accomplished each year until the goal is reached.

- Provisions to assure quality and timeliness in future data reporting.

The plan should describe the mechanisms which will be put in place to assure that source agencies comply with reporting requirements, that the data is timely, accurate and complete, and that reported data is entered accurately and in a timely fashion by the repository. Such mechanisms may include establishment of clearly defined reporting and data entry procedures (including the automation of reporting and data entry processes), provision for training to persons responsible for reporting and entering data, regular audits of the repository and representative samples of source agencies, remedies or sanctions for non-reporting, and the provision of adequate resources for the reporting and timely entry and maintenance of information.

ADMINISTRATIVE ISSUES

The five percent set-aside is subject to the same requirements and restrictions as the balance of the Formula Grant funds. Matching funds must be provided in the same proportion as for other Formula Grant funds. Compliance with the pass-through requirement is determined on the entire Formula Grant award, including the five percent set-aside. Thus, funds used by state agencies must be taken out of the State's share of the funds, unless a waiver from local units of government is obtained.

A portion of set-aside funds may be used for expenses associated with the data quality audit or assessment, the planning process and/or the development of the records improvement plan. States may request approval from BJA to use a portion of the set-aside for these purposes as a part of the application for Formula Grant funds or as a separate request. The request should describe how the funds would be used and indicate the amount that will be needed.

The balance of the set-aside may not be used until the State has a criminal record improvement plan approved by BJA. If the plan is not approved prior to or with the State's application for Formula Grant funds, the award will be made subject to a special condition requiring that the funds be set aside until a plan has been approved.

DUE DATE FOR SUBMISSION OF THE PLAN

A specific due date for submission of the criminal justice records improvement plan to BJA has not been established. States are at different stages in the development and improvement of criminal justice records. Some States have existing task forces and have already completed the data quality assessment and/or much of the planning. Other States are just beginning the process. States are allowed the time necessary to complete a rational planning process, but may not expend the set-aside funds until a plan is accepted or funds have been approved by BJA for use in developing the plan.

CRITERIA AND PROCEDURES FOR WAIVER OF SET-ASIDE FOR CRIMINAL RECORDS IMPROVEMENT

The Improvement of Criminal Justice Records provisions authorizes the Director of BJA, at the request of a State, to:

- Waive compliance with the five percent set-aside, or
- Authorize the State to reduce the minimum amount the State is required to allocate for records improvement

A waiver can be approved if the Director finds that the quality of the State's criminal justice records does not warrant the expenditure of the five percent set-aside.

A request for a waiver must demonstrate compliance with the criteria described in the table which follows. The criteria were established to define the three criminal justice records improvement factors identified in the legislation. The demonstration of compliance must be supported by an independent data quality audit. Independent audit is defined as an audit performed or supervised by an agency or entity other than the repository, such as the legislative audit office.

LEGISLATIVE REQUIREMENTS

Completion of criminal histories to include the final dispositions of all arrests for felony offenses.

CRITERIA TO DEFINE COMPLIANCE

Arrests

- 95% of current felony arrest records and fingerprints are complete

(Current is defined throughout this table as records initiated with an arrest on or after the effective date of this provision which is October, 1991).

(Complete records are defined as fully and accurately reflecting the underlying criminal justice transactions (arrest, charging, court disposition, etc.)

LEGISLATIVE REQUIREMENTS

Completion of criminal histories to include the final dispositions of all arrests for felony offenses.
(Continued)

CRITERIA TO DEFINE COMPLIANCE

Arrests (Continued)

- A reasonable attempt should be made to improve the availability of past records with a goal of achieving complete records for 90% of felony arrests during the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.

Dispositions

- 95% of current felony arrest records contain disposition information, if a disposition has been reached.

(Disposition is defined as case termination by release without charging, prosecutor declination or court adjudication)

- A reasonable attempt should be made to improve the availability of disposition information in past records with a goal of achieving disposition information for 90% of felony arrest records for the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.

Correctional Status

- 95% of current sentences to and releases from prison are available
- A reasonable attempt should be made to improve the availability of incarceration information in past records with a goal of achieving incarceration information for 90% of felony arrest records for the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.

LEGISLATIVE REQUIREMENTS

Completion of criminal histories to include the final dispositions of all arrests for felony offenses.
(Continued)

Full automation of all criminal justice histories and fingerprint records.

Frequency and quality of criminal history reports to the Federal Bureau of Investigation.

CRITERIA TO DEFINE COMPLIANCE

Felony Identification

- 95% of current arrest records identify felonies
- A reasonable attempt should be made to improve the flagging of felonies in existing records, with a goal of achieving felony identification for 90% of the offenses in the repository which occurred during the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.
- All criminal history records from the past 5 years have been automated.
- All master name index records from the past 5 years have been automated.
- New records for offenders with prior manual records are entered into the automated files (including the manual record).
- Procedures have been established to ensure that all records related to felony offenses are entered into the automated system within 30 days of receipt by the central repository and all other records are entered within 90 days.
- Fingerprints taken at arrest and/or confinement are submitted to the State repository and, when appropriate, to the FBI Identification Division (ID) within 24 hours. In single source States, the State repository shall forward fingerprints, when appropriate, to the FBI ID within two weeks of receipt.
- Final dispositions are reported to the State repository and, when appropriate, to the FBI ID within 90 days after the disposition is known.

(The words "when appropriate" are included in the above two compliance criteria in recognition of the fact that, when the National Fingerprint File is implemented, States that participate in Interstate Identification Index (III) will no longer submit arrests and dispositions (other than first arrest) to the FBI)

FORMULA GRANT APPLICATION REQUIREMENTS

Beginning in FY 1992, the Formula Grant application from each State must contain:

- A listing of programs to be funded with the five percent set-aside for criminal justice records improvement and a description of how they relate to the plan. If the State does not have an approved plan, the State's Formula Grant award will be made subject to a special condition prohibiting the State from making awards from the set-aside until the plan has been submitted to and approved by BJA.
- A description of progress made during the previous year toward addressing the factors used to measure compliance with the criminal justice records improvement provision. The factors are outlined in the section related to waivers of the set-aside for criminal justice records improvement. The description of progress should include an estimate of the beginning and current level of compliance with each factor.

An application for Formula Grant funds, which does not include a set-aside for the improvement of criminal justice records, will be considered an incomplete application, unless the State has requested and been granted a waiver.

SECTION II:

GUIDANCE FOR REPORTING ALIEN CONVICTIONS TO INS

INTRODUCTION

This section of the guidance was prepared by the Bureau of Justice Assistance in consultation with the Immigration and Naturalization Service (INS) and the Bureau of Justice Statistics (BJS), with input from State and local criminal justice practitioners. Its purpose is to provide guidance to the States on the effective implementation of a statute, enacted in November 1990, which requires the States to provide certified records of conviction of aliens to INS.

REQUIREMENT

The Immigration Act of 1990 changed Section 503 of the Omnibus Crime Control and Safe Streets Act to require that criminal justice records identify aliens so that conviction records can be shared with INS. It requires the States to have a coordination plan with INS as a condition for receipt of Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grants.

The following assurance, which must be signed as part of the application for Formula Grant funds, was added to the ten assurances already required by Section 503 of the Act:

An assurance that the State has established a plan under which the State will provide without fee to the Immigration and Naturalization Service, within 30 days of the date of their conviction, the certified records of conviction of aliens who have been convicted of violating the criminal laws of the State.

This provision applies to FY 1991 and subsequent Formula Grant awards. However, because there was inadequate time for BJA and INS to respond fully to this provision before Formula Grant applications were due on January 4, 1991, the States were required to assure in their application that they would provide a completed plan, in accordance with BJA guidance, within 120 days after the issuance of that guidance.

The implementation of this provision will help INS achieve its Criminal Alien Strategy Goals which are to:

- Systematically identify, locate and remove aliens not authorized to remain in the United States because of criminal activity
- Ensure the expeditious deportation of convicted criminals, consistent with due process requirements
- Create an effective deterrent to aliens seeking to enter the United States to engage in criminal activities

The achievement of these goals, will afford State and local agencies benefits in two ways. First, by deporting aliens upon release from prison, the potential for recidivist behavior is reduced. Second, States should realize a cost savings related to correctional supervision (probation/parole) as a result of the prompt deportation of convicted aliens who are not incarcerated. INS estimates that over 10 percent of the inmates in some State prison systems are foreign born and may be subject to deportation.

IMPLEMENTATION

For purposes of reporting to INS, conviction is defined as a final criminal conviction of aliens or suspected aliens by a court of competent jurisdiction for which the offender has been sentenced and all direct appeal rights have been exhausted or waived or the appeal period has lapsed. INS can deport many offenders convicted of felonies or certain misdemeanors. A list of deportable offenses appears in Appendix C. States are required to provide information on felony and deportable misdemeanor convictions. States which plan to report to INS through the central repository, but which do not collect information on misdemeanors, should address, in their plan, the feasibility of collecting information on deportable misdemeanors.

Aliens or suspected aliens are defined as offenders who hold a foreign citizenship or who are foreign born. The State is not required to investigate alien status but should forward conviction records for all suspected aliens to INS for verification.

Documents which should be forwarded by the State to the appropriate INS District Office include certified copies of:

- Judgement and Conviction Records
- Indictment Records

Documents must have a certification of authenticity under official seal by the custodian of the records or an authorized deputy. A transmittal form, developed by INS, is found in Appendix D and a list of INS District Offices is found in Appendix E. If a copy of the court records is attached to the transmittal form, only section A of the form is required to be completed. The forms indicate that certain data elements should be provided, if available. These data will assist INS with the deportation process and will reduce the need to request additional information from the courts. States are encouraged to provide them, if available.

States which have the information required by sections A and B of the transmittal form in the criminal history records maintained by the central repository may provide INS with printouts or electronic records, except as noted below. An individual at the central repository may be deputized by the court to certify the records of conviction as long as the process for transmission of disposition information from the courts to the repository provides for a secure system, one not subject to tampering. An individual in the central repository may be deputized by the court clerks of each court or by the Chief Justice for the State. Since INS District Offices are not equipped to accept an electronic transfer of records at this time, the State should provide the required records in printout form to the INS District Office until a system for the electronic reporting of information can be established. If INS requires additional information regarding a particular conviction, INS officers may request and receive without fee, certified alien criminal records from the court or, if available, from the central repository.

PLAN FOR REPORTING CONVICTED ALIENS

Each State is required to develop a plan for reporting convicted aliens which should describe current efforts, if any, to provide INS with certified records of conviction of aliens or suspected aliens, a review of alternative methods of reporting, recommendations for reporting, and an implementation strategy and schedule. The INS provision became effective in November of 1990 with the enactment of the Immigration Act of 1990. However, many States are not able to comply fully immediately. States which cannot comply fully with the requirement immediately, should implement a two-phased approach:

Phase I

This phase should target serious offenders and should be implemented immediately. At a minimum, the State should provide INS with certified records of conviction for aliens sentenced to prison, including those held in local jails awaiting placement in prison. If INS receives this information when the offender is sentenced or enters prison, the deportation hearing can be conducted and arrangements made to deport the offender as soon as the sentence has been served.

Phase II

This phase should provide for the establishment of mechanisms and procedures for the transfer to INS of records for all convicted aliens or suspected aliens. During this phase, such issues should be addressed as how aliens will be identified, where in the process this will occur (e.g., presentence investigation), and who will be responsible for providing the information to INS (e.g., the courts or the central repository). This phase should be addressed as part of the criminal justice records improvement plan, although it may be a separate section of the plan. The goal of the plan should be that at least 90% of the records of convictions contain information on the Place of Birth of the offender and, if available, the Citizenship and Alien Identification Number and that certified records of conviction for aliens or suspected aliens will be provided to INS within 30 days of final conviction.

DUE DATE FOR SUBMISSION OF THE PLAN

Each State was required to assure in its FY 1991 Formula Grant application that it would provide a completed plan for the implementation of the alien conviction reporting requirement within 120 days of issuance of guidance by BJA. A plan to implement at least Phase I, which requires the State to provide INS certified records of final conviction of aliens resulting in a sentence to prison, should be submitted to BJA within 120 days of the date of issuance of this guidance document. Phase II, which requires a plan for the reporting of all convicted aliens or suspected aliens, may be included in the criminal justice records improvement plan.

FORMULA GRANT APPLICATION REQUIREMENTS

Beginning in FY 1992, the Formula Grant application from each State must contain:

- An assurance that the State has established a plan or will establish a plan within the timeframes specified in the Guidance for the Improvement of Criminal Justice Records under which the State will provide without fee to the Immigration and Naturalization Service, within 30 days of the date of their final conviction, the certified records of conviction of aliens who have been convicted of violating the criminal laws of the State.
- A description of progress made during the previous year toward addressing the criteria used to measure compliance with INS reporting provisions. The description of progress should include an estimate of the beginning and current levels of compliance with the criteria.

An application for Formula Grant funds, which does not include an assurance that a plan has been completed or will be completed within the required timeframes, will be considered an incomplete application.

APPENDICES

Recommended Voluntary Standards for Improving the Quality of Criminal History Records Information

1. Every State shall maintain fingerprint impressions or copies thereof as the basic source document for each arrest (including incidents based upon a summons issued in lieu of an arrest warrant) recorded in the criminal history record system.
2. Arrest fingerprint impressions submitted to the State repository and the FBI Identification Division (ID) should be complete, but shall at least contain the following data elements: date of arrest, originating agency identification number, arrest charges, a unique tracking number (if available) and the subject's full name, date of birth, sex, race and social security number (if available).
3. Every State shall ensure that fingerprint impressions of persons arrested for serious and/or significant offenses are included in the national criminal history records system.
4. All disposition reports submitted to the State repository and the FBI ID shall contain the following: FBI number (if available), name of subject, date of birth, sex, State identifier number, social security number (if available), date of arrest, tracking number (if available), arrest offense literal, court offense literal, and agency identifier number of agency reporting arrest.
5. All final disposition reports submitted to the State repository and the FBI ID that report a conviction for an offense classified as a felony (or equivalent) within the State shall include a flag identifying the conviction as a felony.
6. States shall ensure to the maximum extent possible that arrest and/or confinement fingerprints are submitted to the State repository and, when appropriate, to the FBI ID within 24 hours; however, in the case of single-source States, State repositories shall forward fingerprints, when appropriate, to the FBI ID within two weeks of receipt.
7. States shall ensure to the maximum extent possible that final dispositions are reported to the State repository and, when appropriate, to the FBI ID within a period not to exceed 90 days after the disposition is known.
8. Every State shall ensure that annual audits of a representative sample of State and local criminal justice agencies shall be conducted by the State to verify adherence to State and Federal standards and regulations.
9. Whenever criminal history record information is collected, stored, or disseminated, each State shall institute procedures to assure the physical security of such information, to prevent unauthorized access, disclosure or dissemination, and to ensure that such information cannot be improperly modified, destroyed, accessed, changed, purged, or overlaid.
10. Every State shall accurately identify to the maximum extent feasible all State criminal history records maintained or received in the future that contain a conviction for an offense classified as a felony (or equivalent) within the State.

Reference Materials Related to Criminal Records Improvement

These documents have been or will be published by the Bureau of Justice Assistance (BJA) or the Bureau of Justice Statistics (BJS) and can be obtained by contacting the BJA Clearinghouse at 1-800-688-4BJA.

Survey of Criminal History Information Systems, BJS, March 1991.

Strategies for Improving Data Quality, BJS, April 1989.

Audit Manual for Criminal History Records Systems, BJS, December 1982 (To be reissued and updated, 1991).

Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms, BJS, October 1989.

Attorney General's Programs for Improving the Nation's Criminal History Records and Identifying Felons Who Attempt to Purchase Firearms, BJS, March 1991.

Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study, BJS, May 1990.

Planning for Automated Fingerprints Identification Systems (AFIS) Implementation (Monograph), BJA, 1988.

Compendium of State Privacy and Security Legislation, 1989 Overview, Privacy and Security of Criminal History Information, BJS, April 1990.

Criminal Justice "Hot" Files, BJS, November 1986.

Statutes Requiring the Use of Criminal History Records Information, BJS, June 1991.

Guide to Selecting Criminal Justice Microcomputers (Monograph), BJA, 1990.

Structured Systems Development Guidelines, BJA, 1990.

Criminal Grounds for Removal of Aliens

A. Criminal Grounds for Exclusion of Aliens

Criminal grounds for exclusion of aliens are enumerated in Section 212 of the Immigration and Nationality Act (INA). They are included in the following list which is not exhaustive. Involvement in terrorist activities and posing a threat to the security of the United States, for example, also constitute grounds for exclusion.

Crimes Involving moral turpitude (Crimes involving moral turpitude constitute grounds for removal of criminal aliens from the United States. However, there is no precise formula for determining which crimes involve "moral turpitude". A list of crimes involving moral turpitude are found in Section C.

Violation of (or conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substance Act [231 U.S.C. 802]). There are some exceptions to excludability based on commission of crimes involving moral turpitude and violations of controlled substance laws. These exceptions deal with juveniles and petty criminals, and can be found in Section 212 (a) (2) (A) (ii) of the INA.

Controlled substance traffickers

Prostitution and commercialized vice

Multiple criminal convictions (not necessarily crimes involving moral turpitude) for which the aggregate sentence of imprisonment imposed is five years or greater

B. Criminal Grounds for Deportation of Aliens

Criminal grounds for deportation of aliens are enumerated in Section 241 of the Act. They include the following which is not an exhaustive list. Failure to register under the Selective Service Act and falsification of documents, for example, also constitute grounds for deportation.

Crimes Involving moral turpitude (see Section C): requires conviction of such crimes within five years after the date of entry and that the alien is either incarcerated or sentenced to incarceration for one year or longer

Multiple criminal convictions for crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether the sentence includes incarceration, or whether the convictions were in a single trial

Convictions of an aggravated felony any time after entry. At any time after entry, a conviction of a violation or (or conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, other than a single offense involving possession for one's own use of thirty grams or less of marijuana (same definition of a controlled substance as for exclusion grounds)

Conviction at any time after entry, under any law, of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, in violation of any law, any weapon, part, or accessory that is a firearm or destructive device (as defined in Section 921 (a) of Title 18, United States Code)

Conviction under Chapter 37 (espionage), Chapter 105 (sabotage), Chapter 115 (treason and sedition), of Title 18, United States Code, for which a term of imprisonment of five years or more may be imposed

Conviction under Section 871 or 960 of Title 18, United States Code, violations of the Military Selective Service Act (50 U.S.C. App. 451 et seq.), and violations of Section 215 or 278 of the Act

The INA defines certain serious criminal offenses as aggravated felonies. There are severe immigration consequences that result from convictions for crimes that are defined as aggravated felonies. Eligibility for discretionary relief from deportation is severely limited for aliens convicted of aggravated felonies. Further, the INA provides for mandatory detention and expedited deportation proceedings against aliens convicted of such offenses, which include murder, drug trafficking, illicit trafficking in firearms or destructive devices, money laundering, violent crimes carrying a prison term of five years or more, or any attempt or conspiracy to commit such acts. See INA S 242A, 8 U.S.C. 1252a.

C. Crimes Involving Moral Turpitude

Generally, conviction of the following crimes may make an alien amenable to exclusion or deportation. This list is not all inclusive.

Crimes against the person

- Murder or intentional homicide
- Voluntary manslaughter
- Manslaughter (depends on degree)
- Homicide by reckless conduct
- Attempted murder

Crimes against the person *(continued)*

- Kidnapping
- Mayhem
- Assault with intent to commit murder
- Assault with intent to commit abortion
- Attempted assault, second degree (with intent to commit carnal abuse and rape)
- Indecent assault (falls short of rape)
- Atrocious assault and battery
- Carrying a concealed weapon with intent to use against the person of another
(where the intent to use the weapon is presumed)
- Assault in the second degree (with a weapon or other instrument likely to produce
grievous bodily harm)
- Assault with a deadly and dangerous weapon
- Assault (with a weapon likely to produce bodily harm)
- Rape
- Interfering with a law enforcement officer
- Attempting to obstruct or impede the progress of justice

Crimes against property

- Arson
- Blackmail
- Forgery
- Robbery
- Embezzlement
- Larceny
- Receiving stolen goods (with knowledge)
- Burglary
- Extortion
- Fraud
- Grand theft
- Transporting stolen property
- Malicious destruction of property
- Obtaining money by false pretenses
- Bribery of an amateur athlete
- Malicious trespass

Sexual and family crimes

- Practicing prostitution
- Maintaining a house of prostitution
- Renting rooms with knowledge that they were to be used for prostitution
- Adultery
- Bigamy
- Statutory rape
- Oral sexual perversion
- Soliciting commission of crimes against nature

Sexual and family crimes *(continued)*

- Soliciting people to engage in lewd or dissolute conduct
- Gross indecency
- Contributing to the delinquency of a minor (sexual acts)
- Taking indecent liberties with a child
- Incest
- Abandonment of a child

Crimes against the authority of government

- Alien smuggling, transporting, or harboring
- Defrauding the U.S. by falsely issuing a narcotics prescription
- Offering a bribe to a government official
- Making, passing, or possessing counterfeit coins
- Conspiracy to violate internal revenue laws
- Use mail to extort
- Possession of counterfeit obligations (with knowledge)
- Counterfeiting
- Conspiracy to pass counterfeit coins
- Smuggling merchandise
- Willful misapplication of funds of a savings and loan association
- Impersonating a federal officer
- False statements in the acquisition of a firearm
- False statements or entries
- Harboring a fugitive from justice
- Mail fraud
- Uttering and selling false or counterfeit immigration documents
- Influencing or injuring an officer, juror, or witness
- False statements to obtain a passport
- False statements under oath in an alien's application for permanent residence
- Perjury
- Theft from U.S. mails
- Interfering with trade and commerce by violence and threats
- Taking kickbacks
- Trafficking in narcotic drugs
- Knowingly failing to report income
- Union official unlawfully accepts a loan
- Violation of Selective Service Act (false statement)
- False statement to obtain unemployment benefits

INS Transmittal Forms

State of _____

Date Form Completed: * *

A. Biographic Information (Alien) *

Last Name		First Name	Middle Name	Immigration Number: (if known)
				A#:
Aliases (if any)				Social Security Number:
				Other I.D. No.: (FBI, SID, etc.)
Country of Birth	Country of Citizenship (if known)			Date of Birth
Last Known Place of Residence (Complete Address if Possible)				
Comments or Other Information				
Judge (if known)		Counsel for Defendant (if known)		

INSTRUCTIONS:

1. Complete each item as completely as possible to aid in locating any already existing INS record relating to subject.
2. Include in the "Comments" section of the Biographic Information block any further information that may aid in identifying subject. If subject is incarcerated, provide location of incarceration and projected release date. If subject has been placed on probation, provide the location of his probation office.
3. You may:

A. Complete Part "A" and submit this form together with a certified copy of the final conviction record (either direct appeal of right has been waived, or the appeal period has lapsed, or the appeal has been concluded). The conviction record consists of the complaint, indictment, judgement, sentencing order, and any other documents the state deems to be a part of the conviction record. The copy of the record of conviction must be certified by the custodian of the original record or by an authorized deputy.

OR:

- B. Complete Parts "A" and "B" of this form in lieu of submitting a certified copy of the conviction record.
4. Attach an addendum for each additional count.

Form

The public reporting burden for this collection of information is estimated to average five minutes per response for electronic transfer and one hour per response for manual reporting, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to the Bureau of Justice Assistance, 633 Indiana Avenue N.W., Washington, D.C., 20531; and to the Public Use Reports Project, 1121-0168 Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Complete Section B only if "Abstract" is to be used in lieu of submitting certified copies of "Final Conviction Record."
 (For all multi-count indictments please specify all counts for which convictions were received.)

B. Abstract of Conviction

Last Name		First Name		Middle Name	
Aliases (if any)					Date of Birth (mo) (day) (yr)
Name of Court: State		County		Court I.D. Number	
Judge (if known)			Counsel for Defense (if known)		
Charge (section of law violated)			Date of Offense		Date of Conviction
Description of Crime (please be specific; i.e., manslaughter, murder I, etc.)					Controlled Dangerous Substance and amount
Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/>					
Trial: (if known) Court <input type="checkbox"/> Jury <input type="checkbox"/> Plea <input type="checkbox"/>					Date of Imposition of Sentence
Sentence: (Please specify total sentence, period of incarceration, probation and suspension of sentence.)					Earliest Possible Release Date (if known)
Disposition of Appeal: Affirmed <input type="checkbox"/> Reversed <input type="checkbox"/> Waived <input type="checkbox"/> Appeal Period Expired <input type="checkbox"/> Other (i.e., Deferred Judgement) <input type="checkbox"/> Explain:					
Parole Violation: (prior or present) Yes <input type="checkbox"/> No <input type="checkbox"/>					
Prior Conviction Record Yes <input type="checkbox"/> No <input type="checkbox"/> Prior Conviction Case Number:					
I hereby certify that the information contained in this abstract of judgement is a true and correct copy of the information contained in the original record of conviction.					
Signature			Clerk of Court or Authorized Deputy (specify)		Date

INS DISTRICT OFFICES

DISTRICT

DISTRICT DIRECTOR
620 EAST 10TH AVENUE
SUITE 102
ANCHORAGE, ALASKA 99501
(907) 271-3105

DISTRICT DIRECTOR
2035 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004
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DISTRICT DIRECTOR
300 NORTH LOS ANGELES STREET
ROOM 7122
LOS ANGELES, CALIFORNIA 90012
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DISTRICT DIRECTOR
880 FRONT STREET
ROOM 2-N-2
SAN DIEGO, CALIFORNIA 92188
(619) 557-6011

DISTRICT DIRECTOR
APPRAISER'S BUILDING
630 SANSOME STREET
ROOM 232
SAN FRANCISCO, CALIFORNIA 94111
(415) 705-4560

DISTRICT DIRECTOR
ALBROOK CENTER
4730 PARIS STREET
DENVER, COLORADO 80239
(303) 371-3841

JURISDICTION

ALASKA

ARIZONA
NEVADA

CALIFORNIA COUNTIES: LOS ANGELES,
ORANGE, RIVERSIDE, SAN BERNARDINO,
SAN LUIS OBISPO, SANTA BARBARA, AND
VENTURA

CALIFORNIA COUNTIES: IMPERIAL, SAN
DIEGO

CALIFORNIA COUNTIES: ALAMEDA, ALPINE,
AMADOR, BUTTE, CALAVERAS, COLUSA,
CONTRA, COSTA, DEL NORTE, EL DORADO,
FESNO, GLENN, HUMBOLDT, INYO, KERN,
KINGS, LAKE, LASSEN, MADERA, MARIN,
MARIPASO, MENDOCINO, MERCED, MODOC,
MONO, MONTEREY, NAPA, NEVADA, PLACER,
PLUMAS, SACRAMENTO, SAN BENITO, SAN
FRANCISCO, SAN JOAQUIN, SAN MATEO,
SANTA CLARA, SANTA CRUZ, SHASTA,
SIERRA, SISKIYOU, SOLANO, SONOMA,
STANISLAUS, SUTTER, TEHAMA, TRINITY,
TULARE, TUOLUMNE, YOLO, AND YUBA.

COLORADO
UTAH
WYOMING

DISTRICT

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ROOM T-8037
NEW ORLEANS, LOUISIANA 70113
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PORTLAND, MAINE 04103
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BALTIMORE, MARYLAND 21201
(301) 962-7449

DISTRICT DIRECTOR
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GOVERNMENT CENTER ROOM 706
BOSTON, MASSACHUSETTS 02203
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DISTRICT DIRECTOR
FEDERAL BUILDING
333 MOUNT ELLIOTT STREET
DETROIT, MICHIGAN 48207
(313) 226-3270

JURISDICTION

FLORIDA

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NORTH CAROLINA
SOUTH CAROLINA
ALABAMA

HAWAII
GUAM
MARIANA ISLANDS

ILLINOIS
INDIANA
WISCONSIN

LOUISIANA
ARKANSAS
MISSISSIPPI
TENNESSEE
KENTUCKY

MAINE
VERMONT

MARYLAND

CONNECTICUT
NEW HAMPSHIRE
MASSACHUSETTS
RHODE ISLAND

MICHIGAN

DISTRICT

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DISTRICT DIRECTOR
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OMAHA, NEBRASKA 68144

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DISTRICT DIRECTOR
U.S. COURT HOUSE
68 COURT STREET
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(716) 846-4751

DISTRICT DIRECTOR
26 FEDERAL PLAZA
SUITE 14-100
NEW YORK, NEW YORK 10278
(212) 264-5821

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1240 EAST NINTH STREET
CLEVELAND, OHIO 44199
(216) 522-4774

DISTRICT DIRECTOR
FEDERAL OFFICE BUILDING
511 NORTHWEST BROADWAY
ROOM 406
PORTLAND, OREGON 97209
(503) 326-2168

JURISDICTION

(ST. PAUL DISTRICT)
MINNESOTA
NORTH DAKOTA
SOUTH DAKOTA

KANSAS
MISSOURI

MONTANA
IDAHO COUNTIES EXCEPT: BENEWAH,
BONNER, BOUNDARY, CLEARWATER, IDAHO,
KOOTENAI, LATAH, LEWIS, NEZ PERCE, AND
SHOSHONE; ALSO, OVER THE UNITED
STATES IMMIGRATION OFFICES LOCATED IN
CALGARY, ALBERTA AND CANADA.

IOWA
NEBRASKA

NEW JERSEY

NEW YORK STATE EXCEPT THAT PART
WITHIN JURISDICTION OF NEW YORK
DISTRICT

NEW YORK COUNTIES: BRONX, DUTCHESS,
KINGS, NASSAU, NEW YORK, ORANGE,
PUTNAM, QUEENS, RICHMOND, ROCKLAND,
SUFFOLD, SULLIVAN, ULSTER, AND
WESTCHESTER; ALSO, U.S. IMMIGRATION
OFFICES LOCATED IN HAMILTON, BERMUDA.

OHIO

OREGON

DISTRICT

DISTRICT DIRECTOR
1600 CALLOWHILL STREET
PHILADELPHIA, PENNSYLVANIA 19130
(215) 597-7345

DISTRICT DIRECTOR
GPO BOX 5068
SAN JUAN, PUERTO RICO 00936
(809) 766-5053

DISTRICT DIRECTOR
8101 NORTH STEMMONS
DALLAS, TEXAS 75247
(214) 655-3025

DISTRICT DIRECTOR
P.O. BOX 9398
EL PASO, TEXAS 79984
(915) 534-6615

JURISDICTION

PENNSYLVANIA
DELAWARE
WEST VIRGINIA

PUERTO RICO
U.S. VIRGIN ISLANDS

OKLAHOMA
TEXAS COUNTIES: ANDERSON, ANDREWS, ARCHER, ARMSTRONG, BAILEY, BAYLOR, BORDEN, BOSQUE, BOWIE, BIRISCOE, CALLAHAN, CAMP, CARSON, CASS, CASTRO, CHEROKEE, CHILDRESS, CLAY, COCHRAN, COLLINGSWORTH, COMANCHE, COOKE, COTTLE, CROSBY, DALLAM, DALLAS, DAWSON, DEAF SMITH, DELTA, DENTON, DICKENS, DONLEY, EASTLAND, ELLIS, ERATH, FANNIN, FISHER, FLOYD, FOARD, FRANKLIN, FREESTONE, GAINES, GARZA, GRAY, CRAYSON, GREGG, HALE, HALL, HAMILTON, HAMSFORD, HARDEMAN, HARRISON, HARTLEY, HASKELL, HEMPHILL, HENDERSON, HILL, HOCKLEY, HOOD, HOPKINS, HOUSTON, HOWARD, HUNT, HUTCHINSON, JACK, JOHNSON, JONES, KAUFMAN, KENT, KING, KNOW, LAMAR, LAMB, LEON, LIMESTONE, LIPSCOMB, LUBBOCK, LYNN, MARION, MARTIN, MITCHELL, MONTAGUE, MOORE, MORRIS, MOTLEY, NAVARRO, NOLAN, ORCHILTREE, OLDHAM, PALO PINTO, PANOLA, PARKER, PARMER, POTTER, RAINS, RANDALL, RED RIVER, ROBERS, ROCKWALL, RUSK, SCURRY, SHACKELFORD, SHERMAN, SMITH, SOMERVELL, STEPHENS, STONEWALL, TERRY, THROCKMORTON, TUTUS, UPSHUR, VAN ZANDT, WHEELER, WICHITA, WILLBARGER, WISE, WOOD, YOAKUM, AND YOUNG.

NEW MEXICO
TEXAS COUNTIES: BREWSTER, CRANE, CULBERSON, ECDTOR, EL PASO, HUDSPETH, JEFF DAVIS, LOVING, MIDLAND, PECOS, PRESIDIO, REEVES, TERRELL, UPTON, WARD, AND WINKLER.

DISTRICT

DISTRICT DIRECTOR
2102 TEEGE STREET
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DISTRICT DIRECTOR
509 NORTH BELT
3RD FLOOR
HOUSTON, TEXAS 77060

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DISTRICT DIRECTOR
4420 NORTH FAIRFAX DRIVE
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ARLINGTON, VIRGINIA 2220
(202) 307-1594

DISTRICT DIRECTOR
815 AIRPORT WAY SOUTH
SEATTLE, WASHINGTON 98134
(206) 553-7924

JURISDICTION

TEXAS COUNTIES: BROOKS, CAMERON, HIDALGO, KENNEDY, KLEBERG, STARR AND WILLACY

TEXAS COUNTIES: ANGELINA, AUSTIN, BRAZORIA, CHAMBERS, COLORADO, FORT BEND, GALVESTON, GRIMES, HARDIN, HARRIS, JASPER, JEFFERSON, LIBERTY, MADISON, MATAGORDA, MONTGOMERY, NACOGDOCHES, NEWTON, ORANGE, POLK, SABRINE, SAN AUGUSTINE, SAN JACINTO, SHELBY, TRINITY, TYLER, WALKER, WALLER, WASHINGTON, AND WHARTON.

TEXAS COUNTIES: ARANSAS, ATASCOSA, BANDERA, BASTROP, BEE, BELL, BEXAR, BLANCO, BRAZOS, BROWN, BURLESON, BURNET, CALDWELL, CALHOUN, COKE, COLEMAN, COMAL, CONCHO, CORYELL, CROCKETT, DE WITT, DIMMITT, DUVAL, EDWARDS, FALLS, FAYETTE, FRIO, GILLESPIE, GLASSCOCK, GOLIAD, GONZALES, GUADALUPE, HAYS, IRION, JACKSON, JIM HOGG, JIM, WELLS, KARNES, KENDALL, KERR, KIMBLE, KINNEY, LAMPASAS, LA SALLE, LAVACA, LEE, LIVE OAK, LLANO, MCCULLOCH, MCLENNAN, MCMULLEN, MASON, MAVERICK, MEDINA, MENARD, MILAM, MILLS, NUECES, REAGAN, REAL FEFUGIO, ROBERTSON, RUNNELS, SAN PATRICIO, SAN SABA, SCHLEICHER, STERLING, SUTTON, TOM GREEN, TRAVIS, UVALDE, VAL VERDE, VICTORIA, WEBB, WILLIAMSON, WILSON, ZAPATA, ZAVALA.

(WASHINGTON DISTRICT)
DISTRICT OF COLUMBIA
VIRGINIA

WASHINGTON
IDAHO COUNTIES: BENEWAH, BONNER, BOUNDARY, CLEARWATER, IDAHO, KOOTENAI, LATAH, LEWIS, NEZ PERCE AND SHOSHONE; ALSO, U.S. IMMIGRATION OFFICES LOCATED IN THE PROVINCE OF BRITISH COLUMBIA AND CANADA.

Comments from Review of Draft Guidance for the Improvement of Criminal Justice Records

In early June 1991, the Bureau of Justice Assistance distributed a draft guidance document, at that time called the Guidance for Implementation of New Provisions Related to Criminal Records and Reporting to INS, to State and local criminal justice agencies and associations for review. The following is a summary of the comments received and BJA's response to each comment. The responses explain how the issue was addressed, provide an interpretation of specific provisions in the guidelines or explain why a recommended change was not made.

SUBJECT: FIVE PERCENT SET-ASIDE FOR CRIMINAL RECORD IMPROVEMENT

COMMENT RECEIVED

States should be allowed to use the five percent set-aside to perform the planning functions, especially the quality audits and needs assessments (If necessary).

* * *

It is not practical to require a full plan with identified programs for funding in the FY 1992 application.

* * *

The five percent should be excluded from the pass-through requirement. The guidelines should clarify if the five percent set-aside must be considered separate from the pass-through or be included in the State portion.

* * *

BJA RESPONSE

The guidelines have been changed to allow States to submit a request to use part of the five percent set-aside for planning functions.

There is no deadline for the plan. States are at varying stages in the improvement of their records systems. Some States may be in full compliance with the requirements and will request a waiver during the first year. Other States may require a year or two to complete the planning process, with implementation extending over a number of years.

General Counsel finds no basis for excluding the five percent from the pass-through. Any funds used by local units of government to improve their records or reporting would count against the pass-through requirement. States can obtain waivers from local units of government if necessary.

COMMENT RECEIVED

Does the five percent require match?

* * *

Obtaining matching funds, especially to develop the plan will be difficult for many States and match will not be available until July, 1993.

* * *

Acknowledge in the guidelines that similar steps previously taken by States may be substituted for steps specified. Does participation in the criminal history record improvement program satisfy some of the audit-assessment requirements?

* * *

The guidelines should require the plan to indicate how the information and reports generated from the system will be used to improve the formulation of policy and allocation of resources.

* * *

Allow States sufficient time to implement each phase of the program. Allow each State to determine its planning process.

* * *

Grant a waiver to States which make a good faith effort to collect the data but are unable to due to situations beyond their control.

* * *

Are juveniles included in the definition of "final dispositions of all arrests for felony offenses"? Fingerprints of minors cannot be placed in the automated fingerprint system unless waived to adult court.

* * *

BJA RESPONSE

Yes, the matching requirement is the same for these funds as for other program funds. This has been clarified in the guidelines.

The State should request approval to use overmatch from other projects, if appropriate. If match is assured, Federal funds can be used prior to receiving match.

Planning and records improvement activities initiated under the Criminal History Record Improvement (CHRI) Program or through State initiatives should be built upon and incorporated into the planning process outlined in the guidelines. The CHRI program and the requirements related to the five-percent set aside are complementary.

This is a laudable goal but not a requirement of the legislation.

The guidelines provide considerable flexibility to the States to determine the planning process and a reasonable implementation timetable.

BJA does not have the authority to grant a waiver for good faith effort. The State must continue to work toward the goals until achieved.

This provision only applies to the records required to be maintained by the central repository. States are not required to add juvenile or misdemeanor records not required by State law.

COMMENT RECEIVED

Does the five percent requirement apply to Federal funds only or State/Federal funds?

The guidelines need to be clarified to indicate what is required and what is merely recommended. Many of the "shoulds" in the guidelines should be changed to "must".

While primary responsibility for criminal histories and reporting lies with the executive branch of government, the courts are essential sources of information. Plans for utilization of funds set aside for implementation should therefore be subject to approval of the Chief Justice in each State or the Chief Justice's designated representative.

The final element (provision to ensure data quality) under Step IV should include a requirement that reported data be entered accurately and in a timely fashion by the repository.

Funding to local law enforcement agencies, DA's, courts and corrections will be required to obtain accurate and timely submission of CHR for all reporting agencies. Some statute changes would be necessary to require fingerprint cards on all arrests, to require the district court to advise the repository when all appeals have been exhausted, to require fingerprinting of all persons charged, whether arrested or not, and to mandate sanctions for failure to report.

BJA RESPONSE

The requirement applies to the Federal funds only, but they must be matched.

The guidelines are written to provide guidance to the States on the implementation of the new provisions, while providing the States with enough flexibility to address their needs. BJA has reviewed the guidelines and changed the language to indicate which requirements are mandatory.

The guidelines recommend the establishment of a criminal justice records improvement task force with representation from the courts. Although judicial approval is not required, the language in the guidelines has been changed to clarify the importance of participation by the repository, the courts and all other source agencies. Because the required improvements cannot be implemented without the cooperation and involvement of all of these entities, BJA will carefully review the level of participation before approving the plan.

The guidelines have been changed to include this requirement.

The five percent set-aside may be used for costs related to the accurate and timely reporting of criminal history records.

COMMENT RECEIVED

The 90 percent completeness criterion for past records should be established as a requirement.

While full automation of criminal histories from the past five years is an ideal goal, the costs to each prosecuting and police agency would be prohibitive. Suggest a more modest time frame (2 years).

Several references are made about the difficulty in meeting the FBI Voluntary Standards for Improving the Quality of Criminal Justice Records Information.

Apparently, BJA envisions that the independent data quality audit will be a more rigorous review than the assessment required as part of the plan development.

Independent audit should be defined as one which is performed or supervised by some agency or entity other than the repository.

BJA RESPONSE

States should try to complete records for the past five years. However, it is more important to concentrate on current records to ensure that all future records are complete. If the State has made substantial improvement of past records but is unable to obtain certain records (e.g., useable fingerprint cards are not available) or if the costs of completing the remaining records are prohibitive, BJA may consider approval of the waiver.

The requirement related to full automation requires that the central repositories automate all manual records in their possession for the past five years. It does not require any action on the part of prosecuting or police agencies.

These guidelines do not require implementation of the FBI Voluntary Standards. They are provided as an appendix for reference purposes only. As States are improving their criminal history records systems, they may also want to consider compliance with the Voluntary Standards.

The initial assessment need not be as rigorous as the final audit. The purpose of the initial assessment is to provide the State with sufficient information about the quality and completeness of their records to develop a plan. For example, it is important to know that approximately 30 percent of the records contain dispositions rather than 80 percent. However, the plan which the State develops will not be affected if that figure is off by a few percentage points. A more rigorous audit of the records is required to support a request for a waiver of the five percent set-aside.

The guidelines have been changed to clarify that issue.

COMMENT RECEIVED

The guidelines should describe the scope and nature of the data quality audit that will be required, the methods that must be utilized and the reliability of audit results necessary to establish compliance.

References to "State audit office" should be changed to the "State agency responsible for performance audits".

"Dispositions" should be defined to mean case termination by release without charging, prosecutor declination or court adjudication.

The reference to the National Incident Based Reporting System should be deleted since it has nothing to do with the improvement of criminal history records.

The compliance criteria appear to be unrealistically high, particularly if applied on October 1, 1991. Establish a lower initial level that would increase over a period of time. Criteria to Define Compliance should be changed from October 1, 1991 to January 1, 1993.

BJA RESPONSE

BJA will provide the States with guidance on performing data quality audits. Some work has already been done by BJS and others which will be helpful to the States. BJA is also considering developing training for state auditors or those in the States responsible for overseeing an audit conducted by outside organizations.

State Audit Office refers to the office responsible for conducting either financial or performance audits regardless of the official agency title in the State.

That definition has been added to the guidelines.

The reference to the National Incident Based Reporting System is included as a reminder that there are other efforts underway which will affect criminal records in the States and that these should be considered throughout the planning process to ensure that the system changes implemented to meet this requirement are compatible with and facilitate other required changes or enhancements.

The criteria are applied to records beginning with arrests made on or after October 1, 1991, because that is the effective date of the legislation. States which are still in the planning phase on that date should make provisions in the implementation strategy to retrieve unreported information for this period. The guidelines provide greater flexibility relative to records for the previous five years. States are required to make a reasonable attempt to improve these records, but BJA can waive or reduce this requirement if the time or costs involved exceed the benefits.

SUBJECT: REPORTING OF ALIEN CONVICTIONS TO INS

COMMENT RECEIVED

It is becoming increasingly burdensome and counterproductive to State and local drug enforcement efforts dealing with the increasing number of special conditions and requirements being imposed by Congress and OJP concerning use of these Federal Formula Grant monies. The requirement to begin reporting convictions of possible aliens to the INS is an example in which States must expend considerable sums of money, which could be better targeted for local drug enforcement efforts, to address what is essentially a Federal responsibility. Termination of the Formula Grant funds because of non-compliance with the INS requirement is a high penalty. The entire program has digressed from voluntary to mandatory and these unsolicited changes will damage the good working relationship between the States and DOJ.

The law provides that the States must provide alien conviction information to INS without fee. This approach departs from established Congressional precedents recognizing that the costs of additional information-supplying burdens placed upon the States by Federal law should be paid by the Federal agencies that benefit from the information. Federal funding (separate from the Formula Grant funds) should be provided to support the costs for State and local agencies to assist the INS in fulfilling its mandate.

Given the expense involved in meeting the INS requirements, INS should provide an assessment of its ability to act upon the conviction data provided by the States. Does INS have a list of deportable offenses?

BJA RESPONSE

The deportation of convicted aliens should benefit the States by reducing the potential for recidivist behavior by aliens who have been deported. The States should also realize a reduction in the costs of correctional supervision (probation and parole) as a result of the prompt deportation of convicted aliens.

The guidelines provide as much flexibility as possible in an effort to reduce the burden on the States.

BJA must implement the law as written but has tried to make the guidelines flexible enough to allow the States to establish a reporting mechanism which causes minimal burden.

The Senate Crime Bill, if passed, would create a Criminal Alien Identification and Removal Fund, which would provide funds to INS to assist it in the identification, investigation, apprehension, and deportation of aliens who have committed an aggravated felony. Ten percent of the monies from the fund may be distributed to the States to assist with the identification of aliens and reporting of convictions. Hopefully some funding will be available to the States in the future to assist with any burden.

The expeditious deportation of criminal aliens is a priority at INS and the agency is working to maximize its efforts to deport offenders. A list of deportable offenses is included as an appendix to the guidelines.

COMMENT RECEIVED

The States should be allowed to utilize the five percent set-aside to meet the INS requirements.

The guidelines should provide for a single repository of all criminal justice data to meet both requirements.

The required reporting for both INS and criminal justice records should be consistent. More information and a broader range of convictions is required for INS reporting than is recommended for criminal history records.

The State central repository does not collect information on misdemeanors. Requiring the reporting of misdemeanors will require a major investment in time and resources.

At what stage in the process and in what agency should alien status be determined?

BJA RESPONSE

The purpose of the five percent set-aside, required under a separate statute, is to improve criminal records. Only incidental expenses associated with the implementation of the INS reporting requirement will be allowed.

This is not required, but a State could decide to implement this recommendation through the planning process.

Data not required in criminal records upgrade has been made optional.

Information on deportable misdemeanor convictions should be provided. See Appendix C of the Guidelines for a list of deportable offenses. INS can and will deport offenders convicted of deportable misdemeanor offenses. States which plan to report to INS through the central repository but which do not collect information on misdemeanors should address, in their plan, the feasibility of collecting information on deportable misdemeanors.

The States are asked to provide data concerning place of birth or citizenship only. INS will make the determination of alien status. Each State should identify the stage in the process where information on place of birth or citizenship will be collected during the planning process and should define responsibilities in the plan.

COMMENT RECEIVED

Phase II of the INS plan lacks any clear form of a model or proposed plan. Given this lack of "experience data", we are unable to determine true impact or ramifications on the repository but believe it will be significant.

Recommendation: Implementation should be delayed to allow for the creation of a committee consisting of INS, State repository directors, State and Federal judges and court clerks, State planning agency personnel and other appropriate persons.

* * *

The planning process for the INS requirement should be separated from the planning for criminal justice records improvement.

BJA RESPONSE

Under the statute as enacted, BJA has no authority to delay implementation. Since the method of implementation may vary from States to State, the task forces in each State should determine the best method of meeting this requirement rather than establishing a national task force to make recommendations which will affect all States.

Since both of the new requirements deal with criminal records, the planning should be done together to ensure a coordinated response. The actual means of implementation could be done on totally separate tracks. For example, a State could decide to provide hard copies of the alien information directly from the courts. However, if the planning for both provisions is done jointly, States which are making changes in their central repository records may find it to be most efficient to include the new elements required by INS so that reporting can be done by the central repository.

* * *

It will be difficult to meet the 30 day reporting requirement because sentencing often does not take place within that timeframe. Some appeal rights cannot be waived, and these appeals may take years. Are States expected to provide conviction information and provide follow-up sentencing information?

Recommendation: Convictions should be reported after the date of sentencing and then only 30 days after receipt by the agency responsible for reporting to the INS.

Recommendation: Report the convictions/sentences to INS and have INS require the offender to demonstrate that an appeal has been perfected and filed.

Convictions need not be reported to INS until 30 days after the offender has been sentenced and all appeals have been exhausted or waived or the appeal period has lapsed. States with the capability are encouraged to report at the time of arrest with updates at conviction and sentencing.

Recommendation #1, whereby the State reports convictions after the date of sentencing and within 30 days after the date of receipt by the agency responsible for reporting to INS, is acceptable to INS as long as INS is notified if an appeal is filed and is provided with updated information when it becomes available.

* * *

COMMENT RECEIVED

The requirement that the records be certified by the court or a person at the central repository deputized by the court is a problem (e.g. NY has 1,200 courts of jurisdiction). The documents are coming directly from a State agency whose job it is to process criminal history record information. No other local, State or Federal agency to which CHRI is sent requires this confusing certification. Why INS? Repositories do not have judgments of convictions.

Recommendation: Require that a person at the central repository certify that the record is a true and accurate representation of the records in the repository files.

It is not clear which data elements on the transmittal forms are mandatory and which are optional.

Citizenship is not collected. Reporting formats would have to be changed (e.g. Since NY receives 600,000 fingerprint cards annually, changing computer programs would require two years and significant cost.)

Recommendation: Modify the FBI arrest fingerprint card to collect citizenship data.

One State indicated that reporting formats would have to be changed to include place of birth and one State collects place of birth for actual or suspected aliens only).

BJA RESPONSE

The law requires that certified records be submitted to INS. The records must be certified for use in court. As long as the process for transmission of conviction records from the courts to the central repository preserves the integrity of the records and ensures that they are not subject to tampering, the repository should be able to certify as to the accuracy of the records provided to INS. If the records are challenged in court, both the person from the court responsible for submitting the records to the repository and the person in the repository who certifies the records submitted to INS may be called to testify in court. If the method of transmission between the court and the repository does not provide for the accurate reporting of disposition information, the State should address this issue under the criminal justice records improvement program.

* * *

The forms have been revised to indicate which information should be provided, if available, to assist INS with the deportation process and reduce the need to request additional information from the courts.

* * *

If the records include information on country of citizenship, it should be included. If citizenship is not available, INS will use place of birth to investigate alien status.

* * *

Place of birth or citizenship must be identified but need not be reported for offenders not suspected of being an alien.

* * *

COMMENT RECEIVED

Most States do not collect:

- Immigration Number
- Counsel for Defendant
- Judges Name
- Controlled Dangerous Substance and Amount
- Trial
- Earliest Possible Release Date

BJA RESPONSE

Immigration number, defense counsel, judge, trial and release date should be provided to INS if available to assist it with the deportation process and to reduce the need to request additional information from the courts. The type and amount of controlled substance are required to determine deportability. The earliest possible release date is needed so INS can process the case prior to the date of release from incarceration. States which do not currently collect this information should address the feasibility of collecting this information during their planning process.

Central repositories should be required to submit the information requested in section A. INS should determine which offenders are aliens and request additional information on these offenders.

Based on feedback from the States that certain information would be difficult to obtain, the guidelines have been changed to make those elements optional. Thus, the repositories in most States should be able to provide all of the required information, generally eliminating the need for INS to obtain information from the courts.

The guidelines suggest that the repositories can do the required reporting to INS. The most logical way to implement the INS reporting requirement in most States may be to have the judiciary report directly to INS. They have all of the necessary information.

The guidelines do not require that reporting be done through the repositories. It is offered as an option for States which find this the most efficient way of reporting. The planning process should identify the best method of reporting for that State. The guidelines offer the flexibility to use any reasonable method of reporting.

What is the purpose for indictment records. The repository does not have indictment records nor are there indictment records in the majority of cases which are filed by information.

INS needs the information found in the indictment records to determine whether a person is deportable and the section of the Immigration law which has been violated. If the INS forms contained in Appendix D are completed or if that information is provided through the central repository, copies of indictment records are not required.

COMMENT RECEIVED

DOC currently provides alien information to INS on Form G340. If phase I requires information from local correctional facilities, considerable time and effort will be required.

Parole violation should be clarified.

The largest city in the State is under an executive order prohibiting all city departments from inquiring into a person's citizenship or immigration status.

It will be difficult to identify aliens. Some agencies do not request this information, there may be legal problems related to using this information against the person and/or many offenders will not tell the truth. The criminal justice community knows very little about identifying aliens (e.g., if an offender does not have a SS# is he assumed to be an alien?). Does INS have a "profile" of "suspected aliens" to make such identification easier for the States? INS needs to inform the criminal justice community of reliable methods to identify aliens.

The timeframe for compliance with the INS reporting requirement of October 1, 1991, is unrealistic. The 90 percent compliance requirement is not mandated by Federal law and is inconsistent with other sections in the guidance, which allow the States to implement the alien conviction requirement using a two-phased approach.

BJA RESPONSE

During Phase I, States should concentrate on offenders sentenced to prison, including those held in local jails awaiting placement in prison. States which can also provide information on offenders sentenced to local jails during phase I are encouraged to do so. States which cannot, should do so during phase II.

A "yes" should be reported under "Parole Violation" if the current offense is a parole violation and/or if there have been previous parole violations. This information is used to demonstrate the seriousness of the offender's criminal history.

During the planning process, the State should explore other methods of providing INS with conviction records from this jurisdiction, such as through the courts, through the central repository, or other means.

The State is only required to provide place of birth and/or country of citizenship. The States are not asked to investigate or verify alien status. INS will use the information provided by the States to verify alien status.

Guidelines have been modified to make it clear that the timelines for implementation will be defined by the State in the plan and reasonable timeframes will be approved.

COMMENT RECEIVED

Recommendation: The guidelines should be modified to require substantial compliance over a period of years.

The plan for reporting is broken down into phases I and II. Will the guidelines give any deadlines for implementation of these plans?

How long will INS have to review and approve the plan? If the plan is not approved, will the States have adequate time to correct and resubmit. On what basis will the plan be reviewed?

The guidelines should be more specific on what constitutes a plan for the reporting of this information.

The guidelines should contain an explicit exclusion of convictions for traffic violations.

Rather than submitting records on all foreign born defendants, the prosecutors should be required to have the court ask the citizenship and residency status of all foreign born defendants. If the party appears to be an alien or admits to being an alien, records should be forwarded to INS.

Obtaining an alien's criminal conviction in certified form will be costly to local prosecutors' offices. INS should either pay or allow the Chief Prosecutor, or his designee, to administratively certify an abstract of a conviction in lieu of the certified conviction.

BJA RESPONSE

Reasonable timelines for implementation should be outlined in the plans for phase I and phase II. Timelines will vary depending on the quality of the records.

INS will not approve the plans. It will be asked to provide comments, which will be considered in BJA's decision to approve or deny the plans. BJA will apply the 45 day period allowed for review of Formula Grant applications to the criminal justice records improvement plans; thus INS will be requested to provide comments within a three- week period.

The guidelines have been changed.

The requirement does not apply to traffic offenses.

The State has that option. The method of reporting should be determined during the planning process and defined in the plan.

The certified records will generally be provided by the courts or the central repository and will not require involvement of the prosecutor.

COMMENT RECEIVED

INS should deport convicted aliens as soon as possible upon notification of conviction, before States spend time and money for prison care.

Delete the requirement that the detailed transmittal form proposed by INS be utilized. Substitute a requirement to annotate certified copies of conviction records with the SID numbers assigned to the convicted aliens and with their home address as of the their conviction date.

Sentencing procedures will have to be modified by statute or rule to require courts to determine citizenship status and to forward records to INS. Implementation should not be mandated until legislatures and rule-making bodies have had the opportunity to modify procedures. FY 1992 should be used for development of comprehensive plans.

Recommendation Change the assurance to read: "an assurance that the State has established a plan or is in the process of developing a plan to be implemented no later than January 1, 1992, in which that State will provide ..."

Unless reasonable accommodation is made with the States, the penalty may result in the termination or interruption of effective anti-drug programs. BJA should take into account the status of each State's criminal records systems, realistic timetables and resources necessary to reach compliance, and legislative or other action needed to achieve cooperation across different branches and levels of government.

It would be helpful if INS submitted policies and procedures regarding deportation. It may be necessary to redesign the fingerprint card designating the citizenship of the individual or some further identifier to be reported by the arresting agency and supported by the judicial process.

BJA RESPONSE

INS cannot, by law, deport an offender sentenced to prison until the sentence has been served.

If certified copies of conviction are transmitted, only section A of the forms is required.

BJA has no authority to delay implementation of the requirement. The plan should outline a reasonable timetable for implementation of the reporting to INS. Existing reporting mechanisms should continue to be used and/or expanded until the plan is fully implemented.

The guidelines allow the flexibility requested.

INS is preparing information on the deportation process which will be provided to the States as background information.

COMMENT RECEIVED

The States should not be penalized by the inability of some INS offices to accept data electronically. If most INS offices have this capability, then it is incumbent upon INS to see that all of its offices are so equipped.

BJA RESPONSE

Information should be provided in printout form to those offices which cannot accept electronic records.

* * *