

THE VIRGINIA PLAN FOR PRIVACY & SECURITY OF CRIMINAL HISTORY RECORD INFORMATION

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DIVISION OF JUSTICE AND
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CRIME PREVENTION

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ACQUISITIONS

THE
VIRGINIA PLAN
PRIVACY AND SECURITY
OF
CRIMINAL HISTORY RECORD INFORMATION

March 16, 1976

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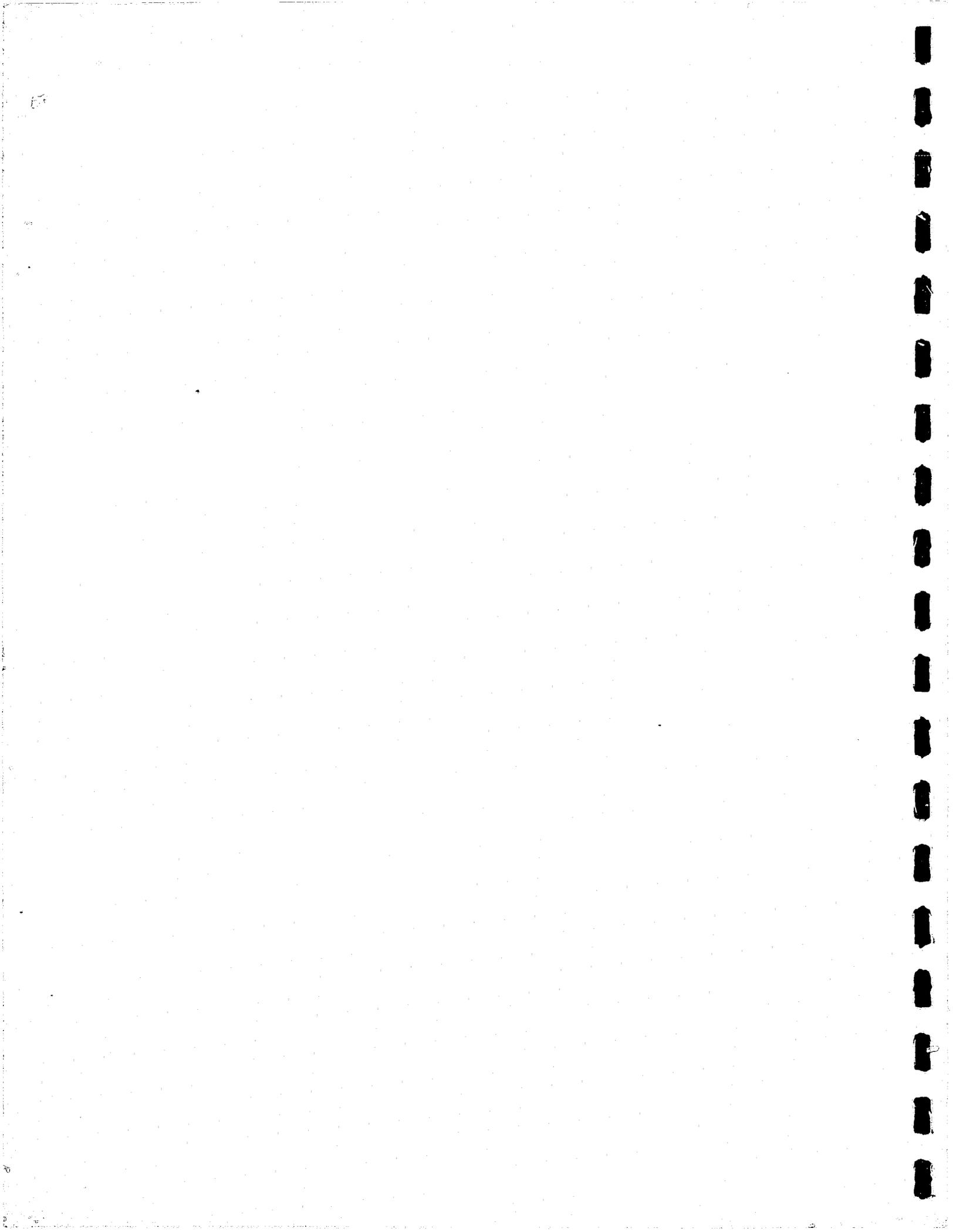
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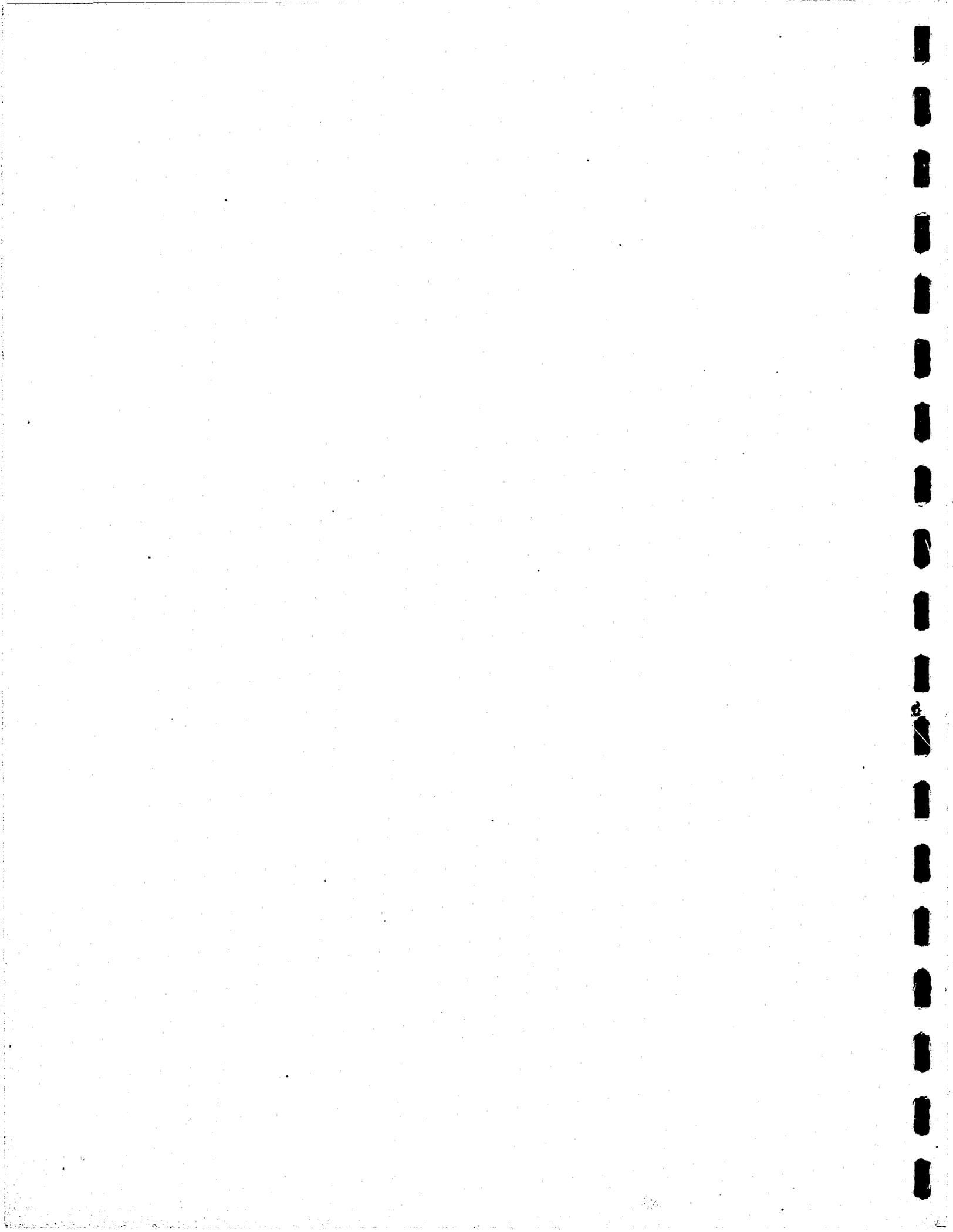
FOREWORD

On June 19, 1975, new rules and regulations, added to the Code of Federal Regulations governing the collection, storage, and dissemination of criminal records and criminal history information, became directly applicable to thirty-five (35) criminal justice agencies in thirty (30) local jurisdictions. In addition, the Department of State Police, the Department of Corrections, the Supreme Court of Virginia and all District Courts were similarly affected. The jurisdictions in which the affected local agencies are located constitute 55% of the population of the State.

Some thirty (30) specific operational procedures should be implemented by the directly affected agencies as soon as possible within fiscal, technical, and administrative constraints. Procedures to insure the individual's right to access and review of criminal history information must already be implemented. All of the procedures must be fully operational and implemented by December 31, 1977. Procedures regarding dissemination of criminal history record information by affected agencies will further extend coverage of the regulations to other criminal justice agencies.

The Virginia Plan for Privacy and Security of Criminal History Record Information proposes an administrative framework as a remedy for a potentially chaotic situation that results when a significant portion of the criminal justice system operates under a new set of rules and regulations while others do not.

Part I sets forth goals and objectives and a proposed administrative framework for consideration by the General Assembly. Part II, Approach, sets forth operational procedures consistent with those being implemented by criminal justice agencies directly (and indirectly) covered by the new addition to the Code of Federal Regulations. Some of the procedures require legislation, others would be promulgated as rules or regulations by a legislatively empowered regulatory agency. Part III, Schedule of Major Milestones, reflects implementation dates for administrative provisions and operational procedures. Part IV, Responsibilities of Involved Agencies, delineates the responsibilities of agencies for implementation.



INTRODUCTION

A. THE CRIMINAL JUSTICE SYSTEM

The administration of criminal justice is a function of federal, State, and local government. Through a complex network of law enforcement agencies, courts, and correctional facilities, governments attempt to carry out public demand for the control of crime and the apprehension, adjudication, and rehabilitation of criminals. These interactions are frequently called the criminal justice system. It is a system largely because all of the agencies, courts, and facilities involved, while performing their diverse functions, have one common element - the offender. The information recorded about the offender as he passes through the system is termed criminal history record information.

B. CRIMINAL HISTORY RECORD INFORMATION

As defined in the rules and regulations now applicable in most of the State:

"Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

Additional discussion of "criminal history record information" is contained in Appendix A which sets forth terms used in the plan and their applicability.

This plan is concerned with that portion of the new regulations which was issued pursuant to authority vested in the Law Enforcement Assistance Administration (LEAA) by Section 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973. Included in Section 524(b) is the statement that "[LEAA] shall assure that the security and privacy of all [criminal history record information] is adequately provided for and that information shall be used only for law enforcement and criminal justice and other lawful purposes."

Under §17-43 of the Code of Virginia the records and papers of every court shall be open to inspection by any person. The entire procedure followed in filing records and papers in criminal cases for both district courts (courts not of record) and circuit courts (courts of record) is not completely set forth in the Code. Those sections of the Code pertaining to the filing of records and papers are extracted and contained in Appendix B.

Taking the Code and practice together, all district court cases in Virginia are entered on a criminal docket sheet, which is maintained as a public record. Cases are entered on the docket sequentially, i.e., each new case in a court receives the next file number in sequence.

This becomes the file number of the papers in the case. Each docket is dated and filed chronologically, while case records are filed sequentially by the chronologically assigned file number. Both the docket sheets and the case records are open to the public.

The proceedings, orders and judgements of circuit courts are recorded chronologically in a common-law order book, and constitute a public record. There is no single standard practice for filing case records. However, in most circuit courts all papers on a case are filed numerically by a chronologically assigned number. These are considered public records although access to such files is controlled in varying degrees among circuit courts.

Section 20.20(b) of the LEAA regulations states that the regulations ...shall not apply to criminal history record information contained in: ... (3) court records of public judicial proceedings compiled chronologically. The meaning of "compiled chronologically" is not clear. In any event, LEAA has narrowed the "lawful purposes" of Section 524(b) by the addition of "compiled chronologically" to the exclusion. In fact, LEAA, by a narrowly defined listing of exclusions in Section 20.20(b) which reference statutes or executive orders, has completely narrowed and circumscribed the "lawful purposes" of the Congress in Section 524(b).

In addition to the ambiguity of "compiled chronologically," LEAA's Privacy and Security Planning Instructions, prepared under contract by Public Systems, Inc., states on pages 4 and 5 of Supplement No. 2 thereto that alphabetical indexes to court records are generally not exempt since a summary criminal history of all an individual's appearances before the court could be obtained.

In the preface to the Instructions the contractor includes this statement:

The materials contained herein do not have the same force of law as the regulations. However, this report has been thoroughly reviewed by the LEAA staff which will be responsible for approving State plans, and has the approval of LEAA.

The effect of bringing the index to court records under the regulations is the nullification of the narrow exemption granted to chronologically compiled court records. As a practical matter court records would be essentially inaccessible to anyone (public or otherwise) without an index. The Code of Virginia recognizes this fact and thus requires proper indexing. (See Appendix B)

Therefore, the Virginia Plan for Privacy and Security of Criminal History Record Information must adhere to the Code of Virginia. Court records and their indexes are excluded from any implementation of the regulations in Virginia.

Finally, LEAA's contractor discusses the exemption of individual case files on page 5 of Supplement 2 to the Instructions.

One important caveat, however, must be issued. "Rap sheets" or summary criminal histories are sometimes included in such files, as a matter of administrative practice in filing. These documents are not considered "court records" under this section and are not exempt from coverage under the regulations.

The Code of Virginia does not presume to define what specifically shall be filed in a case file. Inspection of Appendix B will disclose phrases such as "papers relating to a particular case", "all papers in the case", "all papers in a criminal proceeding." This plan will also not presume to define what should be considered a court record but will adhere to the Code.

Interpretation provided by LEAA relates criminal history record information to offenses in connection with which an individual's fingerprints are taken, this distinction requires further delineation for Virginia. Under §15.1-135 Code of Virginia, duly constituted police authorities of more populated cities are authorized to take fingerprints of any person arrested and charged by them with a misdemeanor, other than a misdemeanor under Title 46.1 Motor Vehicles, where such person is taken into physical custody by such police authorities. For sake of uniformity throughout the State, criminal history record information shall include all misdemeanors, except driving motor vehicle, engine, etc., while intoxicated under §18.2-266 and disorderly conduct in public places under §18.2-415, whether or not the person charged is fingerprinted.

The term "criminal history record information" could be interpreted to include information on juveniles. However, in the Commonwealth the dissemination of juvenile court records is governed by §16.1-162 Code of Virginia wherein it is stated that juvenile court records "... shall be open to the child's parents and attorney and to such other persons as the judge or the judge of a court of record in his discretion decides have a proper interest therein ..." The effect of this statute removes juvenile information from all existing procedures related to collection, storage, and dissemination of criminal history record information. The effect of §16.1-162 would likewise remove juvenile information from all new procedures adopted by criminal justice agencies directly affected by the new rules and regulations in the Code of Federal Regulations or from the administrative provisions and operational procedures proposed in this plan. Hence, as used herein, the term "criminal history record information" does not include juvenile information.

Criminal history record information, according to the commentary appended to the new rules and regulations, is intended to include the basic offender-based transaction statistics/computerized criminal history (OBTS/CCH) data elements. The development of a State-level Offender-based Transaction Statistics System (OBTS) endorsed by the Council on Criminal Justice in April 1975, is in progress, funded by LEAA discretionary funds under its Comprehensive Data Systems Program. The development of the computerized criminal history subsystem of the Virginia Criminal Information Network (V-CIN)

became operational in 1975. The data elements of OBTS/CCH are contained in Appendix C. This information is essentially that which is already required to be reported to the CCRE by §19.2-390 of the Code of Virginia plus the additional information to be reported in the future by the Department of Corrections.

As a distinct sub-system, an Offender-Based State Corrections Information System (OBSCIS), endorsed by the Council on Criminal Justice, it is also in development, supported by LEAA discretionary funding. The OBSCIS project will provide full data processing support to the Virginia Department of Corrections regarding inmate handling and status. A development program to meet the Department's needs for data processing support of management and administrative information with LEAA discretionary funding of development costs is also underway. The CCH/OBTS/OBSCIS development will, in effect, constitute a Statewide Comprehensive Criminal Justice Information System (CJIS).

A Criminal Justice Information Systems Management Review Board (CJIS MRB) has been established for the purpose of providing agencies affected by OBTS/OBSCIS/CCH development the opportunity for full and continued review of all proposals for that system. Representation from local jurisdictions is included in the membership of this board.

The operation of OBTS and OBSCIS, in conjunction with the existing Computerized Criminal History (CCH) subsystem of the Virginia Criminal Information Network (VCIN), will represent a small cost increase for key punch data entry operators at the Department of State Police above that presently incurred for CCH data entry. Cost decrease or increase for the Department of Corrections operational use of OBSCIS compared to present costs for the less than satisfactory manual handling of this information will be small. It is doubtful if any of these costs at the State-level should be charged to new operational procedures connected with the new rules and regulations regarding criminal history record information. At the local level, the reporting of arrests for felonies and class 1 and 2 misdemeanors and dispositions resulting therefrom is already required by §19.2-390 Code of Virginia.

Information systems are being increasingly employed at the local level to make better use of information generated in the daily operations of criminal justice agencies for better utilization of resources, scheduling, and the coordination of criminal justice agencies in the processing of cases through the criminal justice system. Many of these systems have the potential for "on-line" generation of Uniform Crime Reports and the reporting of dispositions.

C. CRIMINAL JUSTICE AGENCIES IN VIRGINIA

Review of Virginia statutes indicates that the following are criminal justice agencies:

Law Enforcement

City Sergeants

Commission of Game and Inland Fisheries

Department of Agriculture and Commerce

Department of Alcoholic Beverage Control - Enforcement and
Inspection Divisions

Department of State Police

Division of Motor Vehicles

Police Departments (cities, counties, towns)

Police Sergeants (towns)

Local Fire Marshalls

Sheriffs' Departments (county and city)

State Fire Marshall's Office

Police agents of steamboat companies

Masters of steamships or steamboats, and wharfs or landing agents

Police agents of railroad companies

Conductors of railroad trains, motormen, and station and depot
agents

Prosecution

Office of the Attorney General

Commonwealth's Attorneys

County and City Attorneys

Courts

Circuit Courts

District Courts

- Juvenile and Domestic Relations

- General

Magistrates

Virginia Supreme Court

Corrections

Department of Corrections

- Adult Services
- Youth Services (not for purposes of this plan)
- Probation and Parole Services

The Abuse of Criminal History Record Information

Criminal history record information when made available by law enforcement and other criminal justice agencies to non-criminal justice organizations for licensing checks, security checks, employment checks, and similar purposes constitutes a potential threat and abuse to personal privacy. This is particularly true of arrest record information with no subsequent disposition recorded of the charge. In such cases the affected individual has not been accorded an opportunity to answer to the charge in court.

The maintenance of criminal history record information which is not complete and accurate is wasteful and limits the usefulness of that information, and may cause the individual data subject unnecessary harm or embarrassment. When such information-keeping practices are coupled with the dissemination of information to non-criminal justice agencies who may use the information to make major decisions affecting an individual's life, the potential for unwarranted harm to the individual becomes even greater.

Recent years have seen the growth of concern for the rights of individuals who are subjects of information in information systems. Review of the United States Constitution and the passage and proposals of new legislation at the State and federal levels have prompted criminal justice agencies to look into their traditional record-keeping practices. In order to better protect the Constitutional rights of those who pass through the criminal justice system, and to develop more efficient information for better management of the system, many practices are being altered. The implementation of this plan is intended to protect the individual's right to privacy of criminal history record information and provide more efficient administration of criminal history record information systems (manual or automated).

PART I
GOALS AND OBJECTIVES
AND
ADMINISTRATIVE PROVISIONS FOR ACHIEVING THEM

A. GOALS AND OBJECTIVES

1. Protection of Individual Security and Privacy

a. Goal

To protect the individual citizen from the consequences of inaccurate and incomplete reporting and improper use of identifiable offender information describing formal contact with the criminal justice system.

b. Objectives

- Insure the collection, maintenance, dissemination, and use of up-to-date, complete criminal history record information.
- Insure the collection, maintenance, dissemination, and use of information that is error-free.
- Limit dissemination to those who by State or federal regulation or statute or court order have authorized access to criminal history record information.
- Protect information from unauthorized access, and from destruction by man-made or natural forces.
- Review and monitor, both through internal agency procedures and through external State audit, all criminal history recordkeeping operations to insure that all operational procedures consistently promote the completeness, accuracy, proper dissemination, and security of all criminal history record information.
- Make it possible for the individual subject of specific criminal record information to review only for purposes of accuracy and completeness the criminal history record information maintained about him at the CCRE (felonies and class 1 and 2 misdemeanors) and by law-enforcement agencies (class 3 and 4 misdemeanors).
- Make it possible for the individual to request that inaccurate information be corrected and the recipients of inaccurate information be notified.

2. Recognition of the Criminal Justice System

a. Goal.

To implement rules, regulations, and procedures which protect the rights of the data subject in a manner that minimizes any negative impact on the functioning of criminal justice agencies.

b. Objectives

- Insure that all operational procedures are responsive to the organization and administration of criminal justice in Virginia.
- Seek to maximize existing resources and minimize additional legislative and administrative additions or alterations.
- Insure participation of those to be affected by the rules, regulations, and procedures in all aspects of the drafting and implementation process.

B. ADMINISTRATIVE PROVISIONS

Improvements in the organization and control of criminal history recordkeeping are imperative both to strengthen the administration of criminal justice and to assure appropriate protection of rights of individual privacy. An effective administrative structure is necessary to regulate the collection, storage, dissemination, and usage of criminal history record information.

The new rules and regulations in the Federal Code of Regulations which now impact the Commonwealth clearly and unmistakably place responsibility and accountability for ensuring adherence to those rules and regulations upon the State. The fulfillment of this responsibility rests upon the exercise of a regulatory mechanism in the Executive Department and the enactment of appropriate changes and additions to the Code of Virginia by the General Assembly consistent with the new rules and regulations in the Code of Federal Regulations.

1. Regulatory Mechanism

The regulation of the collection, storage, dissemination and use of criminal history record information, within the executive branch of State government, would be a responsibility of a regulatory mechanism determined by the General Assembly.

The regulatory mechanism would have the responsibility for State-wide monitoring of the recordkeeping practices and procedures of criminal justice agencies for adherence to federal and State statutes, rules, and regulations governing criminal justice information.

The authorized regulatory mechanism would provide for the coordination of the operation of a State-wide comprehensive criminal justice information system (CJIS) for the exchange of criminal history record information among criminal justice agencies of the State and its political subdivisions. The regulatory authority would also make recommendations regarding further development to improve this system and upon request advise State and local users of the system on all matters pertaining to the handling of criminal justice information.

Rules, regulations, and procedures to be issued by the regulatory authority would be submitted for review and comment to

any board, commission, committee, or other body which may be established by the General Assembly to regulate non-criminal justice information.

2. Audit

a. Need and Scope

The new rules and regulations in the Federal Code of Regulations require that the State conduct annual audits of State and local criminal justice agencies to verify adherence to the regulations and the operating procedures contained therein.

Section 524(b) of the Omnibus Crime Control and Safe Streets Act states that "the collection, storage, and dissemination of [criminal history information] shall take place under procedures reasonably designed to insure that all such information is kept current therein" (emphasis added). Additionally, that Act places responsibility upon LEAA to "assure that the security and privacy of all information is adequately provided for and that the information shall only be used for law enforcement and criminal justice and other lawful purposes." Consequently, the annual audit requirement upon the State is the method selected by LEAA for insuring compliance with the procedures stemming from the Act. However, in selecting this method LEAA recognized, as indicated in the commentary appended to the new rules and regulations, that audit of all agencies would be too costly and thus opted for random audits of a representative sample of agencies, not focusing on any particular type of agency.

The required audits should encompass all elements relative to compliance with procedures stemming from State statutes or regulations promulgated by the State's regulatory authority, which statutes and regulations must be consistent with the new regulations in the Federal Code of Regulations. Areas to be reviewed would include, but not be limited to, record accuracy, completeness, review of the effectiveness of an agency's internal audit procedures (systematic audit), and examination of evidence of dissemination limitations, security provisions, and the individual's right of access. Audits would be performed on both manual and computerized systems.

b. Responsibility

Supervision of audits and issuance of procedures related thereto would be a responsibility of the duly authorized regulatory mechanism. The staff of the regulatory authority would have the duty of conducting audits. In performing this duty, the staff would be authorized to draw upon other State agencies for resources when necessary.

Considering the scope of security and privacy measures involved, audit teams would include persons who have expertise in the following areas:

- Data processing and security measures (when required).
- Federal and State security and privacy requirements.

- Operation of the Central Criminal Records Exchange and all types of criminal justice agencies.
- Commonly-accepted auditing procedures.

The resource requirements for conduct for audits are further determined by the number of each type of criminal justice agencies within the Commonwealth, the size of annual audit sample of each type of agency, the size of agencies and their location within the State.

There are more than 350 police and sheriff departments in Virginia, more than 150 Commonwealth's Attorneys, and more than 60 courts. In addition, there are the many other types of criminal justice agencies earlier listed. As a result, if only one-fifth of the total number of agencies were selected for audit in any one year and that selection was also made in a manner to distribute the audit of larger agencies over a five year period, the resulting number of agencies to be audited annually will constitute a large task, considering the geographical area and demography involved.

c. Conduct of Audits

Audits would commence with an examination of specific records at the CCRE and establish the sources which reported up-dates of these records before going into the field to terminate at the source documents. Thus, it is estimated that a single audit team would be needed on a full-time basis. Although the automatic data processing (ADP) member would not be involved in all audits, the first audit of an automated information system might prove more time consuming for the ADP member than for the other members. This might even be true for subsequent ADP audits if software changes had been incorporated in the interval between audits. (Procedures for agencies in preparation for audit are set forth in Part II, B.3. while an outline of the procedures which would be issued by the regulatory authority is presented in Part II, C.)

d. Summary Recommendations

It is recommended that the General Assembly, when providing for the exercise of executive authority in State-wide regulation of the handling of criminal justice information, include authority for ensuring compliance with rules, regulations and procedures by means of annual audits, under the supervision of the designated regulatory authority.

It is recommended that the staff of the regulatory authority should have the duties of defining, developing, and coordinating necessary rules, regulations, or procedures, and conducting audits.

3. State Central Criminal History Record Information Repository

Information about an individual's contact with the criminal justice system is produced at a variety of locations. Within any single locality, law enforcement agencies, offices of Commonwealth's

Attorneys, courts, and jails may all deal with and produce some kind of information about individuals convicted or accused of criminal activity although jurisdictional boundaries may vary for each agency. The high mobility of our population further increases the possibility that individuals may commit offenses or be accused of doing so in many different cities, towns and counties, and may be transferred from one locality to another in the course of their movement through the criminal justice system.

For these reasons, a record of an individual's criminal history as recorded by one local agency cannot be assumed to be a complete record of that individual's criminal justice system experience. It is unfair to the individual, and inefficient for criminal justice agencies, to operate with less than complete criminal history information.

The establishment of a central location for the receipt, compilation, and distribution of criminal history information from all localities and all criminal justice agencies is the only viable way to collect, store, and disseminate complete criminal history record information. Only a central location can collect information from across the State, collate different criminal justice transactions referring to one individual, and supply such information to users as the single authoritative source of information.

a. Repository Functions

A central repository should have the following legislatively-mandated functions:

- Collect, maintain, and disseminate criminal history record information (as defined in Appendix A).
- Maintain complete, accurate criminal history record information to be used by all authorized agencies as the valid, comprehensive criminal history record for the administration of criminal justice in the State.
- Insure the proper reporting, administration, and dissemination of criminal history record information by the central repository and by all criminal justice agencies in the State.
- Insure the protection of criminal history record information in its custody from destruction or misuse, through the imposition of physical security (locks, exclusion of unauthorized persons), computer security measures, and personnel security (limited access, training, clearance procedures).
- Supply, quickly and efficiently, criminal history record information to all criminal justice agencies in Virginia.
- Monitor and conduct internal (systematic) audits of the operations of the central repository to maintain the quality of information in the system.

- Provide for convenient review for completeness and accuracy of criminal history record information by the subjects of that information.
- Provide for the correction of criminal history record information found to be inaccurate or incomplete wherever that information may have been disseminated.
- Serve as an administrator of such rules, regulations, and procedures promulgated by the regulatory authority as may be desired by that authority.

b. Existing Resources

In Virginia, the General Assembly has made the Central Criminal Records Exchange (CCRE) of the Department of State Police responsible for receiving, classifying and filing the criminal history record information required to be reported to it.

Law enforcement officials are, under §19.2-390 of the Code of Virginia, required to report any arrest on a charge of treason or any felony or any offense punishable as a misdemeanor under Title 54, or class 1 and 2 misdemeanors under Title 18.2, together with fingerprint identification. The clerk of each general district and circuit court must report the disposition of all offenses required to be reported to the CCRE.

The CCRE is required under the Code of Virginia to furnish criminal history records upon request to local, State and federal criminal justice agencies within the State, federal law enforcement agencies, the armed forces of the United States, and any agency of any other state which maintains a repository of criminal records, or the chief law enforcement officer or agency of any other state. Such records shall not be made available to the public.

Appendix D to this plan contains excerpts from the Code of Virginia re the CCRE, current disposition reporting, CCRE dissemination responsibilities, and dissemination limits.

With support from the FBI's National Crime Information Center (NCIC) and LEAA and State funding, the Department of State Police has recently implemented a system of computerized criminal histories (CCH), which will make criminal history information derived from the Central Criminal Records Exchange (CCRE) and from the FBI available to all agencies with computer terminals, provided these agencies enter into a user's agreement with the Department of State Police.

CCRE records and CCH records are open to inspection and challenge by the individual. This availability frees the individual from the dangers of erroneous information and further operates to promote information accuracy.

The Department of State Police then, presently serves as a central repository. The procedure and forms for mandatory reporting of certain dispositions to the Department have been established. The development of the computerized criminal histories (CCH) system makes

criminal history information available to agencies within seconds or minutes of a request. The rights of the individual are protected by the consolidation of all information about his criminal history, and by his right to review that information for accuracy and completeness. Criminal justice needs, existing federal regulations and proposed federal statutes strongly encourage the creation of an organization that can serve as the sole source of complete criminal history record information on arrests reported under §19.2-390, maintain comprehensive information, and exercise supervision over the reporting, maintenance and dissemination of that information. The Department of State Police Criminal Records Exchange meets this need in Virginia.

A central repository must receive dispositions of all arrests reported to it in a timely fashion. It must be able to demand certain levels of quality in information submitted to it. Further, inquiries should be made of the repository prior to any dissemination to insure that complete and accurate information is disseminated.

Specifically lacking in the present format of the CCRE is input from changes of status in the corrections process. The reporting of such information would permit statistical analysis of the overall functioning of the criminal justice system and of the effectiveness of various ways of dealing with different types of offenders and crimes. As discussed earlier, the Department of Corrections is participating in the development of information systems which will provide offender status and handling information but the reporting of this information should be provided for under legislative authority.

c. Summary Recommendation

Existing state statutes should be amended to include prompt reporting of each disposition, including changes of status in the corrections process to the central repository, by all criminal justice agencies in Virginia as soon as feasible and in no instance later than 90 days of the formal transaction.

4. Penalties

a. For Agencies Directly Under the New Rules and Regulations

Subpart B of the new regulations in the Code of Federal Regulations which sets forth the operational procedures for the collection, storage, and dissemination of criminal history record information, annual audits, and an individual's right to access and review also contains penalties.

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

b. For Agencies Brought Under the New Rules and Regulations

LEAA holds that the intent of the new regulations will be undermined if criminal justice agencies not directly covered by the

regulations receive without sanctions, criminal history record information from those that are covered. Such sanctions must subject those agencies not directly covered which violate the regulations to penalties equivalent to those applicable to agencies covered by the regulations.

Without or until legislation is passed specifying appropriate civil or criminal penalties for violation of the regulations by all receiving agencies, those agencies covered by the regulations must exact user agreements before making dissemination to agencies not covered whereby the receiving agency agrees to be subject to the fines under the regulations and the Crime Control Act.

Passage and enforcement of a State statute specifying appropriate civil or criminal penalties for violation of the new regulations by all receiving criminal justice agencies would obviate the need of user agreements for intra-state dissemination. While alleviating an awkward situation, such legislation would not meet the needs of the Commonwealth for standardization and interpretation of procedures, audit, an appeal body for determining validity of contested challenges to the correctness and completeness of criminal history record information, strengthening the role of the CCRE as the central repository of complete criminal histories, and legislative sanction of disposition reporting not presently in the Code of Virginia (Department of Corrections status change reporting).

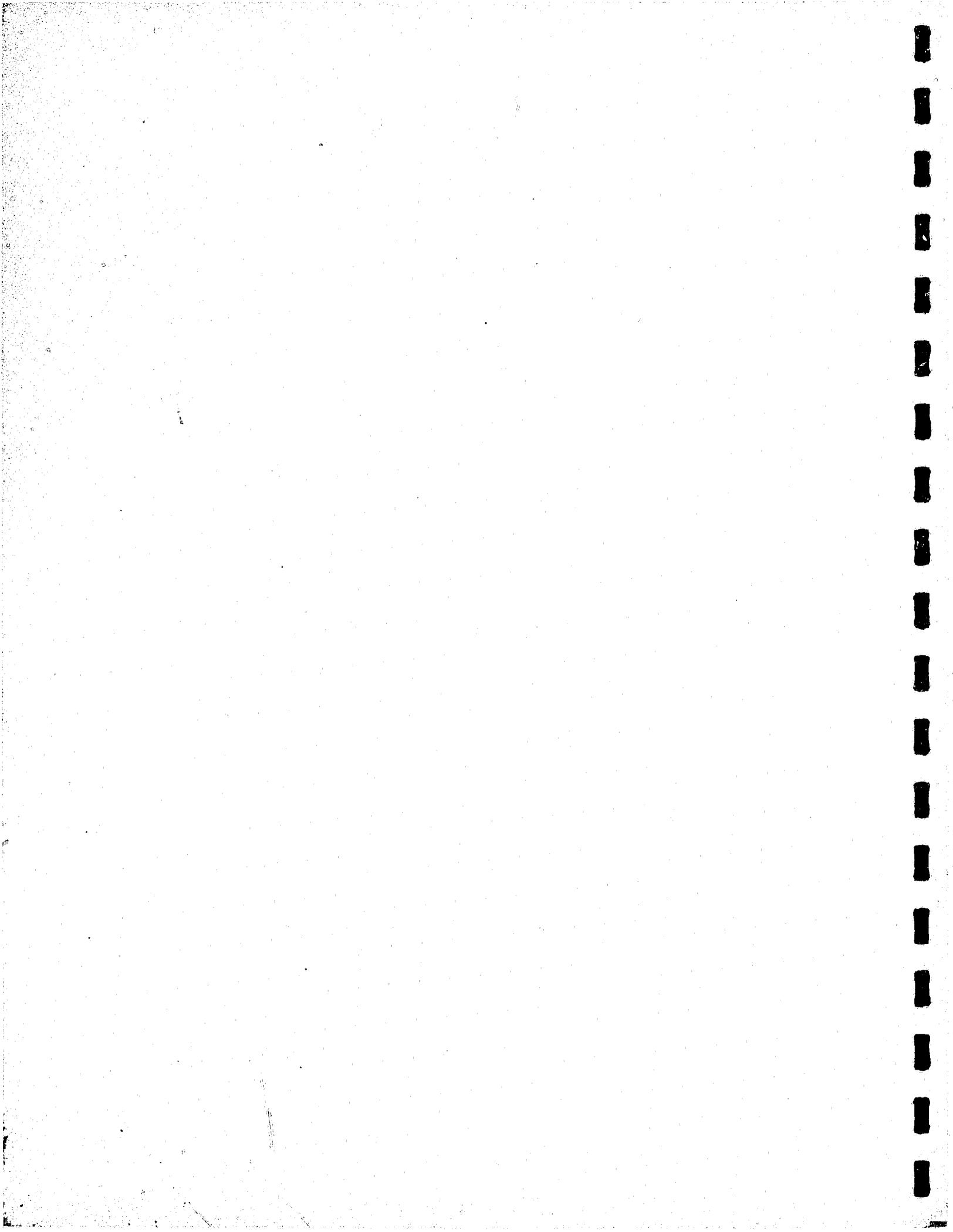
c. Under Recommended Legislation by General Assembly

The preceding discussed the expedient of user agreements to bring all receivers of criminal history record information under operating procedures and penalties of the new rules and regulations in the Federal Code of Regulations.

The basic approach of the Virginia Plan for Privacy and Security of Criminal History Record Information, however, is the recommendation of a package of legislation which places into State statutes or rules and regulations issued by a duly empowered regulatory authority the same operational procedures for collection, storage, and dissemination of such information as are required to implement the new rules and regulations.

One intent of new statutes, rules and regulations is obtaining complete, accurate, and timely information for the administration of criminal justice and, in the process, protecting individuals from the use of incomplete and inaccurate information. The recommended legislation places responsibility for enforcing provisions for control of criminal history record information on the regulatory authority. One means of determining violations of statutes, rules, regulations and procedures is through the conduct of audits. But, whenever a criminal justice agency is determined to be continually in non-compliance a petition for mandamus or injunction would be sought through the Attorney General or appropriate Commonwealth's Attorney. In addition, the Council on Criminal Justice will be requested to approve a policy for suspension of any current or future funding of programs under its jurisdiction while an agency remained in non-compliance.

Another intent of new statutes, rules and regulations is to limit dissemination to purposes of administration of criminal justice with limited, specific exemptions. This is directed at protecting individual rights of privacy and security. It is in this area of concern that criminal penalties providing for the possibility of jail confinement are recommended. It is recommended, therefore that the offense of willful and intentional unlawful dissemination of criminal history record information be made a class 2 misdemeanor. Failure to accord an individual the right of access for review should also be considered. Here a willful and intentional offense is recommended to be a class 3 misdemeanor.



PART II

APPROACH

A. INTRODUCTION

As of June 19, 1975, many State and local criminal justice agencies are directly covered by Part 20 (Criminal Justice Information Systems) to Chapter I (Department of Justice) of Title 28 (Judicial Administration) of the Code of Federal Regulations. Appendix E contains a copy of these regulations and a proposed change thereto which is reflected in this plan.

The regulations are directly applicable to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration since July 1, 1973. Within the constraints of fiscal, technical, and administrative obstacles, agencies directly covered by the Department of Justice regulations should now be instituting procedures to comply with the specific requirements of the regulations. At a minimum, the requirements of access and review described in Section B 5 of Part II must be completely operational prior to March 16, 1976. Appendix F lists those Virginia Criminal Justice Agencies covered by Federal Regulations as of January 1, 1976.

As indicated in its Foreword, this plan is designed to promote the responsible collection, storage, and dissemination of criminal history record information throughout the Commonwealth. With passage of appropriate legislation by the General Assembly rules, regulations, and procedures issued by the duly authorized regulatory mechanism would require at a minimum that all agencies collecting, storing, or disseminating criminal history record information carry out their business within the following common framework:

- Reporting of each disposition including correctional change of status to the CCRE or the arresting law enforcement agency in the case of class 3 and 4 misdemeanors as promptly as feasible but in any event within ninety (90) days after occurrence.
- Processes for data collection, entry, storage, and quality control to minimize the possibility of recording and storing inaccurate information.
- Dissemination limitations for criminal history record information, whether directly or through any intermediary, to only those agencies and individuals duly authorized by statute, regulation, or court order/rule.
- Adherence to established general policies on use by or dissemination to non-criminal justice agencies or individuals regarding, 1) arrest record information, 2) use of criminal history record information only for purpose given, 3) no

further dissemination, and 4) refusal to confirm or deny the existence or non-existence of criminal history information for employment or licensing checks except as provided for by statute or executive order.

- Non-dissemination of juvenile records except as specifically authorized by statute or court order/rule.
- Retention of appropriate records or microfilm copies thereof to facilitate external audit of adherence to statutes and regulations regarding criminal history record information.
- Installation of data processing technical security measures, management control policies including accountability and responsibility, physical protection, personnel training, and access restrictions which will insure the confidentiality and security of criminal history record information.
- Provisions for the individual subject of criminal history record information to become aware of his right to access and review of that information for purposes of accuracy and completeness, exercise that right without undue burden, obtain administrative review, make administrative appeal, and (should a record be corrected and upon request) obtain the names of all non-criminal justice agencies to whom the data have been given.
- Notification of all criminal justice recipients of corrected information whenever and however an inaccuracy is found.

B. OPERATIONAL PROCEDURES

1. Completeness and Accuracy

The Department of Justice Rules and Regulations, Code of Federal Regulations, Chapter 1 of Title 28, Part 20, Subpart B, §20.21 require that criminal justice agencies affected by the regulations establish procedures to assure that criminal history record information be complete and accurate to the maximum extent feasible. This is required by Section 524(b) of the Safe Streets Act of 1973.

These regulations are binding on those criminal justice agencies in Virginia which have received LEAA funds subsequent to July 1, 1973, for the collection, storage, or dissemination of criminal history record information. Those agencies must comply with the regulations by December 31, 1977. Appropriate legislation has been submitted to the Virginia General Assembly to require effective procedures to assure completeness and accuracy of criminal history record information collected, stored, used, or disseminated by any criminal justice agency in the Commonwealth. Such legislative proposals are consistent with the Department of Justice regulations.

a. Enhancement of CCRE Functions and Comprehensive Dispositions Reporting

Existing Virginia statutes should be amended to provide for mandatory and prompt reporting of each disposition, including changes of status in the corrections process, to the central repository (CCRE)

or to the arresting law enforcement agency, in the case of class 3 and 4 misdemeanors by all criminal justice agencies in Virginia as soon as feasible but in no case later than ninety (90) days of the formal transaction.

b. Query Before Dissemination

The Department of Justice regulations §20.21(a)(1) provide that in those States that have central State repositories "procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to insure that the most up-to-date disposition data is being used." Exempt from this requirement are "those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period."

In order to bring all Virginia criminal justice agencies into operational agreement with the requirement for "query of the central repository before dissemination" appropriate legislation has been submitted for inclusion with the CCRE legislation.

c. Systematic (Internal) Audit (Quality Control)

The Department of Justice Regulations [20.21(a)(2)] require systematic (internal) auditing as a means of guaranteeing the completeness and accuracy of criminal history record information. These quality control procedures should be part of the operational procedures for all agencies.

(1) Delinquent Disposition Monitoring

It is recommended that the regulatory authority adopt rules/regulations requiring all criminal justice agencies to institute procedures for delinquent disposition monitoring. Such procedures should provide for checks to obtain dispositions which are not received by the estimated due date. Procedures should also provide for routinely withholding dissemination to non-criminal justice agencies prohibited from receiving arrest record information over one year old when no disposition of the charge has been recorded and no active prosecution of the charge is pending.

(2) Accuracy Verification

In order to obtain accuracy verification, all criminal justice agencies should institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information. Such procedures should include random inspection of the records compared against source records to determine if data handling procedures are being correctly followed.

2. Limits on Dissemination

Dissemination of criminal history record information to agencies and individuals is limited to only those specific purposes and conditions set forth in §20.21(b) of the new rules and regulations

and with the further restrictions that use of criminal history record information disseminated to non-criminal justice agencies under the regulations shall be limited to the purposes for which it was given and may not be disseminated further. (See Appendix A for definition of dissemination.)

Additionally, the regulations specify that no agency or individual shall confirm the existence or non-existence of criminal history record information for employment or licensing except as provided in procedures in the regulations discussed in subparagraphs (1), (2), and (5) of a. below.

The following are operational procedures which would either be enacted into the Code or issued by the regulatory authority. These procedures are taken from the new regulations and are already being implemented by directly affected agencies as well as by agencies not directly affected, and should be implemented promptly by additional agencies brought under the regulations by user agreements.

a. Redissemination/Contractual Agreements/Sanctions

Section 524(b) of the Crime Control Act provides that criminal history record information (See Appendix A for definition) "shall only be used for law enforcement and criminal justice and other lawful purposes." The rules and regulations promulgated for that purpose require that this plan set forth operational procedures which will insure that the dissemination of criminal history record information is limited whether directly or through any intermediary only to a specific listing of agencies and individuals and for specifically stated purposes. LEAA, in its instructions providing clarification and explanation of the regulations and intended to assist those affected by the regulations in understanding their impact, recognized that criminal history record information would, in the course of normal criminal justice processes, be disseminated to agencies not directly subject to the regulations. For this reason operational procedures are required to insure that dissemination restrictions on affected agencies are not violated as a result of disseminations to intermediary agencies not directly subject to the regulations. Therefore, procedures must include that written notice of the dissemination restrictions be given to receiving agencies and that, accompanying the notice of dissemination limitations and restrictions would be a contractual agreement to which the receiving agency must expressly concur in writing before the dissemination is made. The agreement would specify that the dissemination of criminal history record information is subject to cancellation if the receiving agency knowingly violates the requirement relating to redissemination, internal use, and physical security.

The agreement would also stipulate that the receiving agency shall agree to be subject to fines under the regulation and the Act for knowingly violating the regulations.

Once notice of the regulations has been given and a receiving agency has agreed to abide by them, later disseminations to the receiving agency would be made under the same agreement.

Appendix G is the standard form contract suggested for use by all State and local agencies directly subject to the regulations and for the use of those criminal justice agencies who subsequently come under the regulations by reason of having executed the contract, should they make further dissemination. When the Code of Virginia is amended to impose the same dissemination limitations and restrictions as contained in the new regulations, the use of the standard form contract will no longer be required for intra-state dissemination among criminal justice agencies.

NOTE:

Great care should be exercised in dissemination of criminal history record information. All NCIC criminal history records based on reports of arrest and subsequent dispositions in other States which are obtained from the National Crime Information Center (NCIC) of the FBI by communication linkage of the Virginia Criminal Information Network (VCIN) to NCIC or by other communication linkage with NCIC are subject to Subpart C of the new rules and regulations which apply to interstate exchange of criminal history record information utilizing NCIC's CCH. Continued exchange of such information is subject to cancellation of dissemination if made outside the receiving departments or related agencies (not defined). Thus, such information should be clearly marked, NOT FOR REDISSEMINATION to avoid cancellation of service.

(1) Dissemination to Criminal Justice Agencies

Dissemination may be made to criminal justice agencies for the purposes of the administration of justice and criminal justice employment. Until the Code of Virginia is amended, dissemination by CCRE is limited to the provisions of §19.2-389 with the added restriction on NCIC records discussed in the note above.

Dissemination by other criminal justice agencies is also governed by §19.2-389 in that records obtained from CCRE shall not be made available to the public and by the new rules and regulations which permit a criminal justice agency to disseminate to another criminal justice agency for administration of criminal justice purposes and criminal justice agency employment. (See Appendix A for a broader definition of criminal justice agency than that affecting CCRE under §19.2-389.) Subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to statute are included in the definition of criminal justice agency. Recommended legislation would provide uniformity regarding eligibility to receive criminal history record information.

(2) Dissemination re: Statute/Executive Order Referring to Criminal Conduct

Criminal justice agencies are permitted, under the new rules and regulations, to disseminate to "such other

individuals and agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct. However, in this case the following general policy applies:

"Criminal history record information concerning the arrest of an individual may not be disseminated to a non-criminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution is pending."

In Virginia the only such statute is §24.1-26 regarding the Board of Elections. Proposed legislation would permit dissemination to agencies of political subdivisions of the State for conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public safety, it is necessary to determine, under a duly enacted ordinance, if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration. Other legislation being introduced for regulation of the private security industry would permit similar screening of applicants for employment in registered private security firms.

(3) Dissemination to Non-Criminal Justice Agencies Providing Services for Criminal Justice Administration

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

(4) Dissemination to Non-Criminal Justice Agencies for Research and Statistical Activities

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

Section 524(a) of the Act is contained in the commentary to Section 20.21(b)(4) of the new regulations which are contained in Appendix E hereto.

Proposed rules governing confidentiality of identifiable research and statistical information implementing section 524(a) were published in the Federal Register, September 24, 1975. As defined therein information identifiable to a private person--means information which either is labeled by name or other factors and can be reasonably interpreted as referring to a particular private person.

- (5) Dissemination to Government Agencies re: Employment Suitability or Security Clearance

Criminal justice agencies may disseminate to "agencies of State or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information."

- (6) Dissemination on Court Order or Court Rule

Criminal justice agencies may disseminate to individuals and agencies where authorized by court order or court rule.

- (7) Validation of Receiver's Right of Access

The Department of Justice regulations §20.21(b), as interpreted by LEAA, requires that before any dissemination occurs, the disseminating agency must be certain that the requesting agency or individual is permitted to receive information under the regulations. The disseminating agency must review the text of the authorization of a non-criminal justice agency which claims to be authorized to receive information pursuant to a statute, executive order, or court order or rule; if the disseminating agency is not certain that the claimed authorization is proper authority for dissemination, it should refuse to release the information pending an opinion by appropriate legal counsel.

- b. Restrictions on Dissemination

- (1) Juvenile Record (non) Dissemination

Virginia law (§16.1-162, Code of Virginia) states that juvenile court records "shall be open to the child's parents and attorney and to such other persons as the judge or the judge of a court of record in his discretion decides have a proper interest therein ..." This, in effect, removes juvenile information from all existing procedures related to collection, storage, and dissemination of criminal history record information, and from the provisions of the Department of Justice Regulations, Code of Federal Regulations, Chapter 1 of Title 28, Part 20, Subpart B, §20.21(d).

(2) Confirmation of Record Existence

The Department of Justice Regulations, Federal Code of Regulations, Chapter 1 of Title 28, Part 20, Subpart B, §20.21(c)(3) states that "no agency or individual shall confirm the existence or non-existence of criminal record information for employment or licensing checks" except as provided:

- to "criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment"
- to "implement a statute or executive order that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct"
- to "agencies of State or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information."

(See Dissemination re: Statute/Executive Order Referring to Criminal Conduct in a.(2) above for applicability in Virginia.)

(3) Secondary Dissemination by Non-Criminal Justice Agencies

The Department of Justice regulations §20.21(c)(2) provide that "use of criminal history record information disseminated to non-criminal justice agencies under these regulations shall be limited to the purposes for which it was given and may not be disseminated further."

(4) Dissemination Without Disposition

In effect, the Department of Justice regulations §20.21(c)(1) states that criminal history record information concerning the arrest of an individual may not be disseminated to a non-criminal justice agency or individual which requires criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.

This would have an impact on the Virginia Board of Elections which operates under §24.1-26, Code of Virginia. (See comments in a.(2) above.)

3. Audits

The requirement for audits is introduced in Part I, B.2. An outline of procedures which would be issued by the regulatory authority

is presented in Part II, C. The procedures contained in this section are those required of criminal justice agencies so that audits may be conducted when administrative provisions for conducting audits have been established.

The regulations require that each agency shall institute operating procedures for:

a. Recreating Data Entry

Documents (or microfilm copy thereof) shall be maintained such that an individual's record reflects the participating agencies in the criminal justice system that have contributed to such record, and shall reflect the specific individuals who made the entries on the source documents supporting such record system.

Source documents (or microfilm copy thereof) of data entry shall be maintained for those elements of criminal history record information for which the agency is responsible.

b. Dissemination Logs

Dissemination logs shall be maintained indicating the agencies or individuals both in and outside of the State to which criminal history record information is released.

- such file shall be preserved for a period of not less than three years from the date of information dissemination
- such file shall indicate, at a minimum, the agency or individual to which information was released, the date of release, the individual to whom the information relates, and the items of information released
- such file shall include specific numeric or other unique identification making possible an identification link between the disseminated information and the record from which it was extracted

c. Record of Notification of Correction

When inaccurate data is corrected on a record which has been disseminated in inaccurate form, an agency shall immediately notify agencies known to have received the information. Corrections to records should be forwarded in hardcopy (letter or computer printout). A record shall be maintained of agencies notified and the date that notification was sent.

4. Security

The following provisions for security of criminal history record information are based upon a proposed change to the regulations published in the Federal Register on October 24, 1975. Hearings have been concluded on the proposed change. It is understood that the change will be published at some time in the future essentially as it appeared

in the Federal Register. However, the lead-in statement to paragraph d below may be slightly revised. If necessary, a change to this plan will be issued.

a. General Security Provisions

Any criminal justice agency which receives, stores, disseminates, or uses criminal history record information (as defined in the introduction and Appendix A to this plan), whether by automated or manual methods, will develop and apply internal agency procedures in conformance with the following general security procedures.

- (1) Select and supervise all personnel authorized to have direct access to criminal history record information.
- (2) Assure that an individual or agency authorized direct access is responsible for (A) the physical security of criminal history record information under its control or in its custody and (B) the protection of such information from unauthorized access, disclosure, or dissemination.
- (3) Provide that each employee working with or having access to criminal history record information is familiar with the substance and intent of the new rules and regulations in the Federal Code of Regulations and with rules, regulations, and procedures issued by the State's regulatory authority.
- (4) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.
- (5) In addition, the Central Criminal Records Exchange (CCRE) will institute reasonable procedures to protect criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

b. Prevention of Unauthorized Access to Computerized Information

Where computerized data processing is employed, effective and technologically advanced software and hardware designs will be instituted to prevent unauthorized access to such information.

c. Conformance With Virginia Criminal Justice Computer-Operations Security Standards

A Virginia Criminal Justice Computer Operations Security Standards Manual is now being drafted for coordination, review, and comment to provide security standards covering access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system dissemination. When approved, this manual will be issued by the regulatory authority.

In the interim, until issuance of the manual, criminal justice agencies should be guided by security standards contained in Federal Information Processing Standards Publication, FIPS Pub 31 - Guidelines for Automatic Data Processing Physical Security and Risk Management. This publication is available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402, at \$1.35.

d. Criminal Justice Agency Authority over Computer Operations Policy

A criminal justice agency shall have authority to set and enforce policy concerning those computer operations which support criminal history record information processing, by specifically providing that:

- (1) Criminal history record information be stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.
- (2) A designated criminal justice agency employee will specify and certify for operational use programs that will prohibit inquiry, record updates, or destruction of records from any terminal other than criminal justice system terminals which are so designated.
- (3) The destruction of records is limited to specifically designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.
- (4) Designated criminal justice agency employees will specify and certify for operational use such programs to detect and store for their output all unauthorized attempts to penetrate any criminal history record information system, program, or file.
- (5) Such program(s) in (4) above, shall be known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) kept continuously under maximum security conditions.

5. Individual Right of Access

The Department of Justice regulations [20.21(g)(1)] provide that any individual shall, "upon satisfactory verification of his identity, be entitled to review, without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purposes of challenge or correction." The operational procedures to insure the "individual's right of access and review of criminal history information for purposes of accuracy and completeness" are to be operational in those agencies directly covered by the regulations on or before March 16, 1976.

The section below sets out operational procedures designed to satisfy requirements in the regulations for (a) public notice, (b) individual authorization to review criminal history record information, (c) identification prior to review, (d) availability of records, (e) record review, (f) obtaining a copy of a record, (g) record challenge and request for correction, and (h) administrative appeal. These procedures provide for the individual's right of access and review only for purposes of accuracy and completeness of (1) criminal history record information arising from arrests for class 3 and 4 misdemeanors maintained by the arresting law enforcement agency in accordance with §15.1-135.1 of the Code of Virginia and, (2) criminal history record information from arrests for felonies and class 1 and 2 misdemeanors maintained by the Central Criminal Records Exchange (CCRE) based upon reports made to the CCRE in accordance with §19.2-390.

Legislation has been proposed to amend §19.2-390 to require court clerks to report dispositions of class 3 and 4 misdemeanors to the law enforcement agency making the arrest, which agency shall file the disposition report with the arrest record required to be maintained by §15.1-135.1.

Provision for administrative appeal is contained in proposed legislation. Should need arise for administrative appeal prior to the time such provision becomes effective, the individual or his legal counsel should request appointment of an appeal panel by the Governor. Such request should be directed to the Secretary of Transportation and Public Safety.

a. Rules for Access and Point of Review

(1) Public Notice

The Department of State Police shall print once each year informational posters for use throughout the State in all law enforcement agencies and in other official public buildings. Public notices shall give information that -

- Any individual may review for purposes of accuracy and completeness criminal history record information arising from arrests for class 3 and 4 misdemeanors maintained about him by the arresting agency by applying at that agency during normal working hours.
- Any individual may review for purposes of accuracy and completeness the criminal history record information arising from arrests for felonies and class 1 and 2 misdemeanors maintained about him at the Central Criminal Records Exchange by applying at any law enforcement agency with a computer terminal on the Virginia Criminal Information Network (VCIN) during normal working hours. The poster will list locations of all such agencies. A person may apply to make a review of such information at any law enforcement agency without terminal access to CCRE during normal working hours, in which event

he may be charged a fee not to exceed \$5.00 by the agency to cover administrative costs of obtaining the record.

- In the event the individual after his review believes the information to be inaccurate or incomplete he may institute established procedures to seek correction or completion of the information and that such procedures will be made known to him.

(2) Individual Authorized to Review Record

Prior to any record review by an individual, the agency shall request verification of identity; the agency may require fingerprint verification where that capability exists; however, at a minimum, a Commonwealth of Virginia Operator's license, non-operator's I.D. card, photo identification card of the Department of Defense or other federal agency or of another state or of any municipality shall be required.

b. Additional Mechanisms for Review

(1) Persons Without Ready Access

The opportunity to exercise the right of review of a current CCRE criminal history record or records of class 3 and 4 misdemeanors maintained by the arresting law enforcement agency shall be provided those within the State penal system at the time of their confinement as part of the standard intake process and again at, or immediately prior to, the proceedings of the Probation and Parole Board.

Individuals residing outside the Commonwealth may obtain their Virginia records for review and a copy thereof, if necessary, for purposes of challenge by making that request through a non-Virginia criminal justice agency governed by the Department of Justice Rules and Regulations, Code of Federal Regulations, Chapter 1 of Title 28, Part 20.

(2) Record Review

Reasonable assistance shall be provided the individual in order to make the record understandable.

(3) Obtaining a Copy of the Record

Copies of the individual's record shall be made available, to the individual and/or his legal counsel only when such copies are required for the purpose of initiating a challenge to the record.

- The individual and/or legal counsel shall be provided with a copy of his record if after review he actually initiates a challenge and indicates a record copy is needed to pursue the challenge;

- Such record copy shall be prominently marked or stamped to indicate that the copy is for review and challenge only and that any other use thereof would be a violation of 42 USC, page 3771;
- A record copy shall not be supplied to the individual at the request of a potential employer, except as required by State or federal law;
- The agency may charge a reasonable fee, not to exceed \$1.00 per page, for the duplication of the record.

c. Challenge by Individual

An individual who takes exception to the contents of criminal history record information provided him shall submit his exception to the record contents in writing, on a form designed and provided for that purpose by the Central Criminal Records Exchange.

- The agency in which the record is reviewed and challenged shall then forward the original challenge form to the Central Criminal Records Exchange and/or the law enforcement agency maintaining the record of class 3 or 4 misdemeanors.
- The agency shall keep a copy of the challenge form.

(1) Challenge of Record Maintained by CCRE

If the challenge is made to a record received from the central repository, the Department of State Police Central Criminal Records Exchange shall initiate the following action upon receipt of a challenge form:

- The Central Criminal Records Exchange shall cause the individual's record in computerized and non-computerized files to be flagged with the message that the record is under challenge. This "flag" shall accompany all disseminations of this information while the record is being checked.
- The Central Criminal Records Exchange shall conduct a comparison of the original input forms and the information contained in the repository files and reviewed by the individual. Any errors therein discovered shall be corrected.
- If no error is found, the Department of State Police shall forward a copy of the original challenge form, a copy of the CCRE form, and any other relevant information to the agency or agencies which CCRE records indicate as originating the information under challenge, and shall request them to examine all relevant files to determine the validity of the challenge.

- The CCRE shall notify the agency in which the record was reviewed of CCRE's action. The agency where review and challenge occurred shall notify the individual and/or his legal counsel of CCRE's action.
- The employee supervising recordkeeping in the agency responsible for originating the challenged information shall conduct an examination of the agency's source papers, the content of the challenge, and information supplied by the CCRE (when available) to discover discrepancies in the information transferred from the source documents to the documents reviewed by the individual.

(2) Challenge of Record Maintained by a Law Enforcement Agency

If the challenge is made to a record of class 3 or 4 misdemeanors received from the arresting law enforcement agency, that agency shall initiate the following action upon receipt of a challenge form:

- The agency shall cause the individual's record in the file to be flagged with the message that the record is under challenge. This flag shall accompany all disseminations of the information while the record is being checked.
- If the challenged information pertained to the arrest information, the agency shall examine all relevant files to determine the validity of the challenge and make necessary corrections if error(s) are found. The agency shall then notify the agency where review and challenge occurred.
- If the challenged information pertained to the disposition information, the agency shall compare the contents of the challenge with the information supplied by the clerk of the court; and if no error is found, forward the challenge to the clerk of the court originating the disposition for examination of court records pursuant to the challenge. The arresting law enforcement agency shall notify the agency in which the record was reviewed of this action. That agency shall notify the individual and/or his legal counsel of the action taken.
- The clerk of court shall cause the court records to be compared with the content of the challenge to determine if there are discrepancies in the documents maintained by the arresting law enforcement agency or documents reviewed by the individual. The clerk of the court shall then notify all agencies party to the challenge (arresting law enforcement agency and agency in which the record was reviewed) of the results and any corrective action necessary. The agency in which the

challenge occurred shall notify the individual and/or his counsel of the action taken.

d. Administrative Review

If, after the agency originating the information addressed in the challenge has conducted an examination of the records pursuant to the challenge, the individual is dissatisfied with such examination he or his legal counsel may request administrative review of such challenge as follows:

- Request in writing that an agency official, other than the official who made the first decision about his challenge, review the challenge and make a decision thereon.
- An official shall be selected by the agency head to conduct all such reviews of challenges.
- The individual shall be notified of the decision of the reviewing official within thirty (30) days of submission of the written request.

e. Administrative Appeal

Proposed legislation would place responsibility for hearing an administrative appeal upon the regulatory authority if, after the administrative review, the individual to whom the information relates is not satisfied and wishes to pursue the challenge further. Until such legislation becomes effective, the individual or his legal counsel should, within thirty (30) days of notification of the decision of the administrative review, request appointment of an appeal panel by the Governor. Such request should be directed to the Secretary of Transportation and Public Safety.

Procedures governing the appeal process will be established by the regulatory authority and, in the interim if required, by the Office of the Governor.

f. Correction/Notification of Error

If an error is found, an agency shall do the following:

- Correct all affected documents in its possession.
- Where such information is maintained in the files of CCRE or another law enforcement agency, notify the department of State Police or the agency maintaining the record in writing of the correction(s) to be made.
- Notify all known criminal justice recipients of erroneous information of correction(s) to be made.
- Request that the CCRE or agency maintaining the record notify all known criminal justice recipients of the correction(s) to be made.

- Notify the individual at his request, in writing, at no cost, of all known non-criminal justice recipients of the information.
- Request that the CCRE or agency maintaining the record supply the individual at his request, in writing, at no cost with a list of known non-criminal justice recipients of erroneous information.

If no error is found, the agency shall notify the Central Criminal Records Exchange or agency maintaining the record, the agency in which the record was reviewed, and the individual of this finding.

Regardless of what action is taken, all affected parties, including the agency in which the record was reviewed, the individual and/or his legal counsel, and the CCRE and/or agency maintaining the record, shall be notified of the agency's action within 30 days of the originating agency's receipt of the challenge form.

C. OUTLINE OF AUDIT PROCEDURES TO BE ESTABLISHED BY THE REGULATORY MECHANISM

The Department of Justice Regulations, Code of Federal Regulations, Chapter 1 of Title 28, Part 20, Subpart B, §20.21(e) require the State to adopt auditing procedures that "insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits."

Detailed auditing rules/regulations will be developed and issued by the duly authorized regulatory mechanism, such that

- Sampling procedures be established for the examination of specific records at the repository level to be traced through internal update procedures back through field input processing to terminate at the source document.
- Audit review would include, but not be limited to, examination of record accuracy, completeness, effectiveness of the systematic audit procedures, evidence of dissemination limitations, security provisions, and the individual's right of access.
- Source documents, from which criminal history information stored at the repository is derived and other information necessary to support annual audits, such as complete dissemination logs indicating the names of all persons or agencies to whom information from the CCRE or from records maintained by law enforcement agencies concerning class 3 or 4 misdemeanors is disseminated and the date of dissemination, shall be maintained by criminal justice agencies.
- The CCRE shall be audited on a annual basis, and all other criminal justice agencies shall be selected for auditing

by a weighted, random-sample method such that the sample is representative of the State criminal justice system and such that all agencies of a specific type and size classification have an equal chance of being selected.

MAJOR MILESTONES (Cont.)

Agencies Covered by Regulations	1976 Session of Virginia General Assembly		Regulatory Mechanism
	Should Be Implemented Prior To 12/31/77	May Need Delay Up To 12/31/77	
(Not Criminal History Record Information in Va.)			
Juvenile Record Dissemination			
Confirmation of Record Existence	x		x
Secondary Dissemination by Non-Criminal Justice Agencies	x		x
Dissemination Without Disposition	x		x
<u>Audits (Audit Trail)</u>			
Recreating Data Entry	x		x
Dissemination Logs	x		x
<u>Security</u>			
Prevention of Unauthorized Access	x		x
Conforming with Virginia Criminal Justice Computer Operations Security Standards		Note 1	x
Criminal Justice Agency Authority Over Computer Operations Policy Re:			
Data Security in Computer Certified, Inviolable Computer Program		Note 1	x
Positive Control of Record Destruction		Note 1	x
Certified Program to Detect and Record Unauthorized Penetration Attempts		Note 1	x
Security of Unauthorized Penetration Detection Programs		x	x
General Security Provisions:			
Physical Security	x		x
Unauthorized Access	x		x
Physical Protection Against:			
Access to Equipment	x		x
Theft, Sabotage	x		x
Fire, Flood, Other Natural Disaster	x		x
Employee, Training Program	x		x
<u>Individual Right of Access</u>			
Rules for Access	*		x
Point of Review and Mechanism	*		x
Challenge by Individual	*		x
Administrative Review	*		x
Administrative Appeal	*		x
Correction/Notification of Error	*	x	x

Note 1 - Based upon an estimated date for promulgation of Virginia Criminal Justice Computer Operations Security Standards of August 1, 1976, agencies directly covered by the regulations may well need until 12/31/77 to fully comply.

*Must be implemented by 3/16/76.

PART IV

RESPONSIBILITIES OF INVOLVED AGENCIES

A. NEED FOR LEGISLATION

The Code of Virginia has recognized the importance for criminal justice administration of reporting all arrests and subsequent court dispositions for all felonies and class 1 and 2 misdemeanors, the positive identification of persons reported on, the collection and storage of this criminal history information, and the needs for its dissemination to criminal justice agencies and non-availability to the public. This "criminal justice system" relationship of the Central Criminal Records Exchange (CCRE) with criminal justice agencies is contained in §19.2-388 to §19.2-390 of the Code.

With the assistance of federal and State funding, through grants from the Virginia Council on Criminal Justice since 1973, the Department of State Police have developed and operate a modern communication network and computer facility, the Virginia Crime Information Network (VCIN), which makes computerized criminal histories (CCH) and other information of tactical importance for law enforcement instantly available at over 83 computer terminals. Dissemination of non-computerized records to all users and computerized records to agencies without terminals is via the U. S. Postal Service.

Further development of the VCIN/CCH system to include basic status-change information of persons under various forms of State control by the Department of Corrections is in progress through an Offender-Based Transaction Statistics subsystem (OBTS). Other correctional programmatic information on Department of Corrections handling of offenders will be computerized by further capability expansion of the VCIN/CCH/OBTS by development of an Offender-Based State Corrections Information System (OBSCIS). These development programs are also with federal and State funds. The resulting system will essentially constitute a comprehensive Criminal Justice Information System (CJIS).

The Supreme Court of Virginia is completing a District Court Uniform Docketing and Caseload Reporting System, also with federal and State funds.

The foregoing developmental effort has and will vastly improve the value of criminal history record information to Virginia's criminal justice system, a value already recognized in the Code.

Those State and local agencies which receive funding after July 1, 1973, for the purposes just described, are subject to the provisions regarding criminal history information found in §524(b) of the Crime Control Act of 1973 and new rules and regulations in the Code of Federal Regulations stemming from the Act. The results of this are to create a situation wherein a significant number of criminal justice agencies in Virginia must meet more detailed

requirements for the collection, storage, and dissemination of criminal history record information than must other such agencies in the Commonwealth.

The Regulations provide that where dissemination of information covered by the regulations is made by an agency subject to the Regulations to an agency not subject to the Regulations, the personnel of the disseminating agency are subject to severe fines under the Crime Control Act and the Regulations for any misuse of the disseminated information by the receiving agency. In the absence of legislation which applies to all of Virginia's criminal justice agencies, each agency subject to the Regulations can protect its personnel from liability only by executing an agreement with each recipient not subject to the Regulations. Under the agreement, the receiving agency would place itself under the Regulations and accept the responsibilities and penalties therein. Needless to say, the process could become an administrative nightmare. If the exchange of criminal history information is to continue between the immediately affected agencies serving 55% of the State and agencies serving the balance of the State, each disseminating agency will be required to ascertain what agreements exist and are in effect. This situation constitutes the most compelling reason for immediate legislative action placing identical procedures for handling criminal history record information on all criminal justice agencies.

In order to establish a more consonant relationship amongst all elements of the criminal justice system, certain additional provisions for the handling of criminal history record information and safeguarding individual privacy and security are needed in the Code. Parts I and II of the Virginia Plan for Privacy and Security of Criminal History Record Information develop, discuss, and recommend these additional provisions which are contained in the legislation before the General Assembly.

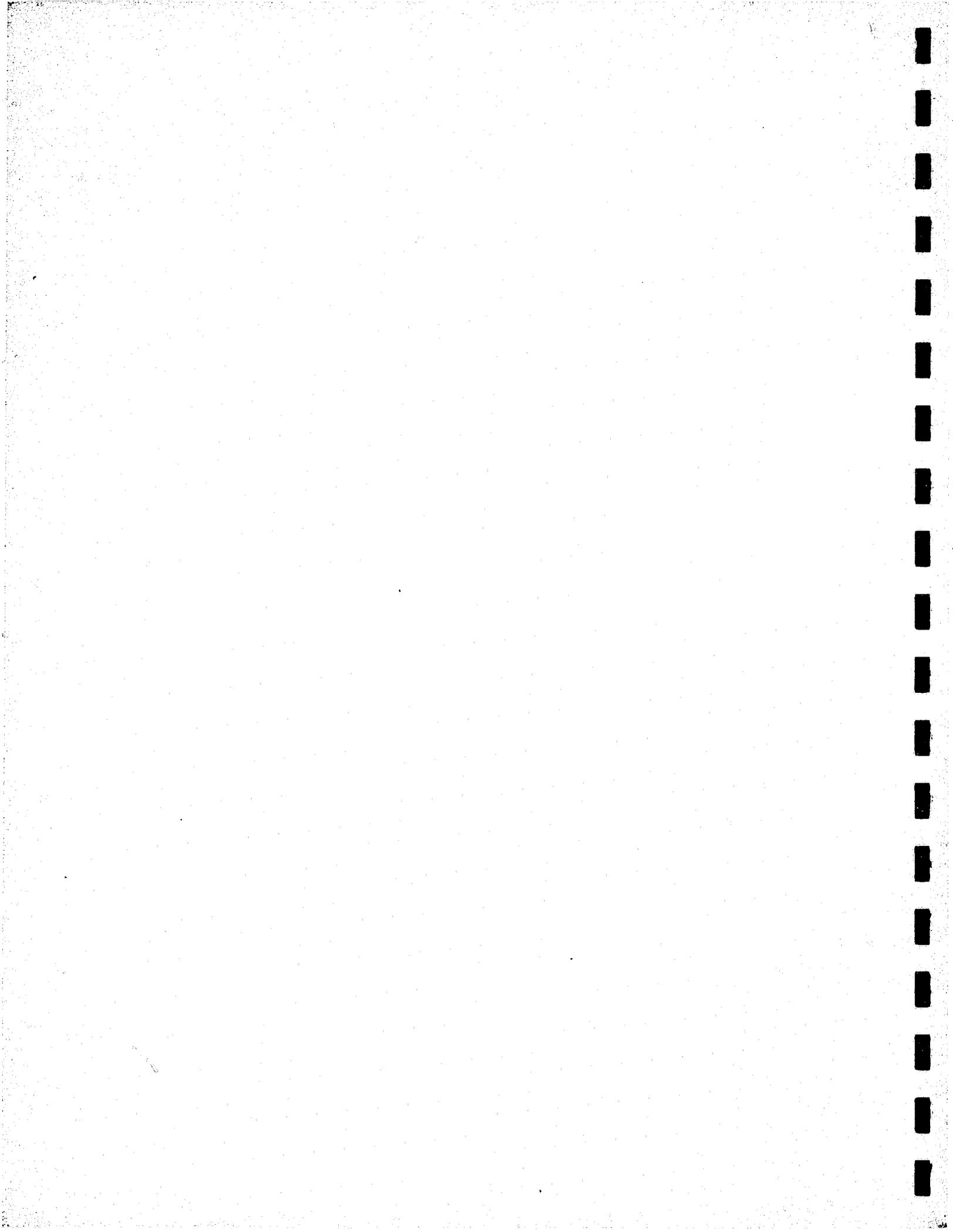
It was necessary that the Governor of Virginia have this plan prepared for submittal to the Law Enforcement Assistance Administration by March 16, 1976, pursuant to a revised requirement of the regulations. The plan was prepared by the Division of Justice and Crime Prevention but every effort has been made to reflect and address the concerns and comments of State and local agencies and local governments. While remaining responsive to the provisions of the new rules and regulations, the plan has been very much shaped by an enormous amount of effort and attention devoted to it by a great number of people throughout the Commonwealth.

B. COST-IMPACT ANALYSIS

A survey of the cost to implement operational procedures in agencies directly affected by the new rules and regulations was conducted. Based upon responses to the survey an estimate of costs to implement these procedures throughout the Commonwealth was prepared by the Division of Justice and Crime Prevention and is contained in Appendix H.

C. PREPARATION OF LEGISLATION

Legislation has been prepared by representatives of the Office of the Attorney General, the Division of Legislative Services, and the Division of Justice and Crime Prevention. Proposed legislation has been coordinated with the Virginia State Crime Commission. Alternative means of regulating the collection, storage, dissemination and use of criminal history record information exist. Which form of regulation will be enacted is not known. There is, however, general support for passage of legislation at the 1976 session of the General Assembly. In this event, legislation would become effective November 1, 1976. Many provisions of the federal regulations would then be directly applicable to all criminal justice agencies within the Commonwealth. Other provisions would be promulgated by the regulatory authority following the Administrative Process Act, Chapter 1.1:1 to Title 9 of the Code of Virginia (§9-6.14:1 et. seq.). Additional legislation could then be considered at the 1977 session of the General Assembly, based upon the experience gained in operating under the new provisions in the Code.



Appendix A

TERMS - DEFINITIONS AND APPLICABILITY

The following terms have been used as key concepts in the development of the Virginia Plan for Privacy and Security of Criminal History Record Information. These terms have been used with regard to the meaning given them in Department of Justice and LEAA documents.

The following documents are cited as reference points for definitions and applicability of the terms:

Ref. (1) - Department of Justice Regulations, Federal Register, May 20, 1975.

Ref. (1a) - Commentary - Department of Justice Regulations.

Ref. (2) - LEAA Planning Instructions, June 30, 1975.

Ref. (3) - LEAA Supplement No. 1, August 20, 1975.

Ref. (4) - LEAA Supplement No. 2, September 30, 1975.

A. Administration of Criminal Justice:

Ref. (1) - means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders; and shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

B. Criminal History Record Information:

Ref. (1) - means information collected by criminal justice agencies on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

Ref. (1a) - if notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet," any criminal history record information contained in such reports comes under the definition of this subsection.

Ref (3) - criminal history record information must contain both (1) identification data sufficient to identify the subject of the record and, (2) notations regarding any "formal criminal justice transaction" involving the identified individual. Fingerprints are not required for a record to be criminal history record information, if it otherwise is covered by the definition.

Exceptions

Ref. (1) - identification information such as fingerprint records

to the extent that such information does not indicate involvement of the individual in the criminal justice system.

Ref. (2) - statistics which do not reveal the identity of individuals.

Ref. (2) - criminal records of corporations.

Ref. (3) - the document originally prepared to record facts about the transaction (e.g. the report of a crime scene investigation, individual arrest report, report of court action on an individual).

NOTE:

§16.1-16.2 Code of Virginia removes juvenile information from the scope of the Department of Justice Regulations and from the definition and procedures relating to the term "criminal history record information."

C. Criminal History Record Information Collections:

Ref. (2) - means criminal justice information systems which contain data on arrests and other criminal justice system transactions; for example, subject-in-process, prosecution management, and inmate records systems.

Ref. (3) - source documents that are filed alphabetically, thereby allowing a search by name for retrieval of all such records related to an individual are criminal history record information; an index system which permits a search of documents filed chronologically would be, in conjunction with the documents, criminal history record information.

Ref. (4) - regulations apply to combinations of any non-chronological index and file which might be used to assemble or permit retrieval of a summary criminal history on an individual. If, as a result of automatic data processing, the equivalent to an alphabetical manual index exists, such automated files would likewise be subject to the regulations.

Exceptions

Ref. (2) - posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

Ref. (2) - original records of entry, compiled chronologically and required by law or long-standing custom to be made public, if such records are accessed on a chronological basis.

Ref. (2) - court records of public judicial proceedings compiled chronologically, if such files are solely within the management and control of a court system.

Ref. (2) - published court opinions or public judicial proceedings.

Ref. (2) - record of traffic offenses maintained by State departments for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's or other operator's licenses.

Ref. (2) - announcement of executive clemency.

D. Criminal History Record Information System:

Ref. (1) - means a system including the equipment, facilities, procedures, agreements, and organization thereof, for the collection, processing, preservation or dissemination of criminal history information.

E. Criminal Justice Agency:

Ref. (1) - means courts, and a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

Ref. (1a) - traditional police, courts, and corrections agencies as well as subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order; umbrella-type administrative agencies supplying criminal history information services (e.g. New York's Division of Criminal Justice Service).

Ref. (2) - a governmental agency or subunit thereof would be one having an agency head administratively responsible to elected public officials or to persons appointed by elected public officials; must be expressly authorized by statute or executive order to perform one of the functions of the administration of criminal justice; and must allocate a substantial part of its annual budget to the administration of criminal justice; this agency should have as its principal function one of the functions of the administration of criminal justice, but it is not necessary that such an agency be exclusively performing administration of criminal justice functions.

Ref. (2) - criminal justice agency may include subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to a Federal or State statute or executive order; it is possible for a functional sub-unit of a data processing agency to qualify as a criminal justice agency.

Ref. (2) - the level in the organization defined to be a criminal justice agency must be construed narrowly to meet the intent of the regulations.

Exceptions

Ref. (2) - corporations and other private agencies which by contract perform important functions related to criminal justice.

Ref. (2) - agencies and individuals which provide only funding, oversight, staff services, general supervision, or policy guidance without regularly engaging in the day-to-day management or administration of criminal justice activities; in infrequent and exceptional cases a chief executive may be considered as part of a criminal justice agency.

F. Disposition:

Ref. (1) - means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement.

Ref. (1a) - other unspecified transactions concluding criminal proceedings within a particular agency.

Ref. (2) - the formal conclusion of each stage of a case as it moves from arrest through the criminal justice system; includes police, prosecutor, court, and corrections actions; and such other actions as pardons or executive clemency or appellate court decisions reversing or modifying earlier actions.

G. Dissemination:

Ref. (2) - means transmission of criminal history record information to individuals and agencies other than the criminal justice agency which maintains the criminal history record information; includes confirmation of the existence or non-existence of a criminal history record.

Ref. (3) - the release of criminal history record information by an agency to another agency or individual.

Exceptions

Ref. (3) - use of the information by an employee or officer of the agency maintaining the records.

Ref. (3) - reporting the occurrence or the circumstances of a criminal justice transaction (the reporting of an arrest or other transaction to a local or State repository is not dissemination).

Ref. (3) - reporting data on a particular transaction to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings.

Ref. (4) - reporting of criminal history record information to the FBI.

Excerpts From the CODE OF VIRGINIA Re: Court Records

§ 16.1-87. **Civil docket.** — For each district court having jurisdiction of civil actions there shall be a civil docket, on which shall be entered all civil actions or proceedings before the court. Such dockets shall be maintained as public records for a period of twenty years, after which they may be destroyed. (1956, c. 555; 1958, c. 578; 1972, c. 753; 1975, c. 334.)

§ 16.1-91. **Papers to be numbered, indexed and filed.** — Upon the return of the warrant or motion for judgment to the court with the return of the officer thereon showing service on one or more of the defendants it shall be given a number by the judge or clerk, which shall be the file number for that particular warrant or motion and all other papers relating to that particular case. The file number of each case shall be placed upon the papers and upon the court docket and other records where the case appears. Whenever any action or other proceeding is disposed of by the court, all papers in the case shall be securely fastened together and numbered, and filed in consecutive order and preserved as provided by law. All writs of fieri facias or other writs issued in the case shall bear the file number, and upon being returned to the court or clerk's office shall be placed with the other papers. In each such court there shall be kept an index on which there shall be maintained in alphabetical order the names of all defendants, and the file number assigned to the proceeding in which the defendant appears. (1956, c. 555; 1958, c. 578; 1975, c. 334.)

§ 16.1-130. **Criminal dockets.** — For each court not of record having jurisdiction of criminal matters there shall be a criminal docket, on which shall be entered all cases tried and prosecuted and all matters coming before the court, and the final disposition of the same, together with an account of costs and fines assessed. Such dockets shall be maintained as public records for a period of twenty years, after which they may be destroyed. (1956, c. 555; 1962, c. 108.)

§ 16.1-133. **Papers retained for payment of fine; when papers indexed, filed and preserved in the trial court.** — In any case in which the defendant is permitted by the judge to pay in installments any fine imposed upon him the papers may, if otherwise required to be returned to a court of record, be retained in the trial court for such period not in excess of three years after conviction as may be required for the payment of the fine or until the suspension is revoked. All papers in criminal proceedings which are not required to be returned to a court of record shall be properly indexed, filed and preserved in the trial court, as public records for a period of twenty years, after which they may be destroyed. (1956, c. 555; 1962, c. 108.)

§ 17-27. **How proceedings of court drawn up and signed.** — The proceedings of every court shall be entered in a book kept for the purpose to be known as the order book. After being corrected when it is necessary the record shall be signed by the presiding judge. In the event of the judge of a court dying, retiring, or resigning, heretofore or hereafter, without having signed all of the orders or decrees endorsed by him for entry and entered in the order books of the court by the clerk thereof, it shall be lawful for either the judge appointed to fill the vacancy caused by such death, retirement, or resignation, or any judge appointed to preside over the court until such vacancy is filled, to sign such of the orders or decrees so entered of record as had not been signed by the judge who endorsed them for entry; and when so signed, they shall be of the same force and effect as if they had been signed by such judge in his lifetime. (Code 1919, § 5962; 1940, p. 364; 1954, c. 175; 1966, c. 385.)

The purpose of this section is to provide for keeping the records of every court correctly, by making it the duty of the clerk to enter them in a book, and to read them in open court to the judge, and in the presence of the bar, so that any errors in or omissions from them might be corrected. *Barnes v. Commonwealth*, 92 Va. 794, 23 S.E. 784 (1895). See *New York Life Ins. Co. v. Barton*, 166 Va. 426, 186 S.E. 65 (1936).

A court speaks only through its orders. *Cunningham v. Smith*, 205 Va. 205, 135 S.E.2d 770 (1964).

Which must comply with law. — In those cases where the jurisdiction of the court depends upon compliance with certain mandatory provisions of law, the court's order, spread upon its order book, must show such compliance or jurisdiction is not obtained. *Cunningham v. Smith*, 205 Va. 205, 135 S.E.2d 770 (1964).

Court proceedings should be recorded as of the day they take place. *Carpenter v. Commonwealth*, 193 Va. 851, 71 S.E.2d 377 (1952).

And should be entered chronologically. — Courts of record are required to maintain order books for the purpose of recording systematically the daily proceedings had in court. Orders should be entered by the clerk chronologically. *McDowell v. Dye*, 193 Va. 390, 69 S.E.2d 459 (1952).

All orders need not be recorded immediately. — It is not the practice in this State, and indeed it would be physically impossible, for the clerk to record all of the orders on the order book immediately, or for the judge forthwith to sign them. The universal practice is that the clerk extends the orders upon

the permanent record of the court just as soon as possible, and they are thereafter read in open court and signed as orders of the date when the judgments were pronounced. This practice is recognized by this section. *Daley v. Commonwealth*, 132 Va. 621, 111 S.E. 111 (1922).

Court order carrying into effect its prior oral pronouncement should have been spread upon the order book under the date upon which it was approved and endorsed for entry and should not have been antedated as of the date of the oral pronouncement. *McDowell v. Dye*, 193 Va. 390, 69 S.E.2d 459 (1952).

Signing orders of last day of term authenticates all orders. — If only the orders of the last day of the term are signed, this is sufficient authentication of all the orders of the term which are spread on the record and which precede the signature of the judge, though the reasonable inference from this section is that the orders of each day should be separately signed. *Weatherman v. Commonwealth*, 91 Va. 796, 22 S.E. 349 (1895).

Presence of accused not necessary when orders signed. — It is not necessary that the accused should be present when orders are signed. *Weatherman v. Commonwealth*, 91 Va. 796, 22 S.E. 349 (1895).

Amendment of record after the term. — After the term at which a case is tried the court cannot amend its records, unless there is something in the record by which amendments can be safely made. They cannot be made upon the individual recollection of the judge, or upon proof aliunde. *Barnes v. Commonwealth*, 92 Va. 794, 23 S.E. 784 (1895). See also *Sydnor v. Burke*, 25 Va. (4 Rand.) 161 (1826).

§ 17-28. Order books. — There shall be kept in the office of the clerk of every circuit court, except as otherwise provided herein, two order books, to be known as the common-law order book and the chancery order book, in which shall be recorded, in the common-law order book, all proceedings, orders and judgments of the court in all matters at common law, and in the chancery order book, all decrees, and decretal orders of such court, in matters of equity and all matters pertaining to trusts, the appointment and qualification of trustees, committees, administrators, executors and guardians, except when the same are appointed by the clerk of such court, in which event the order appointing such administrators or executors, shall be made by the clerk and by him entered in a certain other book, to be known as the clerk's order book. In any circuit court, the clerk may, with the approval of the chief judge of such court, by order entered of record, divide the common-law order book into two sections, to be known as the civil common-law order book and the criminal common-law order book. All proceedings, orders and judgments of the court in all matters at civil common law shall be recorded in the civil common-law order book, and all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the criminal common-law order book. The action of any court which has established a separate criminal common-law order book prior to July one, nineteen hundred seventy-three, is hereby validated. In any proceeding brought for the condemnation of property, all proceedings, orders, judgments and decrees of the court shall be recorded in the common-law order book of the court. The recordation prior to January one, nineteen hundred seventy-four, of all proceedings, orders, judgments and decrees in such cases, whether entered in the common-law order book or the chancery order book of any court, is hereby declared a valid and proper recordation of the same. (1926, p. 750; 1932, p. 765; 1936, p. 557; Michie Code 1942, § 5962a; 1962, c. 233; 1973, c. 9; 1974, c. 524.)

§ 17-43. Records, etc., open to inspection; copies. — The records and papers of every court shall be open to inspection by any person and the clerk shall, when required, furnish copies thereof, except in cases in which it is otherwise specially provided. The certificate of the clerk to such copies shall, if the paper copied be recorded in a bound volume, contain the name and number of the volume and the page or folio at which the recordation of the paper begins. No person shall be permitted to use the clerk's office for the purpose of making copies of records in such manner, or to such extent, as will interfere with the business of the office or with its reasonable use by the general public. (Code 1919, § 3388; 1920, p. 242; 1930, p. 353; 1936, p. 17; 1942, p. 242; 1944, p. 40; 1946, p. 56; 1947, p. 96; 1952, c. 286.)

§ 17-78. Clerk to make index to each of his books. — The clerk of every court shall have an index to each book he is required to keep, except those for which general indexes are required and kept, or permitted and kept, making convenient reference to every order, record or entry therein. Every execution and every judgment or decree for money shall be indexed, as well in the name of the person against whom as in the name of the person in whose favor the same is. (Code 1919, § 3391; 1942, p. 179.)

Judgments not regarded as docketed as to defendant in whose name it is not indexed. — Sections 8-377, 8-378, former 8-390 and this section, with respect to indexing and docketing judgments, require that a docketed judgment shall be indexed in the names of all the parties

to the judgment, and should not be regarded as docketed as to any defendant in whose name it is not indexed. These names must be set out, and the omission of the christian name is fatal to the judgment. *Richardson v. Gardner*, 128 Va. 676, 105 S.E. 225 (1920).

§ 17-79. General indexes for clerks' offices; daily index. — (1) There shall be kept in every clerk's office modern, family name or ledgerized alphabetical key-table general indexes to all deed books, miscellaneous liens, will books, judgment dockets and court order books. The clerk shall enter therein daily with pen and ink or typewriter all instruments admitted to record, indexing each instrument in the names of all parties appearing therein who are thereby shown to be affected by the instrument.

(2) A deed made to one or more trustees to secure the payment of an indebtedness shall be sufficiently indexed if the clerk shall enter in the appropriate places in the general index to deeds provided for in paragraph (1) the names of the grantor and the name of the beneficiary or, in lieu of the name of the beneficiary, the first listed trustee as grantee.

(3) A deed made by a person in a representative capacity, or by devisees or coparceners, shall be indexed in the names of the parties and the name of the former record title owner, shown by the instrument.

(4) The general indexes of law and chancery causes shall be sufficiently kept if the clerk shall index such causes under the short style or title thereof, except that in multiple suits brought under § 58-1107, the names of all of the defendants disclosed by the pleadings shall be entered in said general index or book.

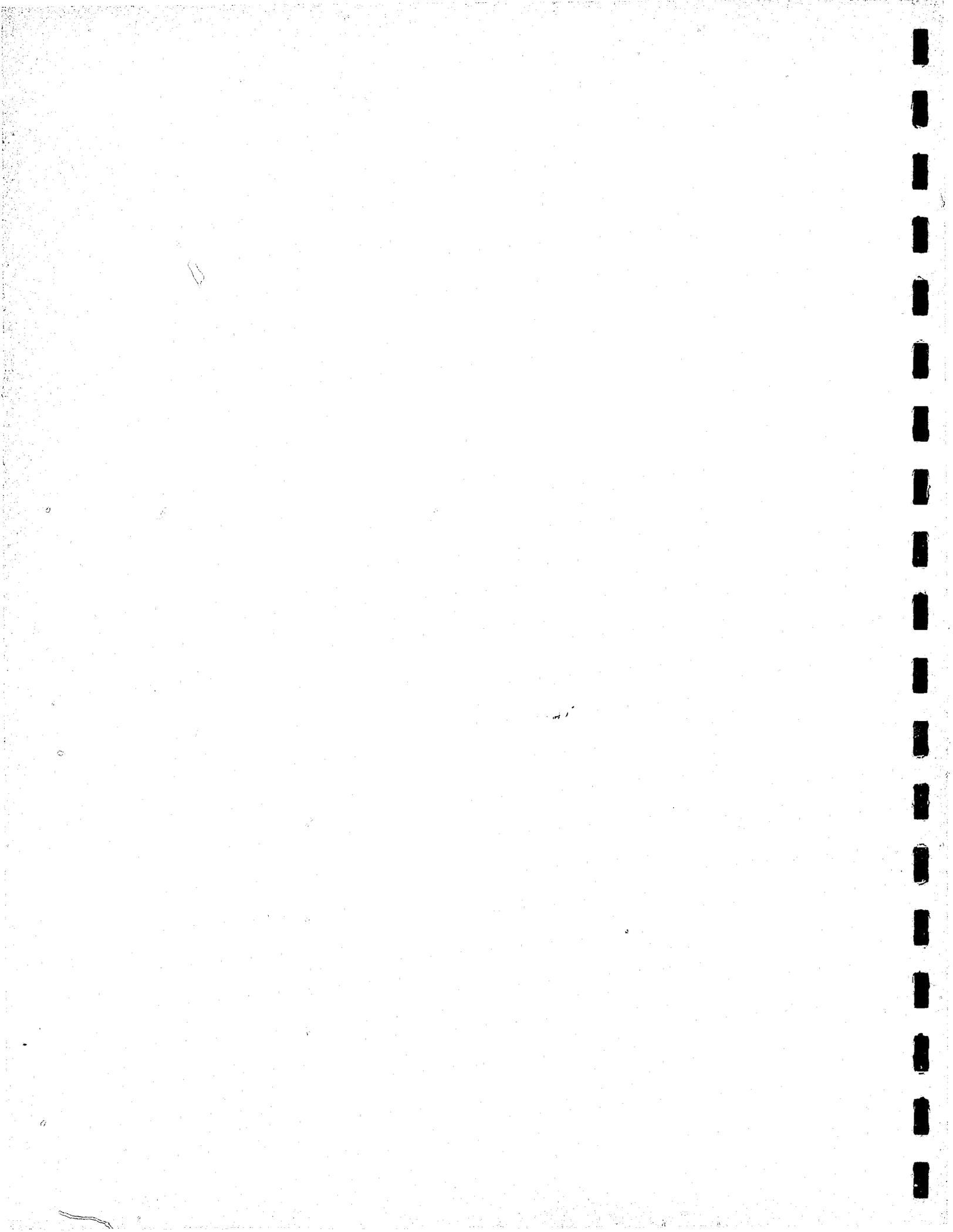
(5) Every deed of conveyance of real estate in which a vendor's lien is reserved shall be double indexed so as to show not only the conveyance from the grantor to the grantee in the instrument, but also the reservation of the lien as if it were a grant of the same from the grantee to the grantor by a separate instrument and the fact of the lien shall be noted in the index.

(6) All deed books, miscellaneous liens, will books, judgment dockets and court order books shall be numbered or otherwise adequately designated and the clerk upon the delivery of any writing to him for record required by law to be recorded shall duly index it upon the general index in the manner hereinbefore required and when the writing has been actually transcribed on the book shall add to the general index the number of the book in which, and the page on which, the writing is recorded.

(7) The clerk on receipt of any such writing for record may immediately index it in a book to be known as the "daily index of instruments admitted to record" and within ninety days after its admission to record the clerk shall index all such writings indexed in the daily index in the appropriate general index as hereinbefore provided. The daily index book shall, at all times, be kept in the office of the clerk and conveniently available for examination by the public. During the period permitted for transfer from the daily index to the general index, indexing in the daily index shall be a sufficient compliance with the requirements of this section as to indexing.

(8) The judge of any circuit court in term or in vacation may make such order or orders as he may deem advisable as to the time and method of indexing the order books in the clerk's office of the court and may dispense with a general index for order books of the court. (Code 1919, § 3394; 1920, p. 105; 1926, p. 125; 1936, p. 82; 1944, p. 355; 1952, c. 34; 1960, c. 146; 1974, c. 515.)

§ 19.2-346. Clerks to file and index such warrants and issue execution upon unpaid fines; when destroyed. — Upon receipt of the warrants under § 19.2-345, the clerk of the circuit court shall file and properly index the same and, when necessary, issue execution or other proper process upon those fines and costs, or costs, remaining unpaid as though such fines and costs had been imposed in his court. Such warrants shall be maintained as public records for a period of twenty years, after which they may be destroyed. (Code 1950, § 19.1-336; 1960, c. 366; 1962, c. 446; 1975, c. 495.)



Appendix C

OFFENDER BASED TRANSACTION STATISTICS
(OBTS) DATA ELEMENTS

Source: The data elements which follow were obtained from SEARCH Technical Memorandum #4, January 1972: Implementing Statewide Criminal Justice Statistics Systems - The Model and Implementation Environment. Data elements for the Virginia OBTS have not been determined, at this time, by the Criminal Justice Information Systems Management Review Board.

POLICE/PROSECUTOR DATA ELEMENTS

1. *State ID Number
2. *FBI Number (if available)
3. *Arresting Agency (NCIC code) agency, county
4. *Date--Arrest
5. *Charged Offense--Most Serious (NCIC code, 2 level)
6. *Police Disposition
 1. Transfer Other Law Enforcement Agency
 2. Transfer Other Agency
 3. Released
 4. Other
7. *Birthdate
8. *Sex
 1. Male
 2. Female
 3. Not Stated
9. *Race
 1. White
 2. Negro
 3. Chinese
 4. Japanese
 5. American Indian
 6. Other
 7. Unknown
10. Prosecutive Disposition
 1. Felony Charge
 2. Misdemeanor Charge
 3. Declined to Prosecute
 4. Other
11. Date--Prosecutive/Police Disposition

LOWER CRIMINAL COURT DATA ELEMENTS

12. Court ID Number
13. Date--Initial Appearance
14. *Release Action (initial opportunity)
 1. Own Recognizance
 2. Bail
 3. Committed in Default
 4. Committed Without Bail
 5. Other
15. *Date--Release Action
16. *Charged Offense--Most Serious
17. *Date--Lower Court Disposition
18. *Final Charge--Most Serious
19. *Type of Charge
 1. Felony
 2. Misdemeanor
 3. Other
20. Type of Trial
 1. Non-Jury
 2. Jury
 3. Transcript
 4. Other
21. Plea (at misdemeanor trial in lower criminal court)
 1. Not Guilty
 2. Guilty
 3. Nolo
 4. Other
 5. Unknown
22. *Disposition
 1. Bound Over/Held to Answer
 2. Dismissed/Noli
 3. Acquitted
 4. Convicted
 5. Civil Procedure
 6. Off Calendar/Stet (case not adjudicated)
 7. Other
23. *Data of Sentence
24. *Type of Sentence
 1. Prison
 2. Probation (supervised)
 3. Probation and Jail (supervised)
 4. Probation (unsupervised)
 5. Jail and Fine

6. Jail
 7. Fine
 8. Suspended/Imposition/Execution
 9. Other
25. *Imprisonment Sentence (days/months)
 26. *Probation Sentence (months)
 27. Type of Counsel
 1. Private
 2. Public-Appointed
 3. Public Defender
 4. Self
 5. Other

FELONY TRIAL COURT DATA ELEMENTS

28. Court ID Number
29. Date--Filing
30. Type of Filing
 1. Information
 2. Grand Jury
 3. Other
31. Felony Filing Procedure
 1. Indictment/Accusation
 2. No Bill
 3. Refer to Lower Court/Reduced Charge
 4. Dismissed
 5. Information
32. *Charged Offense--Most Serious
33. Date--Arrest
34. Initial Plea
 1. Not Guilty
 2. Guilty
 3. Nolo
 4. Other
 5. Unknown
35. Final Plea (same code as Initial Plea)
36. Date--Trial Commences
37. Type of Trial
 1. Non-Jury
 2. Jury
 3. Transcript
 4. Other

38. *Release Action

1. Own Recognizance
2. Bail
3. Committed to Default
4. Committed Without Bail
5. Other

39. Date--Release Action

40. *Disposition

1. Dismissed
2. Acquitted
3. Convicted
4. Civil Procedure
5. Off Calendar/Stet
6. Other

41. *Date--Sentencing

42. *Sentence Type

1. Prison
2. Probation (supervised)
3. Probation and Jail (supervised)
4. Probation (unsupervised)
5. Jail and Fine
6. Jail
7. Fine
8. Suspended/Imposition/Execution
9. Other
10. Sentenced to Time-Served and Released

43. *Prison (years) (min and max)

44. *Jail (days/months)

45. *Probation (months)

46. Type of Counsel

1. Private
2. Public-Appointed
3. Public Defender
4. Self
5. Other

CORRECTIONS DATA ELEMENTS

47. Agency ID Numbers

48. *Receiving Agency

1. State Institution
2. Local Prison
3. Jail/Local Institution
4. Probation
5. Parole
6. Other

49. Status

1. Custody
2. Part-Time Release
3. Full-Time Release
4. Abscond
5. Other

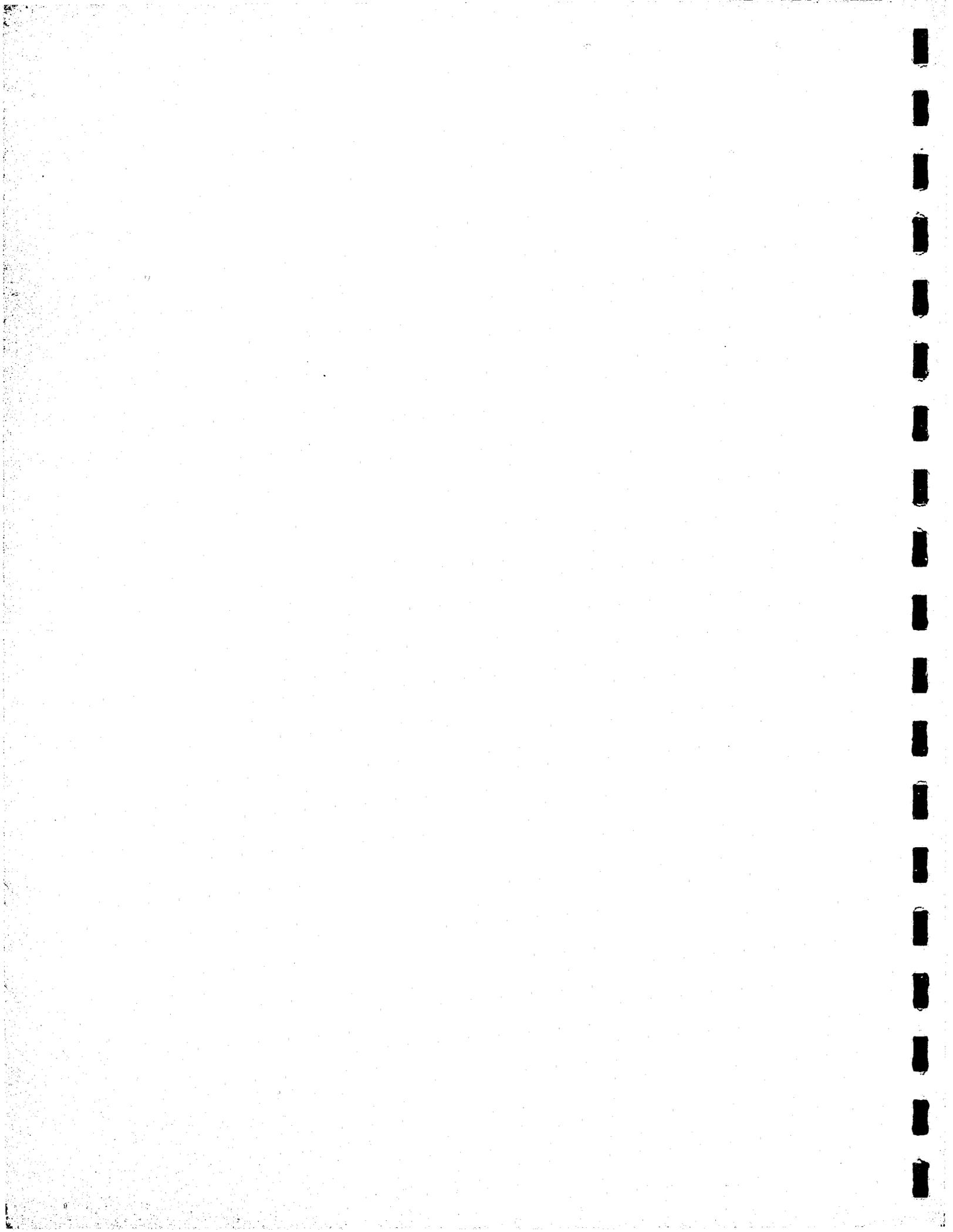
50. *Date--Received

51. *Date--Agency Move/Status Change/Exit

52. *Exit

1. Discharge/Pardon/Commutation
2. Court Order Discharge
3. Return to Court - Revocation
4. Return to Court - New Offense
5. Other

NOTE: * indicates those elements captured by the Virginia Criminal Information Network/Computerized Criminal Histories (VCIN/CCH).



Appendix D

EXCERPTS FROM CODE OF VIRGINIA ON
CENTRAL CRIMINAL RECORDS EXCHANGE (CCRE),
CURRENT DISPOSITION REPORTING
CCRE DISSEMINATION RESPONSIBILITIES
DISSEMINATION LIMITATION

§19.2-388. Duties and authority of Exchange. - It shall be the duty of the Central Criminal Records Exchange to receive, classify and file records required to be reported to it by §19.2-390. The Exchange shall also receive, record, and file the F.B.I. record of any person as furnished by the Federal Bureau of Investigation. Such records may also contain any information made available to the Exchange by any law enforcement agency or any State official or agency prior to March fifteen nineteen hundred sixty-eight. The Exchange is authorized to prepare and furnish to all State and local law enforcement officials and agencies, and to clerks of circuit courts not of record, forms which shall be used for the making of such reports.

§19.2-389. Furnishing copies of records. - The Central Criminal Records Exchange shall furnish copies of the records in its files respecting any person concerning whom a report has been made under the provisions of this chapter, to any of the following persons or agencies upon the request of such person, agency or authorized representative thereof: (i) the person concerning whom such a report has been made; and (ii) any official or agency required to make reports to it, or any federal law enforcement agency, or the armed forces of the United States, or any State or local probation or parole officer or similar federal officer employed by any federal court in this State, or any official of any penal institution of this State, or any agency of any other state which maintains a repository of criminal records, or the chief law enforcement officer or agency of any other state. Such records shall not be made available to the public.

Upon an ex parte motion of a defendant in a felony case, and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

§19.2-390. Reports to be made by local law enforcement officers, conservators of the peace and clerks of court- (a) Every State official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest on a charge of treason or of any felony or of any offense punishable as a misdemeanor under Title 54, or class 1 and 2 misdemeanors under Title 18.2. Such reports shall contain such information as shall be required by the

Exchange and shall be accompanied by fingerprints of the individual arrested and information as to whether a photograph of the individual is available. For persons arrested and released on summonses in accordance with §19.2-74, such report shall not be required until after a disposition of guilt is entered by a competent judicial authority.

(b) The clerk of each court of record and court not of record shall make a report to the Central Criminal Records Exchange of any dismissal, nolle prosequi, acquittal, or conviction of, or failure of a grand jury, to return a true bill as to, any person charged with an offense listed in subsection (a) of this section. No such report of conviction shall be made by the clerk of a court not of record unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction has been nullified in any manner, he shall also make a report of that fact, and each clerk of a court of record, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange on forms provided by it, any reversal or other amendment to a prior sentence reported to the Exchange. For each such report made by a clerk of a court of record, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

(c) In addition to those offenses enumerated in paragraph (a) of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law enforcement agency or any correctional institution.



Public Law 93-83
93rd Congress, H. R. 8152
August 6, 1973

An Act

87 STAT. 197

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to improve law enforcement and criminal justice, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Crime Control Act of 1973".

SEC. 2. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

Crime Control Act of 1973.
82 Stat. 197;
84 Stat. 1681.
.42 USC 3701.

"TITLE I—LAW ENFORCEMENT ASSISTANCE

EXTRACT

"SEC. 524. (a) Except as provided by Federal law other than this Prohibition, title, no officer or employee of the Federal Government, nor any recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings.

"(b) All criminal history information collected, stored, or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate,

incomplete, or maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

Penalty.

"(c) Any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed \$10,000, in addition to any other penalty imposed by law.

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PART IV



DEPARTMENT OF
JUSTICE

■
CRIMINAL JUSTICE
INFORMATION SYSTEMS

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

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

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

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

Subpart A—General Provisions

- Sec.
 20.1 Purpose.
 20.2 Authority.
 20.3 Definitions.

Subpart B—State and Local Criminal History Record Information Systems

- 20.20 Applicability.
 20.21 Preparation and submission of a Criminal History Record Information Plan.
 20.22 Certification of Compliance.
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Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

- 20.30 Applicability.
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 20.35 National Crime Information Center Advisory Policy Board.
 20.36 Participation in the Computerized Criminal History Program.
 20.37 Responsibility for accuracy, completeness, currency.
 20.38 Sanction for noncompliance.

Authority: Pub. L. 93-83, 87 Stat. 197, (42 U.S.C. 3701, et seq.; 28 U.S.C. 534), Pub. L. 92-544, 86 Stat. 1115.

Subpart A—General Provisions

§ 20.1 Purpose.

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

§ 20.2 Authority.

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

§ 20.3 Definitions.

As used in these regulations:

(a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(c) "Criminal justice agency" means: (1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(d) The "administration of criminal justice" means performance of any of the following activities: detection; apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information

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

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

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

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

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

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

Subpart B—State and Local Criminal History Record Information Systems

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to Title I of the Act.

(b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or

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

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

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

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

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

familiar with the substance and intent of these regulations; and

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

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

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

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

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

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

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

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

§ 20.22 Certification of Compliance.

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

(b) The certification shall include—

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

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

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

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

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

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

§ 20.23 Documentation: Approval by LEAA.

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

§ 20.24 State laws on privacy and security.

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

§ 20.25 Penalties.

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

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

§ 20.30 Applicability.

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

§ 20.31 Responsibilities.

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

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

(b) The FBI shall operate the Identification Division to perform identification and criminal history record information functions for Federal, state and local criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (96 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States.

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

§ 20.32 Includable offenses.

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

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

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

§ 20.33 Dissemination of criminal history record information.

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

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

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

(3) Pursuant to Public Law 92-544 (96 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination

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

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

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

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

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

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

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

§ 20.35 National Crime Information Center Advisory Policy Board.

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

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

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

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

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

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

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

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

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

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

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

§ 20.36 Participation in the Computerized Criminal History Program.

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

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

§ 20.37 Responsibility for accuracy, completeness, currency.

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

§ 20.38 Sanction for noncompliance.

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

to comply with the provisions of Subpart C.

EDWARD H. LEVI,
Attorney General.

MAY 15, 1975.

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

MAY 15, 1975.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 20.21(a)(1). Section 504(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

granting extensions of time under this provision.

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

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

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

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

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

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

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

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

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

by the FBI for Federal, state and local agencies.

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

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

§ 20.33. Incorporates the provisions of a regulation issued by the FBI on June 26, 1974, limiting dissemination of arrest information not accompanied by disposition information outside the Federal government for non-criminal justice purposes. This regulation is cited in 28 CFR 50.12.

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

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

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

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

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

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

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

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

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

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

[FR Doc.75-13197 Filed 5-19-75;8:45 am]

[Order No. 602-75]

PART 50—STATEMENTS OF POLICY

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

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

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

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

(b)

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

MAY 15, 1975.

EDWARD H. LEVI, Attorney General.

[FR Doc.75-13198 Filed 5-19-75;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Law Enforcement Assistance
Administration

[28 CFR Part 20]

CRIMINAL HISTORY RECORDS

Collection, Storage, and Dissemination of Information

This proposed regulation amends the regulations pertaining to the collection, storage and dissemination of criminal history record information.

These amendments are based upon a reevaluation of the dedication requirement by the Department of Justice and the persuasive comments of many State and local officials who have stated that dedication of the criminal justice information system would cause highly excessive increases in present criminal justice system expenditures and that other appropriate methods are available to assure the security of criminal justice information.

The amendments also extend the date on which the State plan must be submitted.

Hearings on the proposed changes will be held November 17, and if necessary November 18, 1975, beginning at 10 a.m. in the 3rd Floor Conference Room, 633 Indiana Avenue, NW., Washington, D.C. Two other hearings are planned to be held November 21, 1975, in Atlanta, Georgia and December 4, 1975, in San Francisco, California. Interested persons who wish to testify should notify Thomas J. Madden, General Counsel, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531 no later than five days before each hearing.

The selected commentary dealing with the proposed amendments are deleted: § 20.21, the second sentence; § 20.21(f) (2) in its entirety.

Written views on the proposed regulations should be submitted to the LEAA Office of General Counsel no later than December 5, 1975.

Pursuant to the authority vested in the Law Enforcement Assistance Administration by sections 301 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-33, 87 Stat. 197 (42 U.S.C. 3701 et seq.) (Aug. 6, 1973), this amendment to Chapter I of Title 28 of the Code of Federal Regulations is proposed.

In § 20.21 the first sentence of the introductory text is deleted and the following two sentences are added and paragraph (f) is revised to read as follows:

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

A plan shall be submitted to LEAA by each State on or before March 16, 1976, to set forth all operational procedures, except those contained in paragraph (f) of this section. A supplemental plan covering paragraph (f) of this section shall be submitted no later than 60 days after the amendment to paragraph (f) of this section becomes effective. * * *

(f) *Security.* Insure confidentiality and security of criminal history record information by providing that wherever criminal history record information is collected, stored, or disseminated, each State shall ensure that:

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation conforms with security standards established by State legislation or, in the absence of such legislation, by regulations approved or issued by the governor of the State.

(3) A criminal justice agency shall have authority to set and enforce policy concerning those computer operations which support criminal history record information processing, by specifically providing that:

(i) Criminal history record information be stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(ii) A designated criminal justice agency employee will specify and certify for operational use programs that will prohibit inquiry, record updates, or destruction of records from any terminal other than criminal justice system terminals which are so designated.

(iii) The destruction of records is limited to specifically designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

(iv) Designated criminal justice agency employees will specify and certify for operational use such programs to detect and store for their output all unauthorized attempts to penetrate any criminal history record information system, program, or file.

(v) Such program(s) shall be known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) kept continuously under maximum security conditions.

(4) A criminal justice agency will:

(i) Select and supervise all personnel authorized to have direct access to such information.

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

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

(iv) Provide that each employee working with or having access to criminal history record information is familiar with the substance and intent of these regulations; and

(v) Provide that direct access to criminal history records information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

2. Section 20.23 is revised to read as follows:

§ 20.23 Documentation: Approval by LEAA.

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

RICHARD W. VELDE,
Administrator.

OCTOBER 15, 1975.

[FR Doc.75-28752 Filed 10-23-75;8:45 am]

Title 23—Judicial Administration
CHAPTER I—LAW ENFORCEMENT AS-
SISTANCE ADMINISTRATION, DEPART-
MENT OF JUSTICE

PART 20—CRIMINAL JUSTICE
INFORMATION RECORDS

Criminal History Records; Collection,
Storage, and Dissemination of Information

This amends the regulations pertaining to the collection, storage and dissemination of criminal history record information by extending the date on which the State plan must be submitted. Further changes as proposed in 40 FR 49789 dated October 24, 1975, will be forthcoming at a later date.

Pursuant to the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197 (42 U.S.C. 3701 *et seq.*) (Aug. 6, 1973), this amends Chapter I of Title 28 of the Code of Federal Regulations.

In § 20.21 the first sentence of the introductory text is amended as follows:

§ 20.21 Preparation and submission of
a Criminal History Record Informa-
tion Plan.

A plan shall be submitted to LEAA by each State on March 16, 1976, to set forth all operational procedures, except those contained in paragraph (f) of this section. * * *

JAMES MEGG,
Acting Administrator.

DECEMBER 16, 1975.

[FR Doc 75-34465 Filed 12-19-75; 8:45 am]

Federal Register

FRIDAY, MARCH 19, 1976



PART III:

DEPARTMENT OF JUSTICE

Law Enforcement Assistance
Administration

CRIMINAL HISTORY RECORDS

Collection, Storage, and Dissemination
of Information

Title 28—Judicial Administration
CHAPTER I—DEPARTMENT OF JUSTICE
PART 20—CRIMINAL JUSTICE
INFORMATION SYSTEMS

On May 20, 1975, regulations were published in the FEDERAL REGISTER (40 FR 22114) relating to the collection, storage, and dissemination of criminal history record information. Amendments to these regulations were proposed October 23, 1975 (40 FR 49789) based upon a re-evaluation of the dedication requirement contained in § 20.21(f). Hearings on the proposed changes were held November 17, 18, 21 and December 4, 1975. In addition, hearings were held to consider changes to the dissemination provisions of the regulations (40 FR 52846). These hearings were held December 11, 12 and 15, 1975, to consider comments from interested parties on the limitations placed on dissemination of criminal history record information to non-criminal justice agencies. The purpose of the hearings was to determine whether the regulations, as they were drafted, appropriately made the balance between the public's right to know such information with the individual's right of privacy.

As a result of these hearings modifications to the regulations have now been made to better draw this balance. The regulations are based upon section 524 (b) of the Crime Control Act of 1973 which provides in relevant part:

"All criminal history information collected, stored or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction."

The regulations, as now amended, provide that conviction data may be disseminated without limitation; that criminal history record information relating to the offense for which an individual is currently within the criminal justice system may be disseminated without limitations. Insofar as nonconviction record information is concerned (nonconviction data is defined in § 20.20(k)), the regulations require that after December 31, 1977, most non-criminal justice access would require authorization pursuant to a statute, ordinance, executive order or court rule, decision or order. The regulations no longer require express authority, that is specific language in the authorizing statute or order requiring access to

such information, but only that such dissemination is pursuant to and can be construed from the general requirement in the statute or order. Such statutes include State public record laws which have been interpreted by a State to require that criminal history record information, including nonconviction information, be made available to the public. Determinations as to the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order will be made by the appropriate State or local officials. The deadline of December 31, 1977, will permit States to obtain the authority, as they believe necessary, to disseminate nonconviction data.

The regulations, as now amended, remove the prohibition that criminal history record information in court records of public judicial proceedings can only be accessed on a chronological basis. § 20.20(b) (3) deletes the words "compiled chronologically". Therefore, court records of public judicial proceedings whether accessed on a chronological basis or on an alphabetical basis are not covered by the regulations.

In addition, the regulations would not prohibit the dissemination of criminal history record information for purposes of international travel (issuance of visas and granting of citizenship). The commentary on selected portions of the regulations have been amended to conform to the changes.

Pursuant to the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197 (42 U.S.C. 3701 *et seq.*) (Aug. 6, 1973), these amendments to Chapter I of Title 28 of the Code of Federal Regulations are hereby adopted to become final on April 19, 1976. These amendments only amend subparts A and B. Subpart C remains the same.

Subpart A—General Provisions

- Sec. 20.1 Purpose.
 20.2 Authority.
 20.3 Definitions.

Subpart B—State and Local Criminal History Record Information Systems

- 20.20 Applicability.
 20.21 Preparation and submission of a Criminal History Record Information Plan.
 20.22 Certification of Compliance.
 20.23 Documentation: Approval by LEAA.
 20.24 State laws on privacy and security.
 20.25 Penalties.

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

- 20.30 Applicability.
 20.31 Responsibilities.
 20.32 Includable offenses.
 20.33 Dissemination of criminal history record information.
 20.34 Individual's right to access criminal history record information.
 20.35 National Crime Information Center Advisory Policy Board.
 20.36 Participation in the Computerized Criminal History Program.

- Sec. 20.37 Responsibility for accuracy, completeness, currency.
 20.38 Sanction for noncompliance.

AUTHORITY: Pub. L. 93-83, 87 Stat. 197 (42 USC 3701, *et seq.*; 28 USC 534), Pub. L. 92-544, 85 Stat. 1115.

Subpart A—General Provisions

§ 20.1 Purpose.

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

§ 20.2 Authority.

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

§ 20.3 Definitions.

As used in these regulations:

(a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(c) "Criminal justice agency" means: (1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(d) The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to com-

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

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

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

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

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

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

(k) "Nonconviction data" means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(l) "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

Subpart B—State and Local Criminal History Record Information Systems

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds

made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to Title I of the Act. Use of information obtained from the FBI Identification Division or the FBI/NCIC system shall also be subject to limitations contained in Subpart C.

(b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long standing custom to be made public, if such records are organized on a chronological basis; (3) court records of public judicial proceedings; (4) published court or administrative opinions or public judicial, administrative or legislative proceedings; (5) records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses; (6) announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section. The regulations do not prohibit the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship.

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

A plan shall be submitted to LEAA by each State on March 16, 1976, to set forth all operational procedures, except those portions relating to dissemination and security. A supplemental plan covering these portions shall be submitted no later than 90 days after promulgation of these amended regulations. The plan shall set forth operational procedures to—

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposi-

tion has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

(2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

(b) *Limitations on dissemination.* By December 31, 1977, insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:

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

(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;

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

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

These dissemination limitations do not apply to conviction data.

(c) *General policies on use and dissemination.* (1) Use of criminal history record information disseminated to non-criminal justice agencies shall be limited to the purpose for which it was given.

(2) No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

(3) Subsection (b) does not mandate dissemination of criminal history record information to any agency or individual. States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order.

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

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

(f) *Security.* Wherever criminal history record information is collected, stored, or disseminated, each State shall insure that the following requirements are satisfied by security standards established by State legislation, or in the absence of such legislation, by regulations approved or issued by the Governor of the State.

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.

(3) (A) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:

(i) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(ii) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

(iii) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or stor-

ing the criminal history record information.

(iv) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file.

(v) The programs specified in (ii) and (iv) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) are kept continuously under maximum security conditions.

(vi) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for A the physical security of criminal history record information under its control or in its custody and B the protection of such information from unauthorized access, disclosure or dissemination.

(vii) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(B) A criminal justice agency shall have the right to audit, monitor and inspect procedures established above.

(4) The criminal justice agency will:

(A) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(B) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(C) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for (i) the physical security of criminal history record information under its control or in its custody and (ii) the protection of such information from unauthorized access, disclosure, or dissemination.

(D) Institute procedures, where computer processing is not utilized, to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(E) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record

information shall be made familiar with the substance and intent of these regulations.

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

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

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

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

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

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

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

§ 20.22 Certification of Compliance.

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

(b) The certification shall include—

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

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

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

(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and

(5) A listing setting forth categories of non-criminal justice dissemination. See § 20.21(b).

§ 20.23 Documentation: Approval by LEAA.

Within 90 days of the receipt of the plan, LEAA shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by LEAA will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by December 31, 1977. A final certification shall be submitted in December 1977.

§ 20.24 State laws on privacy and security.

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

§ 20.25 Penalties.

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

RICHARD W. VELDE,
Administrator.

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

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

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

§ 20.3(c). The definitions of criminal justice agency and administration of criminal justice of 20.3(c) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or

executive order. The above subunits of non-criminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

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

§ 20.3(k). The different kinds of acquittals and dismissals as delineated in 20.3(e) are all considered examples of nonconviction data.

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

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

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

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

Limitations as contained in Subpart C also apply to information obtained from the FBI Identification Division or the FBI/NCIC System.

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

Section 20.20(b)(2) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank

potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus, announcements of arrest, convictions, new developments in the course of an investigation may be made. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1975" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal justice agency may respond to the inquiry. Conviction data as stated in 20.21(b) may be disseminated without limitation.

§ 20.21. The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor. The State has 90 days from the publication of these revised regulations to submit the portion of the plan covering 20.21(b) and 20.21(f).

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

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

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

Section 20.20(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

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

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

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

The regulations distinguish between conviction and nonconviction information insofar as dissemination is concerned. Conviction information is currently made available without limitation in many jurisdictions. Under these regulations, conviction data and pending charges could continue to be disseminated routinely. No statute, ordinance, executive order, or court rule is necessary in order to authorize dissemination of conviction data. However, nothing in the regulations shall be construed to negate a State law limiting such dissemination.

After December 31, 1977, dissemination of nonconviction data would be allowed, if authorized by a statute, ordinance, executive order, or court rule, decision, or order. The December 31, 1977, deadline allows the States time to review and determine the kinds of dissemination for non-criminal justice purposes to be authorized. When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State. It is possible for a public record law which has been construed by the State to authorize access to the public of all State records, including criminal history record information, to be considered as statutory authority under this subsection. Federal legislation and executive orders can also authorize dissemination and would be relevant authority.

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

§ 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories

where they perform a necessary administration of justice function such as pre-trial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

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

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

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

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

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

§ 20.21(c)(2). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

§ 20.21(c)(3). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in § 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished. The State could, on the other hand, enact laws authorizing any member of the private sector to have access to non-conviction data.

§ 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language of a statute or court order, rule, or court decision specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of

juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§ 20.21(e). Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies. Although this subsection requires that there be records kept with the names of all persons or agencies to whom information is disseminated, criminal justice agencies are not required to maintain dissemination logs for "no record" responses.

§ 20.21(f). Requirements are set forth which the States must meet in order to assure that criminal history record information is adequately protected. Automated systems may operate in shared environments and the regulations require certain minimum assurances.

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

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

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

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

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

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Reports No. 2 and No. 13; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum No. 3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum No. 4.

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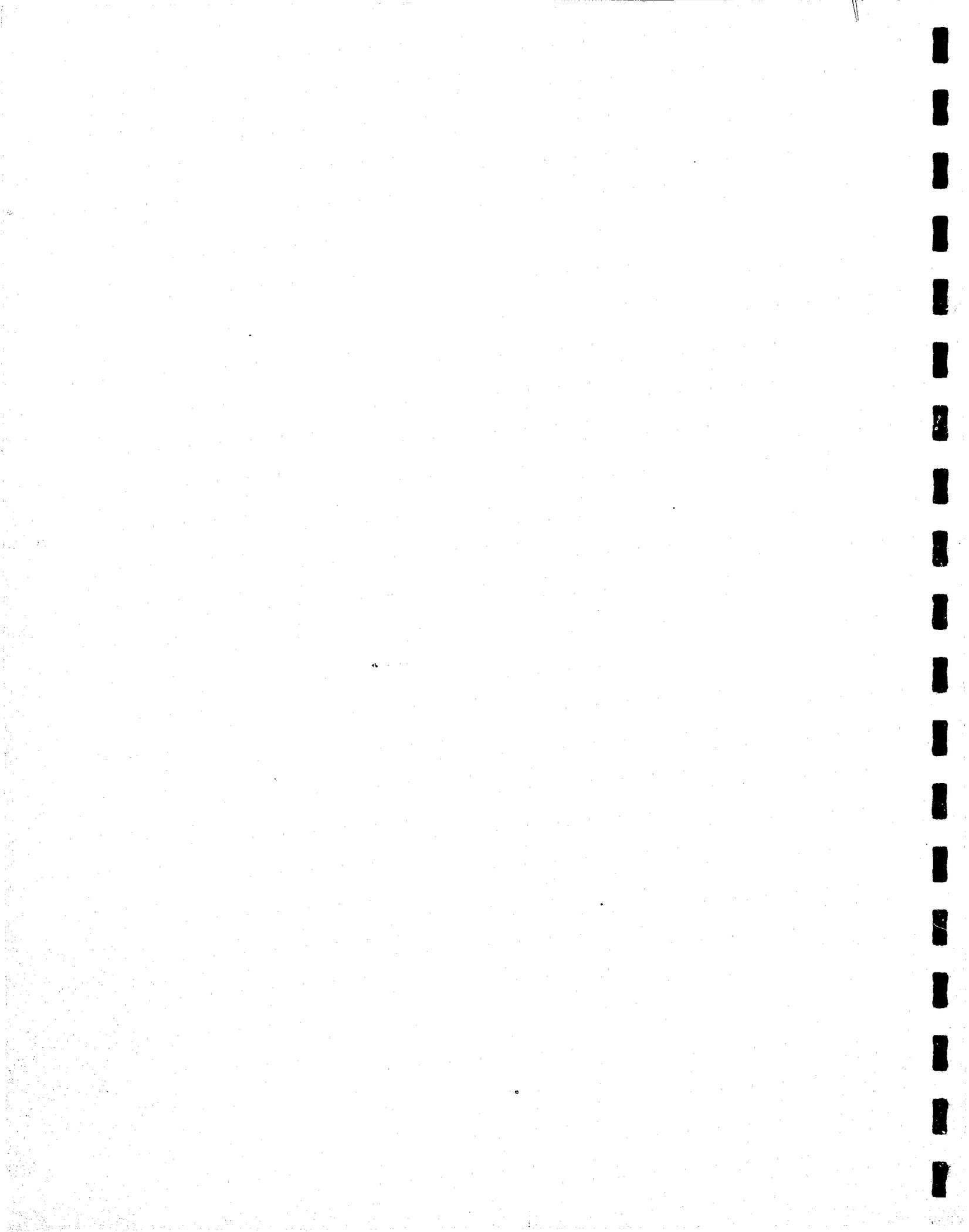
Appendix F

Virginia Criminal Justice Agencies Covered by Department of Justice Regulations

<u>Grant No.</u>	<u>Jurisdiction</u>	<u>Agency</u>	<u>Project Title</u>
A1603	Alexandria	Police Dept.	Improvement of Crime Investigation, Detection, and Prevention
A2154	Buchanan Co.	Sheriff's Dept.	"
A1211	Campbell Co.	Sheriff's Dept.	Development and Improvement of Electronic Information Retrieval Systems
A1520	Chesapeake	Police Dept.	Improvement of Police Communications
A2377	Chesapeake	Sheriff's Dept./ City Jail	II - Adult Rehabilitation Programs
A2891	Chesapeake	Police Dept.	Improvement of Criminal Justice Data Systems
A2083	Chesterfield	Police Dept.	Improvement of Crime, Investigation, Detection, and Prevention
A1890	Colonial Beach	Police Dept.	Improvement of Criminal Justice Data Systems
A2772	Colonial Heights	Police Dept.	Improvement of Criminal Justice Data Systems
A1327	Danville	Police Dept.	Improvement of Criminal Investigation, Detection, and Prevention
A2575	Fairfax Co.	Police Dept.	High Incidence Target program
A1397	Fairfax Co.	Police Dept.	"
A1512	Fairfax Co.	Sheriff's Dept./ County Jail	Community Based Correctional Programs and Services for Adults
A2004	Franklin Co.	Sheriff Dept.	Improvement of Criminal Justice Data Systems
A1987	Hampton	Police Dept.	Improvement of Criminal Justice Data Systems
A2006	Hampton	Police Dept.	VCCJ Specific Program "Non-Metropolitan HIT"
A2933	Hampton	Police Dept.	High Incidence Target Phase II
A1684	Henry Co.	Sheriff's Dept.	Improvement of Crime Investigation, Detection and Prevention
A3019	Herndon	Police Dept.	Improvement of Police Communications (VCIN)
A2734	Hopewell	Police Dept.	Improvement of Criminal Justice Data Systems
A2854	Louisa Co.	Sheriff's Dept.	Improvement of Criminal Justice Data Systems
A2359	Manassas	Police Dept.	Improvement of Police Communications (VCIN)
A1355	Nansemond (Suffolk)	Police Dept.	Development and Improvement of Electronic Information Retrieval Systems
A2328	Newport News	Police Dept., Commonwealth's Attorney, Gen. District Court	Improvement of Criminal Justice Data Systems

<u>Grant No.</u>	<u>Jurisdiction</u>	<u>Agency</u>	<u>Project Title</u>
A2758	Norfolk	Sheriff's Dept. City Jail	Pre-Release Service for Adult Offenders
D2855	Norfolk	City of Norfolk	Adult Offender Transaction and Management Information System
A2231	Petersburg	Police Dept.	Improvement of Criminal Justice Data Systems
A2046	Portsmouth	Police Dept.	Non-Metropolitan HIT
A2937	Portsmouth	Police Dept.	High Incident Target Phase II
A2178	Prince William	Police Dept.	Improvement of Crime Investigation, Detection and Prevention Basic Criminal Justice Equip.
A1735	Richmond	Police Dept.	High Incidence Target Program Phase I HIT
A1354	Richmond	Police Dept.	High Incidence Target Program Phase I HIT
A2582	Richmond	Police Dept.	High Incidence Target Program Phase II
A1859	Roanoke	Police Dept.	High Incidence Target Program Phase II
A2912	Roanoke	Police Dept.	High Incidence Target Program Phase II
A2084	Rockingham Co.	Sheriff's Dept.	Development and Improvement of Electronic Information Retrieval Systems
A2248	Stafford Co.	Sheriff's Dept.	Improvement of Criminal Justice Data Systems
A1488	State of Va.	Dept. of Corrections	Development and Improvement of Electronic Information Retrieval Systems
A2670E	State of Va.	Dept. of Corrections	Improvement of Criminal Justice Data Systems
A2717E	State of Va.	Dept. of Corrections	Adult Rehabilitation Programs
A2716E	State of Va.	Dept. of Corrections	Adult Rehabilitation Programs
A2918	State of Va.	Dept. of Corrections	Adult Rehabilitation Programs
A2179	State of Va.	Dept. of State Police	Improvement of Criminal Justice Data Systems
A2311	State of Va.	Dept. of State Police	Uniform Crime Reporting
A2312	State of Va.	Dept. of State Police	Improvement of Criminal Justice Data Systems
A2313	State of Va.	Dept. of State Police	Improvement of Criminal Justice Data Systems
A2671	State of Va.	Dept. of State Police	Improvement of Criminal Justice Data Systems
A2967	State of Va.	Dept. of State Police	Improvement of Criminal Justice Data Systems
A2968	State of Va.	Dept. of State Police	Maintenance and Improvement of Electronic Information Retrieval Systems
A3119	State of Va.	Dept. of State Police	Improvement of Police Communications
A0977	State of Va.	Dept. of State Police	Improvement of Police Communications

<u>Grant No.</u>	<u>Jurisdiction</u>	<u>Agency</u>	<u>Project Title</u>
D2605	State of Va.	Dept. of State Police	Uniform Crime Reporting
D2870	State of Va.	Dept. of State Police	Offender Based Transaction Statistics/Computerized Criminal Histories (OBTS/CCH)
D2950	State of Va.	Dept of State Police	Uniform Crime Reporting
A2477	State of Va.	Va. Supreme Ct.	Judicial System Reorganization
A2606	State of Va.	Va. Supreme Ct.	District Court Statistics System
A2210	Sussex Co.	Sheriff's Dept.	Improvement of Crime Investi- gation, Detection and Prevention
A1990	Virginia Beach	Police Dept.	HIT Burglary Program
A2935	Virginia Beach	Police Dept.	HIT Phase II
D2295	Virginia Beach	City of Virginia Beach	Adult Offenders Transaction Statistics and Management
A1552	Wise County	Sheriff's Dept.	Development and Improvement of Electronic Information Retrieval Systems
A1298	York County	Sheriff's Dept	Development and Improvement of Electronic Information Retrieval Systems



Appendix G

STANDARD FORM CONTRACT FOR USER AGREEMENT
BETWEEN CRIMINAL JUSTICE AGENCIES

This agreement made and entered into _____ by and
between _____, hereinafter referred to as the
(Disseminating Agency)
Criminal Justice Agency and _____, hereinafter referred to
(User Agency)
as the Criminal Justice User Agency, a criminal justice agency within
the meaning of "criminal justice agency" as defined by Department of
Justice Rules and Regulations, Code of Federal Regulations, Chapter
1 of Title 28, Part 20, Subpart B, §20.3(c) and (d).

A. Services

The Criminal Justice Agency agrees to furnish the Criminal
Justice User Agency such criminal history record information as is
available in the Criminal Justice Agency files only for such purposes
as established by this agreement.

B. Provisions

The Criminal Justice User Agency agrees to comply with all
Federal and State statutes, executive orders, regulations, and rules/
regulations issued by other duly authorized information regulatory
agencies; and

1. User agencies with VCIN terminal access shall comply with
the Department of Justice Rules and Regulations Code of
Federal Regulations, Chapter I of Title 28, Part 20,
Subpart B and all rules, procedures, and policies formally
adopted by the Superintendent of the Department of State
Police and published in the Virginia Criminal Information
Network Operating Manual.
2. User agencies requesting non-Virginia criminal history record
information by terminal access shall comply with Department
of Justice Rules and Regulations, Code of Federal Regulations,
Chapter I, of Title 28, Part 20, Subpart C; and all rules,
procedures, and policies formally approved by the NCIC advisory
policy board and adopted by the National Crime Information
Center.

C. Dissemination to Other Criminal Justice Agencies

The Criminal Justice User Agency agrees to enter into a Standard
Form Contract for User Agreement Between Criminal Justice Agencies with
any criminal justice agency prior to redissemination of the criminal
history record information, or any part thereof, obtained from the
disseminating agency of this present agreement.

D. Dissemination to Non-Criminal Justice Individuals or Agencies

The Criminal Justice User Agency agrees to disseminate criminal history record information to a non-criminal justice user only as authorized by Department of Justice Rules and Regulations, Code of Federal Regulations, Chapter I of Title 28, Part 20, Subpart B, §20.21(b)(2), (3), (4), (5), (6) and (c)(1), (2) and (3).

Prior to the dissemination of criminal history record information to a non-criminal justice agency, the Criminal Justice User Agency agrees to enter into a specific agreement with such non-criminal justice individuals or agencies as authorized above.

- (a) Such agreement shall specifically authorize access to data, limit the use of data to purposes for which given pursuant to Subpart B, §20.21(b)(2), (3), (4), (5), (6) and (c)(1), (2) and (3), prohibit further dissemination, insure the security and confidentiality of the data consistent with the regulations, and provide that the non-criminal justice individual or agency shall be subject to the sanctions of Subpart B, §20.25 and Subpart C, §20.38 as applicable.
- (b) Agreements providing criminal history record information for research and evaluative or statistical activities shall also insure the confidentiality and security of the data consistent with Section 524(a) of the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Crime Control Act of 1973 and any regulations implementing Section 524(a).

E. Violation of Agreement

1. The Criminal Justice Agency reserves the right to immediately suspend furnishing any information provided for in this agreement to the Criminal Justice User Agency when any applicable law, regulation, rule, policy or procedure as provided by this agreement is violated or appears to be violated.
2. The Criminal Justice User Agency shall be subject to such penalties as provided by Department of Justice Rules and Regulations, Code of Federal Regulations, Chapter I of Title 28, Part 20, Subpart B, §20.25, and Subpart C, §20.38 and applicable state and federal laws for knowingly violating such statutes and regulations.
3. The furnishing of information may be reinstated upon receipt of satisfactory assurances that such violation did not occur or was corrected.

NAME OF DEPARTMENT OR AGENCY

CITY

ZIP CODE

STREET ADDRESS OR P.O. BOX

TELEPHONE NUMBER

APPLICATION MUST BE SIGNED BY SHERIFF, CHIEF OF POLICE, OR AGENCY HEAD OF OTHER CRIMINAL JUSTICE AGENCIES.

SIGNATURE OF AGENCY HEAD OF
CRIMINAL JUSTICE USER AGENCY

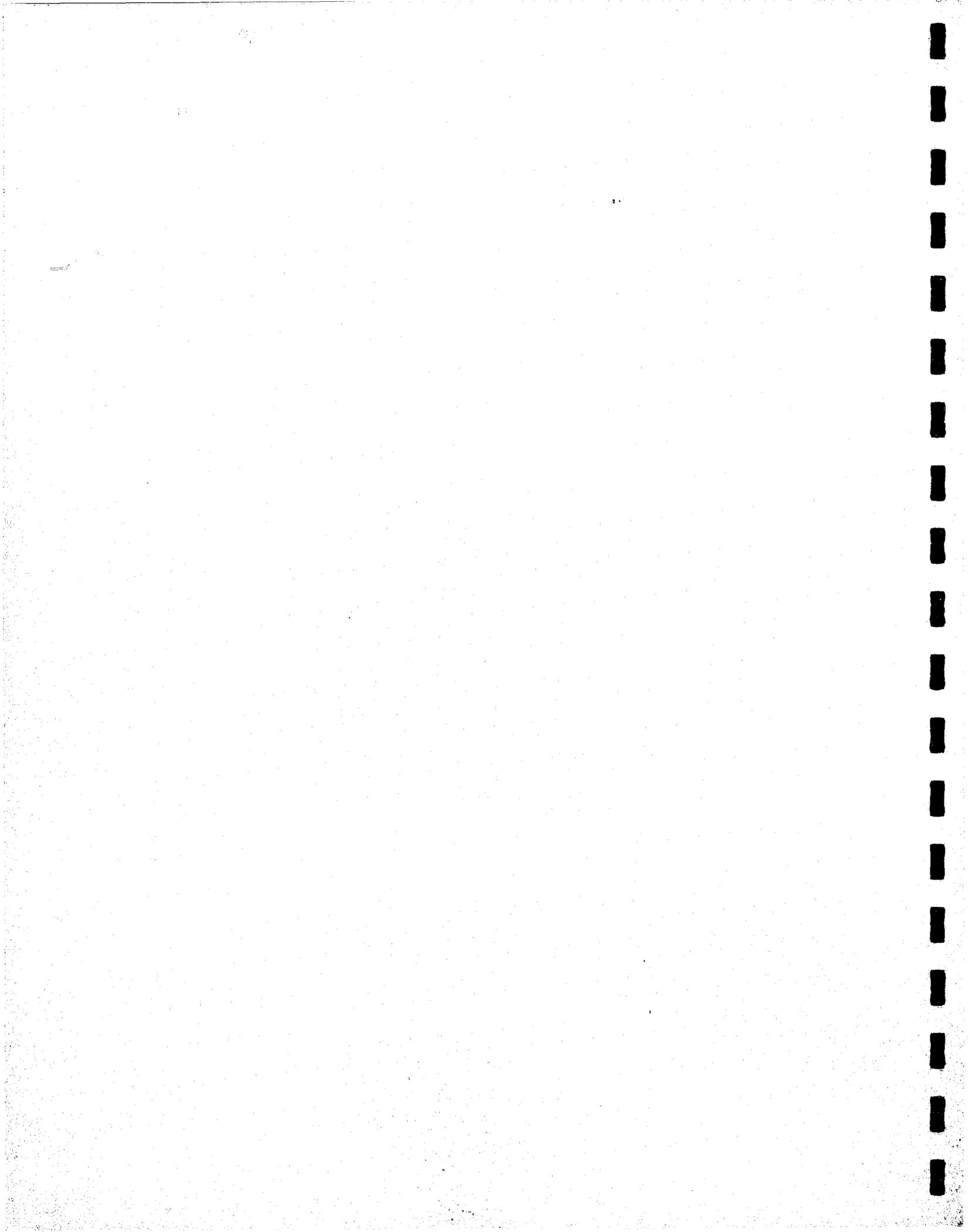
TITLE

(Form must be submitted in duplicate. If approved, one copy containing the approval will be returned to the applicant and one copy will be retained by the disseminating agency.)

* * * *

APPROVED

Signature of Agency Head of
disseminating criminal justice
agency



COST-IMPACT

A. INTRODUCTION

The net costs of legislation to implement the Department of Justice Regulations throughout the Commonwealth are derived from two main categories, personnel and equipment (equipment includes physical facilities and supplies for operational requirements). According to the specific situation at each agency, it may be possible to accommodate the increased workload by shifting personnel within the agency. Many local agencies presently comply with most provisions of this legislation and it is quite likely that many other agencies can assume these duties with no increase in personnel and only a minimal increase in equipment, such as forms and other office supplies. Other agencies will, however, require substantial increases in equipment and the addition of new personnel. (See estimates and figures below.) From the analysis of data submitted by agencies serving various size populations it appears likely that agencies serving large populations will require additional personnel; agencies serving rural areas, small towns, and small cities would, in most cases, be able to meet the increased workload with present personnel and equipment.

B. COST-IMPACT SURVEY

In order to estimate the cost impact of this legislation a sample of criminal justice agencies was sent questionnaires to indicate the cost for each procedural requirement. The sample was composed of state and local agencies which had received LEAA funding for the collection, storage, use, or dissemination of criminal history record information subsequent to July 1, 1973.

Of the thirty-five questionnaires distributed to the agencies almost half (16 of 35) were completed and returned in time to use with this analysis. Those agencies in the larger metropolitan areas had the highest percent of return while the agencies in the smaller cities, towns, and rural counties were low in percent of responses. All State agencies affected: the State Police, the Virginia Supreme Court, and the Department of Corrections submitted data.

By using the FBI Uniform Crime Report population categories as a guide to segregate the agencies into groupings according to size of population served, the following breakdown was developed:

Locality Population Categories

- A. Town/Cities Less than 25,000
- B. Cities: 25-100,000
- C. Cities: More than 100,000
- D. Suburban Counties
- E. Rural Counties

The population figures for this analysis were taken from the 1974 Tayloe Murphy Institute Population Estimates and the Report of the Secretary of the Commonwealth - Virginia 1973-74.

1. Net Personnel Costs will be the result of additional salaries for new personnel and/or increases in existing salary levels to make them commensurate with added duties and responsibilities. Such costs will involve salaries of professionals, clericals, consultants, contract labor, and other temporary or part-time personnel needs. This cost will include the fringe benefits and other personnel costs in addition to the base figure. There will also be a cost involved in the training or retraining of the personnel necessary to implement this legislation at the agency level.

Personnel costs appear to vary with the size of the population served by the agency; the larger populated agencies cited a need to add personnel for several specific items. However, this cost is subject to inflation according to the agency estimate of information activity increase. For most agencies such an increase will be minimal. Few agencies should require additional personnel.

2. Net Equipment Costs include the various physical items (such as logs, forms, line printers, etc.) needed to implement this legislation and to satisfy the requirements of the Federal regulations. Equipment needs, however, should be minimal. Several agencies have submitted statements that show a large equipment cost - but in comparison to other agencies of similar situation, the equipment needs are considered to be overstated (they may be legitimate but not necessarily caused by the requirements of this legislation).

For some agencies it may be necessary to add new software, storage devices, or communications and access equipment in order to meet the security and dissemination requirements. Office supplies, desks and other items, and ancillary materials are also legitimate expenses but may have been needed independent of this legislation. Several agencies failed to note any costs for equipment - yet the maintenance of records will be costs for any agency. This cost will be minimal for agencies in less populated areas. The agencies of more populated areas and State agencies will have a substantially greater cost for these items.

3. Cost Impact. The vast majority of costs directly produced by this legislation will be assumed by the local governments and jurisdictions. The State will, however, assume the cost of an Audit team and staff as required, in addition to funding the increased costs to State agencies. (Tables 1 and 2)

4. Subsequent Costs. It should be emphasized that the major cost will be personnel. The on-going personnel cost will increase even where agency activity volume remains constant. For those agencies with increasing activity the cost of personnel will also increase either in number of personnel or in use of time.

TABLE 1

ESTIMATE OF AVERAGE COSTS FOR LOCALITIES

Population of Locality	First Year & Start-up Costs			Annual Costs		
	Personnel	Equipment	Total	Personnel	Equipment	Total
A. Towns/Cities less than: 25,000	minimal	minimal	minimal	minimal	minimal	minimal
B. Cities: 25-100,000	\$8-10,000	\$3-5,000	\$11-15,000	\$8-10,000	\$1-3,000	\$9-13,000
C. Cities: More than 100,000	\$10-20,000	\$3-5,000	\$13-25,000	\$10-20,000	\$1-3,000	\$11-23,000
D. Suburban Counties	refer to city of similar population size			refer to city of similar population size		
E. Rural Counties	minimal	minimal	minimal	minimal	minimal	minimal

H-3

Based on these survey estimates and population figures from the Tayloe Murphey Institute and the Report of the Secretary of the Commonwealth - Virginia, 1973-74, the First Year and Start-up Costs in all political subdivisions of the Commonwealth are estimated to be \$519,000 to \$795,000. The Annual Costs to all political subdivisions of the Commonwealth are estimated to be \$429,000 to \$705,000.

TABLE 2

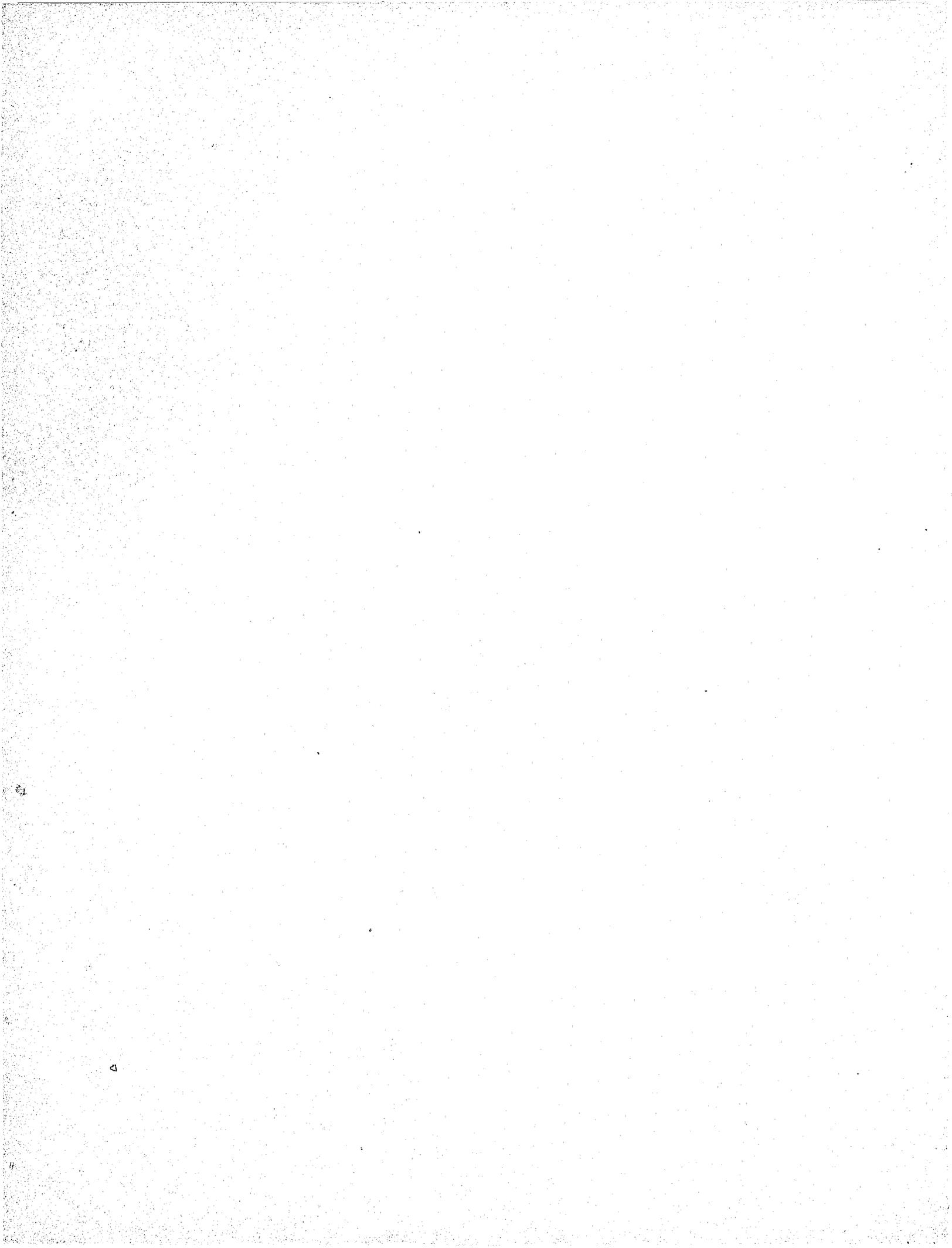
ESTIMATE OF STATE AGENCY COSTS

	<u>First Year & Start-up Costs</u>			<u>Annual Costs</u>		
	<u>Personnel</u>	<u>Equipment</u>	<u>Total</u>	<u>Personnel</u>	<u>Equipment</u>	<u>Total</u>
¹ Department of State Police	\$ 60,000	\$ 27,300	\$ 87,300	\$ 60,000	--	\$ 60,000
² Virginia Judicial Branch	227,200	800	228,000	225,000	1,000	226,000
³ Department of Corrections	<u>76,960</u>	<u>32,571</u>	<u>109,531</u>	<u>89,528</u>	<u>15,000</u>	<u>104,528</u>
Totals	\$ 364,160	\$ 60,671	\$ 424,831	\$ 374,528	\$ 16,000	\$ 390,528

¹These estimates appear to be reasonable with regard to the increased duties and requirements placed on this agency. The State Police will operate the central repository (CCRE) and expect an increase in the volume of requests for a complete record as well as an increase in the amount of data they will receive and store.

²These estimates are for providing dispositions of class 3 and 4 misdemeanors to the arresting law-enforcement agency and need to be further substantiated with work load data. Compared to other agencies with similar work load requirements, these figures are significantly higher and should be re-evaluated.

³These estimates need to be further substantiated with work load data. The personnel needs cited are, without doubt, legitimate; it is not clear, however, that such needs are created by this legislation.



END