

ACQUISITIONS

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SECURITY AND PRIVACY PLAN
FOR THE
NORTH CAROLINA CRIMINAL JUSTICE
INFORMATION SYSTEM

DONALD R. NICHOLS, ADMINISTRATOR
JUNE, 1976

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NORTH CAROLINA DEPARTMENT OF
NATURAL AND ECONOMIC RESOURCES
DIVISION OF COMMUNITY ASSISTANCE
LAW AND ORDER SECTION
JAMES E. HOLSHOUSER, JR., GOVERNOR
GOVERNOR'S COMMISSION ON LAW AND ORDER

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TABLE OF CONTENTS

	Page
Introduction	1
Section 1: Scope of the Plan	3
Section 2: Objectives	6
Section 3: Approach to Achieving Objectives	9
Section 4: Major Milestones	24
Section 5: Responsibilities of Involved Agencies and Changes in those Responsibilities as Required By the Privacy and Security Plan	25
Appendix A: Federal Regulations/Criminal History Records	
Appendix B: Resolution of Governor's Commission on Law and Order	

This North Carolina State Plan for the security and privacy of criminal history information has been developed at the direction of Governor James E. Holshouser, Jr. in response to the mandate section 524 (b) of the Crime Control Act of 1973 and regulations adopted by the United States Department of Justice to implement that section. Those regulations can be found in 40 FR 22114 (May 20, 1975) and 41 FR 11714 (March 19, 1976). The Plan includes a summary review of North Carolina's position on key elements of the federal regulations, a review of existing North Carolina statutory and case law relevant to the Plan's subject matter, an overview of the existing criminal justice information system in North Carolina, an outline of proposals developed by the Governor's Commission on Law and Order in cooperation with various state and local criminal justice agencies for expansion and improvement of North Carolina's Criminal Justice Information System, and a description of actions which North Carolina is taking and will take to assure compliance with federal and state laws and regulations governing the security and privacy of criminal justice information while preserving North Carolina's tradition of free and ready public access to public information maintained by state and local governments in North Carolina.

As originally promulgated in May, 1975, the federal regulations governing the security and privacy of criminal justice history information contained several provisions which were objectionable to North Carolina as well as several provisions with which we concurred. The objectionable provisions would have significantly limited public access to much information maintained by criminal justice agencies which has traditionally and statutorily been open to public scrutiny, and they would have dictated to state and local government in North Carolina the physical nature of any computerized portions of North Carolina's Criminal Justice Information System.

North Carolina voiced its objections to these provisions to the United States Department of Justice. With regard in particular to the public access to information or "dissemination" portions of the regulations, North Carolina State Government in cooperation with such private organizations as the North Carolina News Media - Administration of Justice Council, the North Carolina Press Association and the North Carolina Association of Broadcasters took a national leadership role in urging the Justice Department to reconsider those provisions. New hearings were conducted in December of 1975 with North Carolina representatives present and urging the Department to leave to the states decisions as to what criminal justice information should be accessible to the public. On March 19, 1976, the United States Department of Justice published revised regulations which returned to the states the bulk of the decision-making responsibility in both the problem areas noted above.

It has been the consistent position of this Administration that the best ways to protect individual citizens against the abuse of information gathered, maintained and shared by and among criminal justice agencies; while at the same time protecting the public's right to know what its government is doing, are to insure that whatever the mechanism for gathering, maintaining and sharing criminal justice information:

- (1) criminal justice agencies maintain no more information - particularly computerized information - than is necessary for the efficient, effective administration of the criminal justice system;

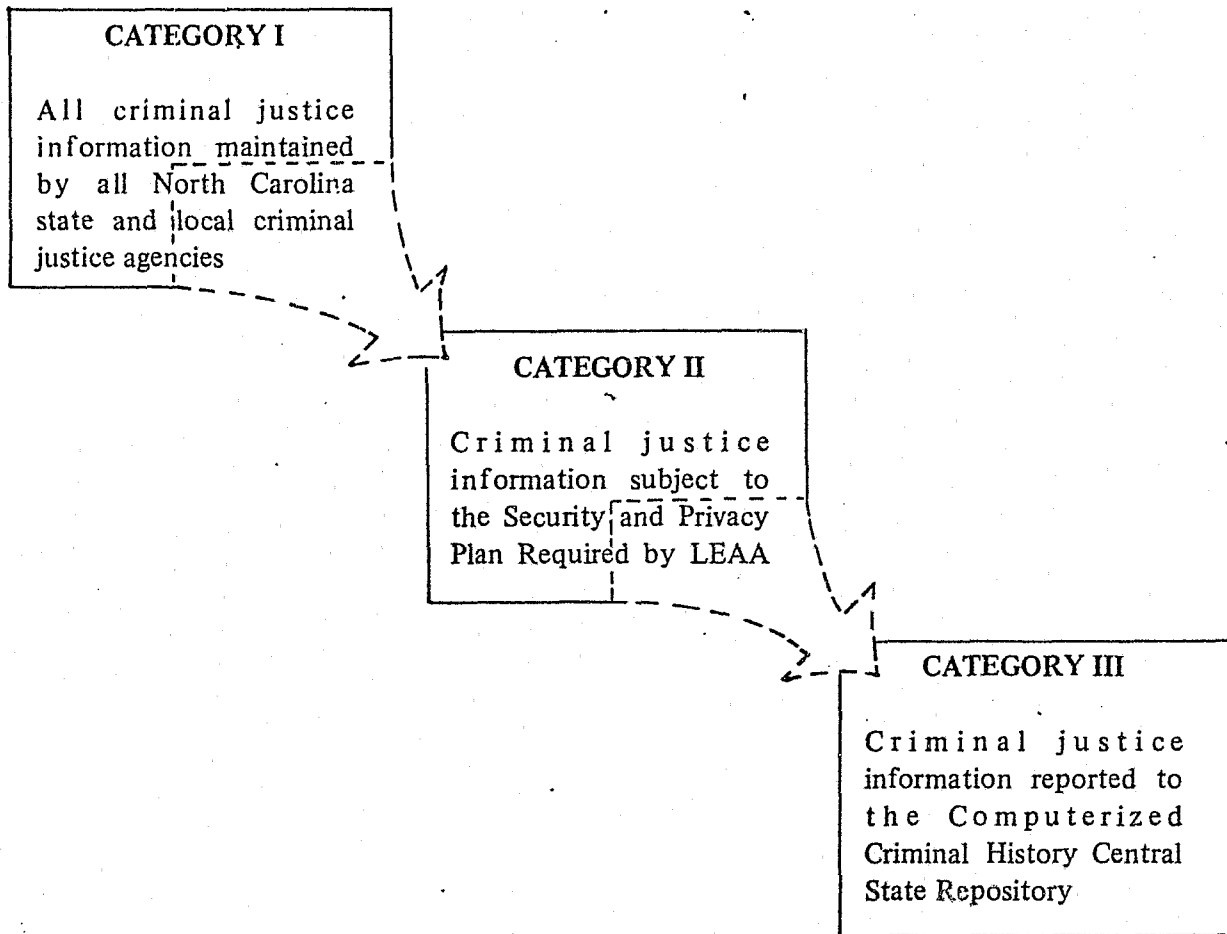
- (2) information which is maintained is accurate, current and complete and is maintained in a physically secure environment;
- (3) the public can access the maximum amount of criminal justice information possible consonant with established North Carolina concepts of what information is properly public and what is properly held in confidence;
- (4) individuals should have ready and easy access to public information about themselves which is maintained by criminal justice agencies and that individuals can, through a simple, inexpensive administrative process, secure corrections in incorrect records; and
- (5) security of criminal justice information and the right of individual citizens to privacy be made the particular responsibility of an independent citizen commission vested with the authority to make rules and regulations and take action to enforce laws regarding security and privacy, to audit the Criminal Justice Information System to determine compliance with such laws, rules and regulations, to assist citizens in exercising their rights of access to information and security correction of incorrect information.

This Plan is the blueprint which North Carolina proposes to follow in developing a mechanism to bring itself into compliance with the requirements of the United States Department of Justice regulations by December 31, 1977, and to accomplish the goals set forth above. The Plan does not attempt to specify the details of what an expanded, computerized Criminal Justice Information System for North Carolina would encompass or precisely how it would function. Such detailed proposals are available from the Governor's Commission on Law and Order. The Plan does not attempt to specify in detail how each of the federal requirements or the state objectives for security and privacy outlined above will be met. Developing detailed rules and regulations to bring North Carolina into compliance will be the responsibility of the N.C. CJIS Security and Privacy Commission, the N.C. CJIS Commission, and the state's criminal justice agencies as provided in the Plan.

The Plan does attempt to outline the legal, philosophical, and administrative framework on which North Carolina's compliance with the federal regulations and its own state objectives can be built. It provides target dates for reaching stated goals. It outlines the responsibilities of various components of the criminal justice system in achieving those goals. Finally, it attempts to recognize that the federal law and regulations and most existing state laws contemplate a criminal justice information system that has both manual and computerized components, and that while the increasing computerization of criminal justice information systems is inevitable, the protection of the public cannot be a function of whether information is stored in a file folder or a computer tape.

SECTION 1. SCOPE OF THE PLAN

The scope of the Security and Privacy Plan for North Carolina can be illustrated as follows:



Category I information includes material ranging from internal agency management information to information on arrests, judgments, paroles and other dispositions. Some of this material has already been or will likely be computerized; some will not. Some of this material is available to the public by North Carolina statute and local tradition; some is not.

Category II is a subdivision of Category I, because not all of the material included in Category I is subject to regulations by LEAA. Again, some of this material is available to the public, and some is or will likely be computerized. Information excluded from Category II includes:

- A. initial records of entry maintained at police stations, such as "police blotters" and "incident reports," if such records are organized chronologically and are not indexed or accessible by name or if they are permitted by law or longstanding custom to be made public;

- B. court records of public criminal proceedings, unless made confidential by specific North Carolina statute or court opinions, including published compilations thereof;
- C. records of traffic offenses other than hit and run, driving under the influence of alcohol or drugs, and transporting dangerous materials;
- D. statistical or analytical records or reports in which individuals are not identified and from which their identities cannot be ascertained.

Category III is a subdivision of Category II. Only certain items of information will be reported by local and state criminal justice agencies to the Computerized Criminal History Central State Repository, which will serve as a message switch among North Carolina criminal justice agencies and between North Carolina and the proposed national criminal justice information system.

The United States Department of Justice Regulations require that this Plan deal with information in Categories II and III; they do not require explicitly that the Plan deal with the security and privacy of information in Category I. It should be pointed out here though that current proposals for the increased computerization of North Carolina's Criminal Justice Information System call for the computerization of much of the information in Category I. In order to insure that security and privacy laws and regulations are complied with, this Plan and the security and privacy assurance mechanisms it calls for deals with the entire Criminal Justice Information System of North Carolina.

It is also important to note that the revised federal Regulations (particularly 20.21 (b) (2) restored to the states the bulk of the decision-making authority with regard to what information not specifically excluded from the coverage of the Regulations (20.20 (b) is to be available for public dissemination. This change in the Regulations means that certain information accessible to the public in North Carolina, i. e. alphabetically maintained arrest records, might not be accessible in another state which has a more restrictive public record or information statute. While this revised Regulation does leave such North Carolina information in the public domain, the information is still subject to the other requirements of the Regulations such as physical security of its storage, audit, assurance of public accessibility, etc. Thus one can say that certain information may be "covered by" the Regulations and yet still be freely accessible to the public.

Following are definitions of some of the terms used in the Plan.

- A. "identification record information," defined as fingerprint classifications, voice prints, photographs, and other physical descriptive data concerning an individual that does not include any indication or suggestion that the individual has at any time been suspected of or charged with a criminal offense;
- B. "arrest record information," defined as information concerning the arrest, detention, indictment or other formal filing of criminal charges against an individual, which does not include a disposition;

- C. "criminal history record information," defined as information concerning the arrest, detention, indictment or other formal filing of criminal charges against an individual, together with one or more dispositions relating thereto;
- D. "disposition," defined as information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings have been concluded, abandoned or indefinitely postponed, or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate review of criminal proceedings, or executive clemency;
- E. "correctional and release information," defined as information or reports on individuals compiled in connection with bail, pretrial or post-trial release proceedings, presentence investigation, proceedings to determine physical or mental condition, participation by inmates in correctional or rehabilitative programs, or probation or parole proceedings.
- F. "criminal investigative information," defined as pre-arrest information on identifiable individuals compiled either in the course of the investigation of specific criminal acts or in an effort to anticipate, prevent or monitor possible criminal activity.
- G. "wanted persons information," defined as identification record information on an individual against whom there is an outstanding arrest warrant, including the charge for which the warrant was issued, and information relevant to the individual's danger to the community and any other information that would facilitate the apprehension of the individual.
- H. "criminal justice agency," defined as 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.
- I. "administration of criminal justice," defined as the performance 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 also include criminal identification activities and the collection, storage, dissemination and supervision of criminal history record information. It would include the N.C. CJIS Commission and the N.C. CJIS Security and Privacy Commission described in this Plan.
- J. "computerized criminal history," defined as that portion of criminal history record information which is verified by positive identification and held in the Computerized Criminal History Central State Repository for intrastate and interstate distribution; it constitutes a summary of an individual's criminal history and consists of data elements determined by the N.C. CJIS Commission described below.

- K. "criminal justice information system," defined as the vehicle by which information is collected, stored, and exchanged within and between criminal justice agencies. The CJIS presently in operation in North Carolina consists of manual and automated records in law enforcement agencies and a telecommunications network provided by the Police Information Network (PIN), registered vehicles, licensed drivers, and enforcement and theft information maintained by the Division of Motor Vehicles, court records maintained under the direction of the Administrative Office of the Courts, correctional information collected and maintained by the Department of Correction, juvenile information maintained by the Department of Human Resources, and certain information maintained by collateral agencies such as the Alcoholic Beverage Commission.
- L. "central state repository" or N.C. CJIS central state repository," broadly defined as the network of criminal justice information storage facilities maintained by the state agencies within the state's criminal justice system. One member of this consortium (PIN) collects and stores Computerized Criminal History (CCH) information for intrastate and interstate dissemination and is designated the CCH Central State Repository. The other state agencies which have or anticipate developing computerized data storage and management facilities are the Department of Correction (existing), the Department of Transportation (existing), and the Administrative Office of the Courts (anticipated).

SECTION 2. OBJECTIVES

The goal of this Security and Privacy Plan for North Carolina's criminal justice information system is to preserve a proper balance between the legitimate and vital information needs of the criminal justice system and the Constitutional and statutory rights of persons affected by the collection and dissemination of criminal justice information. Under the Federal and State Constitutions, government bears the responsibility of preserving this balance.

The development of a criminal justice information system brings the following principles into potential conflict:

- The right of an individual to personal privacy.
- The responsibility of the government to protect its citizens against criminal acts.
- The right of the people to ensure against governmental abuse of power.

Specifically, the Security and Privacy Plan must recognize the following principles:

The Public

- The right to be protected by the criminal justice system against criminal activities.
- The right to inspect public records.

- The right to the protection afforded by a balance of power among the executive, judicial and legislative branches of government, which balance may be disrupted by a concentration within one branch of power over access to criminal history information.
- The responsibility of the press to keep the public informed about the background of people running for or appointed to public office, including criminal history.
- The right to observe the operations of government agencies.
- The opportunity of employers to check the criminal histories of potential employees.

The Offender

- The right of protection against misinformation, incomplete information and excessive personal information within the system.
- The right to protection against misuse of criminal history information.
- The right to access on the part of a defense attorney to all criminal history information available to the prosecuting attorney.
- The right to see and correct any information concerning the individual contained within the system.
- The right to protection against the inclusion of unverified or incorrect information within the system.

The Government

- The responsibility to establish laws for the maintenance of the civil order.
- The responsibility to ensure that these laws are enforced according to due process.
- The responsibility to guarantee equal protection under these laws.
- The responsibility to keep the public informed about government operations.

In order to strike a balance among these rights and responsibilities, the following objectives will be incorporated into the North Carolina Criminal Justice Information System as guidelines for the system's operation:

- (1) The collection, storage and dissemination of criminal history record information shall not conflict with the individual rights and liberties guaranteed by the Constitutions of the United States and of the State of North Carolina and by the North Carolina General Statutes.

- (2) The quality, character and intended uses of criminal history record information shall ensure a reasonable protection of individual rights to privacy by establishing the legal, organizational, and administrative structure necessary for the protection of individual privacy, while maintaining the capability required by criminal justice agencies to collect, store, and disseminate criminal history record information.
- (3) The administration and operation of the North Carolina Criminal Justice Information System shall be coordinated by the N.C. CJIS Commission and shall be regulated and governed by uniform requirements relating to system wide security and privacy developed and enforced by the N. C. CJIS Security and Privacy Commission.
- (4) Criminal history record information shall be collected and processed in a manner that will produce information that is complete and accurate and of a kind and quality that will support the varied functions of the criminal justice system.
- (5) Criminal history record information shall be stored in a manner designed to protect the system against damage or loss that will impair the operation of the system, whether accidental or intentional. System security further implies restricting the availability of certain criminal justice information to authorized individuals.
- (6) The dissemination of criminal history record information for authorized purposes shall be regulated through restrictions designed to guarantee meaningful protection of the individual's privacy and through appropriate access to those records which are public.

The State of North Carolina believes that it is possible to design a criminal justice information system which will permit the continuance of public access to those criminal history records which are now public records in this State and at the same time augment the rights of individuals by permitting them to challenge and secure the correction of incorrect records, and by penalizing persons who misuse criminal history records.

The system would preserve freedom of the press by permitting press access on the same basis as all citizens. Few members of the public have the resources and the time to observe at first hand the operations of their government; most members of the public therefore must rely upon the press to keep them informed on this subject. Without information, citizens are unable to vote intelligently or to register opinions on the administration of government. Within the system of criminal justice, scrutiny by the press for the purpose of informing the public serves to guarantee that the system operates fairly and abides by the rules of due process.

In addition, the system would permit employers to review a potential employee's public records. In short, dissemination of information from the system would be strictly controlled, but it would not be confined to criminal justice agencies.

In developing this Plan, it has become evident that the advent of computerization in the criminal justice system raises issues of individual privacy and increased potential for the abuse of

public information that were not present in the days of manual records systems. Information which has been computerized takes on, for many people, an aura of veracity merely by virtue of the method of its storage and retrieval. Information which though always public has been, because of the sheer physical difficulty of locating and compiling it, practically inaccessible suddenly becomes readily available. Such capabilities can be abused; they can also be utilized to insure that information which is disseminated within and without the criminal justice system is as accurate, complete and current as is humanly and mechanically possible.

It may well be that legislative attention needs to be directed to such questions as whether or not arrest record information should be disseminated without also informing the information receiver of the current status of the case, whether a non-conviction disposition record on a case should have to include a detailed explanation of the reason for that particular disposition, and whether there should be record sealing or expungent procedures available to individuals who are mistakenly accused of violating the law. While we do not advocate further restricting the information available to the public in North Carolina, we do recognize the potential need to reassess the manner in which information is gathered, stored, and disseminated.

SECTION 3. APPROACH TO ACHIEVING OBJECTIVES

1. THE COLLECTION, STORAGE AND DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION SHALL NOT CONFLICT WITH THE INDIVIDUAL RIGHTS AND LIBERTIES GUARANTEED BY THE CONSTITUTIONS OF THE UNITED STATES AND OF NORTH CAROLINA AND BY THE NORTH CAROLINA GENERAL STATUTES.

Right of Privacy

Recognition of the right of privacy as an independent right began in 1890 with the publication of a law review article, entitled "The Right to Privacy," by Samuel Warren and Louis D. Brandeis (4 *Harvard Law Review* 193). Almost four years later, Justice Brandeis described the constitutional right of privacy in his dissent in the case of *Olmstead v. United States* as follows:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. . . They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the fourth amendment.

Since that time, the invasion of privacy has come to be judicially recognized as a civil wrong in many states, including North Carolina, but the United States Supreme Court has not, to date, declared categorically that the right to privacy is a constitutional right. In *Katz v. United States*, 389 U. S. 347, the Court stated that other provisions of the Constitution protect privacy from other

forms of governmental invasion, but protection of a person's general right of privacy – his right to be let alone by other people – is left largely to the law of the individual states.

Prosser on Torts, in the latest edition (4th Edition, 1971, p. 804), makes the following statement: "To date the law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff. . ." The four types of invasion are:

1. Appropriation for defendant's benefit of plaintiff's name or likeness without permission.
2. Intrusion upon plaintiff's physical solitude or seclusion or by invading his home (e. g. wiretapping).
3. Public disclosure of private facts.
4. False light in the public eye (e. g. unauthorized use of name on a petition or alleged authorship of a document written by another).

Dean Prosser's definition has been judicially adopted in many states, and the statutes of many states now recognize the tort of invasion of privacy. However, there are widely recognized limits upon the right, as *Corpus Juris Secundum*, in its chapter on the right of privacy, points out:

The right of privacy is not an absolute right and is subject to limitation, and, while it includes protection against the publication of an individual's private affairs under some circumstances, the dissemination of news or news events does not generally constitute an invasion of the right. (77 C.J.S. 399)

An individual's right of privacy is not necessarily superior to the rights of the public, and the right is not so extensive as to prevent the publication of matter which is of public or general interest or benefit, particularly if such matter concerns a person who has become a public personage or character. (77 C.J.S. 401)

It is generally held that two examples of persons who have become public personages are those who run for public office and those who are convicted of a criminal offense.

It is apparent that the right of privacy must give way to the public interest in matters of this nature, and the relation to the public of one who has been convicted of crime is such as to forfeit whatever right of privacy he may be said to have ever possessed, at least to the extent that the protection of society requires such forfeiture. (62 Am Jur 2d 702)

It is generally held that the customary photographing and measuring of a prisoner for the purposes of police records do not amount to an invasion of the

prisoner's right of privacy. But, with little exception, it has been held that while police authorities may photograph and fingerprint those charged with law violation, they may not publish such photographs in a rogues' gallery, unless the person whose picture was taken has been convicted of a crime. (62 Am Jur 2d 701)

As recently as early 1975, the Supreme Court has stated:

The commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions, however, are without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government. (Cox Broadcasting Corporation v. Conn., 43 L. Ed. 2d 328, March 3, 1975)

The North Carolina courts have recognized the tort of the invasion of privacy in a case concerning the publication of a photograph in a newspaper (*Flake v. Greensboro News Company*, 212 N. C. 780) and in another case concerning the publication of a photograph, wrongly identified, in the yellow pages of the telephone book (*Barr v. Southern Bell Telephone & Telegraph Company*, 12 N. C. App. 388). There is no North Carolina statutory law promulgating the general right of privacy of individuals.

Responsibility of Governments to Protect Citizens

The Preamble of the United States Constitution states that two of the reasons for forming this country were to "insure domestic tranquility," and to "promote the general welfare". It is the responsibility of state and local government and, in some cases of the federal government, to protect citizens against criminal acts.

Constitutional and Statutory Rights of Citizens

The citizens of North Carolina, however, have retained in their Constitution firm control of how their government operates:

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness. . . (Article I, Section 3)

In light of these guarantees, the citizens of North Carolina have a constitutional right and responsibility to oversee how their government operates the North Carolina Criminal Justice Information System.

Article I of the North Carolina Constitution, "Declaration of Rights," contains, in addition to the sections cited above, declarations of freedom of the press, of the right of due process, and of equal protection of the laws.

The major problem in designing a criminal justice information system for North Carolina is to achieve some sort of balance among these conflicting constitutional rights and responsibilities. The task is further complicated by the North Carolina General Statutes, which state that:

'Public record' or 'public records' shall mean all documents, papers. . . electronic data processing records. . . or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (state or local, elected or appointed), institution, board, commission. . . or other political subdivision of government. (General Statutes 132-1).

Criminal justice agencies, agents, files and other records, unless otherwise specified in the statutes, are subject to the provisions of this law.

There are also within the General Statutes declarations that specific records are public: records of the Motor Vehicle Division of the Department of Transportation (G. S. 20-43), all records of the Supreme Court and the Court of Appeals (G. S. 7A6), and all records of the Superior Court (G. S. 7A - 109), including an alphabetical defendant index. G. S. 7A109 states:

Each clerk shall maintain such records, files, dockets and indexes as are prescribed by rules of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the inspection of the public during regular office hours. . .

Some records are considered privileged in North Carolina because of statutes specifically declaring them privileged; these include juvenile records (G. S. 7A287) and probation records (G. S. 15-207). In addition, a North Carolina Court of Appeals case has declared that prison records are confidential (*Goble v. Bounds*, 13 N. C. App. 579, 186 S. E. 2d 638 (1972)).

2. THE QUALITY, CHARACTER, AND INTENDED USES OF CRIMINAL HISTORY RECORD INFORMATION SHALL ENSURE A REASONABLE PROTECTION OF INDIVIDUAL RIGHTS TO PRIVACY BY ESTABLISHING THE LEGAL ORGANIZATIONAL, AND ADMINISTRATIVE STRUCTURE NECESSARY FOR THE PROTECTION OF INDIVIDUAL PRIVACY, WHILE MAINTAINING THE CAPABILITY REQUIRED BY CRIMINAL JUSTICE AGENCIES TO COLLECT, STORE, AND DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION

CRIMINAL JUSTICE INFORMATION SYSTEM BOARD/COMMISSION

The Governor will ask the Governor's Law and Order Commission, the supervisory body for North Carolina's LEAA State Planning Agency, to adopt a resolution creating a North Carolina Criminal Justice Information System Board (N.C. CJIS Board) to oversee the development, cooperative administration, and coordination of the North Carolina Criminal Justice Information System. The Governor, the Law and Order Commission and the N.C. CJIS Board will ask the 1977 N. C. General Assembly to enact legislation to statutorily create a N.C. CJIS Commission with substantially the membership, powers, duties and responsibilities detailed in this Plan for the N.C. CJIS Board.

The N.C. CJIS Board shall consist of nine persons as follows: The Governor or his designee; the Chief Justice of the North Carolina Supreme Court or his designee; the Attorney General or his designee; the Secretary of the Department of Correction or his designee; the Commissioner of Motor Vehicles; an official of local municipal government to be appointed by the Governor from a list of three names supplied by the N. C. League of Municipalities; an official of local county government to be appointed by the Governor from a list of three names supplied by the N. C. Association of County Commissioners; an official of a municipal police agency to be appointed by the Governor from a list of three names supplied by the N. C. Police Executives Association; and an official of a county sheriff's department to be appointed by the Governor from a list of three names supplied by the N. C. Sheriffs Association. Of the members of the Board representing local government and local criminal justice agencies, two shall be appointed initially for a term of two years and two shall be appointed for a term of four years. At the expiration of those terms, new appointments by the Governor shall be for terms of four years. The terms of all appointees shall begin July 1, 1976. Any vacancy on the Commission of a member appointed for a term shall be filled for the remainder of that term by an appointee selected in the same manner as the vacating member. The Commission Chairman shall be appointed by the Governor from the Commission membership.

The N.C. CJIS Board, subject to the privacy and security regulations developed and enforced by the N.C. CJIS Security and Privacy Board shall have the following powers and duties:

- (1) To coordinate and recommend changes in the N.C. CJIS.
- (2) To determine which criminal justice information shall be reported to the Computerized Criminal History Central State Repository.

- (3) To adopt regulations concerning the capability and location of terminals, data elements, and the cooperative management and administration of the entire North Carolina Criminal Justice Information System.
- (4) To supervise the staff of the Statistical Analysis Center.
- (5) To establish advisory committees at the discretion of the Board.
- (6) To adopt guidelines for the development of internal criminal justice record systems for criminal justice agencies.
- (7) To develop and enforce sanctions for noncompliance with the Board's management regulations, which sanctions may, in addition to any applicable civil and criminal penalties, deny access by agencies or individuals to the North Carolina Criminal Justice Information System. for such periods of time as the Board deems reasonable and appropriate.
- (8) To conduct such inquiries as it deems necessary to carry out its functions.
- (9) To take such other actions as are necessary and proper to assure that the N. C. Criminal Justice Information System is developed and operated in accord with applicable state and federal laws and regulations and to bring North Carolina into compliance with the Governor's Security and Privacy Plan for the N. C. Criminal Justice Information System by December 31, 1977.
- (10) To prepare, in cooperation with the Governor's Law and Order Commission and the N.C. CJIS Security and Privacy Board legislation for introduction to the 1977 N. C. General Assembly providing for the legislative creation of a Commission with substantially the same powers as the N.C. CJIS Board.
- (11) To report annually to the Governor, the General Assembly, and all state and local agencies which participate in the North Carolina Criminal Justice Information System concerning the collection, storage, and dissemination of criminal justice information in North Carolina.
- (12) To report to the Governor's Law and Order Commission annually or more often as may be required by the Commission on its work and to prepare and bring to the Commission for adoption the rules and regulations it develops pursuant to the mandates of this Resolution.

N. C. CJIS User Advisory Committee

It is recommended that the Board establish an advisory committee to itself to insure adequate representation to the Board of the needs and problems of criminal justice agencies which use the North Carolina Criminal Justice Information System. Membership on the advisory committee should be broadly inclusive of state and local criminal justice agencies.

S. A. C. Advisory Committee

It is recommended that the Board establish a Statistical Analysis Advisory Committee to make recommendations to the Board on what data elements should be collected by criminal justice agencies, what criminal justice information should be reported to the N.C. CJIS Central State Repositories, and what other actions the N.C. CJIS Board can take to encourage the improvement of the level of statistical gathering and analysis and thus the planning and administration of the criminal justice system in North Carolina.

N. C. CJIS Security and Privacy Board

The Governor will ask the Governor's Law and Order Commission, the supervisory body for North Carolina's LEAA State Planning Agency, to adopt a resolution creating a North Carolina Criminal Justice Information System Security and Privacy Board (N.C. CJIS Security and Privacy Board) to develop, implement and enforce rules and regulations to insure the security of criminal justice information, the citizens' rights of privacy, and the public's rights of access to public information. The Governor, the Law and Order Commission and the N.C. CJIS Security and Privacy Board will ask the 1977 N. C. General Assembly to enact legislation to statutorily create a N.C. CJIS Commission with substantially the membership, powers, duties and responsibilities detailed in this Plan for the N.C. CJIS Security and Privacy Commission.

The N.C. CJIS Security and Privacy Board shall consist of seven persons appointed by the Governor as Chairman of the Governor's Law and Order Commission. There shall be one representative of the Judicial Branch of government, one representative of law enforcement agencies, and five citizens. The Board Chairman shall be appointed by the Governor from the Board membership. The terms of all appointees shall begin July 1, 1976. Of the initial seven members of the Board, two shall be appointed for a one-year term to expire June 30, 1977; two shall be appointed for a two-year term to expire June 30, 1978; two shall be appointed for a four-year term to expire June 30, 1980; one shall be appointed for a six-year term to expire June 30, 1982. After the expiration of the initial terms, appointments to the Board shall be for six-year terms. The terms of the appointees representing the Judicial branch and law enforcement agencies shall not expire simultaneously. In event of a vacancy on the Board, the Governor shall appoint a replacement to fill the unexpired term. The person filling the vacancy shall come from the same category as the individual formerly holding that seat on the Board.

It is the intent of the Governor to recommend that legislation creating a N.C. CJIS Security and Privacy Commission provide that the appointees of the Governor to the Commission be subject to confirmation by the N. C. Senate. The Governor will also recommend that the Commission, as a quasi-judicial regulatory agency be an independent agency of state government within the N. C. Department of Commerce.

The N.C. CJIS Security and Privacy Board shall have the following powers and duties:

- (1) To analyze applicable federal and state statutes to determine which criminal justice information by law is subject to Security and Privacy regulations.
- (2) To adopt regulations to assure that criminal justice information which is subject to Security and Privacy regulations is accurate, current and complete, that public information is accessible to the public as provided by law, and that the confidentiality of non-public criminal justice information is protected.
- (3) To cause to be initiated by the appropriate criminal justice agencies of the state a continuing educational program to assure that officials and employees of criminal justice agencies are familiar with and understand the relevant laws and regulations governing the collection, storage and dissemination of criminal justice information.
- (4) To require that each agency holding or receiving criminal justice information shall maintain, for a specified period, positive identification of the individuals to whom it has released or communicated such information, under procedures developed by the Board.
- (5) To determine, in accord with relevant laws, which agencies and individuals shall have direct access to the N. C. CJIS hardware and to specified classes of information held by North Carolina Criminal Justice Information System, and to insure that limitations on direct access to the N.C. CJIS hardware are not utilized to prevent legitimate lawful access to the information held by the North Carolina Criminal Justice Information System.
- (6) To set requirements for insuring the physical security of N. C. CJIS collection, storage, dissemination, and access mechanisms and facilities.
- (7) To establish a process by which individual citizens can have access to public criminal history record information held by criminal justice agencies about them, challenge, in a simple, inexpensive manner, the accuracy of that information, secure the correction of incorrect information and be assured that parties to whom such incorrect information has been directly disseminated are notified of the corrections if such dissemination has occurred within a reasonable period of time in the past.
- (8) To develop and enforce sanctions for noncompliance with the Board's security and privacy regulations, which sanctions may, in addition to any applicable civil and criminal penalties, deny access by agencies or individuals to North Carolina Criminal Justice Information System for such periods of time as the Commission deems reasonable and appropriate.
- (9) To adopt regulations requiring a continuing program of auditing and verification to assure the accuracy and completeness of criminal justice information data and to assure

compliance with its rules and regulations for the security and privacy of criminal justice information, and to conduct such audits, inquiries, and investigations as it deems appropriate to ensure compliance with its regulations and to carry out its responsibilities and functions.

- (10) To coordinate its activities with those of any interstate systems for the collection and exchange of criminal justice information to the end of insuring maximum feasible cooperation between North Carolina and the other states and the federal government in the exchange of such information including maximum compliance with the laws and regulations of other jurisdictions governing the security and privacy of criminal justice information within the bounds of North Carolina law.
- (11) To petition a Superior Court for the issuance of an order compelling the attendance of witnesses or the production of documents, books or other records necessary for the enforcement of its rules and regulations.
- (12) To take such other actions as are necessary and proper to assure that the North Carolina Criminal Justice Information System is developed and operated in accord with applicable state and federal laws and regulations and to bring North Carolina into compliance with the Governor's Security and Privacy Plan for the North Carolina Criminal Justice Information System by December 31, 1977.
- (13) To prepare, in cooperation with the Governor's Law and Order Commission and the N.C. CJIS Board, legislation for introduction to the 1977 N. C. General Assembly providing for the legislative creation of a Commission with substantially the same powers as the N.C. CJIS Security and Privacy Board.
- (14) To report annually to the Governor, the General Assembly, and to all state and local agencies which participate in the North Carolina Criminal Justice Information System concerning security and privacy within the criminal justice information system in North Carolina.
- (15) To report to the Governor's Law and Order Commission annually or more often as may be required by the Commission on its work and to prepare and bring to the Commission for adoption the rules and regulations it develops pursuant to the mandates of this Resolution.

N.C. CJIS Security and Privacy Board and/Commission Executive Director and Staff

The N. C. CJIS Security and Privacy Board shall have a staff headed by an Executive Director who shall be appointed by the Governor. The Executive Director shall be appointed from a list of names which shall be developed in the following manner. The Chief Justice of the North Carolina Supreme Court, the Attorney General, and the Secretary of the Department of Correction shall jointly submit as many as three names to the N.C. CJIS Security and Privacy Board. The Board shall

review and comment on those recommendations and it may, after consultation with the Chief Justice, the Attorney General, and the Secretary of the Department of Correction, add as many as three names to that list. Upon completion of this process, the Board shall forward the complete list with any appropriate comments and recommendations from the Board, the Chief Justice, the Attorney General, or the Secretary of Correction to the Governor for his final selection. The Executive Director of the N.C. CJIS Security and Privacy Board shall serve at the pleasure of the Board or the Governor and may be discharged by either. The N.C. CJIS Security and Privacy Board shall be provided with such staff as is necessary for the efficient carrying-out of its duties and responsibilities.

3. THE ADMINISTRATION AND OPERATION OF THE NORTH CAROLINA CRIMINAL JUSTICE INFORMATION SYSTEM SHALL BE COORDINATED BY THE NORTH CAROLINA CRIMINAL JUSTICE INFORMATION SYSTEM COMMISSION AND SHALL BE REGULATED AND GOVERNED BY UNIFORM REQUIREMENTS RELATING TO SYSTEMWIDE PRIVACY AND SECURITY DEVELOPED AND ENFORCED BY THE NORTH CAROLINA CRIMINAL JUSTICE INFORMATION SYSTEM SECURITY AND PRIVACY COMMISSION.

Criminal Justice Information System

The North Carolina Criminal Justice Information System is composed of state and local components. The local components are maintained by the law enforcement agencies of county and city government and their detention facilities, which are developing internal records systems and local radio communications networks and are connected by a telecommunication network provided by the Police Information Network of the North Carolina Department of Justice.

Four state agencies provide statewide services to the criminal justice system. The Administrative Office of the Courts will provide computerized information services and telecommunications to the courts and court officials of the state. The Department of Correction will provide these services to the Prisons and Probation and Parole. The Department of Transportation will provide information on vehicle registration and operator licenses to criminal justice agencies through the Police Information Network. The Police Information Network of the Department of Justice will provide telecommunications services to state and local law enforcement agencies and will connect the components together for purposes of message-switching and information exchanges.

Computerized Criminal History Central State Repository

The Police Information Network shall maintain the CCH Central State Repository for the storage and dissemination of CCH records as determined by the N.C. CJIS Commission and pursuant to applicable privacy and security regulations. The Police Information Network will be responsible for ensuring that all criminal history record information in the central repository is complete and accurate.

4. CRIMINAL HISTORY RECORD INFORMATION SHALL BE COLLECTED AND PROCESSED IN A MANNER THAT WILL PRODUCE INFORMATION THAT IS COMPLETE AND ACCURATE AND OF A KIND AND QUALITY THAT WILL SUPPORT THE VARIED FUNCTIONS OF THE CRIMINAL JUSTICE SYSTEM.

Data Collection

The N.C. CJIS Commission shall promulgate regulations listing the criminal offenses which criminal justice agencies must report to the N.C. CJIS Central State Repositories, such list to be consistent with NCIC Uniform Offense Classifications (see Appendix A). Investigative files shall not be computerized in the North Carolina Criminal Justice Information System.

Although the N.C. CJIS Commission will determine reporting requirements for criminal history record information, the various state and local components of the system will maintain authority and control over their own management information and any other criminal justice information which is not subject to regulations promulgated by either the N.C. CJIS Commission or the N.C. CJIS Security and Privacy Commission.

Verification of Identity

The CCH Central State Repository shall verify the identity of the individual arrested in each case reported by criminal justice agencies before including the arrest and disposition information in the Repository. This process will minimize the possibility of erroneous information storage. The methods of verification required shall be established by the N.C. CJIS Security and Privacy Commission.

All criminal justice agencies which have direct access to the CCH Central State Repository shall query that Repository before disseminating criminal history record information to assure that the information to be disseminated is the most accurate, complete and current available.

Additionally, the N.C. CJIS Security and Privacy Commission shall establish regulations requiring reasonable notification of prior direct recipients of information when erroneous information is discovered.

Individual Access or Review

Each individual or his authorized attorney shall have the right to inspect his personal criminal history record located within the N.C. Criminal Justice Information System. All criminal justice agencies at which application may be made to review criminal history record information shall prescribe reasonable hours and places for the inspection of such information. An individual may receive a copy of his record for purposes of perfecting a challenge to that record.

In order that proper dissemination logs may be kept, all criminal justice agencies shall require proof of identification before granting any individual access to criminal history record information.

Criminal justice agencies shall not charge individuals reviewing their own records a service fee, but may charge other persons requesting copies of criminal history record information a reasonable fee as established by the CJIS Commission.

If an individual believes his criminal history record is inaccurate or incomplete, he may request the agency originating the data to delete or change the record. Should the agency decline to do so, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual must formally request in writing that the agency add a challenge to his criminal history record. The fact that his information is challenged shall be disseminated as part of his criminal history record until such time as the challenge is resolved. If the agency corrects the record, it shall immediately notify the N.C. CJIS Central State Repository of the correction.

If the criminal history record is challenged and the originating agency does not resolve the challenge to the satisfaction of the challenging individual, the individual may appeal the agency's decision to the Security and Privacy Commission pursuant to rules and procedures adopted by the Commission.

The decision of the Commission shall be the final administrative review of the challenge. If the individual is unsatisfied with the determination of the Commission, he may request a judicial review of the decision.

If the challenge is successful, the record shall be immediately corrected in the N.C. CJIS Central State Repository, and notification of the change shall be sent to all criminal justice agencies having received the previously inaccurate criminal history record and to noncriminal justice agencies as requested by the individual.

Audit

The N.C. CJIS Security and Privacy Commission shall conduct annual and periodic audits of State and local criminal justice agencies which are subject to the Security and Privacy Regulations. The audits shall be conducted to verify compliance with all Security and Privacy Regulations.

All state and local criminal justice agencies which are subject to the Security and Privacy Regulations shall maintain such records as may reasonably be required by the N.C. CJIS Security and Privacy Commission to facilitate the audits conducted by the Commission and to insure compliance with the Rules and Regulations of the Commission.

5. CRIMINAL HISTORY RECORD INFORMATION SHALL BE STORED IN A MANNER DESIGNED TO PROTECT THE SYSTEM AGAINST DAMAGE OR LOSS THAT WILL IMPAIR THE OPERATION OF THE SYSTEM, WHETHER ACCIDENTAL OR INTENTIONAL. SYSTEM SECURITY FURTHER IMPLIES RESTRICTING THE AVAILABILITY OF CERTAIN CRIMINAL JUSTICE INFORMATION TO AUTHORIZED INDIVIDUALS.

Physical Security of Central State Repositories

Subject to the approval of the N.C. CJIS Security and Privacy Commission as to adequacy and compliance with applicable State and Federal law and regulations dealing with physical security, the N.C. CJIS Commission shall establish reasonable physical security standards for the maintenance and operation of information processing equipment involved in the collection, storage and dissemination of criminal history record information.

Physical security standards for the N.C. CJIS Central State Repositories will include but are not limited to, the following:

- adequate security measures to guard against illegal and malicious tampering with the equipment and files;
- adequate fire detection and quenching systems;
- water and smoke damage protection;
- walls and floors of fire resistant materials;
- air conditioning systems;
- emergency power sources;
- back-up files

While physical security standards for criminal justice information and criminal justice information system components located outside the Central State Repositories will probably not be as stringent as those for the Central State Repositories, they will be calculated to afford reasonable protection of the information and its storage and access mechanisms against unauthorized access, tampering, and physical damage or destruction.

Before any criminal justice agency is allowed to access or disseminate criminal history record information from the Central State Repository, it must demonstrate to the N.C. CJIS Commission and the N.C. CJIS Security and Privacy Commission that appropriate measures have been taken to meet the physical security standards discussed above. This proof of compliance will entail a

certification agreement, promulgated by the N.C. CJIS Commission with the approval of the N.C. CJIS Security and Privacy Commission detailing the physical security measures established at each agency.

Personnel Security

Before any individual is permitted direct access to criminal history record information or the storage mechanisms in which such information is maintained, the individual must be certified as a direct access user by the N.C. CJIS Security and Privacy Commission. The requirements for certification shall be determined by the N.C. CJIS Security and Privacy Commission after consultation with the N.C. CJIS Commission and the N.C. Criminal Justice Training and Standards Council and with due regard for the prerogatives of Constitutional officers of the State of North Carolina. (NOTE: North Carolina has established minimum training standards for law enforcement officers, and PIN terminal operators are currently required to meet some security and privacy requirements.)

Computerized System Security

The N.C. CJIS Security and Privacy Commission and the N.C. CJIS Commission shall ensure that where computerized information processing is employed, the hardware utilized for the handling of criminal history record information is physically secure from unauthorized access and physical harm and that effective and technologically advanced software and hardware designs are employed to prevent unauthorized access to, modification of, or dissemination of criminal history record information.

6. THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION FOR AUTHORIZED PURPOSES SHALL BE REGULATED THROUGH RESTRICTIONS DESIGNED TO GUARANTEE MEANINGFUL PROTECTION OF THE INDIVIDUAL'S PRIVACY AND THROUGH APPROPRIATE ACCESS TO THOSE RECORDS WHICH ARE PUBLIC.

Information to be Disseminated

Using the definitions set forth in Section 1 of this Plan, the following types of criminal justice information would be disseminated only to criminal justice agencies in Federal, State or local governments:

- Identification record information;
- Correctional and release information which is not subject to North Carolina's public records statutes;
- Criminal investigative information;

Criminal investigation information shall not be stored in computer data banks.

The following type of criminal justice information is subject to no restrictions on use and dissemination, but to the extent that such information is criminal history record information, it is subject to all other provisions of this Plan and federal and state laws and regulations governing such matters as physical security, accuracy, completeness, currency, and audit.

- Criminal justice information now matters of public record under North Carolina law.

All criminal justice agencies shall maintain logs of information disseminated, the identity and address of the person and agency to whom the information is disseminated, and the date of dissemination.

Requirements to be Met Before Dissemination is Made

All criminal justice agencies who participate in the system will be required to obtain the latest information from the Central State Repository before disseminating information on any individual within the system.

Audits on Dissemination

Annual and periodic audits will be made by the N.C. CJIS Security and Privacy Commission of a representative sample of state and local criminal justice agencies chosen on a random basis to verify adherence to the system regulations on dissemination. The N.C. CJIS Security and Privacy Commission will require that all criminal justice agencies in the state maintain sufficient data to provide an audit trail back to the source document to facilitate the audits required.

Fines for Misuse of System and Information

Individuals both within and without the criminal justice system who misuse the information within the system will be penalized by the imposition of fines or imprisonment and such other penalties as may be provided by law.

SECTION 4. MAJOR MILESTONES

Submission of Security and Privacy Plan to LEAA	June 1976
Issuance of Executive Orders	July 1976
Appointment of N.C. Criminal Justice Information System Commission and N.C. CJIS Security and Privacy Commission	July 1976
Briefing of gubernatorial candidates Concerning Plan by Governor	August 1976
Development of draft Security and Privacy Regulations by N.C. CJIS Security and Privacy Commission	November 1976
Submission of Executive Orders and proposed implementing legislation to General Assembly	February 1977
Certification of Central State Repository	August 1977
Certification of all other criminal justice Agencies within State	September 1977
System in compliance with N. C. Security and Privacy Plan and in Maximum Feasible compliance with federal regulations.	December 1977

SECTION 5. RESPONSIBILITIES OF INVOLVED AGENCIES AND CHANGES IN THOSE RESPONSIBILITIES AS REQUIRED BY THE PRIVACY & SECURITY PLAN

Department of Justice - Existing Responsibilities

The *Division of Criminal Statistics*, *Police Information Network*, and the *State Bureau of Investigation Identification Bureau* have primary responsibility for the collection, storage, and dissemination of criminal justice information. The Division of Criminal Statistics has established the Police Information Network to collect, correlate, maintain, and disseminate criminal justice information (G. S. 114-19). The Police Information Network monitors, maintains, and operates two large-scale electronic computer systems which allow North Carolina law enforcement agencies to access criminal justice information stored in the computer data banks. PIN also provides assistance to local agencies in establishing internal records systems and issues periodic reports of crime statistics. In addition, PIN obtains information from police, prosecution, court and correctional agencies on arrestees and provides this information to criminal justice institutions through an automated system which is capable of interchanging computerized criminal histories on an interstate basis.

Although nearly all criminal justice agencies use the Police Information Network, there is no mandatory reporting requirement, which means that all criminal justice information contained in the Police Information Network is reported voluntarily.

The State Bureau of Investigation Identification Bureau assists in locating, identifying, and storing records of criminals in this state and from other states (G. S. 114-19). This has been achieved through classifying, indexing, filing and searching all fingerprint records received by the bureau.

Department of Corrections - Existing Responsibilities

The *Department of Correction* maintains combined case records and receives and collects fingerprints, photographs, and other information to assist in locating identifying, and keeping records of criminals (G. S. 148-76). The information collected is classified, compared, and made available to law enforcement agencies, courts, correctional agencies, or other officials requiring criminal identification, crime statistics, and other information relating to individuals under the supervision of the Department of Correction.

Within the Department of Correction there exist organizational units responsible for statistics, research and planning which cooperate with public and private agencies, institutions, officials, and individuals in the development and conduct of programs to compile and analyze statistics and to conduct research in criminology and correction (G.S.148 - 77).

Administrative Office Of The Courts - Existing Responsibilities

Each clerk is required to maintain records, files, dockets and indexes as are prescribed by the rules of the *Administrative Office of the Courts* (G. S. 7A-109). These records are open to the inspection of the public, except as prohibited by law, and include civil actions, special proceedings,

estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, and all other records required by law to be maintained. The rules prescribed by the Director of the Administrative Office of the Courts provide for an accurate record of every determinative legal action including the indexing of all court proceedings by the names of parties involved in the litigation.

Department of Commerce - Existing Responsibilities

The North Carolina General Statutes establish a *State Board of Alcoholic Control* in the Department of Commerce (G. S. 18A-2). The enforcement division of the A. B. C. Board enforces laws relating to the sale and control of intoxicating liquor as delineated in G. S. 18A15. State and local A. B. C. officers have the same powers and authorities as other peace officers and have the authority to investigate and procure evidence with respect to violations of existing law.

Department of Transportation - Existing Responsibilities

The *State Highway Patrol*, located within the Department of Transportation, patrols the highways of the State and enforces all laws and regulations respecting travel and use of vehicles upon the highways of the State (G. S. 20). Members of the Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction. Patrol officers have statewide jurisdiction. Their primary responsibility is the enforcement of travel and motor vehicles laws. The State Highway Patrol submits crime reports to the Police Information Network.

The *Enforcement and Theft Bureau* operates under the authority of G. S. 20-49, which delineates police authority of the Division of Motor Vehicles and provides that the Commissioner and designated officers and inspectors of the Division shall have the power of peace officers. The Enforcement and Theft Bureau enforces weight limits and anti-theft laws pertaining to commercial trucks, tractors, and trailers.

The Division of Motor Vehicles maintains auto registration and driver history data which includes information on all North Carolina registered vehicles and all North Carolina licensed drivers. In order to maintain complete files, dispositions of traffic offenses are reported directly to the Department of Motor Vehicles.

Department of Natural and Economic Resources - Existing Responsibilities

The *North Carolina Forest Service* protects the forests of the State from damage and destruction by wildfire, insects, and disease. G. S. 113-54 delineates the duties of forest rangers including the language, "shall make arrests for violation of forest laws." Forest rangers are empowered with the authority to enforce all statutes of this State for the protection of woodlands and forests from fire; and any forest ranger may arrest, without a warrant, any person or persons committing a crime in his presence, and bring such person(s) before a magistrate or other officer having jurisdiction.

The *Wildlife Resources Commission* and the *Division of Marine Fisheries* are granted the powers of peace officers and are authorized to arrest for violations of laws protecting wildlife. Additionally, protectors and inspectors may arrest without warrant for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order.

Local Government and Subunits Thereof - Existing Responsibilities

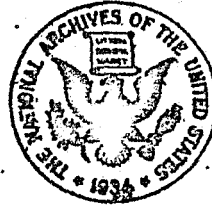
Police, Sheriffs, and other local law enforcement agencies perform the duties of peace officers within their separate jurisdictions and are not required to report criminal justice information to any central repository, however, approximately 90 - 95% of the law enforcement agencies in the State now file uniform crime reports with the Police Information Network.

North Carolina Criminal Justice Information System -- State and Local Components - Changes in Existing Responsibilities

The various State and local components of the Criminal Justice Information System shall provide criminal history record information to the Central State Repository located in the Police Information Network. The dissemination of other criminal justice information shall be left to the discretion of the agency maintaining the information to the extent that dissemination of that information is not restricted or prohibited by statute or regulation.

APPENDIX A

FRIDAY, MARCH 19, 1976



PART III:

DEPARTMENT OF
JUSTICE

Law Enforcement Assistance
Administration



CRIMINAL HISTORY
RECORDS

Collection, Storage, and Dissemination
of Information

Investigative
Records

Title 28—Judicial Administration
CHAPTER 1—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 24, 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

- 20.30 Applicability.
 20.31 Preparation and submission of a Criminal History Record Information Plan.
 20.32 Certification of Compliance.
 20.33 Documentation: Approval by LEAA.
 20.34 State laws on privacy and security.
 20.35 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, 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 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 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 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 of 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 B

RESOLUTION

Of the Governor's Law and Order Commission

Whereas: The Governor's Law and Order Commission is empowered by
G.S. 143B-338 (a):

- (1) To assist and participate with State and local law-enforcement agencies to improve law enforcement and the administration of criminal justice;
- (2) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;
- (3) To encourage public support and respect for law and order;
- (4) To seek ways to continue to make North Carolina a safe and secure State for its citizens;
- (5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work; and
- (6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary, and

Whereas: The Governor's Law and Order Commission is empowered by

G.S. 143B-338 (b) paragraph 1, "to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for law and order purposes which may be made available for the State by the federal government. The

Law and Order Commission shall be the State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the Law-Enforcement Assistance Administration of the United States Department of Justice. In respect to such grants, the Commission shall have authority to review, approve and maintain general oversight of the State plan and its implementation, including subgrants and allocations to local units of government." and, Whereas: G.S. 143B-338 (b) paragraph 2 provides that, "All decisions and grants heretofore made by the Committee on Law and Order shall remain in full force and effect unless and until repealed or superseded by action of the Law and Order Commission established herein. All actions adopted by the Commission shall be enforced by the Administrator, Law and Order Section, of the Department of Natural and Economic Resources."; and

Whereas, on December 8, 1974 the Governor's Law and Order Commission adopted "A Master Plan for Criminal Justice Information Systems for the State of North Carolina" and amended that Master Plan on June 7, 1976, and Whereas, the Governor's Law and Order Commission has adopted various other documents, reports and plans related to the development of a computerized criminal justice information system for the criminal justice system in North Carolina, and

Whereas, the Governor's Law and Order Commission has made grants and contemplates making further grants to various criminal justice agencies for the purposes related to the development of a criminal justice information system for North Carolina, and

Whereas, criminal justice information system related grants are subject to various federal regulations regarding proper criminal justice system-wide coordination and cooperative administration of the criminal justice information system as well as to various federal and state laws and regulations governing the security of criminal justice information, the rights of privacy of individual citizens, and the public's right to access certain criminal justice information, and

Whereas, the United States Department of Justice has issued regulations requiring the development of a State Plan (to be implemented by December 31, 1977) for the security and privacy of criminal justice information and the criminal justice information system, which Plan is to be developed and filed by the Governor, and

Whereas, the Governor's Law and Order Commission recognizes the need for administrative mechanisms to perform the coordinating and cooperative administration functions for the North Carolina Criminal Justice Information System as it is being designed, expanded, and installed and thereafter as it is operated, and

Whereas, the Governor's Law and Order Commission recognizes the need to assure compliance with federal and state laws governing the security and privacy of criminal justice information and the criminal justice information system and in particular to establish an administrative mechanism to assure the proper development, implementation and enforcement of security and privacy rules and regulations for the criminal justice information system called for by the Governor's Security and Privacy Plan

and other relevant state and federal laws, rules and regulations including the various planning documents and grants which have been and will be made and adopted by this Commission, and

Whereas, The Governor's Law and Order Commission believes that the expansion of the North Carolina Criminal Justice Information System into a cooperative, inter-agency, state and local information system utilizing, to the extent economically feasible, modern electronic data processing and telecommunication technology and equipment for its operation, would be of significant benefit to the criminal justice system of North Carolina, allowing more efficient and effective operation of the criminal justice system, and

Whereas, the Governor's Law and Order Commission recognizes that the development of such an interconnected information collection, processing, and dissemination system has the potential for harm and abuse, both intentional and accidental, to the citizens of North Carolina if it is not properly constructed and managed and stringent precautions are not taken to prevent human and mechanical errors in operation and use of that system, and

Whereas, the Commission has determined that further delays in proceeding with the development of such a criminal justice information system for North Carolina would jeopardize the state's ability to secure such a system, and

Whereas, the General Assembly is not in session and therefore not able to consider and enact legislation to provide the kind of administrative mechanism to assure cooperative and coordinated development, installation and operation of a criminal justice information system, and to assure the security of the system and its information, the privacy rights of North Carolina citizens, and the access to public information rights of North Carolina citizens which the Commission believes is necessary, then, THEREFORE, BE IT RESOLVED,

I. That pursuant to the powers vested in it by the North Carolina General Assembly in G.S. 143B-338 and the U.S. Crime Control Act of 1968 (as amended), the Governor's Law and Order Commission hereby creates the North Carolina Criminal Justice Information System Board with the membership, responsibilities, powers and duties as provided herein.

A. The N.C. CJIS Board shall consist of nine persons as follows: The Governor or his designee; the Chief Justice of the North Carolina Supreme Court or his designee; the Attorney General or his designee; the Secretary of the Department of Correction or his designee; the Commissioner of Motor Vehicles ; an official of local municipal government to be appointed by the Governor from a list of three names supplied by the N. C. League of Municipalities; an official of local county government to be appointed by the Governor from a list of three names

supplied by the N. C. Association of County Commissioners; an official of a municipal police agency to be appointed by the Governor from a list of three names supplied by the N. C. Police Executives' Association; and an official of a county sheriff's department to be appointed by the Governor from a list of three names supplied by the N. C. Sheriffs' Association. Of the members of the Board representing local government and local criminal justice agencies, two shall be appointed initially for a term of two years and two shall be appointed for a term of four years. At the expiration of those terms, new appointments by the Governor shall be for terms of four years.

The terms of all appointees shall begin July 1, 1976. Any vacancy on the Commission of a member appointed for a term shall be filled for the remainder of that term by an appointee selected in the same manner as as the vacating member. The Commission Chairman shall be appointed by the Governor from the Commission membership.

- B. The N.C. CJIS Board, subject to the privacy and security regulations developed and enforced by the N.C. CJIS Security and Privacy Board as provided herein below and subject to state law and the approval of the Governor's

Law and Order Commission shall have the following powers and duties:

- 1) To coordinate and recommend changes in the N. C. CJIS.
- 2) To determine which criminal justice information shall be reported to the Computerized Criminal History Central State Repository.
- 3) To adopt regulations concerning the capability and location of terminals, data elements, and the cooperative management and administration of the entire N. C. CJIS.
- 4) To supervise the staff of the Statistical Analysis Center.
- 5) To establish advisory committees at the discretion of the Board.
- 6) To adopt guidelines for the development of internal criminal justice record systems for criminal justice agencies.
- 7) To develop and enforce sanctions for noncompliance with the Board's management regulations, which sanctions may, in addition to any applicable civil and criminal penalties, deny access by agencies or individuals to N. C. CJIS for such periods of time as the Board deems reasonable and appropriate.

- 8) To conduct such inquiries as it deems necessary to carry out its functions.
- 9) To take such other actions as are necessary and proper to assure that the N. C. Criminal Justice Information System is developed and operated in accord with applicable state and federal laws and regulations and to bring North Carolina into compliance with the Governor's Security and Privacy Plan for the N. C. Criminal Justice Information System by December 31, 1977.
- 10) To prepare, in cooperation with the Governor's Law and Order Commission and the N.C. CJIS Security and Privacy Board legislation for introduction to the 1977 North Carolina General Assembly providing for the legislative creation of a Commission with substantially the same powers as the N.C. CJIS Board.
- 11) To report annually to the Governor, the General Assembly, and all state and local agencies which participate in the N. C. CJIS concerning the collection, storage, and dissemination of criminal justice information in North Carolina.
- 12) To report to the Governor's Law and Order Commission annually or more often as may be required by the Commission on its work and to prepare and bring to the Commission for adoption the rules and regulations it develops pursuant to the mandates of this Resolution.

II. That pursuant to the powers vested in it by the North Carolina General Assembly in G.S. 143B-338 and by the U.S. Crime Control Act of 1968 (as amended), the Governor's Law and Order Commission hereby creates the N.C. CJIS Security and Privacy Board with the membership, responsibilities, powers, and duties as provided herein.

A. The N.C. CJIS Security and Privacy Board shall consist of seven persons appointed by the Governor as Chairman of the Governor's Law and Order Commission. There shall be one representative of the Judicial Branch of government, one representative of law enforcement agencies, and five citizens. The Board Chairman shall be appointed by the Governor from the Board membership. The terms of all appointees shall begin July 1, 1976. Of the initial seven members of the Board, two shall be appointed for a one-year term to expire June 30, 1977; two shall be appointed for a two-year term to expire June 30, 1978; two shall be appointed for a four-year term to expire June 30, 1980; one shall be appointed for a six-year term to expire June 30, 1982. After the expiration of the initial terms, appointments to the Board shall be for six-year terms. The terms of the appointees representing the Judicial branch and law enforcement agencies shall not expire simultaneously.

In event of a vacancy on the Board the Governor shall appoint a replacement to fill the unexpired term. The person filling the vacancy shall come from the same category as the individual formerly holding that seat on the Board.

B. The N. C. CJIS Security and Privacy Board, subject to state law and the approval of the Governor's Law and Order Commission, shall have the following powers and duties:

- 1) To analyze applicable federal and state statutes to determine which criminal justice information by law is subject to Security and Privacy regulations.
- 2) To adopt regulations to assure that criminal justice information which is subject to Security and Privacy regulations is accurate, current and complete, that public information is accessible to the public as provided by law, and that the confidentiality of non-public criminal justice information is protected.
- 3) To cause to be initiated by the appropriate criminal justice agencies of the state a continuing educational program to assure that officials and employees of criminal justice agencies are familiar with and understand the relevant laws and regulations governing the collection, storage and dissemination of criminal justice information.
- 4) To require that each agency holding or receiving criminal justice information shall maintain, for a specified period,

positive identification of the individuals to whom it has released or communicated such information, under procedures developed by the Board.

- 5) To determine, in accord with relevant laws, which agencies and individuals shall have direct access to the N.C. CJIS hardware and to specified classes of information held by N.C. CJIS, and to insure that limitations on direct access to the N.C. CJIS hardware are not utilized to prevent legitimate lawful access to the information held by the N.C. CJIS.
- 6) To set requirements for insuring the physical security of N.C. CJIS collection, storage, dissemination, and access mechanisms and facilities.
- 7) To establish a process by which individual citizens can have access to public criminal history record information held by criminal justice agencies about them, challenge, in a simple, inexpensive manner, the accuracy of that information, secure the correction of incorrect information and be assured that parties to whom such incorrect information has been directly disseminated are notified of the corrections if such dissemination has occurred within a reasonable period of time in the past.
- 8) To develop and enforce sanctions for noncompliance with the Board's security and privacy regulations, which

sanctions may, in addition to any applicable civil and criminal penalties, deny access by agencies or individuals to N.C. CJIS for such periods of time as the Board deems reasonable and appropriate.

- 9) To adopt regulations requiring a continuing program of auditing and verification to assure the accuracy and completeness of criminal justice information data and to assure compliance with its rules and regulations for the security and privacy of criminal justice information, and to conduct such audits, inquiries and investigations as it deems appropriate to ensure compliance with its regulations and to carry out its responsibilities and functions.
- 10) To coordinate its activities with those of any interstate systems for the collection and exchange of criminal justice information to the end of insuring maximum feasible cooperation between North Carolina and the other states and the federal government in the exchange of such information including maximum compliance with the laws and regulations of other jurisdictions governing the security and privacy of criminal justice information within the bounds of North Carolina law.
- 11) To petition a Superior Court for the issuance of an order compelling the attendance of witnesses or the production of documents, books or other records necessary for the enforcement of its rules and regulations.

- 12) To take such other actions as are necessary and proper to assure that the N.C. CJIS is developed and operated in accord with applicable state and federal laws and regulations and to bring North Carolina into compliance with the Governor's Security and Privacy Plan for the North Carolina Criminal Justice Information System by December 31, 1977.
- 13) To prepare, in cooperation with the Governor's Law and Order Commission and the N.C. CJIS Board, legislation for introduction to the 1977 N.C. General Assembly providing for the legislative creation of a Commission with substantially the same powers as the N.C. CJIS Security and Privacy Board.
- 14) To report annually to the Governor, the General Assembly, and to all state and local agencies which participate in the North Carolina Criminal Justice Information System concerning security and privacy within the criminal justice information system in North Carolina.
- 15) To report to the Governor's Law and Order Commission annually or more often as may be required by the Commission on its work and to prepare and bring to the Commission for adoption the rules and regulations it develops pursuant to the mandates of this Resolution.

III. That the Governor's Law and Order Commission shall provide the N.C. CJIS Security and Privacy Board with a staff headed by an Executive Director who shall be appointed by the Governor as Chairman of the Governor's Law and Order Commission. The Executive Director shall be appointed from a list of names which shall be developed in the following manner. The Chief Justice of the North Carolina Supreme Court, the Attorney General, and the Secretary of the Department of Correction shall jointly submit as many as three names to the N.C. CJIS Security and Privacy Board. The Board shall review and comment on those recommendations and it may, after consultation with the Chief Justice, the Attorney General, and the Secretary of the Department of Correction, add as many as three names to that list. Upon completion of this process the Board shall forward the complete list with any appropriate comments and recommendations from the Board, the Chief Justice, the Attorney General, or the Secretary of Correction to the Governor for his final selection. The Executive Director of the N.C. CJIS Security and Privacy Commission shall serve at the pleasure of the Board and the Governor and may be discharged by either.

The N.C.

CJIS Security and Privacy Board shall be provided with such staff as is necessary for the efficient carrying-out of its duties and responsibilities.

IV. That the Governor's Law and Order Commission shall cooperate with the N.C. CJIS Board, the N.C. CJIS Security and Privacy Board, and the various state and local criminal justice agencies to develop legislation for introduction during the 1977 Session of the North Carolina General Assembly to legislatively create Commissions to perform the functions of the N.C. CJIS Board and the N.C. CJIS Security and Privacy Board, said Commissions to have substantially the same membership, powers, duties and responsibilities as the two named Boards. The legislation developed shall preserve the principles of:

- 1) cooperative administration of the N. C. Criminal Justice Information System while maintaining the administrative and managerial integrity of the components of that system in the various branches, departments, and agencies of government, both state and local, which comprise that system;
- 2) protection of the public from abuse of that system by reposing responsibility for the protection of security, privacy and public access to information in a Commission comprised of a majority of citizens who are not employees of a criminal justice agency.

V. That the Governor's Law and Order Commission shall make no grants for criminal justice information system related projects to any department or agency which does not commit itself in writing to cooperate with the Governor's Law and Order Commission, the N.C. CJIS Board, and the N.C. CJIS Security and Privacy Board in carrying out the intent and directives of this Resolution and to adhere to the rules and regulations governing the operation of the N.C. CJIS which are adopted by this Commission.

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