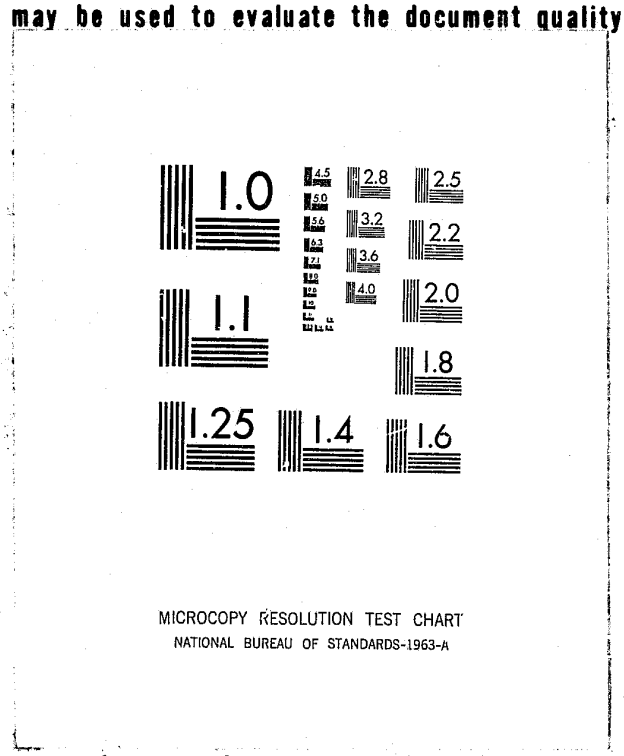
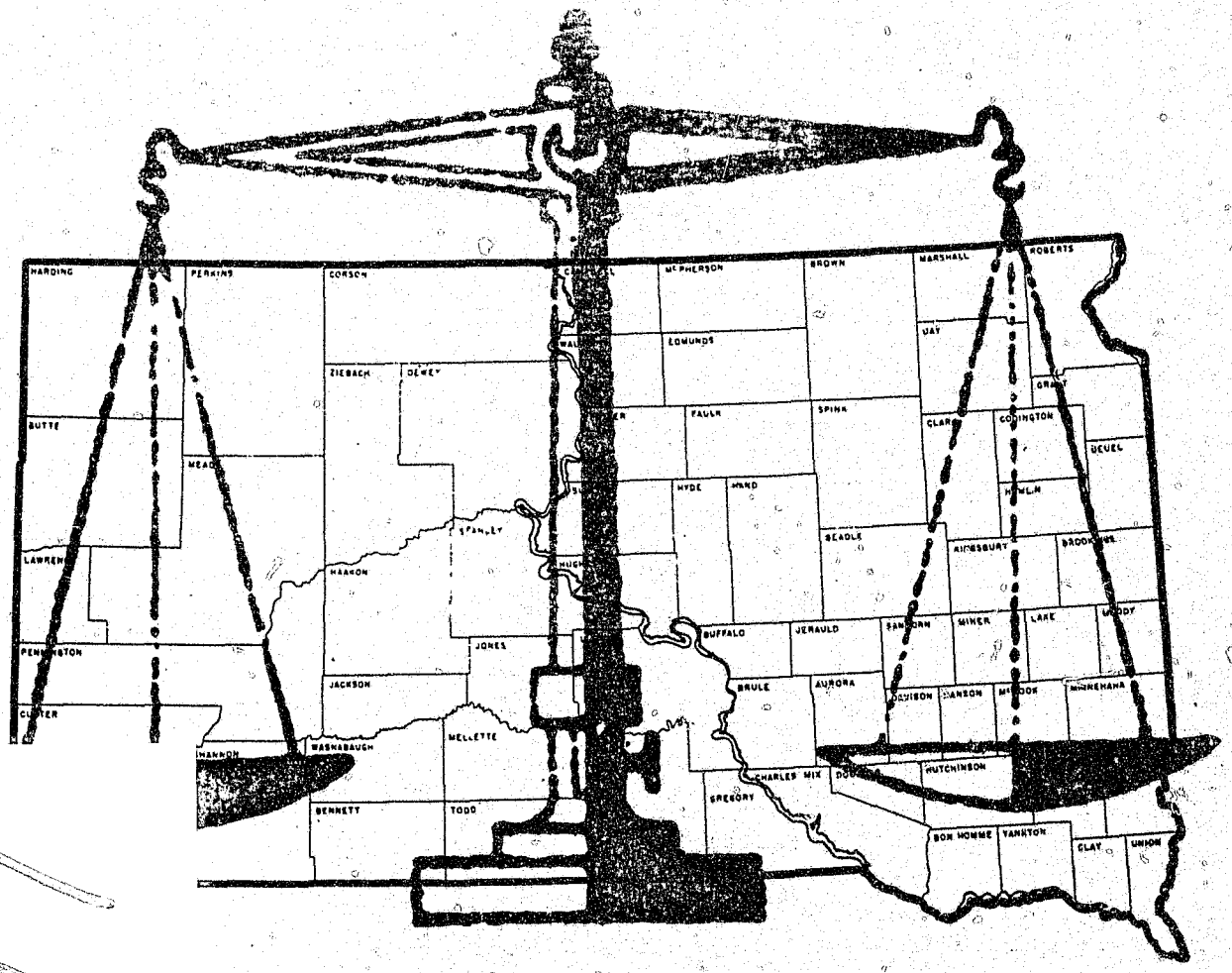
NCJRS



U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

South Dakota
Privacy And Security Plan



March, 1978

SOUTH DAKOTA DEPARTMENT OF PUBLIC SAFETY
Division Of Law Enforcement Assistance
200 West Pleasant Drive
Pierre, South Dakota 57501

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SOUTH DAKOTA

PRIVACY AND SECURITY PLAN

prepared by the

South Dakota
Criminal Justice Commission
200 West Pleasant Drive
Pierre, South Dakota 57501
(605) 224-3665

in cooperation with the

South Dakota
Attorney General's Office
Capitol Building
Pierre, South Dakota 575
(605) 224-3215

STATEMENT OF IMPACT

Any LEAA subgrantee contemplating the design, development, operation, or maintenance of any information system containing sensitive and identifiable criminal case histories which comes under the purview of Title 28, Chapter I, Part 20 of the Federal Register; South Dakota Compiled Laws; the Administrative Rules promulgated by the South Dakota Attorney General; or the State Privacy and Security Plan shall assure that individual(s) having primary responsibility for such a system shall be cognizant of the requirements of the Privacy Protection Act of 1976. Otherwise, the LEAA subgrantee shall take all actions necessary to ensure that the information system is designed, developed, implemented, and operated in conformance with the Federal Privacy and Security Regulations stated above.

STATE PRIVACY AND SECURITY PLAN
for Criminal History Record Information

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*** Principally responsible for authorship of this document.

Department of Public Safety

OFFICE OF THE SECRETARY
118 West Capitol Avenue
Pierre, South Dakota 57501

March 28, 1978

TO THE CITIZENS OF SOUTH DAKOTA:

The number of adult criminal arrests as well as the relative number of adult criminal offenders has continued on the incline over the past several years in South Dakota. The accompanying number of criminal case file requests, responses, records, and updates have also evidenced a sharp increase. But, new and more stringent requirements (Federal Privacy and Security Regulations - Title 28, Chapter I, Part 20 of the Federal Register) have been placed on system resources in meeting these information needs as they relate to criminal history record data. Largely because of these factors, the development of a Privacy and Security Plan for South Dakota was deemed necessary to clarify and address these requirements in a comprehensive manner.

While South Dakota has already made considerable progress in ensuring the security and privacy of criminal history record information, this document can hopefully serve as a valuable resource tool for state and local criminal justice agencies in the voluntary development of operational procedures to provide additional guarantees against the misuse of this information. While it remains the underlying purpose of the State Plan to carry out the rules and regulations issued by the Department of Justice, this document recognizes the fact that in many instances we have already gone beyond the minimum provisions outlined in the federal regulations (i.e. passage of the state statutes, promulgation of administrative rules, etc.).

It is essential then that criminal justice practitioners and citizens alike renew their commitment to guaranteeing the confidentiality of sensitive criminal history record information. By so doing, the deliberate or unintentional misuse of information which chronicles a private person's contact(s) with the criminal justice system can be prevented to the maximum extent possible. Hopefully, the South Dakota Privacy and Security Plan represents a significant step toward accomplishing that end.

Sincerely,

Donald C. Dahlin

Donald C. Dahlin,
Chairman
Criminal Justice Commission

DCD/BLW:ck1

I. BACKGROUND

The criminal history record (illustrated in Exhibits I-A & B on the following two pages) is an integral part of America's criminal justice system. The criminal history record chronicles each contact that an individual has with the criminal justice process by documenting such events as arrests, dispositions, sentences, and correctional commitments. The criminal history record in the United States is "the informational thread that weaves together the functions performed by law enforcement, prosecutors, defense, courts, corrections, probation and parole."

A record is initially established when an individual is arrested for the first time. Entries concerning charges, dispositions, and sentences are made as the individual is processed through the criminal justice system. If an individual is arrested more than once, additional entries are appended to the same record.

The possible forms of the criminal history record are as complex as the criminal process itself. After an individual is arrested, the charge may be dismissed, plea bargaining may result in a lesser charge, or the defendant may be tried and found innocent. If found guilty, the offender may be incarcerated, placed on probation, fined, receive a suspended sentence, or receive a deferred sentence. According to Crime in the United States - 1974, 81 percent of those arrested in 1974 were subsequently tried in the courts. Further, 75 percent of those tried were found guilty, either of the same or lesser charge; 45.2 percent of those found guilty were incarcerated; 41.4 percent were placed on probation; 6 percent were fined; and 7.4 percent received "other" dispositions. A criminal history record, if complete, will contain an individual's entire criminal past, describing the consequence of every arrest.

The FBI, as part of its "Careers in Crime" program conducted an analysis of 207,748 records in its Computerized Criminal History (CCH) file, and found that 34.8 percent of the records contained a single arrest, 18.1 percent contained two arrests, 10.9 percent contained three arrests, and 36.2 percent contained four or more arrests. The "average" record reported four arrests over a period of five years.

Prior to this study, there was no estimate of the number of criminal history records that exist in the United States. The FBI has 21.4 million. In addition, most states maintain separate files in central repositories. Further, local criminal justice agencies often maintain criminal history files of their own. Since a total of 57,575 criminal justice agencies have been identified by the Law Enforcement Assistance Administraion, the number of criminal history records is potentially very large.

In 1975, the United States maintained over 195 million criminal history records at state and local levels. These records, stored in manual, automated, or electro-mechanical form, were in addition to the 21.4 million records in the files of the Federal Bureau of Investigation. South Dakota alone presently maintains 90,000 criminal history record files in the state repository at the Division of Criminal Investigation in Pierre.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537
FICTITIOUS RECORD

The following FBI record, NUMBER 000 000 X **, is furnished FOR OFFICIAL USE ONLY. Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.**

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
SO Clanton AL	John Doe A-000	3-9-65	susp	rel
SO Clanton AL	John J. Doe A-000	6-11-65	vag	rel
SO Clanton AL	John J. Joe A-000	9-18-65	intox	$25 or 25 das; pd
PD Montgomery AL	Joseph Doe CC-000	6-11-66	forg	
St Bd of Corr Montgomery AL	John Joseph Doe C-00000	10-18-66	forg 2nd deg	2 yrs & 1 day par 5-15-67
St Bd of Corr Montgomery AL	Joseph John Doe C-00000	returned 9-5-67	PV (forg 2nd deg)	to serve un-expired term of 2 yrs & 1 day
PD Montgomery AL	John Doe A-0000	2-20-68	burg & escapee	TOT St Bd of Corr Montgomery AL
St Bd of Corr Montgomery AL	John J. Doe C-00000	returned 2-21-68	burg & escapee	2 yrs
USM Jacksonville FL	John J. Doe 00-C	10-14-70	ITSMV	
USP Lewisburg PA	John Joseph Doe 00-NE	11-15-70	ITSMV	18 mos par 8-1-71

Exhibit I-A. A Sample Manual Criminal History Record

DATE 07-02-76
TIME 1335

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
ALBANY, NEW YORK 12208

TRANS NO OWCPS
PAGE 1

RUN NO 9996
CONFIDENTIAL TO: AUTHORIZED AGENCY

B # B580779
DOB 07-16-31
RAC WHITE
SEX MALE
HGT 6-01
SOC 131-34-2526
FBI 111111A

NAME SAMPLE,SAM | NYSID 3679186H

CAUTION - IDENTIFICATION NOT BASED ON FINGERPRINT COMPARISON

NAMES USED BY SUBJECT

SAMPLE,SAMUEL
SAMPLE,SAM
JOHNSON,SAMUEL
SAMPLE,SAMUEL S
JOHNSON,SAM

- - - - - SUMMARY OF NYS CRIMINAL HISTORY INFORMATION - - - - -

DATE			CHARGES	DISPOSITION
5-28-69	PL	D FEL	DANG INST/INT USE ILL 2ND OFF	06-01-69 DISMISSED
	PL	D FEL	ROBBERY-3RD	06-23-69 4 YEARS
06-07-71	FEL		ASLT	06-10-71 PROB 3 YRS
	LL	E FEL	CHARGE CLASS E FEL LIEN LAS	
	PL	D FEL	BURGLARY-3RD	
	PL	D FEL	BURGLARY-3RD	

< < < < < < < CRIMINAL HISTORY > > > > > > >

ARREST DATE INFORMATION	ARREST CHARGES		DISPOSITION AND CORRECTIONS DATA
OUT-OF-STATE N. JERSEY	2A-31-1	POSS STLN PROP	<DISPOSITION> 2A-31-1 POSS STLN PROP DISMISSED OR ACQUITTED
ARREST DATE FEB 15,1958	2A-94-1	B&E	2A-94-1 BURG TOOLS CONV PLEA GUILTY ABOVE OFFENSE
ARREST AGENCY NEW BRUNSWICK PD	2A-90-1	A&B	COURT NOT REPORTED FINE:$10/10 DAS SENT: 6 MONTHS MIDDLESEX CO WKHSE
			<DISPOSITION> 2A-90-1 A&B CONVICTED
			COURT NOT REPORTED SENT: 1 YEAR
			< CORRECTION DATA > 1 YEAR MIDDLESEX CO WKHSE 04-03-58 INMATE ID 3482 REASON: UNKNOWN
ARR DT/PL 05-28-69 NEW YORK COUNTY	265.05 PL CLASS D FEL DANG INST/INT USE ILL 2ND OFF		<DISPOSITION> 265.05 PL CLASS D FEL DANG INST/INT USE ILL 2ND OFF DISM. AFTER ARAIGN AND HEARING
CRM DT/PL 05-28-69 NEW YORK COUNTY (CONT. NEXT PAGE)	160.15 PL CLASS B FEL		

CONFIDENTIAL

Frank J. Rogers
Commissioner

*Represents arrest information unsupported by fingerprints in our files. All entries are as complete as the data furnished to DCJS.

DCJS - 5 (4/75) Summary Case History

Exhibit I-B. A Sample Computerized Criminal History Record

Since 1969, the United States has been developing a computerized system for the interstate exchange of criminal histories. At present, research reveals that 28 states have computerized name indexes and 17 have computerized at least some of their records. Overall, of the 28.5 million criminal histories maintained at the state level, 3.9 million have been computerized.

Criminal history records have been maintained in the United States since before the turn of the century. Common practice has been to maintain a record indefinitely, regardless of whether the individual ever comes into contact with the criminal justice system again, or even whether he is alive. Consequently a large number of records are no longer active. Some indication of the proportion of inactive files can be gained from a recent experience in the state of Minnesota where the criminal history files were purged in preparation for development of a computerized criminal history (CCH) system. The purge criteria were the elimination of:

- all records of individuals over 75
- all records of individuals who had had no contact with the criminal justice system for ten years or more
- all records for which the dispositions after arrest were unknown

Using these purge criteria, the Minnesota criminal history file was reduced from 300,000 to 100,000 records, a two-thirds reduction.

Using 1974 FBI data, it was calculated that only 12 million records would be required nationally to account for the number of first time and repeat adult criminal offenders. This is approximately one-sixteenth the number presently being kept.

Whether active or inactive, criminal histories are often incomplete. The FBI, for example, has reported that an examination of 835,000 charges revealed that disposition data had not been received on over 372,000 (45%). The problem of incompleteness is more severe at the state and local levels where agencies do not possess the extensive data collection capabilities of the FBI.

The criminal history record is used for a wide variety of purposes. Among these are prearrest investigations by law enforcement officers and prosecutors; arrest and bail release decisions; plea bargaining, court case preparation, and witness verification; juror qualification, witness verification, and sentencing; and post-trial corrections and probation/parole activities such as estimating the likehood of escape and violence.

Nationally, criminal histories are also used for such non-criminal justice purposes as making security checks and verifying license applications. (Nevada, for example, requires that all persons employed in the gambling industry undergo a criminal history check.)

Based upon the results of the FBI research, only one-third of the operational criminal justice agencies in the United States need criminal history information to conduct primary criminal justice functions. More importantly, only local police and local corrections have immediate, real-time requirements to obtain this information. Local law enforcement alone accounted for 80% of all requests for criminal histories in 1975.

Files maintained by local police served as the source for 70 percent of criminal history requests. This data suggests that local law enforcement is serving as a secondary source for information -- independent of the centralized state and federal files.

The existence of redundant, unmanageable criminal history files and the multiple ways to request this information enlarges the problem. Today, when local criminal justice practitioners obtain criminal history records to make decisions, 30 percent of those records are missing required data. Moreover, 10% of these records have erroneous data contained in them.

If the state repository record is considered the master criminal history record, two factors contribute to inaccuracy and incompleteness at that level. First, 30 percent of the states do not have mandatory reporting requirements. Secondly, in many of those states with mandatory reporting, reporting time-frames as well as compliance are difficult to enforce. Nevertheless, arrests in 1975 generated 19 million input transactions to the criminal history system. (Input transactions are reporting of intermediate events and final dispositions).

The number of adult criminal arrests as well as the relative number of adult criminal offenders is expected to increase through 1985. One can expect the number of requests, responses, records and updates to increase also. New requirements will continue to be placed on system resources.

To determine what the system will look like in 1980 and 1985, projections were made by the FBI. Based upon these projections, the number of requests for criminal history will increase 22 percent by 1980 and 37 percent by 1985.

The number of input transactions will also increase. The 19 million event-reportings in 1975 is projected to increase to an average of 23.5 million by 1980 and 27 million by 1985.

Because of these and numerous other factors, the necessity of developing guidelines for the complete and accurate collection of criminal case histories on a timely basis to a central receiving point was recognized. It was felt that if the federal government could assume the lead role in attempting to address the problems associated with the collection, storage, and dissemination of criminal history record information that many of these problems could be mediated. This rationale proved to be the impetus for the promulgation of the Federal Privacy and Security Regulations which is the subject of discussion in subsequent sections of the South Dakota Privacy and Security Plan.

II. PURPOSE - OBJECTIVES OF THE PLAN

On May 20, 1975, the United States Department of Justice issued rules and regulations governing data contained in criminal justice information systems (see Attachment A). These regulations called for each state to prepare a state plan. The purpose of the plan was to ensure the development of operational procedures necessary to guarantee the security and privacy of criminal history record information in systems funded by LEAA. But, more importantly, it is hoped that this plan will also serve as a resource document for all state and local operational agencies to ensure the confidentiality of identifiable criminal case histories.

All state and local agencies awarded LEAA monies after July 1, 1973, in whole or in part for manual or automated systems which collect, store, or disseminate criminal history record information are subject to the federal regulations (refer to Attachment A). These regulations do not apply to agencies which have received LEAA funds for general purposes other than for the collection, storage, or dissemination of criminal case histories.

The chart on the following page indicates the factors which govern the impact of the regulations and the consequent procedures required of criminal justice agencies in South Dakota. To use the chart simply find the column (1 through 13) that correctly indicates the combination of applicability criteria that characterizes your agency. Then read down the column to find out which of the optional procedures are required of your agency. For example, if your agency is LEAA - funded for maintenance of a criminal history record information system, but neither receives records from other agencies nor disseminates records to other agencies or individuals, you would select column 9. If your agency does disseminate these records to other agencies or individuals, you would select either column 12 or 13. Once you have selected the correct column, simply read down the column to find which of the operational procedures (lower left column) are required by your agency ("x" indicates that the particular procedure is required). For example, if column 12 or 13 characterizes your agency (which is in fact the case with the central repository in South Dakota), then all of the listed operational procedures are required.

The following LEAA block grant applications were funded in South Dakota which serve to bind the state to the federal privacy and security regulations:

Fiscal Yr.	Project Title	Project Sponsor	Federal Funds Awarded
1973	Digital Message Switches (St. wide)	DCI	$ 30,176.00
1973	High Speed Line Printer	DCI	$ 9,375.00
1974	State Teletype Operations	DCI	$115,230.27
1974	Improving Message Switches	DCI	$ 6,300.00
1975	State Teletype Operations	DCI	$ 99,749.00
1975	State Teletype Operations	DCI	$125,000.00
1975	Career Criminal Index	A.G.'s Office	$ 9,962.43
1976	Microwave Frequency Counter	DCI	$ 5,100.00
1977	State Teletype Operations	DCI	$100,000.00
		TOTAL	$500,892.70

It is important to remember that the federal regulations apply only to criminal history record information. The definition presented in the regulations states that:

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

The regulations were written with the intent of covering collections of records containing historical references to identifiable person's involvement with criminal justice agencies. Such a collection of records would have (potentially) a listing of more than one event (e.g. a listing of all arrests). This file would also be accessible by the name of the person, so that an inquiry by name could produce a listing of many or all actions taken relating to the subject by criminal justice agencies.

Two tests are created to determine whether or not any particular collection of records is criminal history record information. Essentially, to qualify for inclusion in the definition, the individual records assembled must contain both (1) identification data sufficient to identify the subject of the record and (2) notations regarding any formal criminal justice transactions involving the identified individual.

The federal privacy and security regulations apply primarily to traditional "rap sheet" record systems; however, many other files or record systems maintained by criminal justice agencies may fall within the definition of criminal history record information (e.g. prosecutor files indicating the convictions or arrests relating to an individual; accumulations of presentence or probation reports containing information on prior criminal involvement; etc.)

The definition of criminal history record information does not include intelligence or investigation information. Thus, the regulations do not apply to such infomation as suspected criminal activity, associates, "hangouts", financial information or ownership of property or vehicles. Even if South Dakota were to develop such an information system, the information derived from an offender - based transaction statistics (OBTS/CCH) system should not reveal the identity of individuals.

The regulations specifically exclude certain types of information that might otherwise be included within the definition of criminal history record information. These specific exclusions include information contained in:

- Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

- 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 accessed solely on a chronological basis.

- Court records of public judicial proceedings.

- Published court or administrative opinions.

- Public judicial, administrative or legislative proceedings.

- Records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses.

- Announcements of executive clemency.

Exhibit II-A. APPLICABILITY AND IMPACT OF REGULATIONS

Find the column that characterizes your agency in terms of the four applicability criteria, then read down the column to find the impact of the regulations.

Possible Combinations of Applicability Criteria

APPLICABILITY CRITERIA:	1	2	3	4	5	6	7	8	9	10	11	12	13
Received LEAA Funds for CHRI	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Collects/ Maintains CHRI	No	Yes	Yes	No	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes
Disseminates CHRI	No	No	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	Yes
Receives CHRI	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes
	Totally Unaffected By Regulations			Required to Comply Only As Specified in CHRI Use Agreements					↓	↓	↓	↓	↓
OPERATIONAL PROCEDURES REQUIRED:													
Required to submit certification									X	X	X	X	X
Completeness (Disposition Reporting)												X	X
Query before dissemination										X		X	X
Accuracy--quality control and audit									X		X	X	X
Prepare procedures/agreements limiting dissemination										X		X	X
Maintain dissemination logs										X		X	X
Technical provisions limiting access									X	X	X	X	X
Control or approval of computer operations									X	X	X	X	X
Physical security/protection									X	X	X	X	X
Individual right of access									X		X	X	X

The table on the following page shows the extent of coverage of some typical record systems (Exhibit II-B). It should be emphasized that the procedures required in the event a particular system qualifies for inclusion will vary, depending primarily on the extent of dissemination.

Although "dissemination" is a key concept in the federal regulations, the regulations do not define the term. However, it can be interpreted to apply to the release or transmission of criminal history record information by an agency to another agency or individual. Intra-office use of the information by the agency maintaining the records does not constitute dissemination for purposes of the regulations. Further, reporting the occurrence of and the circumstances of a criminal justice transaction is not dissemination (i.e. reporting of an arrest/disposition to the state or FBI repository.) Similarly reporting data on a particular criminal charge to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings is not considered to be dissemination. For example, police departments may deliver arrest reports to a prosecutor as part of the documentation required for prosecutorial action. Because of the "subject-in-process" nature of these uses of records, there will be no possibility that a transaction has occurred that is unknown to the agency transmitting the record. Hence, such transmissions need not be considered disseminations.

In summary, it is the purpose of this plan to carry out the rules and regulations as set out by the Department of Justice and explained by the Law Enforcement Assistance Administration, 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 individuals' privacy pertaining to these records. Too often in the past, prospective employers, vengeful individuals, etc., have tried to launch a "general fishing expedition" into a person's private life. Therefore, it is the intent of this plan to provide a model for state and local criminal justice agencies in South Dakota for guaranteeing the confidentiality of sensitive criminal history record information and thereby helping to prevent the deliberate and malicious misuse of information which documents an individual's contact(s) with the criminal justice system.

Exhibit II-B. EXAMPLE OF THE EXTENT OF COVERAGE OF THE PRIVACY AND SECURITY REGULATIONS

Type of Record System	Features	Coverage
Subject-in-process	Intra-Jurisdictional scope, multiple agency input, temporary storage, multi-agency access	Yes
Crime incident file	Time, place, characteristics of event	No, if arrestee not indicated
Field interview file	Citizen interview by police officer	No, unless also used to record detention/arrests
Local ordinance violations	Arrests/detentions for vagrancy, traffic, disorderly conduct, etc.	Yes
Intelligence files	Investigative observations, associations	No, (only any CHRI contained therein)
Alphabetical indexes to police case files	Name vs. case number	Yes
M. O. files	Data on all persons arrested/convicted for a particular offense	Yes, (need not be complete if only used internally)
Court case files	State vs._____, filed chronologically or by alphabetical index	No
State Judicial Information System	Data on case flow and defendant flow, court management information, court statistics, may also include CCH component or link to CCH	No
Court calendaring	Scheduled dates of actions, names of participants (excluding references to arrests or dispositions)	No
Alpha-indexed appellate decisions	Court opinions of public judicial proceedings	No

III. APPROACH TO ACHIEVING OBJECTIVES

Section 524(b) of the Omnibus Crime Control and Safe Streets Act States:

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

To implement this provision, the regulations provide that each state plan must set forth operational procedures on: (a) completeness and accuracy, (b) limitations on dissemination, (c) general policies on use and dissemination (relating to non-criminal justice purposes), (d) juvenile records, (e) audit, (f) security, and (g) access and review.

Therefore, this section of the South Dakota Privacy and Security Plan includes a brief discussion of the objectives as part of the federal privacy and security requirements along with the operational procedures and actions required. Progress made in the state to satisfy the requirements will be noted. Any shortcoming or significant voids which exist in South Dakota to adequately satisfy the provisions of the federal regulations will be outlined in a subsequent section (Section IV: Schedule of Major Milestones).

A. Completeness and Accuracy

The federal regulations state that each plan is to set forth procedures to insure that criminal history record information is complete and accurate. "Complete" means, in general, that arrest records should show all subsequent dispositions as the case moves through the various segments of the criminal justice system. The approach of the regulations is that complete records should be maintained at a central state repository, and the minimum completeness requirements included in the regulations are made applicable to records maintained at such central repositories. "Accurate" means containing no erroneous information of a material nature. The regulations require operational procedures to minimize the possibility of erroneous information storage and a system for notification of prior recipients when erroneous information is discovered.

Chapter 2:02:02 of the Attorney General's Office Administrative Rules entitled Bureau of Criminal Statistics is devoted to ensuring the completeness and accuracy of records kept in the state registry. These rules were promulgated on October 22, 1977, and retroactively took effect on March 19, 1976 (Section 2:02:02). Section 2:02:01 of the Administrative Rules (see Attachment C) speak to the need of having error-free information as part of the criminal case history file. This particular provision requires that if arrest information is to be a part of the file, information on the disposition of that arrest must also be included. Therefore, the state registry is making every attempt to ensure that all criminal history record information is kept current and that disposition data is included with arrest data to the maximum extent feasible.

The system employed by the Division of Criminal Investigation is the logging method. A log is maintained which chronologically lists any criminal history record information which DCI is in receipt of. This log is kept for a minimum of one year. In the event that erroneous data has been found, this log is used to contact the sending or receiving agencies in order to correct these errors. This log also serves as an aid in notifying the affected individual (i.e. the subject of the criminal case history file).

1. Central State Repository

Clearly, the most effective, efficient and economical way of satisfying both of the complete and accurate requirements is through the establishment of a central state repository to serve all criminal justice agencies in the state, requiring the prompt reporting of all dispositions to this repository, and requiring all criminal justice agencies in the states to query the repository before disseminating criminal history record information to be sure the information is the most current available. Inquiries of a central state repository should 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.

Currently, South Dakota has a central state repository for the collection, maintenance, and dissemination of criminal history record information. The Division of Criminal Investigation serves this function pursuant to Chapter 23-3, 23-5 and 23-6 of the South Dakota Compiled Laws (refer to Attachment B). These laws spell out the fact that there is a central recordkeeping system for criminal histories and that each criminal justice agency in South Dakota is required to report all criminal justice transactions to this central recordkeeping system -- the Division of Criminal Investigation.

Also, included in the Administrative Rules promulgated by the South Dakota Attorney General is Section 2:02:02:03 External Audit Procedure. This section authorizes local and state criminal justice agencies to make inquiries of the state registry on a periodic basis to verify that the most current dispositional data is being used. While it does not mandate that an inquiry be made in every instance where criminal case histories are to be

disseminated, it does permit such an inquiry to be made on a regular basis by local operational agencies to ensure that the state registry's files are kept up-to-date.

2. Reporting of Dispositions

Section 524(b) of the Safe Streets Act requires that dispositions be included with arrests "to the maximum extent feasible." Thus, the plan is required to set forth procedures designed to insure reasonably prompt reporting of dispositions. Since it is expected that all states already have or will establish central state repositories for the maintenance of complete criminal histories, the regulations set minimum standards for reporting of dispositions to these central repositories. As a minimum, the plan must establish procedures to insure that all dispositions occurring within the state are reported to the central state repository within 90 days after occurrence for inclusion on arrest records available for dissemination.

Again referring to Section 2:02:02:01 of the Bureau of Criminal Statistics Administrative Rules, a provision of this section calls for the timely reporting of criminal history information. This particular provision satisfies the requirements of the federal regulations by stating that: "...the registry shall also include information of any disposition in South Dakota which has occurred in regard to the particular case and individual, within ninety (90) days after the disposition has occurred."

"Disposition" is defined to include the formal conclusion of each stage of a case as it moves from arrest through the criminal justice system. The term includes police dispositions such as decisions not to refer charges; prosecutor dispositions such as elections not to commence criminal proceedings or to indefinitely postpone them; court dispositions such as convictions, dismissals, acquittals and sentences; corrections dispositions such as paroles or releases from supervision; and such other dispositions as pardons or executive clemency or state supreme court decisions reversing or modifying earlier dispositions. To be "complete" under the regulations, a criminal history record must include all dispositions that have occurred in the case from arrest to final release of the individual from the cognizance of any segment of the criminal justice system. Thus, an effective disposition reporting system must include provisions for reporting of dispositions by every component of the system -- police, prosecutors, courts and corrections.

SDCL 23-6-4 permits the Director of the Bureau of Criminal Statistics to compile all dispositional information from all segments of the criminal justice system in South Dakota (refer to Attachment C). This provision serves the dual purpose of: 1.) Permitting the Attorney General's Office to present an accurate statistical picture of the number and character of crimes in the state, the extent and nature of the juvenile delinquency and the operations of the agencies in each facet of the criminal justice system in the state as well as 2.) requiring the disposition reporting from police,

courts, prosecutors, corrections, and other public agencies serves to provide a mechanism for ensuring that the disposition files include the most current data.

The federal regulations, in the interest of requiring the development of a system which records all disposition, mandates that the disposition reporting system in each state should provide for the positive identification of an individual through fingerprint identification.

South Dakota Compiled Laws in Chapter 23-5 specifically address this particular requirement (see Attachment B). SDCL 23-5-3 enables the Attorney General to procure and file fingerprint impressions of any persons who are in confinement in any correctional institution in the state. SDCL 23-5-8 requires the Warden of the South Dakota State Penitentiary to furnish fingerprints, photographs, and other identifying information of all inmates and transmit them to the state registry.

SDCL 23-5-4 makes it the duty of all law enforcement officers in the state to take fingerprints of all suspects after making the arrest on forms designed by the Division of Criminal Investigation. Once this has been done, the information is then forwarded along with any other discriptions to the state central repository in Pierre for classification and filing. These records are simultaneously set by local agencies to the FBI in Washington, D.C. This section of Chapter 23-5 also imposes penalties (i.e. upon misdemeanor conviction, a fine of not more than $100 or confinement up to thirty days) for violation of this section by any law enforcement officer.

3. Promptness of Disposition Reporting

The regulations provide that, in states that have central state repositories, dispositions occurring anywhere within the State must be reported to the repository within 90 days after occurrence. The regulations make this requirement applicable to "all arrests occurring subsequent to the effective date of these regulations." Thus, the 90-day limit is applicable only to arrests occurring after June 19, 1975. Dispositions relating to arrests made prior to that date are not subject to the limit even if the dispositions occur after that date. Such dispositions are, however, bound to be reported as promptly as possible under prevailing circumstances. Moreover, even with respect to arrests that occur after June 19, 1975, the 90-day period should be considered a minimum requirement. Every State plan according to the federal regulations should provide for the reporting of dispositions as promptly as feasible considering the existing state of development of criminal justice systems in the state.

Under Chapter 2:02:04 General Reporting Requirements of the Bureau of Criminal Statistics Administrative Rules, the federal privacy and security requirements are adequately satisfied. Section 2:02:04:01 states that all agencies in the state required to report criminal history record information to the state registry "shall submit the necessary information within ten working days" after the information has been made available to the local or state criminal justice agency. The rules promulgated by the Attorney General's Office are more restrictive than the federal regulations

particularly with respect to reporting criminal case histories to repeat offenders. Section 2:02:04:02 requires all agencies to report criminal history record information within forty-eight hours if the information relates to persons who have been arrested for their fourth time or if they have had two felony convictions. Santion against noncompliance with the two rules stated previously are spelled out in Section 2:02:04:03 entitled Consequences of Noncompliance. This rule states that failure of any agency to report criminal history record information in a timely manner will exempt them from receiving any information from the state central repository or any assistance from the director of DCI until all necessary information is completed and forwarded to the state registry.

4. Query of Central Repository Before Dissemination

As was mentioned previously in the Central State Repository section of this plan, the Attorney General's Office authorizes inquiries of the state registry by all local and state criminal justice agencies. This serves to ensure that the most accurate, complete, and up-to-date information is enclosed in the criminal history file on the individual which the agency is requesting information on. Section 2:02:02:03 of the Administrative Rules allow inquiries on a routine and periodic basis. They do not, however, mandate that a query be made of the central repository in every case where an agency is considering dissemination of criminal history information. The Attorney General's Office does not have the statutory authority to order such an inquiry of local agencies and it is doubtful whether he would want such authority for practical reasons. It should be remembered that the central state repository in South Dakota basically employs a manual system. From the standpoint of the manpower necessary and the technical capabilities requisite to enforcing such a rule, DCI would be largely incapable of meeting many of the rapid access needs of police and prosecutor offices in the state. The annual report of the Division of Criminal Investigation indicates that approximately 4,000 information requests are received yearly, the vast majority of which are received from local law enforcement agencies. At present the central repository in South Dakota can respond quickly enough for most criminal justice agencies purposes. However, this would be severely jeopardized if inquiries were made prior to all disseminations.

Therefore, the requirement that criminal case histories be kept current as to dispositions is being accomplished "to the maintain extent feasible." When the central state repository in South Dakota resorts to a fully automated system, thereby upgrading the level of its technical capabilities to serve all the information needs of all criminal and non-criminal justice agencies, then DCI should be able to respond in a very reasonable time for every query between and among all criminal justice agencies in the state.

B. Limitations on Dissemination

"Dissemination" means transmission of criminal history record information to individuals and agencies other than the criminal justice agency which maintains the criminal history record information. Dissemination includes confirmation of the existence or nonexistence of a criminal history record, and thus such a confirmation may not be communicated to anyone who would not be eligible to receive the records themselves (i.e. prospective employers, mass media, etc.)

Section 524(b) of the Safe Streets Act requires that dissemination and use of criminal history record information be limited to "criminal justice and other lawful purposes." The regulations require each state plan to contain operational procedures relating to dissemination of nonconviction data for such non-criminal justice purposes as licensing, employment checks, security clearances and research. The regulations also require procedures for limiting the dissemination of juvenile records for non-criminal justice purposes. It should be noted that the regulations place no limits on dissemination of conviction data or data relating to pending cases.

Since 1939, South Dakota has had a number of statutes which prohibit the dissemination of criminal history record information to all non-criminal justice agencies. The spirit of these laws is that criminal justice agencies share information which is relevant to the administration of criminal justice in the state. The statutes which address the topic of dissemination are as follows and can be referenced in Attachment B of this document:

-- SDCL 23-5-7 Records for identification of prisoners--Filing and preserving in department or institution--Restrictions as to use.

-- SDCL 23-5-8 Warden of penitentiary--Furnishing of identification of inmates -- Transmission to division of criminal investigation.

-- SDCL 23-6-9 Copy of available information -- Furnishing to law enforcement agencies.

-- SDCL 23-6-14 Access to files and records of bureaus

Pursuant to SDCL 23-6-14 the Attorney General's Office promulgated Administrative Rule 2:02:03:06 Specific Agencies Authorized Access to Registry Information. This rule serves to clarify and amplify the intent of SDCL 23-6-14. The rule states that the director of the central state repository specifically authorizes access to criminal history information for official purposes only to the following:

"1. The Governor of the State of South Dakota.
2. Criminal Justice Agencies for the Administration of Criminal Justice.
3. Criminal Justice Agencies for the purpose of criminal justice agency employment.

4. Federal agencies where required by federal statute or federal executive order for security clearance, employment or international travel.
5. Pursuant to court orders."

The flow diagram (Exhibit III-A) shown on the following page illustrates the procedures and requirements which exist in South Dakota with respect to the dissemination of criminal history record information. The procedures provide for direct inquiry to the central repository by criminal justice agencies as well as inquiry through another criminal justice agency.

1. Conviction Data and Pending Charges

The regulations place no limits on the dissemination of conviction data, that is, information indicating that an individual pleaded guilty or nolo contendere to criminal charges or was convicted. Nor do they prohibit the release of information concerning cases that are pending in some stage of processing or prosecution. All such information may be disseminated, both to criminal justice agencies and to non-criminal justice recipients to the full extent that such dissemination is not in violation of any state or local laws.

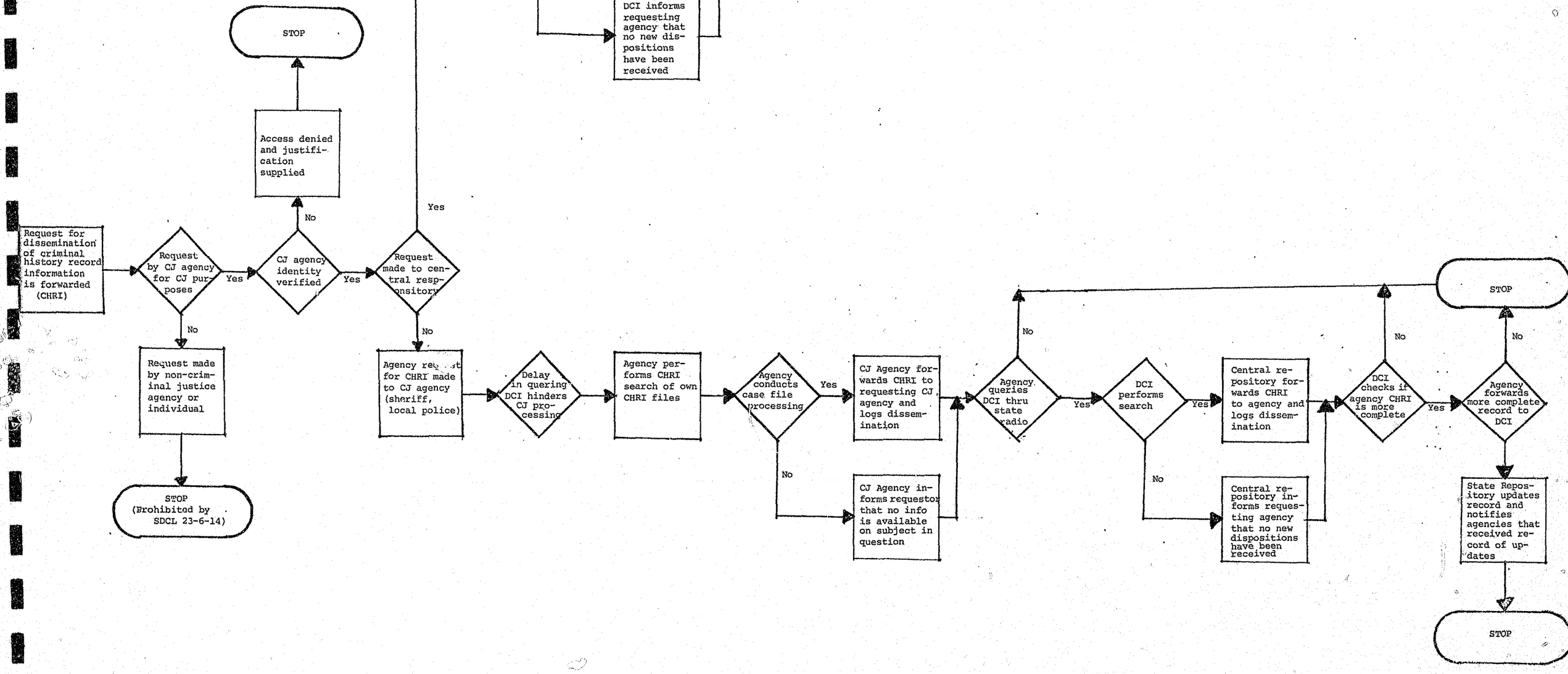
As stated in the previous section, South Dakota statute and all pertinent administrative rules do not draw a distinction between conviction and non-conviction data. The operational procedures used by the Division of Criminal Investigation limit dissemination of all criminal history records to non-criminal justice agencies. In this respect, South Dakota has taken the position of being much more restrictive than the federal privacy and security guidelines.

2. Nonconviction Data

The only dissemination limits imposed by the regulations on applicable agencies relate to "non-conviction data," defined by Section 20.3(k) to include information disclosing that (1) the police have elected not to refer a matter for prosecution, (2) a prosecutor has elected not to commence criminal proceedings (3) proceedings have been indefinitely postponed, (4) all dismissals (5) all acquittals, and (6) arrest records without dispositions if a year has elapsed and no conviction has resulted and no active prosecution is pending. The term thus includes, among others, the following dispositions: "no paper", nolle prosequi, indefinitely postponed, acquittal on the merits, acquittal due to insanity, acquittal due to mental incompetence, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, dismissed -- civil action, and mistrial -- defendant discharged. Where prosecution is deferred or postponed in order to divert the defendant to a treatment alternative program, such a case is still actively pending and the deferral disposition is not considered non-conviction data until the charges are ultimately dismissed.

EXHIBIT III-A

PROCEDURES AND REQUIREMENTS FOR THE DISSEMINATION OF CRIMINAL CASE HISTORY RECORD INFORMATION



In order for a year-old arrest record with no recorded disposition to be still under "active prosecution," the case must be still actively in process, that is, the first step, such as arraignment, must have been completed and the case docketed for court trial. Where prosecution has been officially deferred to divert the defendant to a treatment alternative program, such a deferral is a disposition and should be entered on the record.

For those agencies or individuals who are not bound by the federal requirements, it is advisable to develop user agreements (see Subsection 4 on User Agreements). While the criminal history data in the state repository cannot be disseminated to anyone who is not affiliated with a criminal justice agency, other state agencies or local agencies may choose to adopt operational procedures to permit the dissemination of non-conviction data. It is recommended, however, that the agencies to which this information is disseminated only include those which perform criminal justice services for the "parent" agency. In other words, individuals and agencies could be allowed to access non-conviction data if it serves the needs of the criminal justice agency. However, the user agreement should be entered into which specifically authorizes the access to the sensitive data, limits the use of the data to the purpose stated in the agreement, and insures the security and confidentiality of the data which is consistent with state law and the federal regulations. Such an agreement could permit private agencies such as private criminal justice consulting firms to receive criminal case histories where they perform a necessary administration of criminal justice. This would also include private consulting firms which commonly assist criminal justice agencies in information system and development and operation on the local level.

The user agreement in this instance should express the purpose of allowing dissemination only for the purposes of research, evaluation, or other statistical activities. This would permit any "good faith" researchers or private individuals to gain access to criminal history information for research purposes only without violating the spirit of the South Dakota statute or the federal regulations.

It is important to remember that in satisfying existing state statute or in fulfilling the requirements of the federal privacy and security regulations, only the outer limits of dissemination are set. Any agencies in the state which have stricter requirements are, of course, permitted to enforce such requirements. Neither the Omnibus Crime Control Act nor the federal privacy and confidentiality requirements mandate dissemination.

3. Juvenile Records

Dissemination of juvenile records to non-criminal justice agencies is prohibited by the federal regulations except where the dissemination takes place pursuant to (1) a good faith research agreement,

(2) a contract to provide criminal justice services to the disseminating agency, or (3) a statute, court order or rule or court decision specifically authorizing juvenile record dissemination. The federal regulations clearly state that these authorizations must expressly mention juvenile records; authority to receive criminal history records will not suffice.

Another important point about this section of the federal regulations concerns what the federal regulations do not say. This section of the regulations can only be strictly construed as nothing more than a limitation on dissemination of juvenile records. It applies to particular records only after there has been an adjudication that a youth is delinquent or in need of supervision (or the equivalent). The provisions of the regulations concerning completeness and accuracy, right of access for challenge, and other matters do not apply to juvenile records.

The State of South Dakota is already in full compliance with this section of the regulations. Relevant sections of state statute which address the dissemination of juvenile records are as follows (can be found in Attachment B in their exact language):

1. SDCL 26-8-19.5 — Police records of children taken into temporary custody.

2. SDCL 26-8-19.6 — Transmittal of fingerprints, photographs or other information prohibited except on court order.

3. SDCL 26-8-33 — Records of court proceedings and social studies and reports not open to public inspection -- Persons permitted to inspect.

4. SDCL 26-8-34 — Court order required for publication or broadcasting names in news media.

5. SDCL 26-8-57.1 — Sealing of records of adjudication.

4. User Agreements

The federal regulations require each state to ensure that the dissemination of non-conviction data has been limited, "whether directly or through any intermediary," only to criminal justice agencies and specified categories of legally - authorized non-criminal justice agencies and individuals. In the event that non-criminal justice agencies may be granted access to criminal history record information by issuance of a court order or some other legal means, it is advisable to develop a user agreement. This agreement ensures that criminal justice agencies will themselves comply with the limits of dissemination, and also that these limits will be observed by non-criminal justice agencies or individuals to whom they disseminate records; that is, that secondary disseminations will conform to the federal regulations and state statute.

In practice, this means that, whenever a criminal justice agency subject to the regulations receives a request for a record that includes non-conviction data (and only if the dissemination is authorized through some legal authorization), the agency must, before releasing the record, determine that the requesting agency or individual is (1) an eligible recipient and (2) aware of and willing to satisfy the requirements limiting the use and dissemination of criminal case histories.

User agreements should specify the basis of eligibility, the specific purposes for which the released records may be used, and should contain an acknowledgement by the recipient agency or individual that the records are subject to limits or use and dissemination set out in the federal regulations. The agreement should outline the penalties and sanctions which may be imposed as a result of violation of the limits on dissemination. The user agreement should expressly state that the user agency or individual agrees to be bound by the terms of the federal regulations and appropriate state statute on a continuing basis with respect to any criminal history record information received from any agency within or outside of the state.

In developing the form for these agreements, state or local criminal justice agencies may wish to refer to Project SEARCH Technical Memorandum No. 5, published in November of 1973, entitled, "Terminal Users Agreements for CCH and Other Criminal Justice Information."

5. Validation of Requestor's Authority

Before any dissemination of criminal case data takes place, all disseminating agencies should be certain that the potential recipient is an agency or individual permitted to receive such information.

If a potential recipient claims to be authorized to receive information pursuant to a statute, ordinance, executive order, or court order, rule or decision, and the disseminating agency (e.g. central repository) is not certain that the claimed basis is proper authority for dissemination, it should refuse to release the information pending a cursory investigation. As in the case of user agreements, discussed previously, criminal justice agencies may accept written or oral representations from requesting agencies or individuals that their authority to receive criminal history records has been reviewed and approved by the central state repository.

The Division of Criminal Investigation in Pierre which serves as the state central repository uses a less formalized means of identifying the potential data recipient. A coding system for each criminal justice agency in the state has been developed to identify the requestor's affiliation with a bonafide criminal justice agency. DCI refuses to release the requested information to the potential recipient if his/her identity is in question. A call-back procedure is utilized in those cases where the requestor's identity has not yet been confirmed. These two

simple yet effective procedures serve to verify the identity of the requestor and help to ascertain their eligibility in receiving sensitive and identifiable criminal history record information.

6. Access by the Military

Section 504 of title 10 of the United States Code provides that no person who has been convicted of a felony may enlist in the armed forces, except with special permission. Since implementation of this statute requires armed forces recruiters to review only conviction records, this statute is not adequate authority for the dissemination of non-conviction data on the state or local level. Further, since the statute does not contain any specific reference to juvenile records, it does not satisfy the requirements of Section 20.21(d) and hence may not be relied upon as authority for allowing military recruiters to access juvenile records.

The state registry in Pierre will allow dissemination of criminal history record information only after the requestor has properly identified himself as a military recruiter and a written dissemination request is filled out. The state registry will then contact the person who is the subject of the information jacket and ascertain whether or not he/she is willing to sign a waiver for the transfer of the information to the military recruiter. Only after these procedures have been closely adhered to will the state registry make the requested information available to the military recruiter.

C. Audits and Quality Control

The federal regulations call for two different forms of auditing. The "systematic audit" is required for a repository as a means of guaranteeing the completeness and accuracy of the records being maintained. This audit is actually a quality control mechanism which should be a part of the systems and procedures designed for a criminal history repository (either state or local). The "annual audit" is an examination, usually by an outside agency, of the extent to which the repository is complying with the regulations.

1. Systematic Audit

This process refers to the combination of systems and procedures employed to ensure completeness and to verify the accuracy of the records on file in the state registry. Ideally, it would be most beneficial to institute a delinquent disposition monitoring system. This system would be based on estimated expected arrival dates for final dispositions which would reflect anticipated processing times for each type of criminal offense. If an expected disposition is not received by the central repository by the estimated due date, then the appropriate contacts are automatically made to obtain the disposition information.

Because South Dakota makes use of a manual case file system, the cost would be prohibitive of developing a rather sophisticated delinquent monitoring system. In lieu of a system of this type, the Director of the Division of Criminal Investigation is called upon to select a representative sample of files and conduct an audit of the files. The records are compared against the source documents to determine if the data-handling procedures utilized by the DCI are being followed correctly. The requirements prescribed in the Bureau of Criminal Statistics Administrative Rules Section 2:02:02:04 entitled Internal Audit Procedures (refer to Attachment C of this document).

2. Audit Trail and Dissemination Logs

It is imperative that provisions be made to provide a clear and specific audit trail for staff personnel in the state registry to ensure that a maximum level of system accuracy is maintained. The audit trail covering input into the system should be followed by records of transactions in disseminating data in the system so that accountability can be maintained over the entire process of collection, storage, and dissemination of criminal case histories. Logging is required for support of the audit process and also as a means of correcting erroneous information.

From an operational standpoint the regulations require that procedures be identified for maintaining a listing of the agencies or individuals both in and outside the state to which criminal offender record information is released.

Section 2:02:02:05 of the Bureau of Criminal Statistics Administrative Rules is entitled Records Required to Facilitate Audit. For internal and external audit purposes, this rule states that "the state registry will maintain records which show the date on which the criminal case history information was received by the state, if such information is disseminated to someone other than a state, local, or federal repository, the date of the release of such information and the identity of the person or agency to whom it is released."

3. Annual Audit

The federal regulations call for annual audits of those agencies (i.e. the state registry) where the requirements apply to ensure that adherence to the regulations are being made and that appropriate records are being retained to facilitate these audits. The regulations acknowledge that annual audits are probably cost prohibitive. It also states that the audit of the state central repository should be performed by another agency. In the case of the state central repository in Pierre, the Attorney General will possibly be responsible for designating staff of the Division of Criminal Investigation or possibly representatives from another state agency to ensure that the provisions of the regulations are being upheld. The auditing team will inform the Attorney General fully of its findings. The audit findings will also be made available for LEAA inspection, upon request.

The annual audit should encompass all elements relative to the adherence of the federal regulations. Sampling procedures have been developed (to include at a minimum 2% of the records on file). The records at the central state repository will be traced through internal update procedures back through input processing to terminate at the source documents. Areas to be reviewed will include, but not limited to: 1) record accuracy; 2) completeness; 3) review of the effectiveness of the systematic audit procedures; 4) examination of the evidence of dissemination limitations; 5) security provisions; and 6) individuals right of access and review.

Data elements required for an adequate audit trail will include the following:

1. Name (including any aliases), race, sex, date of birth

2. Fingerprint classification

3. Local identifier number, arrest report numbers, circuit/magistrate court case (indictment) number, parole/probation case number, inmate number, state identifier number, and NCIC number

4. Arrest disposition (e.g., released, not charged), and associated dates

5. Magistrate/circuit court disposition (e.g., bond status, court action, final disposition, sentence), and associated dates

6. Probation, parole, and corrections dispositions (e.g., beginning date of supervision or custody, location, termination), and associated dates

D. Security

The regulations specify a number of requirements to ensure the confidentiality and security of criminal case history data. These requirements are set forth in general terms and are to be implemented by security standards established by each state through regulations, legislation, or internal agency operating procedures. While it is not necessary to delineate the details of these security policies, it is necessary to describe the essential elements of the standards and should describe how the state intends to implement and enforce them.

This particular section of the regulations applies to both manual and computerized record systems, although some requirements apply only to computerized systems. Although a criminal justice agency is ultimately responsible for compliance with the regulations, this can be accomplished by review and approval of procedures developed by another agency and monitoring the implementation of such procedures to assure compliance with the regulations. For example, the operational programs and procedures for computerized data processing

required by Section 20.21(f) (3) may be developed and implemented by a non-criminal justice agency operating a shared computer system with a criminal justice component, provided the procedures are approved by the participating criminal justice agencies and they are afforded the right to monitor the operations of the system to assure that the procedures are being properly implemented.

All agencies in South Dakota maintaining criminal history record information should make these records safe from environmental and physical hazards. The following procedures apply to the Division of Criminal Investigation and Central Data Processing but could also be applied to any agencies covered by the federal privacy and security regulations.

1. Physical Security

The central repository is located at the Division of Criminal Investigation in a building one mile east of Pierre, South Dakota. The building was constructed in 1971 in part with LEAA funds and is solely dedicated for criminal justice purposes. It currently houses in addition to the state registry, the State Police Radio Center, the State Chemical Laboratory and the Criminal Justice Training Center. This building is open daily only during regular working hours and is locked between 6:00 pm and 6:00 am weekdays and for the entire weekend. All main entrances to the building are constantly monitored by close circuit television by employees of the State Police Radio Center. Other entrances to the building are the type that automatically lock when entering or leaving. State Police Radio has at least one employee on duty 24 hours a day and seven days a week.

In addition, the Division of Criminal Investigation has drafted operating procedures which govern the conduct of employees and visitors to the facility.

Central Data Processing is located in the Department of Transportation Building within the Capitol complex in Pierre. It occupies approximately 1/3 of the ground floor of this building. The computer room has bullet proof plastic installed over the inside and outside windows and combination locks on the computer room entrances. This building is considered fireproof and there are hand operated fire extinguishers located in the computer room and in the hallways. CDP has policies and regulations on entrance and movement within the center.

2. Computer Systems

The regulations set out in some detail the operational procedures that must be developed to protect computer systems against unauthorized access. Compliance with these provisions of the regulations will require direct involvement and final decision-making powers for criminal justice agencies in developing policy

governing the operation of a computer used to handle criminal history record information. Where the computer is "owned" by a criminal justice agency and the agency's staff is responsible for all operations, the required policy authority is present and will be excercised directly. However, where the computer center is managed by a non-criminal justice agency, such as a central data processing division that does not meet the test of being a criminal justice agency, the regulations require that operational policies and procedures must be developed or approved by the participating criminal justice agencies and such agencies must have the right to audit, monitor and inspect the procedures to assure that they are being implemented in a manner agreeable to them and in compliance with the regulations. Thus, it is possible to satisfy the regulations with a system that is neither dedicated nor under the direct control of a criminal justice agency, provided the criminal justice agency users have the right and capability of assuring that operational policies and procedures are adequate to achieve an acceptable level of security. This means that the criminal justice agency or agencies so designated must be able to inspect the operations and review procedures as well as have a mechanism for initiating action to change an unsatisfactory operation.

It is readily acknowledged that the Division of Criminal Investigation presently does not have a computerized criminal history information system. However, in the event that a computer environment is envisioned by the Division of Criminal Investigation or another state or local agency, procedures should be outlined by that criminal justice agency to ensure compliance with the federal regulations in the operation of the computer.

3. Software and Hardware Designs

Again it is recognized that since the Division of Criminal Investigation presently uses a manual system, the federal requirements which relate to computerized systems are not applicable. But, while the changeover to an automated system has only received limited discussion, this section on computerized systems is included to serve as a reference tool in the event that such a system is resorted to.

The regulations provide that computerized systems must employ "effective and technology advanced software and hardware designs" to prevent unauthorized access to criminal history record information. It is not useful or desirable to the implementing agency to attempt to define all of the technological design features which would achieve the objective of preventing unauthorized access. Rather, the agency should describe the functions related to security which will be achieved by the system design.

Based on the present level of experience by experts in the field, it would appear that the probability of telephone line interception for the purpose of gaining access to criminal history information is

so low as to permit the use of telephone lines for this purpose. Also, information transmitted in digital form, using standard telecommunication codes, would be sufficiently difficult to reconstruct so as to permit such transmissions unless transmitting agency has reason to doubt the security of the medium. While there is no requirement in the regulations for scrambling or other encryption of transmissions, the transmitting agency must assure itself that the receiving site sustains a reasonable level of security.

System design can be one way of minimizing the likelihood of unauthorized access, although the system design cannot be expected to totally prevent unauthorized access. The institution of these designs should be aimed at both prevention and notification of attempts to penetrate the system.

Prevention is accomplished by making it difficult for an unauthorized user or terminal to access the files. Design features would include techniques such as:

1) Terminal identification number which are checked by the computer before responding to an inquiry;

2) Software which limits terminal access to only certain files or data (depending on eligibility criteria);

3) Further restrictions on terminals used for making changes or deletions, such as limiting this function to specific terminals in well-controlled environments;

4) User authentication software or hardware devices; and

5) Erasing or eliminating residual information in unprotected storage or at remote terminals.

In addition to preventing unauthorized inquiries of criminal justice information systems, the regulations require procedures to prevent unauthorized tampering with information in the system. This includes procedures to ensure that non-criminal justice terminals may not modify, change, update or otherwise affect the storage media used for criminal history record information and that such information may not be destroyed except by specifically designated terminals under the direct control of the agency that created and contributed the record or an agency with the responsibility for maintaining it. This would apply to any form of storage, including tapes, discs, core memory in the computer, or any peripheral storage devices.

Computerized systems must employ operational software programs to protect against such unauthorized inquiries, modifications or destruction of records and to record and report all attempts to penetrate the system for such an unauthorized purpose. This special software must be accorded a higher level of security than the normal operations or application software and should be known only to limited individuals, either in a criminal justice agency or in the programming agency responsible for system control, in which case an agreement must be executed to provide maximum security for this software. The purpose of these programs should

be to alert system operators of attempts to penetrate the system. Software should be designed to detect and display attempts by unauthorized users or terminals. Other desirable features would include automatic cutoff of terminals used in violation of security requirements, load monitoring to determine unusual activity, and similar detection techniques.

For further guidelines in developing such procedures, the reader may wish to refer to Project SEARCH Technical Report No. 6, entitled "Criminal Justice Computer Hardware and Software Security Consideration."

4. Personnel

The regulations distinguish two levels of authority to be assigned to criminal justice agencies relative to personnel assignment. First, where employees of a criminal justice agency (employees include civil service staff, contract employees, and anyone else who is totally supervised by the agency) are the only persons who handle data or files, it is assumed that the requisite authority is achieved. Of primary interest then is the instance where personnel of a non-criminal justice agency are involved. In such cases, the designated criminal justice agency must have the power to exclude, for good cause, individuals from having direct access to criminal justice records. This power is limited to a veto over personnel assignment, and does not imply any right to make personnel selections. It would apply to secretaries, guards, maintenance personnel, computer operators, and the personnel who work in areas where criminal justice records are stored and who have the opportunity and capability to access the records, as well as individuals whose duties clearly require direct access (file clerks, applications programmers, etc.).

There is no intent to conflict with civil service practices already in existence for the selection process, and it may well be that candidates are screened and presented to the criminal justice agency by another agency of government. However, the criminal justice agency must make the final decision as to the acceptability of the person and must be able to initiate or cause to be initiated administrative action transfer or remove persons who violate security requirements or other procedures required by the regulations.

Where the system is operated by a criminal justice agency, the regulations essentially recommend developing a personnel clearance system. Such a system could be used in agencies which have the responsibility for maintaining or disseminating criminal history record information. Policies could be developed to establish procedures for granting clearances for access to criminal history information as well as areas where criminal history data is maintained. These clearances should be granted in accordance with strict "right-to-know" and "need-to-know" principles. The personnel clearance system should provide for selective clearances, allowing less than unconditional access to all areas. The clearance should be selective to the point of denying access because of the absence of the need to know.

The use of non-criminal justice personnel (such as individuals from other government agencies or contractor services) is permissible under the regulations for purposes of system development and operation, including programming and data conversion. Access to criminal history data by these individuals is authorized by Section 20.21(f) (4) (E), but only to the extent that such access is "essential to the proper operation of the criminal history record information system." Access must be granted by means of an agreement or contract which specifies limitations on use and provides sanctions for the breach of security procedures. When such personnel are utilized, they are under the direction of and performing duties for the benefit of a criminal justice agency. It would be reasonable to consider such individuals, for the purposes of the security section of the regulations, to be equivalent to employees of a criminal justice agency. Therefore, the same security procedures could be applied. In practice, this approach would mean that where a person has unlimited access to the data base, the same level of personnel clearance should be obtained as would be sought for a full-time criminal justice agency employee in similar situations. It is not mandatory that all persons having physical access to a data center be required to have a security clearance. Procedures such as escorts, equipment access limitations, etc., can be used where appropriate.

E. Individual Right of Access and Review

One of the most effective ways to relieve the concern of many people about the kinds of information maintained in criminal justice information systems and at the same time help to insure the accuracy and completeness of the information is to permit the individual to review information maintained about him and to challenge and correct it if he deems it inaccurate or incomplete. Thus, Section 524(b) of the Crime Control Act guarantees this right. The regulations set out in some detail the kinds of procedures that must be established to implement this right. Included are procedures for access and challenge, administrative review and appeal of criminal justice agency actions, notifying prior recipients whenever information is corrected and advising the individual of the identity of non-criminal justice agencies that have received erroneous information about him.

Although the regulations set out in some detail the essential elements that must be included in these procedures, maximum latitude is left in allowing the state to devise procedures that best fit our system.

The federal regulations provide that any individual "shall, upon satisfactory verification of his identity, be entitled to review, without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction." Procedures to implement this provision should address the previously stated issues at a minimum. These requirements have been adequately implemented through the promulgation of Chapter 2:02:02:03 entitled Access and Review of the Attorney General's Administrative Rules dealing with the South Dakota Bureau of Criminal Statistics which is outlined in the following five steps.

1. Verification Method

The commentary on this subsection of the federal regulations states that the drafters "expressly rejected a suggestion that would have called for a satisfactory verification of everyone's identity by fingerprint comparison." Thus, states are left free to use other methods of identity verification. For example, fingerprinting need not be required where the requestor is well known to the official responsible for verifications. This approach leaves open the use of verification methods.

The Division of Criminal Investigation (as was mentioned previously in the section on the Validation of Requestor's Authority) makes use of a call back system for information requests. Where the identity of the potential information recipient is in question, two forms of identification are required to verify the identity of the person requesting the sensitive information--the coding system and the cursory investigation (call back) system.
Section 2:02:03:01 on Access and Review of the Bureau of Criminal Statistics Administrative Rules states the following:

> "Any individual shall have the right to review his or her criminal history record information file maintained in the state registry and to obtain a copy of the same at his or her expense. Review of criminal history record information under this rule shall be available only upon verification of the identity of the individual and at times which do not place an undue burden on the state registry."

2. Obtaining a Copy

As provided for in the previous section, a copy of an individual's record can be provided to him. However, this copy should be prominently marked to indicate that it is for the purpose of challenge only that the record is being provided. This subsection of the federal regulations states that "a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge." Consequently, the individual requestor while inspecting his criminal history record may make notations based on the record. However, the individual bears the burden of showing his need for a copy of the record. The individual should be given a copy of his record if after review he actually initiates a challenge and indicates that he needs the copy to pursue the challenge. In this instance, it is necessary to release only a copy of that portion of the record that is challenged.

Any attempt by employers to subvert the restrictions on dissemination by requiring prospective employees to obtain a copy of their criminal history can thus be discouraged by making it a practice only to give the subject a copy of that portion of the record which is to be challenged, and then only after the challenge process is actually initiated (such as by

filing a claim of inaccuracy). Furthermore, the regulations do not require any written documentation to be given to an individual attesting to the lack of a record. Such a "good character" letter would be confirmation of the existence or nonexistence of criminal history record information, is defined to be dissemination, and is therefore limited by Section 20.21 (c) (2).

The fee charged for providing a copy of the case history record or segments of it should not exceed the actual costs of making the copy (including labor and material costs incurred by the Division of Criminal Investigation).

3. Assess and Challenges

The commentary to the federal regulations states that a "challenge" is "an oral or written contention by an individual that his record is inaccurate or incomplete." The commentary also provides that, as part of a challenge procedure, the individual should be required to give a correct version of his record and explain why he believes his version to be correct.

Section 2:02:03:02 of the Bureau of Criminal Statistics rules which are in effect in South Dakota state that "if an individual finds material in his criminal record history information file in the state registry which he believes to be inaccurate or incomplete, he may request that the necessary corrections be made in his record file...."

An individual wishing to challenge his or her record may do so by setting forth in writing notice of the challenge including a statement of the portion of the record to be challenged, the reason for the challenge, documentation or other evidence supporting the challenge (e.g., certified court docket entry), and the change to be made in order to correct or complete the record. The challenge should also include a sworn statement by the individual that the challenge is accurate and is made in good faith (subject to penalties of perjury).

4. Correction Procedures and Appeals

The federal regulations state that the plan must provide for "review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete." This requirement is understood to mean that an individual who challenges his record is entitled to have the record appropriately corrected if there is no factual controversy concerning his challenge. If there is a factual controversy, he is entitled to an audit of the appropriate source documents to determine the validity of the challenge.

South Dakota does not have an administrative procedure to allow for appeals to reviewing record challenges. Section 2:02:03:02 of the Administrative Rules states that if the state registry (for whatever reason) refuses to make the requested changes, individuals can appeal this decision under the provisions of SDCL 1-26-30 (See Attachment B.) SDCL 1-26-30 provides for the right of judicial

review of contested cases. In part this statute holds that "a person who has exhausted all administrative remedies available within the agency...is entitled to judicial review.... A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."

The privacy and security regulations also provide that records found to be incorrect or incomplete must be appropriately corrected, and that "upon request, an individual whose record has been corrected shall be given the name of all non-criminal justice agencies to whom the data has been given." This requirement is addressed almost verbatum in Section 2:02:03:03 of the Administrative Rules promulgated by the South Dakota Attorney General. This requirement enables the individual to take steps to correct erroneous information that may have been given to other criminal justice agencies, since the regulations do not require that such agencies be notified of corrections by the correcting criminal justice agency. This requirement is, of course, directly related to the requirement in Section 20.21(e) of the regulations, which requires that records be kept of the names of all individuals or agencies to whom criminal history record information is disseminated. It should be noted that the regulations do not mandate that the individual requestor be given a list of non-criminal justice agencies or individuals to whom the information has been disseminated.

Consistent with the requirement spelled out in the federal regulations that procedures must be outlined concerning the keeping of appropriate logs of disseminations to criminal justice agencies and fixing the responsibility for notifying those agencies that have received inaccurate information, South Dakota employs an administrative rule which embodies this requirement. Notification of Agencies Receiving Information (Section 2:02:03:04) states that "if an individuals record is corrected under the provisions of rule 2:02:03:02, the state registry will notify all criminal justice agencies of the corrected information." Transfer of this information is based on the accuracy and completeness of the dissemination logs; it is advisable that these logs be maintained for a minimum of one year.

5. Information Subject to Review

The individual's right to review under the regulations extends only to criminal history record information concerning him, as defined by Section 20.3(b) of the regulations. Hence, he is entitled to review information that records essentially the fact, date and results of each formal stage of the criminal justice process through which he passed to ensure that all such steps are completely and accurately recorded. He is not entitled under the regulations to review juvenile records nor intelligence and investigative information. Nor is he

entitled to review substantive reports compiled by criminal justice agencies, as distinguished from a record of his movement through the agency. Thus, he would be entitled to review the record of his admission to bail, but not the bail report; the record of his sentencing, but not the presentence report; and the record of his admission to a correctional institution, but not medical records and other records of treatment at the institution.

If any of these reports are subject to dissemination, such as bail reports, probation reports, or parole reports, and any corrections are made in the individual's criminal history record as a result of a successful challenge, then appropriate corrections should of course be made in any of these reports that contain the erroneous information.

IV. RESPONSIBILITIES OF INVOLVED AGENCIES

The state agency with responsibility for development and implementation of rules and procedures with respect to the security and privacy of criminal history record information is the Division of Criminal Investigation under the administrative supervision of the South Dakota Attorney General's Office. The Division of Criminal Investigation is responsible for maintaining the central repository for criminal history record information and for the development of the mechanisms for the proper dissemination and use of the information. The Office of the Attorney General is also responsible for the development of mechanisms for reporting police identification and arrest dispositional activity and state correctional parole and institutional dispositional activity to the state registry.

The Court Administrator's Office of the Unified Judiciary System in South Dakota assumes the responsibility for the development of court-related information (i.e. probation data) and reporting mechanisms which would report court-related disposition information to the state central repository at DCI.

The Divison of Law Enforcement Assistance has assumed the responsibility for the writing of the South Dakota Security and Privacy Plan. The DLEA is available as a technical assistance resource upon request to ensure that the provisions of the federal privacy and security regulations are being adhered to. Neither the staff of DLEA nor the members of the State Criminal Justice Commission will have any administrative or supervisory authority in enforcing the requirements of Federal Register (Order No. 601-75).

V. NON-COMPLIANCE WITH THE REGULATIONS

Agencies may be subject to the penalties of the Act for a knowing and willful failure to comply with any of the following requirements:

1) failure to submit an adequate plan,

2) failure to submit adequate certification, and

3) failure to comply with the specific requirements of the regulations, including failure to implement operational procedures set forth in the plan by March 1, 1978.

A good faith misinterpretation or lack of knowledge by an agency or individual of the regulations or operational procedures set forth in the state plan may excuse failure to comply.
violations.
LEAA will recommend violations for court imposition of fines (which may be up to $10,000) only in cases of clearly willful and knowing

Submission of the plan and certification is the responsibility of the Division of Law Enforcement Assistance which has been designated this duty by the Governor of South Dakota. A maximum of 90 days will be granted for an extension which will be permitted in the case of inadequate plans or certifications by the LEAA Central Office. The extension period could, however, be less than 90 days, if in the judgement of the LEAA Central Office the deficiencies can be corrected in a shorter period of time. Failure to provide an adequate plan or certification may subject South Dakota to partial or total fund cutoffs by the Law Enforcement Assistance Administration and to the imposition of a $10,000 fine.

VI. CERTIFICATIONS OF COMPLIANCE

A. This section contains the completed LEAA Privacy and Security Certification Form for the Central State Repository located at the Divison of Criminal Investigation in Pierre. The appropriate form has been completed by this criminal justice agency which has received federal funds made available by the Law Enforcement Assistance Administration for the collection, storage, or dissemination of criminal history record information subsequent to July 1, 1973. (Please refer to page 6).

CERTIFICATION FOR A CENTRAL STATE REPOSITORY

Instructions Page Ref.	OPERATIONAL PROCEDURES	Now Implemented	Reasons For Non-Implementation: Cost	Technical	Lack of Authority	Estimated Implementation Date
	Completeness and Accuracy					
20	Central State Repository:					
21	Statutory/Executive Authority	Yes				
21	Facilities and Staff	Yes				
	Complete Disposition Reporting in 90 days from:					
24	Police	Yes*				
24	Prosecutor	Yes*				
24	Trial Courts	Yes*				
24	Appellate	Yes*				
24	Probation	Yes*				
24	Correctional Institutions	Yes*				
24	Parole	Yes*				
	Query before Dissemination:					
26	Notices/Agreements--Criminal Justice	Yes				
	Systematic Audit:					
25	Delinquent Disposition Monitoring	Yes*				
37	Accuracy Verification	Yes*				
38	Notice of Errors	Yes*				
28	Limits on Dissemination					
	Contractual Agreements/Notices and Sanctions in Effect For:					
30	Criminal Justice Agencies	Yes*				
31	Non-Criminal Justice Agencies Granted Access	Yes**				
30	Service Agencies Under Contract	Yes**				
30	Research Organizations	Yes**				
35	Validating Agency Right of Access	Yes				
	Restrictions On:					
32	Juvenile Record Dissemination	Yes				
28	Confirmation of Record Existence	Yes				
36	Dissemination Without Disposition	Yes				
37	Audits and Quality Control					
	Audit Trail:					
38	Recreating Data Entry	Yes*				
38	Primary Dissemination Logs	Yes*				
40	Secondary Dissemination Logs	Yes**				
39	Annual Audit	Yes				

* Addressed by Bureau of Criminal Statistics Administrative Rules promulgated by the Attorney General effective October 15, 1976, for those cases initiated after March 19, 1976.

** Addressed by South Dakota Compiled Laws (refer to Attachment B of the South Dakota Privacy and Security Plan).

Instructions Page Ref	OPERATIONAL PROCEDURES	Now Implemented	Reasons For Non-Implementation: Cost	Technical	Lack of Authority	Estimated Implementation Date
	Security					
40	Executive/Statutory Standards (for DCI	Yes	—	—	—	—
41	Prevention of Unauthorized Access and Tampering:					
43	Hardware/Software Designs for Computer Systems	N/A	—	—	—	—
41	Designs for Manual Systems	Yes	—	—	—	—
	Criminal Justice Agency Authority:					
42	Computer Operations Policy Development or Approval	N/A	—	—	—	—
45	Approval and Clearance of Personnel	Yes	—	—	—	—
	Physical Security:					
46	Theft, Sabotage	Yes	—	—	—	—
46	Fire, Flood, Other Natural Dangers	Yes	—	—	—	—
45	Employee Training Program (OTJ)	Yes	—	—	—	—
47	Individual Right of Access					
48	Rules for Access	Yes*				
48	Point of Review and Mechanism	Yes*				
50	Challenge by Individual	Yes*				
50	Administrative Review	Yes*				
50	Administrative Appeal	N/A**				
52	Correction/Notification of Error	Yes*				

I certify that to the maximum extent feasible that action has been taken to insure compliance with the provisions of 41 Federal Register 11714.

Signed Donald G. Licht

(Head of State Agency designated to be responsible for these regulations.)

Don Licht, Director
Division of Criminal Investigation

B. Applicants for LEAA Funds

Procedurally, the Federal Privacy and Security Regulations require that any application for LEAA assistance in connection with a project containing a research statistical component (including evaluation components of other similar efforts resulting in the collection of identifiable data) be accompanied by a "Privacy Certification" ensuring compliance with the regulations and setting forth procedures to be followed in this connection. The "Privacy Certification" shown on the following page will be used as an attachment to all block grant applications where funds will be used to collect, maintain, and disseminate criminal history record information. Completing of this one-page form should ensure that the potential subgrantee is knowledgeable of and willing to satisfy the provisions of the Federal Privacy and Security Regulations.

Project Title

SDDLEA Project
Application #_____

CERTIFICATE OF
FEDERAL PRIVACY AND SECURITY
REQUIREMENT COMPLIANCE

All agencies receiving LEAA federal funds under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351, 82 Stat. 197, as amended, for the collection, storage or dissemination of information identifiable to a private person, must submit a certificate of compliance as it relates to the Federal Privacy and Security Regulations. Contact the Division of Law Enforcement Assistance or your local District Planner for an explanation of these requirements.

Title of Project: _____

Name of Grantee: _____

The grantee certifies that the above information is correct and that the grantee is knowledgeable of and willing to take the necessary actions to ensure that the requirements of Sec. 524(a) of the Omnibus Crime Control Act of 1968, as amended, and the Regulations promulgated thereunder contained in 28 CFR Part 22 are satisfied.

_____ _____
Date

_____

Name and Title of Project Director or other Official (responsible for overseeing the use, maintenance, and disposition confidential criminal history record information.)

SDDLEA Form 113

VII. APPENDICES

federal register

FRIDAY, MARCH 19, 1976

PART III:

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

■

CRIMINAL HISTORY RECORDS

Collection, Storage, and Dissemination of Information

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

On May 20, 1975, regulations were published in the FEDERAL REGISTER (40 FR 22114) relating to the collection, storage, and dissemination of criminal history record information. Amendments to these regulations were proposed October 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

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

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

20.30 Applicability.
20.31 Responsibilities.
20.32 Includable offenses.
20.33 Dissemination of criminal history record information.
20.34 Individual's right to access criminal history record information.
20.35 National Crime Information Center Advisory Policy Board.
20.36 Participation in the Computerized Criminal History Program.
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 or 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 disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

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

(b) *Limitations on dissemination.* 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 noncriminal justice agencies shall be limited to the purpose for which it was given.

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

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

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

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

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

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

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

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

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

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

(iii) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing 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, annnoucements 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 pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

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

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

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

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

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

§ 20.21(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 nonconviction 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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LIMITATIONS ON DISSEMINATION

LAW ENFORCEMENT RECORDS--RAP SHEETS

	PRIOR §20.21	AMENDMENT
Criminal Justice Access	No limit	No limit
Non-Criminal Justice Access		
1. Arrest/Conviction Information concerning current offense for which individual is under jurisdiction of criminal justice system.	No limit	No limit
2. Conviction Data	Allowed, if expressly authorized by statute or executive order or court order or rule	No limit
3. Non-Criminal Justice Access/Acquittal and Dismissals Arrest Records w/o disposition over one-year old and no active prosecution pending (No disposition).	Same as above except that it may be disseminated to Federal or State governments for employment suitability and security clearance.	Same as above until December 1977. Allowed thereafter if authorized by statute, executive order, ordinance, court rule, decision, or order, as construed by appropriate State or local officials.

1-26-30. Right to judicial review of contested cases—Preliminary agency actions.—A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter and under procedures set forth in chapter 21-33. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

Source: SL 1966, ch 159, § 15; 1972, ch 8, § 26.

Agency.

The state commission on elementary and secondary education is an "agency" within the meaning of the Administrative Procedures Act and electors and taxpayers of a school district had right to judicial review of the commission's action creating a new school district. Elk Point Independent School Dist. No. 3 of Union County v. State Comm. on Elementary and Secondary Education (1971) 85 SD 600, 187 NW 2d 666.

Parties to Appeal.

Since §§ 51-17-15 and 51-16-39 indicated legislative intent to protect interests of existing banks in hearings on applications for new bank charters, competing bank would be "aggrieved" if its interests were not properly protected, and competing bank alleging disregard of those interests by banking commission was entitled to appeal. Valley State Bank of Canton v. Farmers State Bank of Canton (1973) — SD —, 213 NW 2d 459.

Competing banking institutions aggrieved by action of banking commission were entitled to appeal even though not specifically named as parties, and even absent hearing apparently required by § 1-26-1. Valley State Bank of Canton v. Farmers State Bank of Canton (1973) — SD —, 213 NW 2d 459.

Competing bank institutions were the only parties having sufficient interest to appeal errors of the banking commission in chartering an additional bank in a manner contrary to the legislative standards set forth in chapter 51-17. Valley State Bank of Canton v. Farmers State Bank of Canton (1973) — SD —, 213 NW 2d 459.

School Districts.

Where state commission on elementary and secondary education detached part of independent school district and attached it to another independent school district, county board of education had right of review under this act. Custer County Board of Education v. State Comm. on Elementary and Secondary Education (1972) 86 SD 215, 193 NW 2d 586.

Collateral References.

Administrative Law and Procedure ⇐651 et seq.

2 AmJur 2d, Administrative Law, § 553 et seq.

73 CJS, Public Administrative Bodies and Procedure, § 160 et seq.

Constitutionality of statute penalizing unsuccessful appeal to court from action of administrative board, 39 ALR 1181.

Court review of administrative decision, effect of, 79 ALR 2d 1141.

Propriety of certiorari to review decisions of public officer or board granting, denying, or revoking permit, certificate, or license required as condition of exercise of particular right or privilege, 102 ALR 534.

Propriety of certiorari to review decisions of tax boards, 77 ALR 1357.

23-5-3. Criminal records of inmates of penal institutions—Procuring and filing.—The attorney general shall procure and file for record the fingerprint impressions and other means of identification and statistical information of all persons contained in any workhouse, jail, reformatory, penitentiary, or other penal institutions, together with such other information as he may require from the law enforcement officers of the state and its subdivisions.

Source: SL 1935, ch 97, § 6 (3); 1937, ch 104, § 3; SDC 1939, § 55.1606; SL 1966, ch 161, § 5.

Cross-References.

Compilation of statistical information by director of criminal statistics, § 23-6-4.

Warden's register of convicts received, § 24-2-3.

Warden's register respecting conduct and personal history of prisoner, § 24-2-19.

23-5-4. Fingerprints to be taken and forwarded on arrests—Failure of officer to take and report, misdemeanor, penalty.—It is made the duty of the sheriffs of the several counties of the state, the chiefs of police, marshals of the cities and towns, or any other law enforcement officers and peace officers of the state, immediately upon the arrest of any person for a felony or misdemeanor, exclusive of those exceptions set forth in § 23-5-1, to take his fingerprints according to the fingerprint system of identification established by the division of criminal investigation, on forms to be furnished such sheriffs, chiefs of police, marshals or other law enforcement or peace officers and to forward the same together with other descriptions as may be required with a history of the offense alleged to have been committed, to this division for classification and filing. A copy of the fingerprints of the person so arrested, shall be transmitted forthwith by the arresting officer to the federal bureau of investigation in Washington, D. C.

Any officer required under the provisions of this section to take and report fingerprint records, who shall fail to take and report such records as is required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or imprisonment not exceeding thirty days, or by both.

Source: SL 1935, ch 97, § 6; 1937, ch 104, § 3; SDC 1939, §§ 55.1607, 55.9906; SL 1966, ch 161, § 6.

23-5-7. Records for identification of prisoners—Filing and preserving in department or institution—Restrictions as to use.—All photographs, impressions, measurements, descriptions, or records taken or made as provided for in § 23-5-6 shall be filed and preserved in the department or institution where made or taken and shall not be published, transferred, or circulated outside such department or institutions, nor exhibited to the public or any person or persons except duly authorized peace officers unless the subject of such photograph, measurement, description, or other record shall have become a fugitive from justice, or shall have escaped from a penal or reformatory institution.

Source: SL 1921, ch 186, § 2; SDC 1939 & Supp 1960, § 34.1614.

23-5-8. Warden of penitentiary—Furnishing of identification of inmates, transmission to division of criminal investigation.—The warden of the penitentiary shall furnish photographs, fingerprints, and other identifying information of all inmates received at such institution and shall transmit the same to the division of criminal investigation.

Source: SL 1935, ch 97, § 6 (2); 1937, ch 104, § 3; SDC 1939, § 55.1605; SL 1966, ch 161, § 4.

Cross-Reference.

Warden's register of convicts received, § 24-2-3.

23-6-4. Statistical information—Compilation by director.—The director shall collect and compile information, statistical and otherwise, which will, as far as practicable, present an accurate survey of the number and character of crimes committed in the state, the extent and character of delinquency, the operations of the police, prosecuting attorneys, courts and other public agencies of criminal justice, and the operations of penal and reformatory institutions, probation, parole, and other public agencies concerned with the punishment or treatment of criminal offenders. He shall include such information as may be useful in the study of crime and delinquency and the causes thereof, for the administration of criminal justice, and for the apprehension, punishment and treatment of criminal offenders.

Source: SL 1939, ch 138, § 3; SDC Supp 1960, § 55.15A03.

Cross-Reference.

Procuring and filing criminal records of inmates of penal institutions, § 23-5-3.

23-6-9. Copy of available information—Furnishing to law enforcement agencies.—Upon request therefor and payment of the reasonable cost, the director shall furnish a copy of all available information and of records pertaining to the identification and history of any person or persons of whom the bureau has a record, to any similar governmental bureau, sheriff, chief of police, prosecuting attorney, attorney general, or any officer of similar rank and description of the federal government, or of any state or territory of the United States or of any insular possession thereof, or of the District of Columbia, or of any foreign country, or to the judge of any court, before whom such person is being prosecuted, or has been tried and convicted, or by whom such person may have been paroled.

Source: SL 1939, ch 138, § 10; SDC Supp 1960, § 55.15A10.

23-6-14. Access to files and records of bureau.—The Governor, and persons specifically authorized by the director, shall have access to the files and records of the bureau. No such file or record of information shall be given out or made public except as provided in this chapter, or except by order of court, or except as may be necessary in connection with any criminal investigation in the judgment of the Governor or director, for the apprehension, identification or trial of a person, or persons, accused of crime, or for the identification of deceased persons, or for the identification of property.

Source: SL 1939, ch 138, § 14; SDC Supp 1960, § 55.15A14.

26-8-19.5. Police records of children taken into temporary custody.—The records of law enforcement officers concerning all children taken into temporary custody or issued a summons under the provisions of this chapter shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public including the names of children taken into temporary custody or issued a summons, except:

(1) By order of the court;

(2) When the court orders the child to be held for criminal proceedings, as provided in § 26-11-4; or

(3) When there has been a criminal conviction, and a presentence investigation is being made on an application for probation.

Source: SDC 1939, § 43.0320 as enacted by SL 1968, ch 164, § 14.

See Colo Rev Stat Ann 1973, § 19-2-102 (5).

26-8-19.6. Transmittal of fingerprints, photographs or other information prohibited except on court order.—Except in the case of a felony or misdemeanor involving moral turpitude, no fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under the provisions of this chapter may be transmitted to the federal bureau of investigation or any other person or agency, except when permitted by order of the court.

Source: SDC 1939, § 43.0320 as enacted by SL 1968, ch 164, § 14. See Colo Rev Stat Ann 1973, § 19-2-102 (6).

26-8-33. Persons permitted to inspect records of court proceedings and social studies and reports.—Records of court proceedings shall be open to inspection by the parents or guardian, their attorneys, and other interested parties in proceedings before the court, and to any agency to which custody of the child has been transferred.

With consent of the court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings and by persons conducting pertinent research studies.

Probation officers' records and reports of social and clinical studies acquired for use by the court in dispositional hearings shall not be open to inspection, except by consent of court.

For the purposes of this section the records of juvenile probation officers shall be deemed records of the court.

Source: SL 1921, ch 141, § 2; SDC 1939, § 43.0327; SL 1968, ch 164, § 16.

26-8-34. Court order required for publication or broadcasting names in news media.—The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or any person appearing as a witness in proceedings under this chapter shall not be published or broadcast in any news media, nor given any other publicity, unless for good cause it is specifically permitted by order of the court.

Source: SL 1909, ch 298, § 1; 1915, ch 119, § 1; RC 1919, § 9972; SDC 1939, §§ 43.0301, 43.0327; SL 1968, ch 164, § 16.

26-8-57.1. Sealing of records of adjudication.—Any person who has been adjudicated under this chapter may petition the court for the sealing of his record and shall be so informed at the time of adjudication. Such petition shall be filed no sooner than two years after his unconditional release from parole supervision.

Upon the filing of a petition, the court shall set a date for a hearing and shall notify the state's attorney and anyone else whom the court has reason to believe may have relevant information about the petitioner.

The court shall order sealed all records in the petitioner's case in the custody of the court and any such records in the custody of any other agency or official, if at the hearing, the court finds that: the petitioner has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under this chapter since the termination of the court's jurisdiction or his unconditional release from parole supervision; no proceeding concerning a felony or a misdemeanor involving moral turpitude or a petition under this chapter is pending or being instituted against him; and the rehabilitation of the petitioner has been attained to the satisfaction of the court.

Copies of the order shall be sent to each agency or official named therein.

Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

Source: SDC 1939, § 43.0321 as enacted by SL 1968, ch 164, § 15. See Colo Rev Stat Ann 1973, § 19-1-111.

ARTICLE 2:02

BUREAU OF CRIMINAL STATISTICS

CHAPTER

CHAPTER 2:02:01

DEFINITIONS

Section

2:02:01:01. Definitions. Words used in Chapter 2:02, unless the context plainly requires otherwise, mean:

(1) "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;

(2) "Criminal Justice Agency" means a governmental agency or subunit which performs any of the following activities: collection and dissemination of criminal histroy records information, detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of persons accused of or convicted of a criminal offense.

(3) "Director" means the director of the bureau of criminal statistics as defined in SDCL 23-6-2;

(4) "State registry" means the registry of criminal history record information maintained pursuant to § 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:01:02. Scope of Applicability. The rules in Article 2:02 apply only to the criminal history record information kept in the state registry by the division of criminal investigation pursuant to § 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

CHAPTER 2:02:02

COMPLETENESS AND ACCURACY OF RECORDS

2:02:02:01. Completeness and Accuracy of Records. Criminal history record information maintained in the state registry shall be complete and accurate and if the registry contains information that an individual has been arrested, the registry shall also include information of any disposition in South Dakota which has

occurred in regard to the particular case and individual, within ninety (90) days after the disposition has occurred.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:02:02. Retroactive Applicability. Rule 2:02:01 shall apply to all arrests made after March 19, 1976.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:02:03. External Audit Procedure. Local criminal justice agencies making inquiries of the state registry of criminal history records are authorized to make periodic inquiries of the state registry for current disposition records to insure that the current disposition information required by rule 2:02:02:01 is entered on the state's registry files.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:02:04. Internal Audit Procedures. At least once every year, the director shall select a representative sample of files in the state registry and audit such files to insure compliance with the provisions of 41 Federal Register 11714.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:02:05. Records Required to Facilitate Audit. To facilitate the audit provided by rules 2:02:02:03 and 2:02:02:04, the state registry shall maintain records which show the date on which criminal history record information is received by the state registry and, if such information is disseminated to someone other

than a state, local or federal repository of criminal history record information, the date of the release of such information and the identity of the person or agency to whom it is released.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

CHAPTER 2:02:02:03

ACCESS AND REVIEW

Section

2:02:03:01. Access and Review. Any individual shall have the right to review his or her criminal history record information file maintained in the state registry and to obtain a copy of the same at his or her expense. Review of criminal history record information under this rule shall be available only upon verification of the identity of the individual and at times which do not place an undue burden on the state registry.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:02. Requests for corrections in record. If an individual finds material in his criminal record history information file in the state registry which he believes to be inaccurate or incomplete, he may request that the necessary corrections be made in his record file. If the state registry refuses to make the requested changes, individuals shall be entitled to appeal the

decision under the provisions of SDCL 1-26-30.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:03. Request for Dissemination of Information. Upon request, an individual whose record has been corrected pursuant to rule 2:02:03:02, shall be given the names of all non-criminal justice agencies, if any, to whom the data has been given.

General Authority SDCl 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:04. Notification of Agencies Receiving Information. If an individual's record is corrected under the provisions of rule 2:02:03:02, the state registry will notify all criminal justice agencies of the corrected information.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:05. Limitation on Access and Review of Criminal Record Information. An individual's right to access and review of his or her 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 criminal history record information as defined in rule 2:02:01:01.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:06. Specific Agencies Authorized Access to Registry Information. Pursuant to SDCL 23-6-14, and without being limited to the following, the director specifically authorizes access to

information in the state registry to the following, for official purposes to:

1. The Governor of the State of South Dakota.
2. Criminal Justice Agencies for the Administration of Criminal Justice.
3. Criminal Justice Agencies for the purpose of criminal justice agency employment.
4. Federal agencies where required by federal statute or federal executive order for security clearance, employment or international travel.
5. Pursuant to court orders.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive and 23-6-14.

CHAPTER 2:02:04

GENERAL REPORTING REQUIREMENTS

Section

2:02:04:01. Reporting Deadline for Criminal History Records Information. All agencies required to report criminal history record information to the state registry shall submit the information to the state registry within ten working days of the availability of the information to them.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:04:02. Reporting Deadline for Criminal Records History Information on Repeat Offenders. All agencies required to report criminal history records information to the state registry shall report all information relating to persons having their fourth felony arrest or second felony conviction within forty-eight hours

of the information being available to them.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:04:03. Consequences of Noncompliance. Failure to comply with rules 2:02:04:01 and 2:02:04:02 will make an agency requesting information from the state registry ineligible to receive any information from the state registry or assistance from the director until the submission of all required criminal history records information is completed according to the rules in ARSD Article 2:02.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

CHAPTER 2:02:05

GENERAL ADMINISTRATIVE PROCEDURES

Section
2:02:05:01 Requests for Declaratory Rulings

2:02:05:01. Requests for Declaratory Rulings. Petitions may be filed with the director for the purpose of requesting a declaratory ruling as to the applicability of any statutory provision or rule included within the scope of Article 2:02 or any final order of the director to a given set of facts included under Article 2:02. The petition shall be in writing and contain all pertinent facts necessary to inform the director of the nature of the problem on which a ruling is requested. The director may request more facts where necessary upon which to make his ruling.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7)
Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

END